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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUIS RODRIGUEZ,)	Case No. 2:11-CV-00553 JAM-EFB
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION TO DISMISS
)	
WELLS FARGO BANK, N.A.; FIDELITY)	
NATIONAL TITLE INC. COMPANY;)	
FREDDIE MAC; CAL-WESTERN)	
RECONVEYANCE CORP; and DOES 1)	
through 100, inclusive,)	
)	
Defendants.)	

This matter comes before the Court on Defendant Wells Fargo Bank, N.A.'s ("Defendant") Motion to Dismiss (Doc. #4) Plaintiff Luis Rodriguez's ("Plaintiff") Complaint (Doc. #1, Exhibit A), pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff opposes Defendant's Motion to Dismiss (Docs. #7, #8).¹

Plaintiff's opposition was due no later than May 18, 2011. See E.D. Cal. L.R. 230(c) (requiring an opposition to be "served

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled for June 1, 2011.

1 not less than fourteen (14) days preceding the noticed (or
2 continued) hearing date.”). On May 24, 2011, Defendant filed a
3 declaration, stating that to date it had not received an
4 opposition, or a statement of non-opposition, to Defendant’s Motion
5 to Dismiss from the Plaintiff (Doc. # 6). Plaintiff then filed an
6 opposition on May 26, 2011 (Doc. #8). Although Plaintiff’s
7 opposition is untimely, the Court will consider it and decide
8 Defendant’s Motion to Dismiss on the merits. However, this Court
9 will impose sanctions on Plaintiff’s counsel for the late filing.

10 For the reasons set forth below, Defendant’s Motion to Dismiss
11 is granted in its entirety.

12
13 I. FACTUAL AND PROCEDURAL BACKGROUND

14 This action arises out of the purchase, foreclosure, and
15 trustee’s sale, which was scheduled for February 15, 2011, of real
16 property located at 951 Snow Lilly Avenue in Galt, California
17 (“Subject Property”). See Doc. #1, Plaintiff’s Complaint
18 (“Comp.”); Doc. #8. Around October, 2006, Plaintiff successfully
19 applied for a loan from Defendant for the purchase of the Subject
20 Property. Id. Plaintiff seeks relief based on alleged wrongful
21 acts by Defendant in the loan origination process. Id.²

22
23
24 ²The Court notes with great concern that twelve of Plaintiff’s
25 seventeen causes of action, as plead in Plaintiff’s complaint, are
26 identical to those contained in a complaint filed in another case,
27 by Plaintiff’s attorneys, that was dismissed by this Court over one
28 year ago for failure to state a claim. Compare Madrid v. J.P.
Morgan Chase Bank, N.A., 2009 WL 3255880 (E.D. Cal. Oct. 8, 2009),
09-cv-00731 JAM-GGH, Docs. #1, 25, 40, 42, 51, with Comp.
Boilerplate or “cut and paste” pleadings are strongly discouraged
by this Court, particularly pleadings that contain claims
previously dismissed.

1 II. OPINION

2 A. Legal Standard

3 A party may move to dismiss an action for failure to state a
4 claim upon which relief can be granted pursuant to Federal Rule of
5 Civil Procedure 12(b)(6). In considering a motion to dismiss, the
6 court must accept the allegations in the complaint as true and draw
7 all reasonable inferences in favor of the plaintiff. Scheuer v.
8 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by
9 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319,
10 322 (1972). Assertions that are mere "legal conclusions," however,
11 are not entitled to the assumption of truth. Ashcroft v. Iqbal,
12 129 S. Ct. 1937, 1950 (2009) (citing Bell Atl. Corp. v. Twombly,
13 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, a
14 plaintiff needs to plead "enough facts to state a claim to relief
15 that is plausible on its face." Twombly, 550 U.S. at 570.
16 Dismissal is appropriate where the plaintiff fails to state a claim
17 supportable by a cognizable legal theory. Balistreri v. Pacifica
18 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

19 Upon granting a motion to dismiss for failure to state a
20 claim, the court has discretion to allow leave to amend the
21 complaint pursuant to Federal Rule of Civil Procedure section
22 15(a). "Dismissal with prejudice and without leave to amend is not
23 appropriate unless it is clear . . . that the complaint could not
24 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon, Inc.,
25 316 F.3d 1048, 1052 (9th Cir. 2003).

26 Generally, the Court may not consider material beyond the
27 pleadings in ruling on a motion to dismiss for failure to state a
28 claim, unless the material is attached to, or relied on by, the

1 complaint, or the court takes judicial notice of matters of public
2 record, provided the facts are not subject to reasonable dispute.
3 E.g., Sherman v. Stryker Corp., 2009 WL 2241664 at *2 (C.D. Cal.
4 Mar. 30, 2009). Here, Defendant requests the Court take judicial
5 notice of the Deed of Trust securing the loan, which was recorded
6 in the County of Sacramento. MTD at pg. 21-37. Plaintiff did not
7 dispute the authenticity of this document. See Doc. #8.

8 B. Claims for Relief

9 1. Breach of Fiduciary Duty

10 Plaintiff asserts that a fiduciary relationship existed
11 between the Plaintiff and Defendant, which the Defendant
12 breached by acting for its own benefit. Plaintiff's Complaint,
13 Doc. #1 ("Comp.") at ¶¶ 28-31. Defendant argues that Plaintiff
14 did not plead an essential element of this cause of action, and
15 therefore, his claim must be dismissed. Defendant's Motion to
16 Dismiss, Doc. #4 ("MTD") at pg. 2-3.

17 "The elements of a cause of action for breach of fiduciary
18 duty are: 1) the existence of a fiduciary duty; 2) a breach of
19 the fiduciary duty; and 3) resulting damage." Pellegrini v.
20 Weiss, 165 Cal.App.4th 515, 524 (Cal. Ct. App. 6d 2008).

21 As Defendant points out in its Motion to Dismiss, there is
22 no fiduciary relationship between a debtor and creditor. See,
23 e.g., Price v. Wells Fargo Bank, 213 Cal.App.3d 465, 476 (Cal.
24 Ct. App. 1989) (citing Downey v. Humphreys, 102 Cal.App.2d 323,
25 332 (Cal. Ct. App. 1951)). Moreover, in the lending context, "a
26 financial institution owes no duty of care to a borrower when
27 the institution's involvement in the loan transaction does not
28 exceed the scope of its conventional role as a mere lender of

1 money.” Nymark v. Heart Federal Savings & Loan Ass’n, 231
2 Cal.App.3d 1089, 1096 (Cal. Ct. App. 3d 1991).

3 As set forth in Plaintiff’s complaint, the relationship
4 between Plaintiff and Defendant is that of a debtor-creditor,
5 which does not create a fiduciary relationship between the
6 parties. Cf. Comp. with Price v. Wells Fargo Bank, 213
7 Cal.App.3d 465 (Cal. Ct. App. 1989). Accordingly, without this
8 essential element, Plaintiff’s cause of action for breach of
9 fiduciary duty cannot stand and is, therefore, dismissed with
10 prejudice. See Eminence Capital, L.L.C. v. Aspeon, Inc., 316
11 F.3d 1048, 1052 (9th Cir. 2003). Allowing Plaintiff leave to
12 amend this claim would be futile; Plaintiff’s attorneys have
13 previously pled causes of action for breach of fiduciary duty
14 under similar circumstances, which were all dismissed when the
15 defendant lending institution raised the same issue, and it is
16 clear that there is no relationship between Plaintiff and
17 Defendant in this case beyond that of a typical debtor-creditor
18 relationship. Compare Madrid v. J.P. Morgan Chase, 2009 WL
19 3255880, 09-cv-00731 JAM-GGH, Docs. #1, 23, 25; see also
20 Dyachishin v. America’s Wholesale Lenders, 2010 WL 1525703 at *4
21 (E.D. Cal. April 15, 2010).

22 2. Breach of Covenant of Good Faith and Fair Dealing

23 Plaintiff alleges that Defendant breached the covenant of good
24 faith and fair dealing “represented by the terms of the 30 yr loan,
25 Note, and Deed of Trust,” by failing to provide certain loan
26 documents or disclosures, in English and Spanish, failing to verify
27 Plaintiff’s income, and placing Plaintiff in an improper loan
28 transaction. Comp. at ¶¶ 36-38.

1 In general, "[e]very contract imposes upon each party a duty
2 of good faith and fair dealing in its performance and its
3 enforcement." Marsu, B.V. v. Walt Disney Co., 185 F.3d 932, 937
4 (9th Cir. 1999) (citations and internal quotations omitted).
5 Liability can arise when one party does something to "injure the
6 right of the other [party] to receive the benefits of the
7 agreement." Andrews v. Mobile Aire Estates, 125 Cal.App.4th 578,
8 589 (Cal. Ct. App. 2005). Importantly, "the implied covenant is
9 limited to assuring compliance with the express terms of the
10 contract, and cannot be extended to create obligations not
11 contemplated in the contract." Racine & Laramie, Ltd. V.
12 Department of Parks & Recreation, 11 Cal.App.4th 1026, 1032 (Cal.
13 Ct. App. 1992) (emphasis added).

14 As argued by the Defendant, Plaintiff has failed to allege the
15 Defendant interfered with any of Plaintiff's rights under the
16 express terms of the contract. MTD at pg. 3-5. Indeed, Plaintiff
17 fails to point to any terms of the contract that were affected by
18 the Defendant. See Comp. at ¶¶ 36-38. Because Plaintiff fails to
19 provide facts substantiating his claim for breach of the implied
20 covenant of good faith and fair dealing, Defendant's Motion to
21 Dismiss this claim is granted.

22 Additionally, Plaintiff's attorneys have made similar claims
23 in previous cases, all of which have been dismissed because they do
24 not relate to obligations under the contract, an essential
25 requirement to maintain a cause of action for breach of the implied
26 covenant of good faith and fair dealing. See, e.g., Madrid v. J.P.
27 Morgan Chase Bank, N.A., 2009 WL 3255880 (E.D. Cal. Oct. 8, 2009),
28 09-cv-00731 JAM-GGH, Docs. #1, 23, 25, 30, 40, 42, 43, 51;

1 Bezverkhov v. Cal-Western Reconveyance Corp., 2009 WL 4895581 at
2 *6-7 (E.D. Cal. Dec. 11, 2009). In light of the dearth of facts in
3 Plaintiff's complaint, and Plaintiff's attorneys' knowledge that
4 identical claims pled as they were in Plaintiff's complaint have
5 repeatedly failed as a matter of law, allowing leave to amend would
6 be futile. Accordingly, Plaintiff's cause of action for breach of
7 the implied covenant of good faith and fair dealing is dismissed
8 with prejudice.

9 3. Deceit, California Civil Code §§ 1709-10

10 Plaintiff alleges Defendant made misrepresentations to him,
11 which caused Plaintiff to "pay more for his loan than the amount
12 Plaintiff could have qualified for." Comp. at ¶ 44-45.

13 Deceit is defined as the "suppression of a fact, by one who is
14 bound to disclose it, or who gives information of other facts which
15 are likely to mislead for want of communication of that fact."
16 Cal. Civ. Code § 1710. In essence, deceit is a fraud claim. See,
17 e.g., Diaz v. Federal Express Corp., 373 F.Supp.2d 1034, 1066-1067
18 (C.D. 2005) (treating a claim under Section 1709 as a fraud claim).
19 Accordingly, the heightened pleading standards of Federal Rule of
20 Civil Procedure 9(b) apply. Id.; see also FED. R. CIV. P. 9(b)
21 (requiring a party to "state with particularity the circumstances
22 constituting fraud or mistake").

23 Plaintiff's claims are identical to those plead in other
24 complaints under "Fraud" sections. Cf., e.g., Madrid v. J.P.
25 Morgan Chase Bank, N.A., 2009 WL 3255880 (E.D. Cal. Oct. 8, 2009),
26 09-cv-00731 JAM-GGH, Doc. #1 at ¶¶ 60, 64-66, 68. Defendant's
27 Motion to Dismiss points out that Plaintiff's complaint is
28 completely devoid of facts to substantiate his claim for "Deceit."

1 MTD at pg. 5-6. As made clear by this Court, and others in the
2 Northern and Eastern Districts of California, Plaintiff's
3 allegations are insufficient to state a claim under the heightened
4 pleading requirements. Madrid, 2009 WL 3255880 (E.D. Cal. Oct. 8,
5 2009). Accordingly, Plaintiff's claim for deceit is dismissed with
6 prejudice.

7 4. Business & Professions Code § 17200

8 Plaintiff's claim for violations of the California Business
9 and Professions Code section 17200 arises from acts that occurred
10 in the loan application and underwriting process. Comp. at ¶¶ 47-
11 58. However, Defendant correctly argues that Plaintiff's claims
12 under section 17200 are barred by the applicable four year statute
13 of limitations. MTD at pg. 6-8; see also CAL. BUS. & PROF. CODE §
14 17208. The loan was closed no later than November 7, 2006, and
15 Plaintiff filed the operative complaint on February 2, 2011, more
16 than four years after the alleged acts giving rise to Plaintiff's
17 claim under section 17200 occurred. Accordingly, Defendant's
18 Motion to Dismiss is granted, and Plaintiff's claim for relief
19 under section 17200 is dismissed with prejudice, as Plaintiff will
20 not be able overcome the statute of limitations on amendment.³

21 5. Promissory Estoppel

22 Plaintiff alleges he relied on "false promises,
23 representations and assurances of Defendant[]," which resulted in
24 "Plaintiff fail[ing] to act as early as he would have otherwise."
25 Comp. at ¶¶ 60-61.

26 In California, a claim for promissory estoppel requires: "(1)

27 _____
28 ³ The Court does not need to reach Defendant's other arguments for
dismissal of Plaintiff's section 17200 claim in light of the
statute of limitations issue.

1 the existence of a promise 'clear and unambiguous in its terms;'
2 (2) 'reliance by the party to whom the promise is made;' (3) that
3 any reliance was both 'reasonable and foreseeable;' and (4) that
4 the party asserting the estoppels was injured by his reliance."
5 Krouse v. BAC Home Loans Servicing, LP, 2011 WL 2367093 at *3 (E.D.
6 Cal. Jun. 9, 2011) (quoting US Ecology, Inc. v. State, 129
7 Cal.App.4th 887, 901 (Cal. Ct. App. 2005)) (other citations
8 omitted). Defendant correctly argues that Plaintiff's complaint is
9 devoid of any facts substantiating the essential elements of a
10 claim for promissory estoppel. MTD at pg. 8-9. Indeed, Plaintiff
11 fails to identify the promisor with any specificity, as he names
12 all defendants in this action, and it is unclear what the alleged
13 promise was that Plaintiff's claim is based upon. See Comp. at
14 ¶¶ 59-63. Accordingly, Plaintiff's claim for promissory estoppel
15 is dismissed without prejudice.

16 6. Fraud by Intentional Misrepresentation

17 Defendant properly asserts that Plaintiff's claim for fraud by
18 intentional misrepresentation fails for the same reasons
19 Plaintiff's third cause of action for deceit failed. MTD at pg.
20 pg. 5-6; cf., e.g., Bezverkhov v. Cal-Western Reconveyance Corp.,
21 et al., 2009 WL 4895581 at *5-6 (E.D. Cal. Dec. 11, 2009).
22 Accordingly, Plaintiff's claim for fraud by intentional
23 misrepresentation is dismissed with prejudice.

24 7. Fraud by Concealment

25 Defendant properly asserts that Plaintiff's claim for fraud by
26 concealment fails for the same reasons Plaintiff's third cause of
27 action for deceit failed. MTD at pg. pg. 5-6; cf., e.g.,
28 Bezverkhov v. Cal-Western Reconveyance Corp., et al., 2009 WL

1 4895581 at *5-6 (E.D. Cal. Dec. 11, 2009). Accordingly,
2 Plaintiff's claim for fraud by concealment is dismissed with
3 prejudice.

4 8. Unjust Enrichment

5 Plaintiff alleges that Defendant made "false promises," and
6 based on Plaintiff's reliance on those promises, Defendant received
7 profits and material gains. Comp. at ¶¶ 71-72. The elements of an
8 unjust enrichment claim are the receipt of a benefit and unjust
9 retention of that benefit at the expense of another. Lectrodryer
10 v. Seoulbank, 77 Cal.App.4th 723, 726 (Cal. Ct. App. 2000).

11 Defendant correctly asserts in its Motion to Dismiss that
12 Plaintiff's complaint fails to present facts sufficient to
13 constitute a claim for unjust enrichment. MTD at pg. 9-10; see
14 also Comp. at ¶¶ 71-72. Indeed, Plaintiff's complaint is devoid of
15 any facts supporting his conclusory allegations of unjust
16 enrichment. Accordingly, Defendant's Motion to Dismiss is granted.

17 Allowing Plaintiff leave to amend this claim would be futile.
18 Plaintiff's attorneys have previously pled causes of action for
19 unjust enrichment under nearly identical circumstances, which were
20 dismissed for failure to state a claim for lack of factual
21 specificity. See Madrid v. J.P. Morgan Chase, 09-cv-00731 JAM-GGH,
22 Docs. #1, 25, 30, 40, 42, 43, 51. Accordingly, Plaintiff's claim
23 for unjust enrichment is dismissed with prejudice.

24 9. Quiet Title

25 Plaintiff alleges Defendant "claimed an interest adverse to
26 Plaintiff's title in the [subject] property." Comp. at ¶ 74. In
27 order to plead a claim to quiet title, the complaint must state:
28 (1) a legal description of the property; (2) the title of the

1 plaintiff and the basis of the title; (3) the adverse claims to the
2 title of the plaintiff; (4) the date as of which the determination
3 is sought; and (5) a prayer for the determination of the title of
4 the plaintiff against adverse claims. CAL. CIV. PROC. CODE § 761.020.
5 Importantly, “[a] mortgagor cannot quiet his title against the
6 mortgagee without paying the debt secured.” Dyachishin v.
7 America’s Wholesale Lenders, 2010 WL 1525703 at *2 (E.D. Cal. April
8 15, 2010) (quoting Santos v. Countrywide Home Loans, 2009 WL
9 3756337 at *4 (E.D. Cal. Nov. 6, 2009)).

10 Defendant correctly asserts that Plaintiff’s complaint
11 completely fails to present facts substantiating the requisite
12 elements for a claim to quiet title. MTD at pg. 10-11.
13 Furthermore, allowing Plaintiff leave to amend this claim would be
14 futile. Plaintiff’s attorneys have previously pled causes of
15 action to quiet title under nearly identical circumstances, using
16 the exact same language contained in Plaintiff’s complaint, which
17 were all dismissed for failure to state a claim. Compare Madrid v.
18 J.P. Morgan Chase, 2009 WL 3255880, 09-cv-00731 JAM-GGH, Docs. #1,
19 25, 30, 40, 42, 43, 51; see also Dyachishin v. America’s Wholesale
20 Lenders, 2010 WL 1525703 at *2-3 (E.D. Cal. April 15, 2010).
21 Moreover, Plaintiff does not allege anywhere in his complaint that
22 he can pay the debt secured, a requirement for a mortgagor to
23 succeed on a claim to quiet title. See Dyachishin, 2010 WL 1525703
24 at *2-3 (E.D. Cal. April 15, 2010). Accordingly, Defendant’s
25 Motion to Dismiss is granted, and Plaintiff’s cause of action to
26 quiet title is dismissed with prejudice.

27 10. California Rosenthal Act

28 Plaintiff alleges that Defendant violated the California

1 Rosenthal Act by threatening Plaintiff with foreclosure and using
2 other "unfair or unconscionable means in an attempt to collect
3 debt." Comp. at ¶¶ 78-79. Defendant correctly points out that a
4 residential mortgage loan is not considered a "debt," nor is
5 foreclosure considered "debt collection" under the Rosenthal Act.
6 See, e.g., Dyachishin v. America's Wholesale Lenders, 2010 WL
7 1525703 at *3-4 (E.D. Cal. April 15, 2010).

8 Plaintiff's attorneys have made identical claims in previous
9 cases, all of which have been dismissed because they are not
10 actionable under the Rosenthal Act. See, e.g., Dyachishin, 2010 WL
11 1525703 at *3-4 (E.D. Cal. April 15, 2010). Plaintiff's claim to
12 quiet title cannot be cured by amendment because it is clear that
13 the "debt" in this case is not within the scope of the Rosenthal
14 Act. Accordingly, Defendant's Motion to Dismiss is granted and
15 Plaintiff's claim under the Rosenthal Act is dismissed with
16 prejudice.

17 11. Civil Conspiracy

18 Plaintiff alleges Defendant participated in a conspiracy to
19 "implement a scheme to defraud and victimize Plaintiff. . . ."
20 Comp. at ¶¶ 81-85. Defendant properly asserts that Plaintiff
21 cannot maintain a cause of action for civil conspiracy, as "it is
22 not an independent tort." MTD at pg. 13; see also Applied
23 Equipment Corp. v. Litton Saudi Arabia, Ltd., 7 Cal.4th 503, 510-11
24 (1994). As the California Court of Appeal stated: "By its nature,
25 tort liability arising from conspiracy presupposes that the
26 coconspirator is legally capable of committing the tort, i.e., that
27 he or she owes a duty to plaintiff recognized by law and is
28 potentially subject to liability for breach of that duty." Applied

1 Equipment Corp., 7 Cal.4th at 511.

2 Because a cause of action for "civil conspiracy" is not
3 cognizable, Defendant's Motion is to Dismiss is granted, and
4 Plaintiff's claim for civil conspiracy is dismissed with prejudice.

5 12. Declaratory Relief

6 Plaintiff requests declaratory relief in the form of a finding
7 by this Court that "the purported power of sale contained in the
8 Deed of Trust is of no force and effect . . . [and] further [] that
9 the title to the [subject] Property be re-conveyed to Plaintiff
10 free of any liens from any Defendants." Comp. at ¶¶ 87-91. In the
11 Ninth Circuit, "[d]eclaratory relief is only appropriate (1) when
12 the judgment will serve a useful purpose in clarifying and settling
13 the legal relations in issue, and (2) when it will terminate and
14 afford relief from the uncertainty, insecurity, and controversy
15 giving rise to the proceeding." Guerra v. Sutton, 783 F.2d 1371,
16 1376 (9th Cir. 1986) (citations omitted).

17 Defendant properly argues that Plaintiff's allegations are
18 insufficient to state a claim for declaratory relief. MTD at pg.
19 14.⁴ Allowing Plaintiff leave to amend in this case would be
20 futile; Plaintiff's attorneys have previously pled causes of action
21 for declaratory relief under similar circumstances, which were all
22 dismissed for failure to state a claim. See, e.g., Dyachishin v.
23 America's Wholesale Lenders, 2010 WL 1525703 at *5 (E.D. Cal. April
24 15, 2010). Accordingly, Plaintiff's claim for declaratory relief
25 is dismissed, with prejudice.

26 _____
27 ⁴ The Court does have proper jurisdiction over Plaintiff's
28 declaratory relief claim, contrary to Defendant's arguments, see
Guerra v. Sutton, 783 F.2d 1371, and dismisses the claim solely
based on Defendant's argument that Plaintiff's complaint does not
demonstrate the necessity of declaratory relief under Guerra.

1 13. Rescission / Cancellation of a Void Instrument

2 Plaintiff alleges that his consent to the loan was obtained by
3 Defendant though "mistake and fraud by engaging in deceptive
4 practices. . . ." Comp. at ¶¶ 94-101. As presented by Defendant,
5 and set forth above, Plaintiff has failed to present any facts
6 substantiating his allegations of fraud. See supra at sections 3,
7 6, & 7.

8 Allowing Plaintiff leave to amend this claim would be futile;
9 Plaintiff's attorneys have previously plead causes of action for
10 rescission based on fraud, which were all dismissed for failure to
11 state a claim. See, e.g., Dyachishin v. America's Wholesale
12 Lenders, 2010 WL 1525703 at *5 (E.D. Cal. April 15, 2010).
13 Accordingly, Plaintiff's claim for "rescission/cancellation of a
14 void instrument" is dismissed with prejudice.

15 14. Accounting

16 Plaintiff seeks an accounting of the amount he owes on his
17 loan, alleging Defendant improperly received loan payments. Comp.
18 at ¶¶ 103-04. As Defendant properly asserts in its Motion, "[a]
19 cause of action for accounting requires a showing that a
20 relationship exists between the plaintiff and defendant that
21 requires an accounting, and that some balance is due [to] plaintiff
22 that can only be ascertained by an accounting," Zivanic v.
23 Washington Mutual Bank, F.A., 2010 WL 2354199 at *6-7 (N.D. Cal.
24 Jun. 9, 2010) (internal quotations and citations omitted).

25 Plaintiff has not presented any facts in his complaint supporting
26 his claim that he is entitled to an accounting. MTD at pg. 14-15.

27 Plaintiff's claim for an accounting is dismissed with
28 prejudice because allowing amendment would be futile. Plaintiff's

1 attorneys have previously pled causes of action for an accounting
2 under nearly identical circumstances, using the exact same language
3 contained in Plaintiff's complaint, which were dismissed for
4 failure to state a claim. See, e.g., Zivanic, 2010 WL 2354199 at
5 *6-7 (N.D. Cal. Jun. 9, 2010).

6 15. Violation of Code of Civil Procedure §§ 2934(d), (e)

7 Plaintiff alleges that pursuant to the California Code of
8 Civil Procedure sections 2934(d) and (e), "the Deed is void and
9 cannot enforce the note [sic]." Comp. at ¶¶ 106-08. Defendant
10 correctly points out that section 2934 does not exist in the
11 California Code of Civil Procedure. MTD at pg. 16. Assuming
12 Plaintiff is referring to sections 2934a(d) and (e) of the Civil
13 Code, these sections govern the substitution of a trustee. See
14 CAL. CIV. CODE §§ 2934a(d), (e). Plaintiff expressly alleges that
15 Defendant is the lender and beneficiary on the Note and Deed of
16 Trust, and it is clear that Defendant is not the trustee and these
17 provisions are inapplicable to this case. Compare Comp. at ¶ 3
18 with CAL. CIV. CODE §§ 2934a(d), (e). Accordingly, Defendant's Motion
19 is granted, and Plaintiff's claim under "Code of Civil Procedure §§
20 2934(d), (e)" is dismissed with prejudice.

21 16. Civil Code § 1632

22 Plaintiff alleges that Defendant violated the California Civil
23 Code, section 1632, by presenting Plaintiff loan documents to sign
24 in English, yet conducting the negotiations on the loan Spanish.
25 Comp. at ¶¶ 110-11. Section 1632 provides that "any person engaged
26 in a trade or business who negotiates primarily in Spanish, [or
27 another foreign language] . . . in the course of entering [into a
28 contract], shall deliver to the other party to the contract . . . a

1 translation of the contract or agreement in the language in which
2 the contract or agreement was negotiated." CAL. CIV. CODE § 1632.
3 However, the code expressly proscribes loans secured by real
4 property from its coverage. Id.; accord Dyachishin v. America's
5 Wholesale Lenders, 2010 WL 1525703 at *3 (E.D. Cal. April 15,
6 2010). Accordingly, Defendant's motion is granted, and Plaintiff's
7 claim for a violation of section 1632 is dismissed with prejudice.
8 Allowing Plaintiff the opportunity to amend this claim would be
9 futile, because Plaintiff is clearly not entitled to relief under
10 the plain language of the statute.

11 17. Injunctive Relief

12 In light of the dismissal of Plaintiff's other sixteen causes
13 of action, it is clear that Plaintiff cannot demonstrate a
14 reasonable probability of success on the merits. See Dyachishin v.
15 America's Wholesale Lenders, 2010 WL 1525703 at *5 (E.D. Cal. April
16 15, 2010) (dismissing the plaintiff's claim for injunctive relief
17 because plaintiff failed to show a reasonable probability of
18 success on the merits); Bezverkhov v. Cal-Western Reconveyance
19 Corp., 2009 WL 4895581 at *8 (E.D. Cal. Dec. 11, 2009) (same).
20 Therefore, Defendant's Motion to Dismiss is granted, and
21 Plaintiff's claim for injunctive relief is dismissed with
22 prejudice. Allowing Plaintiff leave to amend would be futile;
23 Plaintiff's attorneys have previously plead causes of action for
24 injunctive relief, which were all dismissed for failure to state a
25 claim. See, e.g., Dyachishin, 2010 WL 1525703 at *5 (E.D. Cal.
26 April 15, 2010).

27 III. ORDER

28 After carefully considering the papers submitted in this

1 matter, it is hereby ordered that Defendant's Motion to Dismiss is
2 GRANTED, as follows:

3 1. Plaintiff's claim for breach of fiduciary duty is
4 dismissed with prejudice;

5 2. Plaintiff's claim for breach of the implied covenant of
6 good faith and fair dealing is dismissed with prejudice;

7 3. Plaintiff's claim for deceit is dismissed with prejudice;

8 4. Plaintiff's claim for violations of California Business
9 and Professions Code section 17200 is dismissed with prejudice;

10 5. Plaintiff's claim for promissory estoppel is dismissed
11 without prejudice;

12 6. Plaintiff's claim for fraud by intentional
13 misrepresentation is dismissed with prejudice;

14 7. Plaintiff's claim for fraud by concealment is dismissed
15 with prejudice;

16 8. Plaintiff's claim for unjust enrichment is dismissed with
17 prejudice;

18 9. Plaintiff's claim to quiet title is dismissed with
19 prejudice;

20 10. Plaintiff's claim under the Rosenthal Act is dismissed
21 with prejudice;

22 11. Plaintiff's claim for civil conspiracy is dismissed with
23 prejudice;

24 12. Plaintiff's claim for declaratory relief is dismissed
25 with prejudice;

26 13. Plaintiff's claim for rescission/cancellation of a void
27 instrument is dismissed with prejudice;

28 14. Plaintiff's claim for an accounting is dismissed with

1 prejudice;

2 15. Plaintiff's claim for violations of the California code
3 of civil procedure §§ 2934(d), (e) is dismissed with prejudice;

4 16. Plaintiff's claim under California Civil Code § 1632 is
5 dismissed with prejudice; and

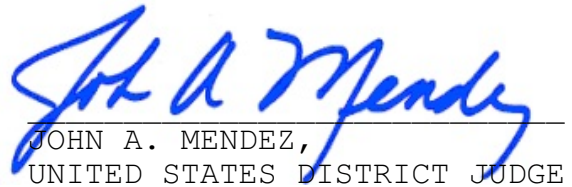
6 17. Plaintiff's claim for injunctive relief is dismissed with
7 prejudice;

8 It is further ordered that within ten (10) days of this Order
9 Ronald Uy and Stevan Henriouille shall either (1) pay sanctions of
10 \$500.00 to the Clerk of the Court, or (2) submit a statement of
11 good cause explaining their failure to comply with Local Rule
12 230(c).

13 If Plaintiff wishes to file an Amended Complaint with respect
14 to his promissory estoppel claim, it must be filed within 20 days
15 of this Order. Otherwise, Plaintiff should file a notice of
16 dismissal.

17 IT IS SO ORDERED.

18
19 Dated: July 20, 2011

20 
JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE