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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GARDENER JAMES DOANE, No. 2:11-cv-02130-MCE-GGH  
Plaintiff,  
v. MEMORANDUM AND ORDER  
FIRST FRANKLIN FINANCIAL,  
et al.,  
Defendants.

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Before the Court are Defendants' Motion to Dismiss  
Plaintiff's First Amended Complaint (ECF No. 13) ("FAC"),<sup>1</sup> Motion  
to Strike (ECF No. 14) ("MTS"), and Request for Judicial Notice  
(ECF No. 13, Att. 1) ("RJN").<sup>2</sup>

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<sup>1</sup> On August 8, 2011, Defendants filed motions to dismiss and strike Plaintiff's original complaint (see ECF Nos. 1, 6 and 7). Rather than opposing these motions, on September 9, 2011, Plaintiff filed the amended complaint (although it does not, on its face, indicate that it has been amended) that is the subject of the present motions (see ECF No. 8).

<sup>2</sup> Because oral argument will not be of material assistance, the Court ordered this matter submitted on the briefing. E.D. Cal. R. 230(g).

1 For the reasons that follow, Defendants' Motion to Dismiss is  
2 GRANTED, the Request for Judicial Notice is GRANTED and the  
3 Motion to Strike is DENIED as MOOT.

4  
5 **BACKGROUND<sup>3</sup>**  
6

7 In March 2007, Plaintiff Gardener James Doane ("Plaintiff"  
8 or "Doane"), using Defendant Summit Funding ("Summit") as his  
9 broker, obtained two mortgage loans from Defendant First Franklin  
10 Financial Corp. ("First Franklin") for his property located at  
11 8333 Raffia Court, Antelope, CA 95843. (FAC, ¶¶ 67-68, see also  
12 ECF No. 13, Att. 1 (Request for Judicial Notice),<sup>4</sup> Exs. A-B).  
13 The principal amount of the first mortgage was \$300,000 and the  
14 second mortgage was for \$75,000. (FAC, ¶ 68, RJN, Exs., A-B.)

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18 <sup>3</sup> To the extent possible, the following facts are taken from  
19 Plaintiff's FAC (ECF No. 1). For the purposes of this Motion,  
the Court accepts Plaintiff's facts as true and makes all  
inferences in the light most favorable to Plaintiff.

20 <sup>4</sup> Pursuant to Federal Rules of Evidence 201(b) (authorizing  
21 judicial notice of adjudicative facts "capable of accurate and  
22 ready determination by resort to sources whose accuracy cannot be  
23 reasonably questioned"), Defendants request the Court take  
24 judicial notice of several documents. (RJN, ECF No. 13, Att. 1.)  
Specifically, Defendants ask the Court to take judicial notice  
25 of: (1) two Deeds of Trust executed by Plaintiff and First  
Franklin (RJN, Exs. A and B); (2) the February 4, 2009, Notice of  
26 Default (Id., Ex. C); (3) the May 7, 2009, Notice of Trustee's  
Sale (Id., Ex D); and (4) the Trustee's Deed Upon Sale recorded  
27 on April 28, 2010 (Id. at Ex. E). Defendants' requests are  
unopposed and are the proper subject of judicial notice. See,  
28 e.g., Champlaie v. BAC Home Loans Servicing, LP, 706 F. Supp. 2d  
1029, 1040 (E.D. Cal. 2009); Lee v. County of Los Angeles,  
250 F.3d 668, 688 (9th Cir. 2001) (court may take judicial notice  
of matters of public record). Accordingly, Defendants' Request  
for Judicial Notice (ECF No. 13, Att. 1.) is granted.

1 The loans were funded by First Franklin and Doane signed  
2 promissory notes and executed deeds of trust in favor of First  
3 Franklin. (FAC, ¶¶ 68-69.) The Deed of Trust names Defendant  
4 Mortgage Electronic Registration System ("MERS") as the nominee  
5 beneficiary under the loan.<sup>5</sup> (See FAC, ¶ 79; RJN, Ex. A at 1;  
6 Ex. 2 at 1.) Doane's loan was allegedly securitized (FAC, ¶ 72),  
7 and Defendant U.S. Bank, N.A., is alleged to be the trustee for  
8 the securitization pool that currently contains Doane's loans  
9 pursuant to a pooling and servicing agreement. (FAC, ¶ 74.)

10 Although Doane's FAC does not make this clear, he apparently  
11 defaulted on the loan in 2009 and his house was sold pursuant to  
12 a trustee's sale in 2010. Specifically, on February 4, 2009, a  
13 Notice of Default was recorded with the Sacramento County  
14 Recorder on the \$300,000 loan. (RJN, Ex. C.) Then, on May 7,  
15 2009, a Notice of Sale was recorded. (RJN, Ex. C.) Doane's  
16 property was thereafter sold in a trustee's sale and a trustee's  
17 deed upon sale was recorded on April 28, 2010. (RJN, Ex. D.)  
18 On June 3, 2011, Doane filed his complaint in state court, (see  
19 ECF No. 1, Ex. A), and Defendants thereafter removed the case to  
20 this Court on the basis of federal question jurisdiction stemming  
21 from Doane's federal-law causes of action. (Id.) On  
22 September 26, 2011, after Doane amended his complaint, Defendants  
23 filed the present motions to dismiss and to strike.

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27 <sup>5</sup> Although Doane acknowledges MERS is the designated nominee  
28 beneficiary, he also contends that because of unspecified "bogus  
and fraudulent assignments," "MERS never had an interest in the  
deed of trust or the note." (FAC, ¶¶ 79-82.)

1 Doane's forty-four page FAC raises factual allegations in  
2 both his "Factual Allegations" section, as well as in each  
3 separate cause of action, and he appears to be incorporating  
4 previously raised factual allegations in each claim without  
5 clearly identifying the facts upon which he relies, thereby  
6 making it difficult to ascertain what, exactly, he is alleging  
7 and relying on for any given claim.<sup>6</sup> To the extent the Court  
8 understands his claims, it appears that Doane is generally  
9 alleging that:

- 10 1. The loan documents he signed do not reflect the  
11 agreement of the parties due to unspecified  
12 mistakes by the parties, or due to unspecified  
13 fraud on every Defendants' part (FAC, ¶¶ 155-56);
- 14 2. All Defendants engaged in "bogus and fraudulent"  
15 assignments and transfers of Doane's loan (Id. at  
16 ¶¶ 75-80);
- 17 3. He was orally promised (by whom is unspecified),  
18 but never received, a permanent home loan through  
19 the HAMP (Id. at ¶¶ 116, 159-63, 166-69, 175,  
20 181-88);
- 21 4. All Defendants "manufactured" unspecified  
22 documents (Id. at ¶¶ 131-32, 140);
- 23 5. All Defendants intentionally, illegally, and  
24 improperly securitized his loan and did so by  
25 means of unspecified misrepresentations and/or  
26 omissions (see, e.g., id. at ¶¶ 7-18, 66-85,  
27 189-212);

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23 <sup>6</sup> Furthermore, numerous paragraphs of the FAC appear to be  
24 boilerplate allegations regarding matters such as (1) the process  
25 of securitizing mortgage loans across the nation and allegations  
26 of problems with that process (See, e.g., FAC, ¶¶ 19-65  
27 (securitization); and (2) the implementation of the Home  
28 Affordable Modification Program ("HAMP") process and problems  
that have allegedly occurred with its implementation (see id. at  
¶¶ 86-116 (HAMP)). Although Doane appears to be alleging the  
same type of issues that occurred elsewhere occurred here, he  
fails to plead facts that tie the problems he alleges occurred  
elsewhere to the parties and transactions at issue here.

1           6.    Unspecified Defendants represented to him that no  
2           foreclosure sale would occur, but then conducted  
3           the foreclosure anyway. (Id. at ¶¶ 146-49.)

4           7.    All Defendants committed mail fraud by mailing him  
5           the notices of default, notice of trustee's sale,  
6           and documents related to the loan modification  
7           (Id. at ¶¶ 218-19).

8           As a result of Defendants' actions, Doane contends that he  
9           "has no idea who, if anyone, to whom [he] owe[s] money under the  
10          note and no idea who, if anyone, holds an enforceable security  
11          interest." (Id. at ¶ 85) (altered for clarity.) He contends  
12          that the loan was an illegal security, based on an unlawful  
13          object, so lacks consideration and is void or voidable. (Id. at  
14          ¶ 212.) He claims the contract must be reformed to reflect the  
15          (unspecified) intent of the parties. (Id. at ¶ 157.) He also  
16          asserts that the trustee's sale constituted a wrongful  
17          foreclosure because none of the Defendants had a lawful interest  
18          in the property at issue. (Id. ¶ 1.) He also claims Defendants'  
19          actions caused him extreme emotional distress. (Id. at ¶¶ 240,  
20          243, 247-48).

21          Doane asserts ten causes of action; two federal law claims  
22          and eight state or common law claims. His first federal cause of  
23          action, his seventh listed claim, is an intentional  
24          misrepresentation claim for violations of the Securities Exchange  
25          Act of 1934 ("Securities Exchange Act") and U.S. Tax Code, in  
26          which he essentially asserts that the note was securitized by  
27          means of a pooling agreement, and that the parties involved in  
28          the securitization intentionally did not follow the proper  
29          securitization process to qualify as Real Estate Mortgage  
30          Investment Conduit ("REMIC"). (Id. at ¶¶ 189-212.)

1 Doane's second federal cause of action, his eighth claim, is for  
2 Civil Racketeer Influenced and Corrupt Organization Act ("RICO")  
3 violations. (Id. at ¶¶ 213-33.) Doane's remaining causes of  
4 action are for: (1) declaratory relief (Id. at ¶¶ 123-44);  
5 (2) detrimental reliance (Id. at ¶¶ 145-51); (3) reformation of  
6 contract (Id. at ¶¶ 152-57); (4) promissory estoppel (Id. at  
7 ¶¶ 158-63); (5) misrepresentation (Id. at ¶¶ 164-72); (6) unfair  
8 business practices under California's Bus. & Prof. Code § 17200,  
9 et seq. (Id. at ¶¶ 173-88); (7) intentional infliction of  
10 emotional distress (Id. at ¶¶ 234-43); and (8) negligent  
11 infliction of emotional distress (Id. at ¶¶ 234-43).

12 Doane's prayer for relief seeks: (1) a declaratory judgment  
13 that the contract was breached and ordering Defendants to offer  
14 him a permanent loan modification; (2) specific performance of  
15 the contract; (3) punitive damages; (4) a determination the  
16 original contract is void and unenforceable; (5) attorney's fees  
17 and costs; and (6) whatever other relief the Court deems  
18 necessary and proper. (Id. at pages 43-44.)

19 Defendants move to dismiss (ECF No. 13), under  
20 Fed. R. Civ. P. 12(b)(6)<sup>7</sup> on the basis that Doane's FAC is  
21 generally insufficient to put them on notice of Doane's claims  
22 against them, and his allegations are insufficient to satisfy the  
23 elements of each of his specific causes of action. (See ECF  
24 No. 13.) In addition, Defendants move to strike certain portions  
25 of Doane's complaint on the basis that they are "redundant,  
26 immaterial, impertinent or scandalous." (See MTS at pages 4-7.)

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28 <sup>7</sup> All further references to "Rule" or "Rules" are to the  
Federal Rules of Civil Procedure unless otherwise noted.

1 **I. MOTION TO DISMISS**

2 **A. Standard**

3  
4 On a motion to dismiss for failure to state a claim under  
5 Rule 12(b)(6), all allegations of material fact must be accepted  
6 as true and construed in the light most favorable to the  
7 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,  
8 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and  
9 plain statement of the claim showing that the pleader is entitled  
10 to relief" in order to "give the defendant fair notice of what  
11 the...claim is and the grounds upon which it rests." Bell Atl.  
12 Corp. v. Twombly, 550 U.S. 544, 554-55 (2007) (internal citations  
13 and quotations omitted). Though "a complaint attacked by a  
14 Rule 12(b)(6) motion to dismiss does not need detailed factual  
15 allegations, a plaintiff's obligation to provide the 'grounds' of  
16 his 'entitlement to relief' requires more than labels and  
17 conclusions, and a formulaic recitation of the elements of a  
18 cause of action will not do." Id. at 555 (internal citations and  
19 quotations omitted). A plaintiff's factual allegations must be  
20 enough to raise a right to relief above the speculative level.  
21 Id. (citing 5 C. Wright & A. Miller, Federal Practice and  
22 Procedure § 1216, pp. 235-36 (3d ed. 2004) ("The pleading must  
23 contain something more...than...a statement of facts that merely  
24 creates a suspicion [of] a legally cognizable right of action")).

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1           Moreover, "Rule 8(a)(2)...requires a 'showing,' rather than  
2 a blanket assertion of entitlement to relief. Without some  
3 factual allegation in the complaint, it is hard to see how a  
4 claimant could satisfy the requirements of providing not only  
5 'fair notice' of the nature of the claim, but also 'grounds' on  
6 which the claim rests." Twombly, 550 U.S. at 555, n.3 (internal  
7 citations omitted). A pleading must contain "only enough facts  
8 to state a claim to relief that is plausible on its face." Id.  
9 at 570; see also Ashcroft v. Iqbal, 556 U.S. 662, 677-679 (2009).  
10 If the "plaintiffs...have not nudged their claims across the line  
11 from conceivable to plausible, their complaint must be  
12 dismissed." Twombly, 550 U.S. at 570; Iqbal, 556 U.S. at 680.  
13 A court granting a motion to dismiss a complaint must then decide  
14 whether to grant leave to amend. Rule 15(a) empowers the court  
15 to freely grant leave to amend when there is no "undue delay, bad  
16 faith[,] dilatory motive on the part of the movant,...undue  
17 prejudice to the opposing party by virtue of...the amendment,  
18 [or] futility of the amendment...." Foman v. Davis, 371 U.S.  
19 178, 182 (1962). Leave to amend is generally denied when it is  
20 clear the deficiencies of the complaint cannot be cured by  
21 amendment. DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655,  
22 658 (9th Cir. 1992); Balistieri v. Pacifica Police Dept.,  
23 901 F.2d 696, 699 (9th Cir. 1990) ("A complaint should not be  
24 dismissed under Rule 12(b)(6) unless it appears beyond doubt that  
25 the plaintiff can prove no set of facts in support of his claim  
26 which would entitle him to relief.") (internal citations  
27 omitted).

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1 **ANALYSIS**

2  
3 Doane's FAC asserts two claims under federal law and several  
4 claims under state law. The federal claims fail to state a  
5 facially plausible claim for relief and are therefore dismissed  
6 with final leave to amend. Because of this, the remaining state  
7 law claims are dismissed for lack of subject matter jurisdiction  
8 and the motion to strike parts of the record is denied as moot.

9 Before turning to the substance of Doane's federal claims,  
10 the Court first addresses the FAC's overall lack of adherence to  
11 the pleading standard set forth in Rule 8(a), as interpreted by  
12 Iqbal and Twombly. As the U.S. Supreme Court noted in Twombly,  
13 Rule 8(a)(2) requires only "a short and plain statement of the  
14 claim showing that the pleader is entitled to relief" in order to  
15 "give the defendant fair notice of what the...claim is and the  
16 grounds upon which it rests." However, "a plaintiff's obligation  
17 to provide the 'grounds' of his 'entitlement to relief' requires  
18 more than labels and conclusions, and a formulaic recitation of  
19 the elements of a cause of action will not do." Id. at 555.

20 Here, Doane's forty-four page FAC is long on conclusory  
21 allegations and short on facts specific to this particular  
22 transaction and these particular parties. His Factual  
23 Allegations include pages of what appear to be boilerplate  
24 statements regarding the process of securitizing loans in the  
25 United States, the HAMP process, etc., but provide few details  
26 about his particular loan, his communications with Defendants,  
27 what exactly he alleges each individual Defendant did and when it  
28 did it. (See FAC, ¶¶ 19-122.)

1 As discussed above, Doane also includes facts that are not  
2 included in his Factual Allegations section throughout his causes  
3 of action, making it difficult to ascertain what the factual  
4 basis for any particular claim may be. As a general matter, this  
5 approach does not give Defendants, or the Court, fair notice of  
6 what Doane's claims are or the grounds upon which they rest. See  
7 Rule 8(a)(2). As has been noted before, "judges are not like  
8 pigs, hunting for truffles buried in briefs." Guatay Christian  
9 Fellowship v. County of San Diego, 670 F.3d 957, 987 (9th Cir.  
10 2011).

11 Furthermore, some of Doane's claims appear to lack any  
12 factual basis at all. For example, Doane's conclusory allegation  
13 that the loan documents do not reflect the agreement of the  
14 parties, due to unspecified mistakes by the parties or due to  
15 unspecified fraud on Defendants' part, does not appear to have  
16 any factual support in his FAC. (FAC, ¶¶ 155-56). Similarly,  
17 his conclusory claims that unspecified Defendants "manufactured"  
18 documents, intentionally engaged in "bogus and fraudulent  
19 assignments," and engaged in "mail fraud" essentially state legal  
20 conclusions and lack sufficient factual detail for the Court (or  
21 Defendants) to determine what, exactly, Doane is alleging was  
22 done, by whom, when, how, and why.

23 As the Court noted in Iqbal, "[a] claim has facial  
24 plausibility when the plaintiff pleads factual content that  
25 allows the court to draw the reasonable inference that the  
26 defendant is liable for the misconduct alleged." 556 U.S. at  
27 678. However, reciting a legal conclusion without providing  
28 supporting facts is simply insufficient to maintain a claim.

1 See Id. ("Threadbare recitals of the elements of a cause of  
2 action, supported by mere conclusory statements, do not  
3 suffice.).

4 In sum, the Court concludes that the FAC generally fails to  
5 adhere to Rule 8(a)'s pleading standard. Although the Court is  
6 dismissing the FAC with final leave to amend, Doane is on notice  
7 that any amended complaint must conform to Rule 8's pleading  
8 standard, as interpreted by the Supreme Court's decisions in  
9 Iqbal and Twombly.

10  
11 **II. FEDERAL CLAIMS**

12 **A. Securities and Tax Claims**

13  
14 Doane's Seventh Claim for Relief is titled "Intentional  
15 Misrepresentation[;] Violation of the Federal Securities  
16 Laws...and U.S. Tax Code." (FAC at page 30.) Doane appears to  
17 contend that Defendants, by means of unspecified  
18 misrepresentations and/or omissions, purposely violated the  
19 Securities and Exchange Act, as well as the U.S. Tax Code, by  
20 intentionally failing to follow the proper process of  
21 securitizing his loan to qualify as a REMIC trust. (FAC,  
22 ¶¶ 19-85, 189-204.)

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1 Doane argues that these actions violate Section 10(b) and 10(b)-5  
2 of the Securities and Exchange Act<sup>8</sup> and he asserts these actions  
3 also violate the "Step Transaction Doctrine,"<sup>9</sup> "which treats  
4 multiple transactions as a single integrated transaction for tax  
5 purposes if all of the elements of at least one of three tests  
6 are satisfied: (1) the end result test, (2) the interdependence  
7 test, or (3) the binding commitment test." Linton, 630 F.3d at  
8 1224 (discussing each of the tests); (see also FAC at ¶¶ 204-212.)

9 Doane seeks to unwind the trustee's sale of the property by  
10 arguing that, by deliberately failing to properly follow the  
11 securitization process, the loan became part of an illegal  
12 security and therefore is both void and voidable. (Id. at  
13 ¶ 212.) In essence, Doane is arguing that none of the Defendants  
14 had the authority to foreclose because their loan was improperly  
15 and illegally packaged and resold in the secondary market, where  
16 it was put into a trust pool and securitized.

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20 <sup>8</sup> Section 10(b) of the Securities Exchange Act makes it  
21 unlawful for any person to "use or employ, in connection with the  
22 purchase or sale of any security...any manipulative or deceptive  
23 device or contrivance in contravention of such rules and  
24 regulations as the Commission may prescribe as necessary or  
25 appropriate in the public interest or for the protection of  
26 investors." 15 U.S.C. § 78j(b). SEC Rule 10b-5 implements this  
27 provision by making it unlawful to, among other things, "make any  
28 untrue statement of a material fact or to omit to state a  
material fact necessary in order to make the statements made, in  
the light of the circumstances under which they were made, not  
misleading." 17 CFR § 240.10b-5(b).

<sup>9</sup> Doane provides no authority for the "Step Transaction  
Doctrine," but this doctrine was recently discussed by the Ninth  
Circuit in Linton v. U.S., 630 F.3d 1211, 1223-25 (9th Cir.  
2011).

1 To state a claim for intentional misrepresentation, a  
2 plaintiff must plead "(a) misrepresentation (false  
3 representation, concealment, or nondisclosure); (b) knowledge of  
4 falsity (or 'scienter'); (c) intent to defraud, i.e., to induce  
5 reliance; (d) justifiable reliance; and (e) resulting damage."  
6 Kearns v. Ford Motor Co., 567 F.3d 1120, 1126 (9th Cir. 2009)  
7 (citation omitted).

8 Therefore, under Rule 9(b), a party alleging fraud or  
9 intentional misrepresentation must satisfy a heightened pleading  
10 standard by stating with particularity the circumstances  
11 constituting fraud. Rule 9(b). Specifically, "[a]verments of  
12 fraud must be accompanied by 'the who, what, when, where, and  
13 how' of the misconduct charged." Vess v. Ciba-Geigy Corp. USA,  
14 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting Cooper v. Pickett,  
15 137 F.3d 616, 627 (9th Cir. 1997)). Further, "a plaintiff must  
16 set forth more than the neutral facts necessary to identify the  
17 transaction. The plaintiff must set forth what is false or  
18 misleading about a statement, and why it is false." Id. (quoting  
19 Decker v. GlenFed, Inc., 42 F.3d 1541, 1548 (9th Cir. 1994)  
20 (superceded by statute on other grounds)). A plaintiff must also  
21 differentiate his allegations when suing more than one defendant,  
22 especially in the context of fraud claims. See Destfino v.  
23 Reiswig, 630 F.3d 952, 958 (9th Cir. 2011).

24 Here, Doane's allegations are conclusory, convoluted, vague  
25 and generally fail to satisfy the pleading standards under  
26 Rule 8(a) or 9(b). Doane brings this claim against all  
27 Defendants and attributes every act against all Defendants. This  
28 fails the specificity requirement of Rule 9(b).

1 It is not clear what acts were done, by whom, to whom, or when  
2 these acts allegedly took place. His factual allegations do not  
3 assist the Court to resolve the vagueness of his claims. To cite  
4 just one example, the contention that "bogus and fraudulent  
5 assignments exist that have been executed by employees of  
6 Defendants, which assignments purport to transfer the beneficial  
7 interest in the mortgage, along with the note thereby secured"  
8 (FAC, ¶ 79) is a legal conclusion couched as a factual allegation  
9 and is insufficient to sustain his claim. See Iqbal, 556 U.S. at  
10 678 ("Threadbare recitals of the elements of a cause of action,  
11 supported by mere conclusory statements, do not suffice.")

12 Doane generally alleges that several transfers and  
13 assignments took place and he contends that these transfers and  
14 assignments were fraudulent. (See, e.g., FAC ¶¶ 67-85.)  
15 However, it is not at all clear what, exactly, made these  
16 assignments and transfers "bogus and fraudulent." (See FAC,  
17 ¶¶ 77, 79-80.) Doane has not adequately explained how the  
18 activity of assigning mortgage loans to a trust pool gives rise  
19 to a fraud claim against any and all Defendants.

20 In addition, to prevail on his claim that Defendants made  
21 material misrepresentations or omissions in violation of § 10(b)  
22 and Rule 10b-5, Doane "must prove '(1) a material  
23 misrepresentation or omission by the defendant; (2) scienter;  
24 (3) a connection between the misrepresentation or omission and  
25 the purchase or sale of a security; (4) reliance upon the  
26 misrepresentation or omission; (5) economic loss; and (6) loss  
27 causation.'"

28 ///

1 Matrixx Initiatives, Inc. v. Siracusano, 131 S. Ct. 1309, 1318  
2 (2011) (quoting Stoneridge Investment Partners, LLC v.  
3 Scientific-Atlanta, Inc., 552 U.S. 148, 157 (2008)). Doane does  
4 not directly address the elements of this claim, nor do his  
5 conclusory Factual Allegations appear to support such a claim.  
6 (See FAC, ¶¶ 67-85, 189-212.)

7       Conclusory allegations of “bogus and fraudulent” transfers  
8 are insufficient to demonstrate a material omission or  
9 misrepresentation or scienter on Defendants’ part. Exactly what  
10 omissions or misrepresentations were made, by whom they were  
11 made, and when they were made is not made clear in the FAC. Nor  
12 does Doane adequately describe how, exactly, he relied on these  
13 alleged misrepresentations or omissions, or how, exactly, these  
14 are tied to his particular loss. Furthermore, Doane appears to  
15 contend that Defendants intended to violate the securities laws  
16 at the time of his loan origination (i.e., before  
17 securitization), but these allegations are also unsupported.  
18 (See FAC, ¶ 194.)

19       Further, Doane’s “Step Doctrine” allegations merely recite  
20 the elements of the doctrine and conclude by asserting Defendants  
21 violated the doctrine. (See FAC, ¶¶ 208-212). This is  
22 insufficient to state a claim under Rule 8(a). See Iqbal,  
23 556 U.S. at 678 (“Threadbare recitals of the elements of a cause  
24 of action, supported by mere conclusory statements, do not  
25 suffice.”).

26       In sum, Doane’s federal security and tax law claims fails to  
27 satisfy the pleading requirements of either Rules 8(a) or 9(b).  
28 Defendants’ motion to dismiss the claim is therefore granted.

1 The Court will grant final leave to amend, but if Doane chooses  
2 to assert these claims again, he is on notice that the Court will  
3 expect his legal claims will be supported by specific factual  
4 contentions (i.e., “‘the who, what, when, where, and how’ of the  
5 misconduct charged.” Vess v. Ciba-Geigy Corp. USA, 317 F.3d at  
6 1106 (citation omitted)). This, in turn, means that any amended  
7 complaint shall comply with Rule 8(a)(2)’s “a short and plain  
8 statement” requirement. Lumping together claims for intentional  
9 misrepresentation, federal securities law violations, and tax law  
10 violations, without discussing the elements for each separate  
11 cause of action, and relying on conclusory factual allegations in  
12 support of these disparate claims, does not satisfy that  
13 standard.

14 While it is conceivable that Doane may be able to state a  
15 claim, at present his allegations are simply not plausible. See  
16 Twombly, 550 U.S. at 547 (“Because the plaintiffs here have not  
17 nudged their claims across the line from conceivable to  
18 plausible, their complaint must be dismissed.”). Defendants’  
19 motion to dismiss this claim is granted with final leave to  
20 amend.

21  
22 **B. RICO Claims**

23  
24 For his RICO claim, Doane contends that all Defendants  
25 engaged in a RICO enterprise by mailing him various mortgage  
26 documents for the purpose of defrauding him of his property.  
27 ((See FAC, ¶¶ 213-233.)

28 ///



1 "To state a claim under § 1962(c), a plaintiff must allege  
2 (1) conduct (2) of an enterprise (3) through a pattern (4) of  
3 racketeering activity." Odom v. Microsoft Corp., 486 F.3d 541,  
4 547 (9th Cir. 2007) (en banc). A " 'pattern'...requires at least  
5 two acts of racketeering activity." 18 U.S.C. § 1961(5). Wire or  
6 mail fraud consists of the following elements: (1) formation of a  
7 scheme or artifice to defraud; (2) use of the United States mails  
8 or wires, or causing such a use, in furtherance of the scheme;  
9 and (3) specific intent to deceive or defraud. Schreiber  
10 Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1400 (9th  
11 Cir. 1986).

12 Rule 9(b) provides that "[i]n alleging fraud ..., a party  
13 must state with particularity the circumstances constituting  
14 fraud," while "[m]alice, intent, knowledge, and other conditions  
15 of a person's mind may be averred generally." Consequently,  
16 "[t]he only aspects of wire [or mail] fraud that require  
17 particularized allegations are the factual circumstances of the  
18 fraud itself." Odom, 486 F.3d at 554.

19 Doane's conclusory allegations are insufficient to state a  
20 RICO claim under Rule 9(b). For the majority of the RICO claim  
21 elements, Doane simply lists each element and then alleges that  
22 all of the Defendants violated it without specifying what,  
23 exactly, Defendants did, which Defendants were involved, when the  
24 alleged actions occurred or anything else that might satisfy  
25 Rule 9(b)'s particularity requirement. (See FAC, ¶¶ 213-233.)

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28 ///

1 To the extent he alleges that Defendants engaged in mail fraud by  
2 mailing him the notice of default, notice of the trustee sale,  
3 and documents related to his loan modification, it is not at all  
4 clear why the mailing of these documents constituted mail fraud.  
5 (Id.) Again, reciting the elements of a cause of action without  
6 providing factual support is insufficient to maintain a claim.  
7 See Iqbal, 556 U.S. at 678 (“Threadbare recitals of the elements  
8 of a cause of action, supported by mere conclusory statements, do  
9 not suffice.”).

10 The RICO claim is dismissed with final leave to amend.

11  
12 **C. State Law Claims**

13  
14 Having dismissed Doane’s federal claims, the Court  
15 determines that the FAC fails to state any federal claims and  
16 therefore presents no basis for federal question jurisdiction or  
17 for diversity jurisdiction. 28 U.S.C. §§ 1331, 1332. The FAC  
18 alleges the following claims seeking relief under state law:  
19 declaratory relief; detrimental reliance; reformation of  
20 contract; promissory estoppel; misrepresentation; unfair business  
21 practices; intentional infliction of emotional distress; and  
22 negligent infliction of emotional distress.

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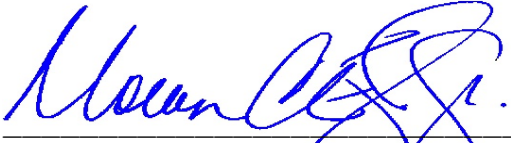
1 The Court declines to exercise supplemental jurisdiction over  
2 these claims pursuant to 28 U.S.C. § 1367(c), and the state law  
3 claims are therefore dismissed as moot.<sup>10</sup>

4  
5 **CONCLUSION**

6  
7 As a matter of law, and for the reasons set forth above,  
8 Defendants' Motion to Dismiss (ECF No. 13) is GRANTED with final  
9 leave to amend, the Request for Judicial Notice is GRANTED and  
10 the Motion to Strike (ECF No. 14) is DENIED as MOOT. Plaintiff  
11 shall not add any additional claims to any amended complaint and  
12 shall file any amended complaint not later than thirty (30)  
13 calendar days after this Order is filed electronically. If no  
14 such amended complaint is filed within said time period, this  
15 action will be dismissed with prejudice and without any further  
16 notice to the parties.

17 IT IS SO ORDERED.

18 Dated: June 11, 2012

19  
20   
21 MORRISON C. ENGLAND, JR.  
22 UNITED STATES DISTRICT JUDGE

23  
24  
25 <sup>10</sup> However, were the Court to reach these claims, they would  
26 be dismissed on the basis of the factual inadequacies and  
27 conclusory allegations that riddle Doane's factual allegations  
28 and each of his causes of action. In the event that Doane  
intends to amend his complaint, he is on notice that failure to  
comply with the pleading standard set forth in Rule 8(a), as  
interpreted by the Supreme Court in Iqbal and Twombly, will  
result in dismissal of this action with prejudice.