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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHEILA GOODEN, an individual,)	Case No. 2:11-cv-02595-JAM-DAD
)	
Plaintiff,)	<u>ORDER GRANTING IN PART AND</u>
)	<u>DENYING IN PART DEFENDANTS'</u>
v.)	<u>MOTION TO DISMISS</u>
)	
)	
SUNTRUST MORTGAGE, INC., a)	
Virginia Corporation; and)	
SUNTRUST BANKS, INC., a Georgia)	
Corporation;)	
)	
Defendants.)	
)	

This matter is before the Court upon Defendants Suntrust Mortgage, Inc. and Suntrust Banks, Inc.'s Motion to Dismiss Class Action Complaint (Doc. #11).¹ Plaintiff Sheila Gooden ("Plaintiff") opposes the motion (Doc. #14). Defendants also filed a Request for Judicial Notice In Support of Motion to Dismiss (Doc. #12), which Plaintiff opposes in part (Doc. #14, Attachment 1).²

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 February 22, 2012.
² The complaint names Suntrust Banks, Inc., but does not contain any allegations specific to that party. Accordingly, the following order refers to Suntrust Mortgage, Inc. as the sole defendant.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 This action originated when Plaintiff filed her complaint in
3 this Court on September 30, 2011. Plaintiff alleges that she
4 obtained a mortgage from Suntrust Mortgage, Inc. ("Defendant") to
5 refinance the existing debt on her property in June 2005.
6 Plaintiff's property is located at 632 S. Murdock, Willows, CA
7 95988. According to Plaintiff, the terms of the mortgage agreement
8 required Plaintiff to purchase hazard and flood insurance coverage
9 at least equal to the replacement value of the improvements on the
10 property or the principal balance of the mortgage, whichever was
11 less. Plaintiff alleges that she maintained coverage on the
12 property between \$130,130 and \$161,960 at all times.

13 Plaintiff also alleges that at the time her property was
14 refinanced, it was in a Federal Emergency Management Agency
15 ("FEMA") designated flood zone. As a result, the complaint
16 indicates that Plaintiff was required to maintain flood insurance
17 based on the Flood Disaster Protection Act ("FDPA") and the
18 agreement between the parties. If Plaintiff did not maintain
19 adequate insurance, then Defendant was empowered to "force place"
20 coverage on Plaintiff's property and bill her for the cost of that
21 coverage. Then, in August 2010, FEMA published a new flood zone
22 map that indicated that Plaintiff's property was no longer subject
23 to the insurance requirements of the FDPA.

24 The replacement value of improvements on the property is not
25 explicitly alleged in Plaintiff's complaint. Plaintiff alleges
26 that from July 1, 2010 through June 30, 2011, the Glenn County
27 Assessor's office valued the improvements on Plaintiff's property
28 at between \$85,000 and \$120,057. The complaint does not indicate

1 whether or not the assessor's determination was for replacement
2 value or resale value.

3 Plaintiff alleges that in October 2010, after 6 years of
4 carrying the same amount of insurance, Defendant determined without
5 explanation that her existing insurance coverage was inadequate.
6 In a series of letters starting on October 19, 2010 and concluding
7 on March 1, 2011, Defendant allegedly demanded that Plaintiff
8 increase her flood insurance coverage by amounts ranging from
9 \$25,300 to \$44,900, depending on the letter. Plaintiff alleges
10 that she purchased additional flood insurance in November 2010 and
11 provided documentation of that insurance to Defendant. In December
12 2010, Defendant allegedly force placed additional flood coverage on
13 Plaintiff's property. Finally, in March 2011, Defendant force
14 placed additional flood and hazard insurance on Plaintiff's
15 property and sent her a mortgage bill that contained line item
16 charges for the premiums of the additional coverage. Plaintiff's
17 monthly mortgage payment allegedly increased from \$517.37 to
18 \$775.89.

19 Plaintiff asserts six causes of action in her complaint:
20 (1) Violation of Truth in Lending Act ("TILA") (Hazard Insurance),
21 15 U.S.C. § 1601; (2) Violation of TILA (Flood Insurance), 15
22 U.S.C. § 1601; (3) Breach of Contract; (4) Violation of Cal. Civ.
23 Code § 2955.5; (5) Violation of California Unfair Competition Law
24 ("UCL") (Hazard Insurance), Cal. Bus. & Prof. Code § 17200; and
25 (6) Violations of California Unfair Competition Law (Flood
26 Insurance), Cal. Bus. & Prof. Code § 17200.

1 The Court has jurisdiction over Plaintiff's federal causes of
2 action pursuant to 28 U.S.C. § 1331 and the related state law
3 claims pursuant to 28 U.S.C. § 1367.

4
5 II. OPINION

6 A. Legal Standard

7 1. Motion to Dismiss

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

24 Upon granting a motion to dismiss for failure to state a
25 claim, the court has discretion to allow leave to amend the
26 complaint pursuant to Federal Rule of Civil Procedure 15(a).
27 "Dismissal with prejudice and without leave to amend is not
28 appropriate unless it is clear . . . that the complaint could not

1 be saved by amendment.” Eminence Capital, L.L.C. v. Aspeon, Inc.,
2 316 F.3d 1048, 1052 (9th Cir. 2003).

3 B. Discussion

4 1. Defendant Sun Trust Banks, Inc.

5 Defendant Suntrust Banks, Inc. argues that all claims against
6 it should be dismissed because the allegations in the complaint
7 appear to only address actions taken by defendant Suntrust
8 Mortgages, Inc. Plaintiff does not dispute Suntrust Banks, Inc.’s
9 dismissal, but requests leave to amend the complaint in order to
10 include allegations specific to defendant Suntrust Banks, Inc.
11 Plaintiff does not, however, provide any explanation as to why
12 Suntrust Banks, Inc. was named as a defendant or specify any of the
13 claims she believes can be brought against this defendant. Given
14 Plaintiff’s failure to provide this information, it appears to this
15 Court that granting leave to file an amended complaint against this
16 defendant would be futile. Accordingly, all claims against
17 defendant Suntrust Banks, Inc. are dismissed with prejudice.

18 2. Defendant’s Request for Judicial Notice

19 Defendant requests that the Court take judicial notice of four
20 documents: (A) a letter dated May 3, 2011 from the Federal Reserve
21 Bank of Atlanta, (B) a Consumer Compliance Handbook published by
22 the Board of Governors of the Federal Reserve System, (C) a FEMA
23 flood hazard determination dated June 24, 2005 prepared by Core
24 Logic, and (D) a FEMA flood hazard determination dated March 24,
25 2011 prepared by Core Logic. Plaintiff objects to documents A, C,
26 and D. The objections to all three documents are sustained.

27 Generally, the Court may not consider material beyond the
28 pleadings in ruling on a motion to dismiss for failure to state a

1 claim. The exceptions are material attached to, or relied on by,
2 the complaint so long as authenticity is not disputed, or matters
3 of public record, provided that they are not subject to reasonable
4 dispute. E.g., Sherman v. Stryker Corp., 2009 WL 2241664 at *2
5 (C.D. Cal. Mar. 30, 2009) (citing Lee v. City of Los Angeles, 250
6 F.3d 668, 688 (9th Cir. 2001) and Fed. R. Evid. 201).

7 Item A is a letter from the Federal Reserve Bank of Atlanta
8 that indicates that if Defendant refunded forced placed insurance
9 policy premiums to Plaintiff, then there was no violation of law or
10 regulation. The letter does not state that the amount was actually
11 refunded. Since the contents of the letter are disputed it is not
12 a proper subject of judicial notice.

13 Items C and D are not proper subjects of judicial notice
14 because they appear to be prepared and certified by a private
15 entity, Core Logic, and are not matters of public record. The
16 forms are instead a third party's interpretation of public records,
17 flood zone maps, produced by FEMA. Defendant argues that items C
18 and D are judicially noticeable because they are relied on by the
19 complaint. The Court does not find that the allegations in the
20 complaint rely on these documents. Judicial notice of items C and
21 D is not proper, and they will also not be considered in this
22 order.

23 3. Defendant's Motion to Dismiss

24 a. The Adequacy of Plaintiff's Insurance Coverage 25 Claims

26 Defendant argues that all of Plaintiff's claims related to
27 both hazard and flood insurance should be dismissed because the
28 complaint does not properly allege that the insurance required by

1 Defendant exceeded the replacement value of the improvements on
2 Plaintiff's property. Defendant focuses on the allegations
3 concerning the Glenn County tax assessor's determination of value,
4 arguing that California law requires assessors to determine market
5 value, not replacement cost value. Plaintiff argues that even if
6 the county assessor's valuation referenced in paragraph 22 of the
7 Complaint does not approximate the replacement costs of the
8 property improvements, she has still adequately pled, in paragraphs
9 20 and 21, that the insurance required or force placed by Defendant
10 exceeded the replacement value of improvements on the property in
11 breach of the contract and in violation of California law.
12 Defendant replies that those allegations are conclusory and do not
13 meet federal pleading standards.

14 For the purposes of a motion to dismiss, the Court must accept
15 the allegations in the complaint as true and draw all reasonable
16 inferences in favor of the plaintiff. Scheuer, 416 U.S. at 236.

17 In this case, Plaintiff alleges that she purchased insurance
18 in 2005 and maintained at least that level of coverage at all
19 times. She further alleges that the coverage exceeded the
20 replacement cost of improvements. Turning to the loan documents
21 attached to the complaint, which are properly considered in a
22 motion to dismiss, Plaintiff was required to obtain coverage that
23 was greater than or equal to either the balance of the loan
24 principal or the replacement cost of improvements, whichever was
25 less. Sherman, 2009 WL 2241664, at *2; Compl. Ex. 1, at 8-9.
26 There is no dispute that the loan closed in 2005, so taking the
27 alleged facts as true gives rise to a plausible inference that
28 Plaintiff did obtain sufficient hazard coverage in 2005. As

1 Plaintiff states in the complaint, "[T]here was no explanation
2 [from Defendant] as to why the amount of insurance Plaintiff had
3 carried for the past six years, including flood insurance, was
4 suddenly inadequate [in 2010 and 2011 when Defendant force placed
5 additional coverage]." Compl. ¶ 29.

6 Defendant's argument that Plaintiff did not allege facts
7 sufficient to meet the federal pleading standard is not persuasive.
8 Plaintiff alleged facts that, if true, plausibly show that she
9 obtained sufficient coverage in 2005, and that the coverage she
10 maintained from that time forward met the terms of her loan
11 agreement. Defendant may disagree with the sufficiency of
12 Plaintiff's insurance coverage, but the Court cannot properly
13 resolve a factual dispute about the value of Plaintiff's property
14 in a motion to dismiss. Scheuer, 416 U.S. at 236. Accordingly,
15 the Court finds that Plaintiff adequately alleges that she
16 maintained insurance coverage at least equal to the replacement
17 value of improvements on her property.

18 b. Breach of Contract

19 Defendant argues that Plaintiff's Breach of Contract claim
20 should be dismissed because Plaintiff did not adequately plead the
21 replacement value of the improvements on her property. As
22 discussed in the preceding section, the Court finds that Plaintiff
23 adequately pleads that she maintained replacement value coverage at
24 all times and that, as a result, any additional coverage allegedly
25 force placed by Defendant exceeded the coverage required by the
26 loan agreement. Accordingly, Defendant's motion to dismiss this
27 third cause of action is denied.

28

1 c. TILA (Hazard Insurance)

2 Defendant argues that Plaintiff's TILA claim related to excess
3 hazard insurance (first cause of action) should be dismissed
4 because TILA does not apply to insurance purchased from a third
5 party insurer such as State Farm. Plaintiff concedes that point,
6 but argues that TILA does apply to the insurance allegedly force
7 placed on Plaintiff's property as far as it exceeded the
8 replacement value of improvements. Defendant agrees in the reply
9 that such force placed insurance is subject to TILA, but again
10 argues that Plaintiff's allegations do not meet federal pleading
11 standards.

12 "[A]ccording to 12 C.F.R. § 226.4(d)(2)(i), premiums for
13 insurance against loss or damage to property are specifically
14 excluded from the mandated disclosure when the borrower may choose
15 the provider of insurance coverage and the ability to choose is
16 disclosed." Hayes v. Wells Fargo Home Mortg., No. 06-1791, 2006 WL
17 3193743, at *7 (E.D. La. Oct. 31, 2006). Thus, insurance purchased
18 by Plaintiff from State Farm cannot give rise to a TILA claim.

19 The law treats force placed insurance coverage that exceeds
20 that required in the loan agreement differently. As discussed
21 above, the Court finds that Plaintiff adequately alleges that
22 Defendant force placed unauthorized hazard insurance on Plaintiff's
23 property, exceeding the amount required by the loan agreement and
24 which required accurate and meaningful disclosures as well as
25 changes to the policy's requirements, none of which Defendant
26 provided. Such allegations, if true, entitle Plaintiff to relief
27 under TILA. Hofstetter v. Chase Home Fin., LLC, 751 F. Supp. 2d
28 1116, 1126-27 (N.D. Cal. 2010) (finding that increasing insurance

1 requirements beyond the terms of the original loan agreement
2 constitutes a prohibited "change of terms" in violation of TILA and
3 12 C.F.R. 226.5b(f)(3)).

4 For the first time in its reply, Defendant argues that while
5 Plaintiff pleads that she was billed for force placed insurance,
6 she does not plead that she actually paid the bill and does not
7 therefore plead that she actually sustained damages. The Court
8 first finds that based on the allegations in the complaint, it can
9 reasonably draw the inference that Plaintiff sufficiently alleges
10 payment of the premiums. Second, TILA provides for statutory
11 damages in cases where there is a violation of TILA's requirements,
12 but a plaintiff does not show monetary damage. See 15 U.S.C.
13 §§ 1640(a)(1)-(2) (authorizing suits for actual damage, statutory
14 damages ranging from \$400-\$4,000, and suits for minimum class
15 action damages); Russell v. Mortgage Solutions Mgmt., -Inc., No.
16 CV 08-1092-PK, 2010 WL 3945117, at *6-*7 (D. Or. Apr. 6, 2010)
17 (acknowledging that all three types of damages are authorized by
18 § 1640). Accordingly, Defendant's motion to dismiss Plaintiff's
19 TILA hazard insurance claim based on force placed insurance is
20 denied.

21 d. Cal. Civ. Code § 2955.5

22 Cal. Civ. Code § 2955.5 prohibits a lender from
23 "requiring[ing] a borrower . . . to provide hazard insurance
24 coverage . . . in an amount exceeding the replacement value of
25 improvements on the property." Cal. Civ. Code § 2955.5(a).
26 Defendant seeks dismissal of this fourth cause of action for the
27 same reasons raised with respect to Plaintiff's breach of contract
28 claim.

1 In this case Plaintiff pleads that she maintained insurance
2 coverage on her property at least equal to the replacement value of
3 improvements on the property. Then, in March 2011 Defendant force
4 placed additional insurance on Plaintiff's property and billed her
5 for the premiums.³ As discussed above, these allegations are
6 sufficient to state a claim under this statute, and Defendant's
7 motion to dismiss this fourth cause of action is denied.

8 e. UCL (Hazard Insurance)

9 Defendant argues that Plaintiff's fifth cause of action for a
10 UCL violation is based upon a failure to disclose under TILA and
11 is, therefore, preempted because her legal theory is contradicted
12 by 12 C.F.R. § 226.4(d)(2)(i) and TILA preempts state law claims
13 which contradict it or the regulation promulgated thereunder.
14 Defendant points out that any insurance purchased by Plaintiff from
15 a third party is not subject to the disclosure requirements of
16 TILA, and as a result no UCL claim can be predicated on such a
17 purchase. Plaintiff concedes that TILA does not regulate her
18 purchase of insurance from State Farm, but again argues that the
19 force placed insurance premiums are subject to TILA. Plaintiff
20 also argues that a violation of Cal. Civ. Code § 2955.5 can give
21 rise to a UCL claim based on insurance purchased by Plaintiff from
22 a third party.

23 TILA's savings clause provides that TILA does not preempt
24 state law unless the state law is inconsistent with TILA. Silvas
25 v. E*Trade Mortg. Corp., 514 F.3d 1001, 1007 (9th Cir. 2008).
26
27

28 ³ Plaintiff does not plead that she purchased additional hazard insurance from a third party.

1 Plaintiff is correct that a UCL claim may be predicated on a
2 TILA violation since the UCL and TILA do not conflict when the UCL
3 claim is based on conduct prohibited by TILA. Since Defendants'
4 "preemption" argument is dependent on its TILA argument, and this
5 Court has already rejected that argument, Defendants' motion to
6 dismiss this UCL claim is denied.

7 f. Plaintiff's Flood Insurance Claims

8 Defendant argues that Plaintiff's second and sixth causes of
9 action, i.e., her flood insurance claims, should be dismissed on
10 several grounds. First, Defendant argues that under the National
11 Flood Insurance Act ("NFIA"), it was entitled to force place flood
12 insurance on Plaintiff's property even if the property was no
13 longer in a flood zone. Next, Defendant reproduces the arguments
14 raised in support of dismissing Plaintiff's TILA and UCL hazard
15 insurance claims as discussed in the preceding section. Finally,
16 Defendant argues that the NFIA preempts Plaintiff's flood insurance
17 UCL claim.

18 (i) TILA (Flood Insurance)

19 Defendant argues that the NFIA and the FDPA legally entitle it
20 to engage in the conduct alleged in the complaint, making dismissal
21 of Plaintiff's flood insurance claims appropriate. Defendant
22 argues that under federal flood insurance law, it is entitled to
23 rely on a determination of flood plain status for 7 years, which
24 eliminates its liability in this case. Plaintiff responds that
25 Defendant was not entitled to force place flood insurance on her
26 property once it knew that the property was no longer in a FEMA
27 designated flood zone. Additionally, Plaintiff argues that even if
28 Defendant could force place some amount of insurance on her

1 property, it violated the law when it allegedly force placed
2 insurance on Plaintiff's home that exceeded the value of
3 improvements on the property.

4 The minimum amount of flood insurance required by the NFIA is
5 an amount equal to "the outstanding principal balance of the loan
6 or the maximum limit of coverage made available under the Act
7 . . . , whichever is less." 42 U.S.C. § 4012a(b)(1). "Flood
8 insurance under the Act is limited to the overall value of the
9 property securing the designated loan minus the value of the land
10 on which the property is located." 12 C.F.R. § 339.3. In other
11 words, the NFIA requires flood insurance equal to the lesser of the
12 replacement value of improvements to the property or the principal
13 balance of the loan secured by the property.

14 Based on Exhibit 1 to Plaintiff's complaint, Defendant
15 disclosed to Plaintiff at the origination of the loan that flood
16 insurance that complied with the NFIA was required. Defendant then
17 allegedly required increased flood insurance coverage, eventually
18 force placing the additional coverage. The additional premium was
19 reflected in Plaintiff's April 2011 mortgage statement. As
20 discussed above, the Court finds that the complaint gives rise to a
21 reasonable inference that Plaintiff's existing policy was at least
22 equal to the replacement value of improvements on the property.
23 Additional coverage force placed by Defendants therefore exceeded
24 coverage required under the NFIA and the loan agreement. Insurance
25 premiums for coverage in excess of replacement value of
26 improvements were not disclosed in the original loan agreement, as
27 alleged, which is an impermissible change of terms in violation of
28 TILA. See Hofstetter v. Chase Home Fin., LLC, 751 F.Supp.2d 1116,

1 1125 (N.D. Cal. 2010). Based on the allegation that Defendant
2 required flood insurance coverage on Plaintiff's property in excess
3 of that required under the NFIA, Plaintiff's complaint states a
4 claim.

5 Defendant also argues that it was entitled to rely on the 2005
6 determination of the property's flood status for seven years, and
7 require Plaintiff to maintain flood insurance for at least that
8 time period. Defendant points to guidance from the Federal Reserve
9 Board that explains that Defendant did not have a duty to monitor
10 the flood zone status of the property. Plaintiff responds that
11 Defendant learned that Plaintiff's property was no longer in a
12 flood zone at the latest on or before March 24, 2011, but that
13 Defendant nevertheless force placed flood insurance on her property
14 the next month and never refunded her payment.

15 Defendant concedes that the NFIA does not allow for charging a
16 borrower for forced placed insurance where a lender has contacted
17 FEMA and actually learned that a property was no longer in a flood
18 zone. Reply, at 7. Defendant also points out that if it did
19 overcharge Plaintiff, there was a credit and refund mechanism in
20 place to return Plaintiff's premium payments. Defendant argues for
21 the first time in its reply that Plaintiff does not specifically
22 allege that her payments were not refunded.

23 If, as alleged, Defendant actually knew that Plaintiff's
24 property was not in a flood zone, then its duty to monitor for
25 changes, along with the Federal Reserve Board's guidance on that
26 point, became irrelevant. Further, Plaintiff clearly pleads that
27 she was billed for the flood insurance, and that she was damaged by
28 the "expenses and costs for insurance. . . ." Compl. ¶ 35. At the

1 motion to dismiss stage, Plaintiff's allegations must be accepted
2 as true. Plaintiff plausibly pleads that she was billed for
3 insurance, and that she paid the bill. In light of the
4 allegations, the Court finds a reasonable inference that Plaintiff
5 was not refunded her alleged overpayments. Scheuer, 416 U.S. at
6 236. In short, to the extent Plaintiff's TILA flood insurance
7 claim is based on Defendant's force placement of flood insurance
8 after it allegedly knew that such coverage was not required,
9 Plaintiff has sufficiently pled this cause of action and
10 Defendant's motion to dismiss this claim is denied.

11 Defendant also argues that Plaintiff's flood insurance
12 allegations fail to state a claim under TILA because Plaintiff
13 purchased her insurance from State Farm. As discussed above, the
14 Complaint alleges that Defendant force placed both hazard and flood
15 insurance on Plaintiff above and beyond the insurance she had
16 purchased from State Farm. Since TILA would apply to the forced
17 placed flood insurance of Defendant, the motion to dismiss this
18 second cause of action on this ground is denied as well.

19 (ii) UCL (Flood Insurance)

20 Defendant argues that the NFIA preempts state law causes of
21 action for excessive flood insurance. Plaintiff responds that
22 claims for coverage in excess of amounts required by the NFIA are
23 not preempted.

24 The NFIA does not preempt state law claims that allege that a
25 defendant required coverage in excess of that required by the NFIA.
26 Hofstetter v. Chase Home Fin., LLC, No. C 10-01313 WHA, 2010 U.S.
27 Dist. LEXIS 84050, at *30-31 (N.D. Cal. Aug. 13, 2010). As stated
28 above, Plaintiff's claim concerns coverage that exceeds the amount

1 required by the NFIA, so her claim is not preempted. Defendant's
2 motion to dismiss this sixth cause of action is denied.

3 4. Defendant's Motion to Dismiss Plaintiff's Class
4 Allegations

5 Defendant argues that the class allegations in Plaintiff's
6 complaint should be dismissed or stricken. Defendant asserts that
7 the class definitions would, if certified, include class members
8 who lack standing under Article III. Plaintiff responds that it is
9 proper to determine the sufficiency of class definitions at the
10 class certification stage, making Defendant's motion premature.

11 Defendant primarily relies on Sanders v. Apple Inc., 672 F.
12 Supp. 2d 978 (N.D. Cal. 2009). In that case, the court ruled that
13 it was proper to strike class definitions from the complaint prior
14 to discovery because the class included members that lacked Article
15 III standing, and the complaint asserted claims on behalf of a
16 nationwide class that would be subject to varying state laws.
17 Sanders, 672 F.Supp.2d at 991.

18 There is nothing in the Sanders court holding that requires a
19 court to consider the sufficiency of class definitions during a
20 motion to dismiss or strike. While a court may in some
21 circumstances consider class allegations earlier, the Court
22 declines to do so in this case. The class definitions will be
23 considered during the certification process and Defendant's motion
24 to dismiss the class allegations is denied.

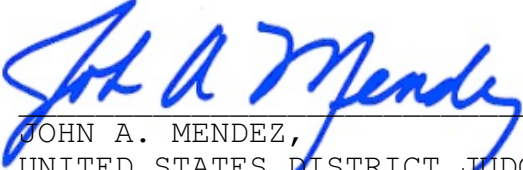
25 III. ORDER

26 For all the foregoing reasons, the motion is GRANTED WITH
27 PREJUDICE with respect to Defendant Suntrust Banks, Inc., and
28 DENIED as to Defendant Suntrust Mortgages, Inc. A responsive

1 pleading from Defendant Suntrust Mortgage, Inc. is due 20 days from
2 the date of this order.

3 IT IS SO ORDERED.

4 Dated: March 22, 2012



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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