



1           **I.       FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

2           Plaintiffs were homeowners who seek damages and injunctive relief based on Defendants’  
3 alleged wrongful foreclosure of their home at 547 Penstock Drive, Grass Valley, California 95945  
4 (the “Property”). (*See* ECF No. 40.) Plaintiffs obtained a loan in 2004 that was serviced by  
5 CitiMortgage, Inc. from approximately September 2004 through February 2014 and by  
6 Defendants beginning February 2014. (*Id.* at ¶¶ 17, 24, 52, 53.) After Plaintiffs missed payments  
7 in 2014 and 2015, Defendants refused to accept further payments “unless the full balance was  
8 rendered” and subsequently invited Plaintiffs to apply for a loan modification. (*Id.* at ¶¶ 27–30.)  
9 Plaintiffs were informed that the Property would not be sold while their completed application  
10 was under evaluation. (*Id.* at ¶ 41.) Plaintiffs continued to follow up with Defendants, who then  
11 informed them that their property was sold in a foreclosure sale even though the evaluation of  
12 their loan modification application was not yet complete. (*Id.* at ¶¶ 44–52.) Defendants then  
13 recorded title to the Property. (*Id.* at ¶ 53.)

14           Plaintiffs filed this action on June 10, 2016 in Nevada County Superior Court. (ECF No.  
15 1.) On July 15, 2016, Defendants removed the action to this Court. (*Id.*) On April 8, 2020,  
16 Plaintiffs filed the operative Second Amended Complaint (“SAC”). (ECF No. 40.) On April 28,  
17 2020, Defendants filed the instant motion. (ECF No. 43.) On August 20, 2020, Plaintiffs filed an  
18 opposition. (ECF No. 47.) On August 27, 2020, Defendants filed a reply. (ECF No. 48.)

19           **II.       STANDARD OF LAW**

20           Federal Rule of Civil Procedure (“Rule”) 12(c) provides “[a]fter the pleadings are closed  
21 — but early enough not to delay trial — a party may move for judgment on the pleadings.” Fed.  
22 R. Civ. P. 12(c). The issue presented by a Rule 12(c) motion is substantially the same as that  
23 posed in a 12(b)(6) motion — whether the factual allegations of the complaint, together with all  
24 reasonable inferences, state a plausible claim for relief. *See Cafasso v. Gen. Dynamics C4 Sys.*,  
25 637 F.3d 1047, 1054–55 (9th Cir. 2011). “A claim has facial plausibility when the plaintiff

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26           <sup>1</sup>       The Court need not recount all the background facts of the instant case here, as they are  
27 set forth fully in the Court’s May 31, 2018 and June 14, 2018 Orders. (ECF Nos. 22, 23.) The  
28 background facts have not substantially changed since the filing of Plaintiff’s Second Amended  
Complaint.

1 pleads factual content that allows the court to draw the reasonable inference that the defendant is  
2 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl.*  
3 *Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

4 In analyzing a 12(c) motion, the district court “must accept all factual allegations in the  
5 complaint as true and construe them in the light most favorable to the non-moving  
6 party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Nevertheless, a court “need not  
7 assume the truth of legal conclusions cast in the form of factual allegations.” *United States ex rel.*  
8 *Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). “A judgment on the pleadings is  
9 properly granted when, taking all the allegations in the non-moving party’s pleadings as true, the  
10 moving party is entitled to judgment as a matter of law.” *Ventress v. Japan Airlines*, 603 F.3d  
11 676, 681 (9th Cir. 2010). Courts have the discretion to grant a Rule 12(c) motion with leave to  
12 amend, and to simply grant dismissal of the action instead of entry of judgment. *See Lonberg v.*  
13 *City of Riverside*, 300 F. Supp. 2d 942, 945 (C.D. Cal. 2004); *Carmen v. S.F. Unified Sch.*  
14 *Dist.*, 982 F. Supp. 1396, 1401 (N.D. Cal. 1997).

15 Even though Rule 12(c) does not expressly authorize “partial judgments,” courts within  
16 the Ninth Circuit have recognized application of Rule 12(c) to individual causes of action.  
17 *Carmen v. San Francisco Unified Sch. Dist.*, 982 F. Supp. 1396, 1401 (N.D. Cal. 1997), *aff’d*,  
18 237 F.3d 1026 (9th Cir. 2001). Thus, “[c]ourts have discretion to grant leave to amend in  
19 conjunction with 12(c) motions, and may dismiss causes of action rather than grant judgment.”  
20 *Id.* However, courts have not entertained motions for partial judgment on the pleadings for only  
21 part of an individual claim or defense or “with respect to less than a full cause of action.” *Erhart*  
22 *v. Bofl Holding, Inc.*, 387 F. Supp. 3d 1046, 1062–63 (S.D. Cal. 2019) (quoting *Wright & Miller*);  
23 *U.S. v. Real Property and Improvements Located at 2366 San Pablo Ave., Berkeley, CA*, 2013  
24 WL 6774082, at \*1 (N.D. Cal. 2013).

### 25 III. ANALYSIS

26 Plaintiffs’ SAC alleges eight claims: (1) negligence; (2) intentional misrepresentation; (3)  
27 negligent misrepresentation; (4) wrongful foreclosure; (5) a violation of California Civil Code §  
28 2923.6(c); (6) a violation of California Civil Code § 2923.7; (7) a violation of California Business

1 and Professions Code § 17200; and (8) intentional infliction of emotional distress (“IIED”). (*See*  
2 ECF No. 40.)

3 Defendants seek judgment on the pleadings on Claims One through Three and Seven,  
4 arguing Plaintiffs fail to plead sufficient facts to establish these claims. (ECF No. 43 at 10–20.)  
5 Defendants argue Plaintiffs cannot state a claim as to Claim Four because Plaintiffs request an  
6 unavailable remedy to set aside a sale. (*Id.* at 18.) Defendants further request judgment on Claim  
7 Eight for IIED as Plaintiffs in the SAC voluntarily dismissed this claim. (*Id.* at 20; *see also* ECF  
8 No. 40 at 27.) Accordingly, Defendants’ motion as to Claim Eight is hereby GRANTED without  
9 leave to amend. The Court will first address Defendants’ Request for Judicial Notice (ECF No.  
10 44) and then each of Plaintiffs’ claims in turn.

11 A. Defendants’ Request for Judicial Notice

12 Defendants request the Court take judicial notice of Exhibits One through Nine.<sup>2</sup> (*See*  
13 ECF No. 44.) Defendants assert Exhibits One through Seven are official records of Nevada  
14 County, California, and are thus “capable of accurate and ready determination by resort to sources  
15 of reasonably indisputable accuracy.” (*Id.* at 3.) Plaintiffs do not oppose Defendants’ motion.

16 The Court may take judicial notice of facts that can be “accurately and readily determined  
17 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Courts  
18 have taken judicial notice of public records, which includes government documents and orders.

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20 <sup>2</sup> Exhibit 1 is the Deed of Trust dated September 1, 2004, executed by Plaintiffs, naming  
21 Mortgage Electronic Registration Systems, Inc. as “beneficiary” and Commonwealth Land Title  
22 as “trustee.” (ECF No. 44 at 5–23.) Exhibit 2 is the Assignment of Deed of Trust dated October  
23 10, 2011, executed by Mortgage Electronic Registration Systems Inc., assigning its beneficial  
24 interest in the Exhibit 1 deed of trust and the “note” to CitiMortgage, Inc. (*Id.* at 24–27.) Exhibit  
25 3 is the Corporate Assignment of Deed of Trust dated February 14, 2014, executed by  
26 CitiMortgage, Inc., assigning its beneficial interest in the Exhibit 1 deed of trust and the “note” to  
27 Fannie Mae. (*Id.* at 28–29.) Exhibit 4 is the Substitution of Trustee dated June 5, 2015, executed  
28 by Fannie Mae, designating The Mortgage Law Firm, PLC as the “trustee” of the Exhibit 1 deed  
of trust. (*Id.* at 30–32.) Exhibit 5 is the Notice of Default and Election to Sell Under Deed of  
Trust dated June 9, 2015, executed by The Mortgage Law Firm, PLC. (*Id.* at 33–35.) Exhibit 6 is  
the Notice of Trustee’s Sale dated April 7, 2016, executed by The Mortgage Law Firm, PLC. (*Id.*  
at 36–39.) Exhibit 7 is the Trustee’s Deed Upon Sale dated May 9, 2016, executed by The  
Mortgage Law Firm, PLC, conveying real property to Fannie Mae. (*Id.* at 40–43.) Exhibits 8 and  
9 are the June 14, 2018 and March 24, 2020 Orders of this Court. (*Id.* at 44–73.)

1 See *Armacost v. HSBC Bank USA*, 2011 WL 825151, at \*1 n.1 (D. Id. Feb. 9, 2011) (taking  
2 judicial notice of documents filed in a county's public record, including deeds of trust); *Pantoja v.*  
3 *Countywide Home Loans, Inc.*, 640 F. Supp. 2d 1177, 1189 n.12 (N.D. Cal. 2009); *W. Fed. Sav.*  
4 *& Loan Ass'n v. Heflin Corp.*, 797 F. Supp. 790, 792 (N.D. Cal. 1992).

5 Here, Exhibits One through Seven are publicly available government documents recorded  
6 in the official records of Nevada County, California. Exhibits Eight and Nine are publicly  
7 available records issued by this Court. Accordingly, Defendants' request for judicial notice of  
8 Exhibits One through Nine is GRANTED.

9 B. Claim One: Negligence

10 Defendants argue Plaintiffs do not set forth factual allegations as to how, why, or when  
11 Plaintiffs would have qualified for and received a loan modification if not for Defendants'  
12 negligence. (ECF No. 43 at 10; ECF No. 48 at 2–3.) Defendants contend Plaintiffs' allegations  
13 of damage to their credit score and other actions they could have taken to avoid foreclosure lack  
14 sufficient detail. (ECF No. 43 at 11.) Defendants also argue Plaintiffs cannot premise this claim  
15 on any alleged emotional distress because there is no physical injury. (*Id.*)

16 In opposition, Plaintiffs argue their SAC sufficiently alleges causation and damages.  
17 (ECF No. 47 at 6–9.) Specifically, Plaintiffs contend they met the necessary requirements for a  
18 loan modification and, but for Defendants' conduct, they should have received a loan  
19 modification. (*Id.* at 6.) Plaintiffs maintain the SAC goes into detail about which remedies  
20 Plaintiffs forewent. (*Id.* at 7.)

21 This Court previously addressed the issue of causation and damages. (*See* ECF No. 23 at  
22 14–15.) With respect to causation, as noted in the Court's June 14, 2018 Order, courts have  
23 found that mishandling of modification documents may deprive a homeowner of the possibility of  
24 obtaining the relief requested, even if there was no guarantee the modification would have been  
25 approved if properly handled. (*Id.* at 14 (citing *Garcia v. Ocwen Loan Servicing, LLC (Garcia I)*,  
26 No. C 10-0290 PVT, 2010 WL 1881098, at \*3 (N.D. Cal. May 10, 2010)).) With respect to  
27 damages, the Court previously noted that damages must be a type the law allows. *Lueras v. BAC*  
28 *Home Loans Servicing, LP*, 221 Cal. App. 4th 49, 79 (2013) (finding time and effort assembling

1 an application were “nominal damages” and “the law does not concern itself with trifles”); *see*  
2 *also Newman v. Bank of N.Y. Mellon*, No. 1:12-cv-01629-AWI-MJS, 2017 WL 1831940, at \*12  
3 (E.D. Cal. May 8, 2017), *adopted in part, rejected in part by Newman v. Bank of N.Y. Mellon*,  
4 No. 1:12-cv-1629 AWI MJS, 2017 WL 4325772 (E.D. Cal. Sept. 29, 2017); *cf. Martinez v.*  
5 *Flagstar Bank, FSB*, No. 2:15-cv-01934-KJM-CKD, 2016 WL 3906810, at \*8 (E.D. Cal. July 19,  
6 2016) (finding allegations of “a lengthy, distressing, and costly application process and [that the  
7 plaintiffs] *would have maintained possession of their home*” sufficient (emphasis added)).

8 Here, Plaintiffs’ SAC attempts to address pleading deficiencies noted in the June 14, 2018  
9 Order. (*See* ECF No. 40.) Plaintiffs allege:

10 [A]s a result of Defendants’ representations, promises, conduct, acts  
11 and failures to act . . . [P]laintiffs refrained from taking other actions  
12 that would have allowed them to cure the default on their loan which  
13 would have prevented a foreclosure trustee’s sale from taking  
14 place . . . Plaintiffs relied upon the above stated acts and  
15 representation of [D]efendants and didn’t file for bankruptcy which  
16 would have prevented a foreclosure sale and didn’t seek . . . the  
17 advice of an attorney to cause a stopping of the foreclosure sale.  
18 Plaintiffs for[e]went filing for bankruptcy, and further for[e]went  
19 borrowing money which they would have been able to do to pay the  
20 default which would have prevented the foreclosure sale from taking  
21 place.

22 (*Id.* at ¶ 78.) With respect to causation, Plaintiffs adequately allege Defendants mishandled their  
23 loan modification documents which possibly deprived them of relief. *Garcia I*, 2010 WL  
24 1881098, at \*3. Plaintiffs further allege that, as a proximate cause of Defendants’ conduct:

25 Plaintiffs have suffered injury in that the . . . Property was sold while  
26 Plaintiffs were in the process of being evaluated for a loan  
27 modification. Further, Plaintiffs were not given an opportunity to  
28 appeal a denial because they never received a decision on their loan  
modification application before or after the trustee’s sale had taken  
place. Further, Plaintiffs were induced to participate in the  
modification process instead of seeking other alternatives. Further,  
Plaintiffs spent time and money engaging in the modification process  
and gave Defendants access to personal financial data that  
Defendants were not otherwise entitled to receive. Plaintiffs lost title  
to the . . . Property and suffered severe emotional distress, anxiety,  
stress and sleeplessness. Finally, Plaintiffs have been forced to pay  
legal fees and expenses to enforce his rights and has suffered  
additional damages all within an amount that is within the  
jurisdiction of this [C]ourt and according to proof at trial.

1 (ECF No. 40 ¶ 79.) With respect to damages, Plaintiffs adequately allege a “lengthy, distressing,  
2 and costly application process” and that they would have maintained possession of the Property  
3 had they received a loan modification. *Martinez*, 2016 WL 3906810, at \*8. Plaintiffs therefore  
4 adequately state a claim for relief. *See Cafasso*, 637 F.3d at 1054–55. Accordingly, Defendants’  
5 motion for judgment on the pleadings as to Claim One is DENIED.

6 C. Claims Two and Three: Intentional and Negligent Misrepresentation

7 Defendants make the same arguments with respect to Claims Two and Three as they did  
8 in their prior motion to dismiss. (*See* ECF No. 23 at 16.) Defendants argue an oral promise not to  
9 exercise the right to foreclose, as Plaintiffs allege, would violate the statute of frauds. (ECF No.  
10 43 at 13–15.) Defendants further argue Plaintiffs do not allege sufficient facts to show required  
11 elements for these two claims — namely, misrepresentation of a past or existing material fact,  
12 knowledge of falsity, and damages. (*Id.* at 12, 15–18.) The Court will address Defendants’  
13 statute of frauds argument and decline to address their remaining arguments as the statute of  
14 frauds argument is dispositive of the instant motion with respect to both claims.

15 Defendants argue an “alleged promise not to foreclose comes within the statute of frauds”  
16 and thus “reliance on an alleged oral representation is not reasonable.” (ECF No. 43 at 12.) In  
17 opposition, Plaintiffs assert “Defendants’ representation to Plaintiffs that ‘the foreclosure sale  
18 would not occur because Plaintiffs were being evaluated for a loan modification[.]’ amounts to  
19 promissory fraud and is an actionable misrepresentation, regardless of any limitations of the  
20 statute of frauds.” (ECF No. 47 at 10–11.)

21 This Court previously noted that under California law, an agreement to modify a contract  
22 subject to the statute of frauds — such as a mortgage — is also subject to the statute of frauds and  
23 must be in writing and signed by the party to be charged to be enforceable. (ECF No. 23 at 16  
24 (citing *Ahmadi v. Nationstar Mortg., LLC*, No. SACV 16-0062 AG (JCGx), 2016 WL 7495826,  
25 at \*7 (C.D. Cal. Mar. 31, 2016); *Secrest v. Security Nat’l Mortg. Loan Trust 2002–2*, 167 Cal.  
26 App. 4th 544, 553 (2008); Cal. Civ. Code § 1698.) The Court also noted Defendants are  
27 estopped from asserting a statute of frauds defense if Plaintiffs can show detrimental reliance.  
28 (*Id.* (citing *Melendez v. U.S. Bank Nat’l Ass’n*, No. CV 15-08633 SJO (AGRx), 2015 WL

1 12866246, at \*5 (C.D. Cal. Dec. 3, 2015); *Garcia v. World Sav., FSB (Garcia II)*, 183 Cal. App.  
2 4th 1031, 1040 n.10 (2010)).)

3 Here, Plaintiffs' fail to allege sufficient facts to establish detrimental reliance. With  
4 respect to reliance specifically, Plaintiffs allege:

5 As a result of Defendants' repr[e]sentations, promises, conduct, acts  
6 and failures to act as described above, [P]laintiffs refrained from  
7 taking other actions that would have allowed them to cure the default  
8 on their loan which would have prevented a foreclosure trustee's sale  
9 from taking place of their residence. Plaintiffs relied upon the above  
10 stated acts and representation of [D]efendants and didn't file for  
11 bankruptcy which would have prevented a foreclosure sale and didn't  
12 seek the advice the advice of an attorney to cause a stopping of the  
13 foreclosure sale. Plaintiffs for[e]went filing for bankruptcy, and  
14 further for[e]went borrowing money which they would have been  
15 able to do to pay the default which would have prevented the  
16 foreclosure sale from taking place. Plaintiffs believed no scheduled  
17 foreclosure sale was going to take place since they were in the loan  
18 modification process and therefore did not know or believe a  
19 foreclosure sale was goin[g] to take place on May 12, 2016 and for  
20 that reason did not earlier file for bankruptcy or obtain a loan or  
21 secure other funds to cure the default amount.

22 (ECF No. 40 ¶ 85.) Plaintiffs' allegations again fall short. Though Plaintiffs state the  
23 aforementioned alternatives exist, Plaintiffs again fail to allege how they would have pursued  
24 them, why they could not pursue them during the modification process, and how they would have  
25 avoided foreclosure. Plaintiffs do not allege whether Defendants instructed Plaintiffs not to  
26 proceed with alternative remedies, nor do Plaintiffs indicate whether Defendants' statement was  
27 in writing. (*See id.*) Both facts are critical to determine whether Plaintiffs can establish  
28 detrimental reliance or whether Defendants are estopped from asserting a statute of frauds  
defense. The Court finds Plaintiffs have not alleged sufficient facts to satisfy either.

Accordingly, Defendants' motion for judgment on the pleadings as to Claims Two and  
Three is GRANTED. Because the Court already provided Plaintiffs with leave to amend  
regarding satisfying detrimental reliance or the statute of frauds and Plaintiffs have failed to do  
so, the Court grants the motion without leave to amend.

26 D. Claim Four: Wrongful Termination

27 Defendants argue an equitable set-aside of a foreclosure sale is not a remedy available  
28 under a wrongful foreclosure claim. (ECF No. 43 at 18.) Defendants cite the California



1 Homeowner Bill of Rights (“HBOR”) and notes Plaintiffs have two available remedies — a pre-  
2 foreclosure injunction or damages for a material violation of the HBOR after a trustee’s deed  
3 upon sale has been recorded. (*Id.*) In opposition, Plaintiffs cite cases that discuss various  
4 monetary damages but do not address equitable relief, such as setting aside a sale. (ECF No. 47  
5 at 13–15.)

6 California case law recognizes setting aside a trustee’s foreclosure sale in cases where  
7 there is “proof of some element of fraud, unfairness, or oppression.” *Susilo v. Wells Fargo Bank,*  
8 *N.A.*, 796 F. Supp. 2d 1177, 1193 (C.D. Cal. 2011) (citing *Stevens v. Plumas Eureka Annex*  
9 *Mining Co.*, 2 Cal. 2d 493, 496 (1935)). To adequately plead a claim to set aside a foreclosure  
10 sale, a plaintiff must establish: “(1) the trustee or mortgagee caused an illegal, fraudulent, or  
11 willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of  
12 trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was  
13 prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the  
14 trustor or mortgagor tendered the amount of the secured indebtedness or was excused from  
15 tendering.” *Lona v. Citibank, N.A.*, 202 Cal. App. 4th 89, 104 (2011). “Justifications for setting  
16 aside a trustee’s sale, . . . which satisfy the first element, including the trustee’s or the  
17 beneficiary’s failure to comply with the statutory procedural requirements for the notice or  
18 conduct of the sale.” *Id.*

19 Here, with respect to the first element, the Court has previously found Plaintiffs  
20 sufficiently pleaded a claim for violation of California Civil Code § 2923.6 (Claim Five), as  
21 Plaintiffs allege Defendants unlawfully proceeded with the foreclosure sale while Plaintiffs had a  
22 complete modification application pending. (*See* ECF No. 23 at 7–11.) Defendants do not seek  
23 judgment on the pleadings with respect to Claim Five in the instant motion. With respect to the  
24 second element, Plaintiffs allege they “suffered harm in that they lost title to the . . . Property  
25 despite the fact that they were in a loan modification review and had submitted a complete  
26 application. (ECF No. 40 ¶ 99.) Plaintiffs also expended time, money and energy in the loan  
27 modification process. Plaintiffs now face eviction and the loss of possession of the . . . Property.”  
28 (*Id.*) With respect to the third element, Plaintiffs allege they “should be excused from tendering

1 the amount of their alleged indebtedness due to the fact that the Trustee’s Deed is Void upon its  
2 Face as Defendants violated Cal. Civ. Code § 2923.6 by selling the . . . Property while Plaintiffs  
3 were in review for a loan modification.” (*Id.* at ¶ 100.) Plaintiffs also allege “it would be  
4 inequitable to require [them] to tender because they were in the process of obtaining the loan  
5 modification which would have allowed them to cure the default.” (*Id.*) This Court has also  
6 previously held it would be contradictory to require Plaintiffs to tender the amount due in these  
7 circumstances, so Plaintiffs were excused from tender. (ECF No. 23 at 19 (citing *Majd v. Bank of*  
8 *Am., N.A.*, 243 Cal. App. 4th 1293, 1305 (2015), *as modified* (Jan. 14, 2016)).) Based on the  
9 foregoing, Plaintiffs can adequately establish a claim to set aside a foreclosure sale. Accordingly,  
10 Defendants’ motion for judgment on the pleadings as to Plaintiffs’ Claim Four is DENIED.

11 E. Claim Seven: Violation of the Unfair Competition Law (“UCL”),  
12 California Business and Professions Code § 17200

13 Defendants argue Plaintiffs are only entitled to restitution for a violation of California  
14 Business and Professions Code § 17203 and “Plaintiffs fail to allege that they have paid  
15 Defendants any monies that would entitle them to relief under the statute.” (ECF No. 43 at 18–  
16 19.) Defendants maintain “[t]o establish the permissible restitutionary disgorgement, Plaintiffs  
17 would need to identify the precise fees and amounts that they paid to Defendants which they  
18 claim must be disgorged.” (*Id.* (emphasis omitted).) In opposition, Plaintiffs contend Seterus still  
19 has the wrongfully-acquired funds from Plaintiffs during the time they were servicing the loan.  
20 (ECF No. 47 at 16.)

21 Under the UCL, “restitutionary disgorgement ‘focuses on the plaintiff’s loss, and  
22 nonrestitutionary disgorgement ‘focuses on the defendant’s unjust enrichment.’” *In re Google*  
23 *Assistant Privacy Litig.*, 457 F. Supp. 3d 797, 840 (N.D. Cal. 2020) (citing *Meister v. Mensinger*,  
24 230 Cal. App. 4th 381, 398 (2014)). While nonrestitutionary disgorgement of profits is not  
25 recoverable in a UCL claim, “disgorgement of money obtained through an unfair business  
26 practice is an available remedy in a representative action only to the extent that it constitutes  
27 restitution.” *Hambrick v. Healthcare Partners Medical Grp., Inc.*, 238 Cal. App. 4th 124, 157  
28 (2015).

1 Here, Plaintiffs allege that they “seek restitution and disgorgement of all fees and  
2 penalties assessed to their [s]ubject [l]oan balance as well as an injunction to enjoin Defendants  
3 from engaging in . . . illegal, unfair and fraudulent business practices.” (ECF No. 40 at 27.)  
4 Plaintiffs do not allege how many total payments were made to Seterus, how much money was  
5 paid to Seterus, or how many of those total payments were returned. (*See id.*) However, to  
6 require that level of specificity on a claim this Court previously ruled as sufficient would be  
7 contradictory. (*See* ECF No. 23 at 22 (holding that Plaintiffs stated a claim under UCL §  
8 17200).) The Court ruled the UCL claim is sufficient because Plaintiffs alleged adequate facts to  
9 support their claims for violations of California Civil Code §§ 2923.6(c) and 2923.7. (*Id.*)  
10 Plaintiffs here seek “disgorgement of money obtained through an unfair business practice,” which  
11 is permissible. *Hambrick*, 238 Cal. App. 4th at 157. Accordingly, Defendants’ motion for  
12 judgment on the pleadings as to Plaintiffs’ Claim Seven is DENIED.

#### 13 IV. CONCLUSION

14 For the aforementioned reasons, the Court hereby GRANTS in part and DENIES in part  
15 Defendants’ Motion for Judgment on the Pleadings (ECF No. 43) as follows:

- 16 1. Defendants’ Motion for Judgment on the Pleadings as to Claim One is DENIED;
- 17 2. Defendants’ Motion for Judgment on the Pleadings as to Claim Two is GRANTED  
18 without leave to amend;
- 19 3. Defendants’ Motion for Judgment on the Pleadings as to Claim Three is GRANTED  
20 without leave to amend;
- 21 4. Defendants’ Motion for Judgment on the Pleadings as to Claim Four is DENIED;
- 22 5. Defendants’ Motion for Judgment on the Pleadings as to Claim Seven is DENIED;
- 23 and
- 24 6. Defendants’ Motion for Judgment on the Pleadings as to Claim Eight is GRANTED  
25 without leave to amend.

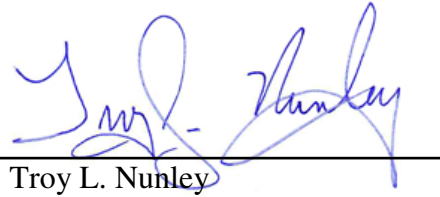
26 The parties are directed to file a joint status report within thirty (30) days of the electronic  
27 filing date of this Order.

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IT IS SO ORDERED.

Dated: September 28, 2021



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Troy L. Nunley  
United States District Judge