

1 Dismiss pursuant to Federal Rule of Civil Procedure Rule 12(b)(6)
2 ("Rule 12(b)(6)").

3 Plaintiffs assert eight claims against CB&T for
4 allegedly aiding and abetting the torts of IMG:¹ (1) Aiding and
5 Abetting Fraud; (2) Securities Fraud; (3) Conspiracy to Commit
6 Fraud; (4) Aiding and Abetting Breach of Fiduciary Duty; (5)
7 Intentional Interference with Contract; (6) Negligence; (7) Penal
8 Code § 496 Violation; and (8) Conspiracy to Violate Penal Code §
9 496.²

10 Plaintiffs allege that CB&T, as IMG's depository
11 institution, owed plaintiffs a duty to protect them from IMG's
12 intentional torts. The primary flaw with regard to this
13 argument, which plaintiffs rely on for all of their claims, is
14 that plaintiffs were neither CB&T customers nor had any
15 relationship with CB&T, and a bank does not owe a duty of care to
16 noncustomers unless extraordinary and specific facts are present.
17 See Software Design & Application v. Hoefer & Arnett, 49 Cal.
18 App. 4th 472, 479 (1st Dist. 1996). Because plaintiffs have
19 alleged no such facts, CB&T was under no legal duty to warn
20 plaintiffs about IMG's financial condition, nor did defendant owe
21 a "duty to [plaintiffs] to investigate or disclose suspicious
22 activities on the part of an account holder." See Casey v. U.S.
23 Bank Nat'l Ass'n, 127 Cal. App. 4th 1138, 1149 (4th Dist. 2005).

24 ¹ Plaintiffs have not sued IMG because the company filed
25 for bankruptcy on May 30, 2014. (Compl. ¶ 9.) Plaintiffs have
26 also not sued Deepal Wannakuwatte, IMG's Chief Executive officer,
27 who pled guilty to federal fraud charges and was sentenced to
28 twenty years in prison for this crime. (Compl. ¶ 4.)

² Plaintiffs have voluntarily dismissed their Aiding and
Abetting Conversion claim. (Docket No. 25.)

1 In fact, federal law explicitly prohibits financial institutions
2 from directly or indirectly disclosing nonpublic personal
3 information to nonaffiliated third parties. See 12 U.S.C. § 3401
4 et seq.; 15 U.S.C. §§ 6801-6809(a).

5 Consistent with this, CB&T had “no duty to prevent
6 commingling of assets in fiduciary accounts, to monitor fiduciary
7 accounts for irregular transactions, to prevent improper
8 disbursements from the accounts, or to conduct an investigation
9 of possible misappropriation of funds.” See Chazen v. Centennial
10 Bank, 61 Cal. App. 4th 532, 541 (1st Dist. 1998). Because a bank
11 does not have a duty to investigate or police its accounts,
12 CB&T’s “alleged knowledge of [a depositor’s] suspicious account
13 activities--even money laundering--without more, does not give
14 rise to tort liability for the banks.” See Casey, 127 Cal. App.
15 4th at 1141.

16 The only relevant question therefore becomes whether
17 CB&T had actual knowledge that IMG was operating a Ponzi scheme
18 and misappropriating funds. Id. at 1149. Here, plaintiffs have
19 not pled sufficient facts to give rise to a plausible inference
20 that defendant knew IMG was misappropriating funds. Plaintiffs
21 simply allege that CB&T “knew that [IMG was] engaged in wrongful
22 or illegal conduct . . . in breach of their fiduciary duties.”
23 Id. at 1152; see also Compl. ¶ 154 (alleging defendant had actual
24 knowledge IMG was not using its investors’ money for the
25 designated purpose, thereby breaching its fiduciary duties.) To
26 support their claim that CB&T was aware of IMG’s Ponzi scheme,
27 plaintiffs point to an October 2009 letter in which CB&T informed
28 IMG that it intended to “disengage from the Lending relationship”

1 because "there has been little to no revolving of the outstanding
2 balances." (Compl. ¶ 117). However, even if this demonstrates
3 that CB&T was aware that IMG could not meet its financial
4 obligations, it does not sufficiently allege that the bank knew
5 that IMG was engaging in fraud and misappropriating money.
6 Accordingly, plaintiffs' Complaint fails to plead more than
7 "alleged knowledge," and instead "essentially alleges the [bank]
8 knew something fishy was going on with the accounts opened by"
9 IMG, see Casey, 127 Cal. App. 4th at 1149, which is insufficient
10 to plead a cause of action for any of the eight claims plaintiffs
11 assert against CB&T.

12 Moreover, even assuming that CB&T had actual knowledge
13 of the fraud IMG was committing against plaintiffs, the court
14 rejects plaintiffs' argument that CB&T was therefore obligated to
15 terminate its depository relationship with IMG.³ "A commercial
16 lender is entitled to pursue its own economic interests in a loan
17 transaction." Nymark v. Heart Fed. Sav. & Loan Ass'n, 231 Cal.
18 App. 3d 1089, 1093, n.1 (3rd Dist. 1991). Therefore, while a
19 bank may terminate a deposit account, it is not liable for
20 failing to do so, even if it has notice of adverse claims or
21 improper disbursements from a trust account. Chazen, 61 Cal.
22 App. 4th. at 541. Accordingly, because CB&T had no duty to
23 plaintiffs to terminate its banking relationship with IMG or to
24 otherwise warn and protect plaintiffs from IMG's fraud,

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26 ³ Notably, plaintiffs cite no authority for their
27 contention that CB&T had a duty to terminate its banking
28 relationship with IMG. In fact, plaintiffs concede that there
are no known cases supporting this point. (Pls.' Opp'n at 20:8
(Docket No. 25).)

1 plaintiffs' claim against CB&T must be dismissed.

2 IT IS THEREFORE ORDERED that defendant's Motion to
3 Dismiss (Docket No. 21) be, and the same hereby is, GRANTED.

4 Dated: December 19, 2017



5 WILLIAM B. SHUBB
6 UNITED STATES DISTRICT JUDGE

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