

1 Dismiss and a Motion to Strike. Docket No. 9 ("Motion").
2 Plaintiffs filed an Opposition and Defendants submitted a Reply.
3 Docket Nos. 14, 15. For the reasons stated herein, the Motion to
4 Dismiss is GRANTED. The Motion to Strike is DENIED.

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6 **II. BACKGROUND**

7 In October 2004, Plaintiffs entered into two loans with CHL
8 to refinance property located at 2331 Pacifica Court, San Leandro,
9 California. Compl. ¶¶ 46, 49. The first loan, dated October 20,
10 2004, was in the amount of \$544,000. Request for Judicial Notice
11 ("RJN") Ex. A ("Note") ¶ 1, Ex. B ("First Deed of Trust").² The
12 Note provides for an interest rate of 5.5% and a monthly payment
13 of \$2,493.33 for the first five years. Note ¶¶ 2, 3(B), 4(A).
14 The Plaintiffs received a disclosure indicating that the lower
15 payments during the first five years would only be paying back
16 interest. Id. Ex. C ("Interest-Only Feature Disclosure").
17 Plaintiffs also received a Truth in Lending Disclosure Statement.
18 Id. Ex. D ("Truth in Lending Disclosure Statement"). The Deed of
19 Trust states that, upon default, CHL, or its Trustee, may

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21 ² Defendants submitted a request for judicial notice in
22 support of the Motion to Dismiss. Docket No. 9. The request
23 includes copies of documents associated with the loans at issue,
24 most of which have been recorded in the Alameda County Recorder's
25 Office. Having reviewed these documents, the Court determines that
26 they are properly subject to judicial notice. See Hotel Employees
27 & Rest. Employees Local 2 v. Vista Inn Mgmt. Co., 393 F. Supp. 2d
28 972, 978 (N.D. Cal. 2005). The Court may take judicial notice of
these documents without converting the Motion to Dismiss into a
motion for summary judgment because these documents are either
referred to in, or attached to, Plaintiffs' Complaint. See Knievel
v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005); United States v.
Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). The Court GRANTS
Defendants' Request for Judicial Notice.

1 accelerate the amount due under the Note and proceed with a
2 foreclosure of the property. First Deed of Trust ¶ 22.

3 The second loan, also dated October 20, 2004, was a Home
4 Equity Line of Credit ("HELOC") in the amount of \$136,000. Compl.
5 ¶ 49; RJN Ex. E ("HELOC Agreement") at 2, Ex. F ("HELOC Deed of
6 Trust"). CHL was the lender. HELOC Agreement at 1. The Deed of
7 Trust associated with this loan also provides that, upon default,
8 CHL, or its Trustee, may accelerate the amount due and proceed
9 with a foreclosure of the property. HELOC Deed of Trust ¶ 3.

10 After Plaintiffs defaulted on their loans, a Notice of
11 Default was recorded informing Plaintiffs that their property
12 could be sold. Id. ¶ 60; RJN Ex. G ("Notice of Default"). The
13 Notice of Trustee's Sale indicated that the sale would occur on
14 May 27, 2009. Compl. ¶ 60; RJN Ex. I ("Notice of Trustee's
15 Sale"). On that date, the property was sold at public auction for
16 \$450,500. RJN Ex. J ("Trustee's Deed Upon Sale").

17 The Complaint alleges that Defendants CFC and CHL engaged in
18 improper conduct by:

19 failing to take into account Plaintiff's [sic]
20 income, failing to analyze Plaintiffs' DTI
21 [debt-to-income] ratio, failing to provide
22 Plaintiffs with adequate documentation,
23 disclosures, notices, and other information
24 concerning the terms of the loan, misleading
25 Plaintiffs about the potential for refinancing
26 the loans, obfuscating the potential for payment
27 shock arising from the inevitable interest rate
28 increases on the loans, misleading Plaintiffs
about the underwriting basis of the loans by
suggesting that the primary basis for approving
the loans was the equity in the Trust Property
and that their monthly income was irrelevant,
and by failing to advise Plaintiffs that they
intended to immediately assign and/or re-sell
and/or securitize the loans in the secondary

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mortgage market.

Compl. ¶ 52. Defendants now move to dismiss Plaintiffs' claims against them, and to strike portions of the Complaint.

III. LEGAL STANDARD

A. Motion to Dismiss

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). Allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). However, the court need not accept as true legal conclusions couched as factual allegations. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 1949. With regard to well-pleaded factual allegations, the court should assume their truth, but a motion to dismiss should be granted if the plaintiff fails to proffer "enough facts to state a claim for relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 547 (2007).

B. Motion to Strike

Rule 12(f) provides that "[t]he court may strike from a

1 pleading an insufficient defense or any redundant, immaterial,
2 impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The
3 essential function of a Rule 12(f) motion is to "avoid the
4 expenditure of time and money that must arise from litigating
5 spurious issues by dispensing with those issues prior to trial."
6 Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993),
7 rev'd on other grounds, 510 U.S. 517 (1994).

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9 **IV. DISCUSSION**

10 **A. Negligence/Negligence Per Se**

11 Plaintiffs allege that CFC, CHL, and Low owed a duty of care
12 to Plaintiffs, "particularly concerning their duty to properly
13 perform due diligence as to the loans" Compl. ¶ 68. They
14 also allege violations of duties of care "under Cal. Civ. Code
15 Section 1916.7, TILA, HOEPA, RESPA, and the Regulations X and Z
16 promulgated thereunder." Id. ¶ 69.

17 "The elements of a cause of action for negligence are (1) a
18 legal duty to use reasonable care, (2) breach of that duty, and
19 (3) proximate [or legal] cause between the breach and (4) the
20 plaintiff's injury." Mendoza v. City of Los Angeles, 66 Cal. App.
21 4th 1333, 1339 (Ct. App. 1998) (citation omitted). "[P]arties to a
22 contractual relationship, such as a mortgagor and mortgagee,
23 cannot bring a tort claim [for negligence] unless a legal duty
24 independent of the contract itself has been violated." Gaitan v.
25 Mortgage Electronic Registration Systems, No. 09-1009, 2009 WL
26 3244729, at *8 (C.D. Cal. Oct. 5, 2009)(citation omitted). "[A]s
27 a general rule, a financial institution owes no duty of care to a
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1 borrower when the institution's involvement in the loan
2 transaction does not exceed the scope of its conventional role as
3 a mere lender of money." Nymark v. Heart Fed. Sav. & Loan Ass'n,
4 231 Cal. App. 3d 1089, 1096 (Ct. App. 1991).

5 The Court finds that Plaintiffs have not alleged facts that
6 would suggest CHL's actions exceeded its conventional role as a
7 mere lender of money. The Court's review of the judicially-
8 noticed documents confirms that CHL was a mere lender. See Note;
9 HELOC Agreement. The Complaint and these documents depict no more
10 than a typical, arms-length, home-loan transaction. As such,
11 Plaintiffs have failed to demonstrate a duty owed by CHL to
12 Plaintiffs.

13 Also, Plaintiffs have failed to plead any facts supporting a
14 claim for negligence per se, beyond listing a number of statutes
15 and stating that "Plaintiffs are among the class of persons [the
16 statutes] were intended and designed to protect." See Compl.
17 ¶ 71. In any event, "an underlying claim of ordinary negligence
18 must be viable before [negligence per se] can be employed." Cal.
19 Service Station and Auto. Repair Ass'n v. American Home Assurance
20 Co., 62 Cal. App. 4th 1166, 1178 (Ct. App. 1998). Without a valid
21 claim for negligence, a claim for negligence per se cannot stand.
22 The Court DISMISSES Plaintiffs' claims for negligence and
23 negligence per se WITH LEAVE TO AMEND.³

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26 ³ Although Low did not participate in Defendants' Motion to
27 Dismiss, the causes of action dismissed in this Order are dismissed
28 as to all defendants.

1 Therefore, the Court DISMISSES Plaintiffs' breach of contract
2 claim WITH LEAVE TO AMEND.

3 Likewise, the Court finds that Plaintiffs have failed to
4 state a claim for breach of the implied covenant of good faith and
5 fair dealing. Plaintiffs allege that CFC, CHL, and Low "breached
6 the covenant of good faith and fair dealing implied in every
7 contract in that they frustrated the reasonable expectations of
8 Plaintiffs to be able to service their loan obligations and to be
9 able to engage in workout negotiations" Compl. ¶ 75.
10 Under California law, the "implied covenant of good faith and fair
11 dealing is limited to assuring compliance with the express terms
12 of the contract, and cannot be extended to create obligations not
13 contemplated by the contract." Pasadena Live, LLC v. City of
14 Pasadena, 114 Cal. App. 4th 1089, 1093-94 (Ct. App. 2004)
15 (citation omitted.) "[T]he implied covenant will only be
16 recognized to further the contract's purpose; it will not be read
17 into a contract to prohibit a party from doing that which is
18 expressly permitted by the agreement itself." Wolf v. Walt Disney
19 Pictures and Television, 162 Cal. App. 4th 1107, 1120 (Ct. App.
20 2008). "The covenant 'cannot impose substantive duties or limits
21 on the contracting parties beyond those incorporated in the
22 specific terms of their agreement.'" Agosta v. Astor, 120 Cal.
23 App. 4th 596, 607 (Ct. App. 2004) (quoting Guz v. Bechtel Nat'l
24 Inc., 24 Cal. 4th 317, 349-50 (2000)).

25 Here, and as noted above, the Complaint fails to allege a
26 specific breach of the terms of an identified agreement.
27 Furthermore, the judicially-noticed documents show that the lender
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1 was permitted to foreclose on Plaintiffs' property once they
2 defaulted on their loans. See First Deed of Trust ¶ 22; HELOC
3 Deed of Trust ¶ 3. There is nothing to substantiate the
4 conclusory allegation that Defendants frustrated Plaintiffs'
5 reasonable expectations. Another federal court came to the same
6 conclusion when considering an almost identical complaint. See
7 Coyotzi v. Countrywide Fin. Corp., No. 09-1036, 2009 WL 2985497,
8 at *7-8 (E.D. Cal. Sept. 16, 2009). The Court DISMISSES the
9 breach of the implied covenant claim WITH LEAVE TO AMEND.

10 **C. Breach of Fiduciary Duty**

11 In their third cause of action, Plaintiffs allege that CFC,
12 CHL and Low owed Plaintiffs "a fiduciary duty of care with respect
13 to the mortgage loan transactions" and that Defendants breached
14 their fiduciary duties. Compl. ¶ 79-80. Unfortunately for
15 Plaintiffs, the law is clear that "[t]he relationship between a
16 lending institution and its borrower-client is not fiduciary in
17 nature [and a] commercial lender is entitled to pursue its
18 own economic interests in a loan transaction." Nymark, 231 Cal.
19 App. 3d at 1093 n.1. Absent "special circumstances" a loan
20 transaction is "at arms-length and there is no fiduciary
21 relationship between the borrower and lender." Oaks Mgmt. Corp.
22 v. Super. Ct., 145 Cal. App. 4th 453, 466 (Ct. App. 2006). Here,
23 the Complaint lacks necessary allegations of a special
24 relationship between Plaintiffs and Defendants to create fiduciary
25 duties.

26 In their Opposition, Plaintiffs allege that Defendants
27 stepped outside the role of traditional lenders by participating
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1 in an unlawful predatory lending scheme. Opp'n at 9. However, as
2 noted by another federal court, "Plaintiffs' claim that CFC and
3 CHL are predatory lenders is the antithesis of a fiduciary
4 relationship." Coyotzi, 2009 WL 2985497 at *8. The Court
5 DISMISSES the cause of action for breach of fiduciary duty WITH
6 LEAVE TO AMEND.

7 **D. Intentional Infliction of Emotional Distress ("IIED")**

8 Plaintiffs' fourth cause of action for IIED alleges that all
9 Defendants "participated in a joint venture/conspiracy to induce
10 Plaintiffs to enter into a loan transaction they knew would go
11 into default" Compl. ¶ 84. The elements of a claim for
12 IIED are: (1) extreme and outrageous conduct by the defendant with
13 the intention of causing, or reckless disregard of the probability
14 of causing, emotional distress; (2) the plaintiff's suffering
15 severe or extreme emotional distress; and (3) actual and proximate
16 causation of the emotional distress by the defendant's outrageous
17 conduct. Cervantes v. J.C. Penny Co., 24 Cal. 3d 579, 593 (1979).
18 Extreme and outrageous conduct must be "so extreme as to exceed
19 all bounds of that usually tolerated in a civilized community."
20 Davidson v. City of Westminster, 32 Cal. 3d 197, 210 (1982)
21 (quoting Cervantes, 24 Cal. 3d at 593).

22 Plaintiffs allege that Defendants' conduct, "driven as it was
23 by profit at the expense of increasingly highly leveraged and
24 vulnerable consumers," was "extreme and outrageous and not to be
25 tolerated by civilized society." Compl. ¶ 84. However, beyond
26 this conclusory allegation, the Complaint points to no conduct
27 outside that generally accepted in the foreclosure process. See

1 Coyotzi, 2009 WL 2985497, at *10. The Court DISMISSES Plaintiffs'
2 fourth cause of action WITH LEAVE TO AMEND.

3 **E. Fraud**

4 Plaintiffs allege all Defendants misrepresented that
5 Plaintiffs could refinance their property at will for more
6 favorable terms, that the only underwriting criteria supporting
7 the loans was the market value of the property, and that
8 Plaintiffs' actual income "was irrelevant to the underwriting
9 and/or loan approval process." Compl. ¶ 90. Plaintiffs also
10 allege that Defendants concealed material information which would
11 have affected their decision-making process. Id. ¶ 92.

12 Under California law, the elements of fraud are "false
13 representation, knowledge of its falsity, intent to defraud,
14 justifiable reliance, and damages." Moore v. Brewster, 96 F.3d
15 1240, 1245 (9th Cir. 1996) (quotations omitted). Allegations of
16 fraud "must state with particularity the circumstances
17 constituting fraud" Fed. R. Civ. P. 9(b). The plaintiff
18 must include "the who, what, when, where, and how" of the fraud.
19 Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003)
20 (citation omitted). Where multiple defendants are asked to
21 respond to allegations of fraud, the complaint must inform each
22 defendant of his alleged participation in the fraud. Swartz v.
23 KPMG LLP, 476 F.3d 756, 765-65 (9th Cir. 2007); DiVittorio v.
24 Equidyne Extractive Indus., 822 F.2d 1242, 1247 (2d Cir. 1987)).

25 Here, Plaintiffs' general allegations against all Defendants
26 fail to satisfy Federal Rule of Civil Procedure 9(b). The
27 Complaint makes no effort to allege names of persons who made the

1 allegedly fraudulent representations, their authority to speak, to
2 whom they spoke, what they said or wrote, and when it was said or
3 written. The Complaint does not adequately inform each Defendant
4 of his or her role in the alleged fraud. The Court DISMISSES
5 Plaintiffs' fraud claim as to all Defendants WITH LEAVE TO AMEND.

6 **F. Violation of Federal and State Lending Laws**

7 Plaintiffs allege that CFC, CHL, and Low "violated Cal. Civ
8 Code Section 1916.7, TILA, HOEPA, RESPA and the Regulations X and
9 Z" by "failing to provide all of the statutorily mandated
10 disclosures required by these laws, engaging in a pattern of
11 marketing loans to borrowers (including Plaintiffs) without regard
12 to their ability to pay, and by paying yield spread premiums and
13 other unlawful compensation to brokers and loan officers as an
14 inducement to sell/market high risk interest loans "
15 Compl. ¶ 97.

16 A request for damages under TILA or HOEPA is subject to a
17 one-year statute of limitations. 15 U.S.C. § 1640(e). The one-
18 year limitations period "starts at the consummation of the [loan]
19 transaction." King v. California, 784 F.2d 910, 915 (9th Cir.
20 1986). RESPA claims are also subject to a one-year limitations
21 period. 12 U.S.C. § 2614(a). The loan transactions in this case
22 were consummated on October 20, 2004, and disclosures were
23 provided to Plaintiffs at that time. See Interest-Only Feature
24 Disclosure; Truth in Lending Disclosure Statement. Therefore, the
25 Court DISMISSES the TILA, HOEPA, and RESPA claims WITHOUT LEAVE TO
26 AMEND.

27 With regard to the alleged violation of California Civil Code
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1 section 1916.7, the Court notes that this section only applies to
2 mortgage loans made pursuant to it. Cal. Civ. Code § 1916.7(b);
3 Brittain v. IndyMac Bank, FSB, No. 09-2953, 2009 WL 2997394, at *3
4 (N.D. Cal. Sept. 16, 2009). Here, Plaintiffs have failed to
5 allege facts showing that section 1916.7 applies, and they have
6 failed to specify which provisions of section 1916.7 have been
7 violated. Accordingly, the Court DISMISSES the section 1916.7
8 claim WITH LEAVE TO AMEND.

9 **G. Deceptive Advertising and Unfair Business Practices**

10 Plaintiffs allege that all Defendants "have engaged in
11 deceptive advertising and have committed a variety of unfair and
12 unlawful business practices prohibited by Federal and State law,
13 including California Business and Professions Code Sections 17200
14 et seq. (Unfair Competition Law ["UCL"]) and 17500 et seq. (False
15 Advertising Act ["FAA"]), and 15 U.S.C. Section 45 et seq.
16 (Deceptive Practices Act ["DPA"])." See Compl. ¶ 100.

17 With regard to the claimed violation of the UCL, the Court
18 notes that this cause of action is derivative of some other
19 illegal conduct or fraud committed by a defendant, and "[a]
20 plaintiff must state with reasonable particularity the facts
21 supporting the statutory elements of the violation." Khoury v.
22 Maly's of California, Inc., 14 Cal. App. 4th 612, 619 (Ct. App.
23 1993). Here, the Court has already dismissed Plaintiffs' fraud
24 allegations, and Plaintiffs have not specified what law or policy
25 has been violated. Plaintiffs' allegations concerning violations
26 of the FAA and DPA are also too vague and conclusory. See
27 Coyotzi, 2009 WL 2985497, at *13 ("Mere mention of a statutory
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1 violation is insufficient, and plaintiffs make no meaningful
2 points to support the claim.") The Court DISMISSES Plaintiffs'
3 seventh cause of action WITH LEAVE TO AMEND.

4 **H. RICO Violations**

5 Plaintiffs allege that Defendants have violated RICO, 18
6 U.S.C. §§ 1961 et seq. Compl. ¶¶ 102-09. Plaintiffs alleged that
7 all Defendants engaged in an unlawful racketeering enterprise,
8 which Plaintiffs refer to as the "Countrywide Predatory Lending
9 Scheme." Id. ¶ 103. They allege the scheme "involved a shifting
10 association of persons and entities, some formally and others
11 informally, the goal of which was to originate as many mortgage
12 loans as possible without regard for the borrowers ability to pay,
13 and in violation of numerous State and Federal Lending/Consumer
14 Protection Laws" Id. ¶ 104.

15 A RICO claim requires a showing that "a pattern of
16 racketeering activity" occurred. 18 U.S.C. § 1961; see Rothman v.
17 Vetter Park Mgmt., 912 F.2d 315, 316 (9th Cir. 1990). In order to
18 establish the requisite activity, plaintiff "must allege either an
19 agreement that is a substantive violation of RICO or that the
20 defendants agreed to commit, or participated in, a violation of
21 two predicate offenses." Baumer v. Pachl, 8 F.3d 1341, 1346 (9th
22 Cir.1993). Plaintiffs fail to either allege a substantive
23 violation of RICO, or to sufficiently enumerate the predicate acts
24 upon which the RICO claim is based. See 18 U.S.C. § 1961(5).
25 When fraudulent acts are the predicate offenses, as may be the
26 case here, Federal Rule of Civil Procedure 9(b) "requires that
27 circumstances constituting fraud be stated with particularity."
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1 Alan Neuman Productions, Inc. v. Albright, 862 F.2d 1388, 1392-93
2 (9th Cir. 1988). Here, the Court has already found the fraud
3 allegations deficient, and the Complaint does not contain specific
4 allegations of a "pattern" of fraudulent conduct. Instead,
5 Plaintiffs' Complaint is focused on one foreclosure sale.
6 Plaintiffs' conclusory allegation that Defendants have engaged in
7 a pattern of racketeering activity, Compl. ¶ 107, is insufficient
8 to defeat a motion to dismiss. The Court DISMISSES Plaintiffs'
9 claim for civil RICO violations WITH LEAVE TO AMEND.

10 **I. Injunctive Relief**

11 Plaintiffs seek to enjoin the sale of their property. Compl.
12 ¶ 110-14. To warrant injunctive relief, a plaintiff "must
13 establish that he is likely to succeed on the merits, that he is
14 likely to suffer irreparable harm in the absence of preliminary
15 relief, that the balance of equities tips in his favor, and that
16 an injunction is in the public interest." Winter v. Natural Res.
17 Def. Council, --- U.S. ---, 129 S.Ct. 365, 374 (2008).
18 Plaintiffs' request for an injunction is moot because the
19 foreclosure sale occurred on May 27, 2008. See Trustee's Deed
20 Upon Sale. The Court is powerless to enjoin what has already
21 occurred. Even if the property was not already sold, the Court's
22 review of the judicially-noticed documents indicates that
23 Plaintiffs are not likely to succeed on the merits of their claims
24 that Defendants' conduct was improper or unlawful. The Court
25 DISMISSES the request for injunctive relief WITHOUT LEAVE TO
26 AMEND.

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(a) A description of the property that is the subject of the action. . . . (b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. . . . (c) The adverse claims to the title of the plaintiff against which a determination is sought. (d) The date as of which the determination is sought. . . . (e) A prayer for the determination of the title of the plaintiff against the adverse claims.

Cal. Code Civ. Proc. § 761.020. The Complaint contains none of these elements. Moreover, Plaintiffs' Complaint is not verified, as required by section 761.020. The Court DISMISSES the quiet title claim WITH LEAVE TO AMEND.

M. Accounting

Plaintiffs seek an accounting in order to establish the amount of money they owe Defendants. Compl. ¶¶ 125-27. "A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting." Hafiz v. Aurora Loan Servs., No. 09-1963, 2009 WL 2029800, at *2 (N.D. Cal. July 14, 2009)(quoting Teselle v. McLoughlin, 173 Cal. App. 4th 156, 179 (2009)). Here, Plaintiffs do not allege some balance is due to them. Instead, they seek an accounting to determine how much money they owe CFC, CHL, and/or MERS. Compl. ¶¶ 126-27. Plaintiffs do not cite any authority to support their right to seek an accounting under these circumstances. Accordingly, the claim for an accounting is DISMISSED WITH LEAVE TO AMEND.

N. Punitive Damages

Plaintiffs' final "cause of action" seeks punitive damages

1 against all Defendants. Plaintiffs allege Defendants' conduct was
2 "despicable, was carried on with malice, fraud, and oppression,
3 and in conscious disregard for the rights of Plaintiffs." Compl.

4 ¶ 129. These conclusory allegations are clearly insufficient to
5 survive a motion to dismiss. See Coyotzi, 2009 WL 2985497, at
6 *21-22. Furthermore, the dismissal of Plaintiffs' other claims
7 warrants dismissal of the request for punitive damages. The Court
8 DISMISSES the request for punitive damages WITH LEAVE TO AMEND.

9 **O. Defendants' Request to Dismiss CFC From this Action**

10 Defendants request the Court to dismiss CFC from this action.
11 Mot. at 22-23. In their Complaint, Plaintiffs allege, in
12 conclusory terms, that "each of the Defendants was the agent of
13 each of the remaining Defendants." Compl. ¶ 5. Throughout their
14 Complaint, Plaintiffs use the term "COUNTRYWIDE" to refer to both
15 CFC and CHL, and Plaintiffs have asserted all of their causes of
16 action against "COUNTRYWIDE." See Compl.

17 The Court agrees with Defendants that Plaintiffs have no
18 basis to assert claims against CFC. The loans at issue in this
19 case both identify the lender as CHL, not CFC. See Note at 1;
20 First Deed of Trust at 2. The Court agrees with Defendants that
21 CFC does not belong in this lawsuit. The Court therefore
22 DISMISSES all of the claims in this action with respect to CFC
23 WITH PREJUDICE.

24 **P. Motion to Strike**

25 Defendants request the Court to strike paragraphs 8 to 43 of
26 Plaintiffs' Complaint. This section of Plaintiffs' Complaint is
27 entitled "General Allegations re: Mortgage Lending Practices."
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1 Compl. at 3. Plaintiffs' specific allegations against Defendants
2 do not begin until paragraph 44 of the Complaint.

3 While the Court agrees with Defendants that these paragraphs
4 are somewhat superfluous, at this early stage of the proceedings,
5 and before Plaintiffs have had an opportunity to amend, the Court
6 will not order that the paragraphs be stricken. Courts often
7 require "a showing of prejudice by the moving party" before
8 granting a motion to strike. Securities and Exchange Commission
9 v. Sands, 902 F. Supp. 1149, 1166 (C.D. Cal. 1995) (citations
10 omitted). Here, Defendants have not shown prejudice as a result
11 of these paragraphs. Also, Defendants' request for the Court to
12 strike Plaintiffs' claim for punitive damages is moot since the
13 Court has already dismissed that claim. See Part IV(N), supra.
14 The Court DENIES Defendants' Motion to Strike.

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V. CONCLUSION

For the reasons stated above, the Court DISMISSES all of Plaintiffs' claims. The Court DISMISSES the TILA, HOEPA, and RESPA claims in the sixth cause of action and the ninth cause of action for injunctive relief WITH PREJUDICE. The Court DISMISSES all of the causes of action against Defendant Countrywide Financial Corporation WITH PREJUDICE. The Court DISMISSES all of Plaintiffs' claims against the other Defendants WITH LEAVE TO AMEND. Defendants' Motion to Strike is DENIED. If Plaintiffs choose to amend their Complaint, they must do so within thirty (30) days from the date of this Order. Plaintiffs' attorney is strongly encouraged to bring only those claims that are warranted, and only those factual contentions that have, or are likely to have, evidentiary support. See Fed. R. Civ. P. 11(b).

IT IS SO ORDERED.

December 3, 2009


UNITED STATES DISTRICT JUDGE