

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CYNTHIA M. CHANG,)	Case No. C-11-1951 SC
)	
Plaintiff,)	ORDER GRANTING IN PART AND
)	DENYING IN PART DEFENDANTS'
v.)	<u>MOTION TO DISMISS</u>
)	
WACHOVIA MORTGAGE, FSB, a national)	
association; WELLS FARGO BANK,)	
N.A., a national association; and)	
DOES 1 through 50, inclusive,)	
)	
Defendants.)	

I. INTRODUCTION

Plaintiff Cynthia M. Chang ("Plaintiff") commenced this action against Wachovia Mortgage, FSB ("Wachovia") and Wells Fargo Bank, N.A. ("Wells Fargo") (collectively, "Defendants"), bringing nine causes of action arising from loan modification discussions between Plaintiff and Defendants and the May 2010 foreclosure sale of Plaintiff's San Francisco, California residence. ECF No. 1 ("Notice of Removal") Ex. A ("Compl."). Now before the Court is Defendants' fully briefed motion to dismiss Plaintiff's Complaint. ECF Nos. 13 ("Mot."), 17 ("Opp'n"), 18 ("Reply"). For the following reasons, the Court GRANTS IN PART and DENIES IN PART Defendants' Motion.

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1 **II. BACKGROUND**

2 As it must on a motion brought under Federal Rule of Civil
3 Procedure 12(b)(6), the Court assumes the truth of the well-pleaded
4 facts in Plaintiff's Complaint. Plaintiff is a resident of San
5 Francisco, and from 1996 until around May 12, 2010, she was the
6 owner of a residence located at 80 Collingwood Street, Number 302,
7 San Francisco, California, Block 2648, Lot 056 ("the residence").
8 Compl. ¶ 1. Around May 18, 2006, Plaintiff refinanced the
9 residence with World Savings Bank.¹ Id. ¶ 8. The refinance
10 consisted of two loans: the first in the principal amount of
11 \$380,000 ("the first loan") and the second, an equity line of
12 credit, in the amount of \$50,000 ("the second loan"). Id.

13 Plaintiff alleges that she made all payments on her loans
14 until sometime in 2008, when she lost her job. Id. ¶ 7. Around
15 this time, Plaintiff contacted Defendants to inquire into loan
16 modification. Id. ¶ 9. Plaintiff claims that these discussions
17 continued through May 2010, and that Defendants "made statements,
18 promises and assurances to plaintiff that her requests for a loan
19 modification or a new loan would be reasonably considered in good
20 faith." Id.

21 On July 24, 2009, and again on September 1, 2009, Defendants
22 recorded a Notice of Default and Election to Sell Under Deed of
23 Trust ("NOD") with respect to the second loan on Plaintiff's home.
24 Id. ¶ 10.² Plaintiff claims that upon receiving the NOD, she
25 "immediately contacted defendants and was assured that her requests

26 _____
27 ¹ Plaintiff alleges, and Defendants concede, that Wachovia is World
28 Savings Bank's successor in interest, and that Wells Fargo is
Wachovia's successor in interest. Id. ¶¶ 2-6.

² It is not clear from the Complaint why two NODs were recorded.

1 and applications for a loan modification and new loan were being
2 considered and that she would not be hurt by the NOD so long as
3 such negotiations continued." Id. ¶ 11.

4 Plaintiff alleges that on or about January 11, 2010, Wachovia
5 recorded a Notice of Trustee's Sale ("Notice") setting a private
6 sale under the Deed of Trust securing the second loan for February
7 1, 2010. Id. ¶ 12. Plaintiff continued to discuss modification of
8 both loans with Defendants. Id. Plaintiff alleges that the sale
9 date was postponed on more than one occasion, but Plaintiff did not
10 receive notice of this postponed sale date. Id.

11 Plaintiff claims that in April 2010, Defendants informed
12 Plaintiff that they were "unable to proceed" with the modification.
13 Id. ¶ 13. Plaintiff claims that despite this communication,
14 Defendants "continued to lead plaintiff to believe that she could
15 obtain a modification of the First Loan and Second Loan and retain
16 ownership of her residence." Id. ¶ 14. Plaintiff claims that
17 Defendants told her on or about May 17, 2010 that the residence was
18 sold at a May 12, 2010 foreclosure sale, but informed her on June
19 18, 2010 that the loan could be reinstated. Id. ¶ 13.

20 Plaintiff claims that due to the sale, she suffered between
21 \$250,000 and \$300,000 in lost equity in the residence. Id. ¶ 16.

22 Plaintiff brings nine causes of action. First, she alleges a
23 claim for promissory estoppel based on Defendants' statements that
24 they would not proceed with a foreclosure sale so long as
25 Plaintiff's modification negotiations continued. Id. ¶ 18-24.
26 Second, she alleges fraud, misrepresentation, and reckless
27 disregard, asserting that Defendants' conduct "constituted material
28 misrepresentations, omissions . . . and actions in reckless

1 disregard of plaintiff's rights and remedies to retain and preserve
2 her Residence." Id. ¶ 26. Third, Plaintiff alleges Defendants
3 committed negligent misrepresentation by making misleading or
4 inaccurate statements to Plaintiff despite having access to
5 accurate information and data. Id. ¶ 30. Fourth, Plaintiff
6 alleges negligence, claiming Defendants "breached their duties of
7 care and skill to plaintiff in servicing and administering
8 plaintiff's First Loan and Second Loan." Id. ¶¶ 31-33. Fifth,
9 Plaintiff alleges Defendants breached the implied covenant of good
10 faith and fair dealing by secretly continuing the foreclosure sale
11 while continuing modification negotiations with Plaintiff. Id. ¶
12 26. Sixth, Plaintiff alleges a claim for unconscionability,
13 stating that "the conduct of defendants . . . in enforcing the Deed
14 of Trust and foreclosure action through the Trustee's sale was
15 unconscionable since it contained elements of oppression (i.e. an
16 inequality of bargaining power) and surprise (i.e. failure to
17 inform plaintiff of the running of separate statutory time periods
18 under the Civil Code, resulting in an allocation of risks in an
19 objectively unreasonable manner)." Id. ¶ 40. Seventh, Plaintiff
20 alleges Defendants waived their right to foreclosure by continuing
21 loan modification negotiations. Id. ¶ 41. Eighth, Plaintiff
22 alleges a claim for violation of California's Unfair Competition
23 Law, Cal. Bus. & Profs. Code § 17200 ("UCL"), claiming Defendants
24 engaged in deceptive business practices by "failing to provide
25 plaintiff with accurate and proper information as to loan status
26 and steps of foreclosure in accordance with the requirements of the
27 California Civil Code," concealing from Plaintiff information about
28 the ongoing foreclosure, and "[i]nducing plaintiff to not resume

1 her payments or otherwise cure alleged defaults by falsely
2 promising and stating that a modification . . . would reasonably be
3 considered in good faith based on plaintiff's circumstances." Id.

4 ¶ 46. Ninth, Plaintiff alleges intentional infliction of emotional
5 distress ("IIED"), asserting: "Defendants' conduct was outrageous
6 and beyond the bounds of decency and in reckless disregard of
7 causing plaintiff mental and emotional distress." Id. ¶ 51.

8 Defendants move to dismiss all nine claims. Defendants argue
9 that all claims are preempted by the Federal Home Owner's Loan Act
10 ("HOLA"), and that none of the nine claims are properly pleaded.

11
12 **III. LEGAL STANDARD**

13 A motion to dismiss under Federal Rule of Civil Procedure
14 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
15 Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal can be based
16 on the lack of a cognizable legal theory or the absence of
17 sufficient facts alleged under a cognizable legal theory.
18 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
19 1990). "When there are well-pleaded factual allegations, a court
20 should assume their veracity and then determine whether they
21 plausibly give rise to an entitlement to relief." Ashcroft v.
22 Iqbal, 129 S. Ct. 1937, 1950 (2009). However, "the tenet that a
23 court must accept as true all of the allegations contained in a
24 complaint is inapplicable to legal conclusions. Threadbare
25 recitals of the elements of a cause of action, supported by mere
26 conclusory statements, do not suffice." Iqbal, 129 S. Ct. at 1950
27 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The
28 allegations made in a complaint must be both "sufficiently detailed

1 to give fair notice to the opposing party of the nature of the
2 claim so that the party may effectively defend against it" and
3 sufficiently plausible such that "it is not unfair to require the
4 opposing party to be subjected to the expense of discovery." Starr
5 v. Baca, 633 F.3d 1191, 1204 (9th Cir. 2011).

6

7 **IV. DISCUSSION**

8 **A. HOLA Preemption**

9 Defendants argue that because World Savings Bank was a federal
10 savings bank organized and operated under HOLA, all nine of
11 Plaintiff's claims are preempted by HOLA and its implementing
12 regulations. Mot. at 14. Congress enacted HOLA "to charter
13 savings associations under federal law, at a time when record
14 numbers of homes were in default and a staggering number of state-
15 chartered savings associations were insolvent." Silvas v. E*Trade
16 Mortg. Corp., 514 F.3d 1001, 1004 (9th Cir. 2008). HOLA gives the
17 Office of Thrift Supervision ("OTS") "broad authority to issue
18 regulations governing thrifts." Id. at 1005 (citing 12 U.S.C. §
19 1464).

20 OTS, in turn, has promulgated regulations stating that OTS
21 "occupies the entire field of lending regulation for federal
22 savings associations." 12 C.F.R. § 560.2(a) ("section 560.2").
23 Section 560.2 offers a framework for determining whether a state
24 law claim is preempted by HOLA and its implementing regulations,
25 and the Ninth Circuit has held that this framework controls.
26 Silvas, 514 F.3d at 1005. Courts must first determine whether the
27 state law is one of the enumerated types of laws expressly
28 identified as preempted in section 560.2(b). Id. These include:

1 (4) The terms of credit, including amortization
2 of loans and the deferral and capitalization of
3 interest and adjustments to the interest rate,
4 balance, payments due, or term to maturity of
5 the loan, including the circumstances under
6 which a loan may be called due and payable upon
7 the passage of time or a specified event
8 external to the loan;

9

10 (9) Disclosure and advertising, including laws
11 requiring specific statements, information, or
12 other content to be included in credit
13 application forms, credit solicitations,
14 billing statements, credit contracts, or other
15 credit-related documents and laws requiring
16 creditors to supply copies of credit reports to
17 borrowers or applicants;

18 (10) Processing, origination, servicing, sale
19 or purchase of, or investment or participation
20 in, mortgages;

21 12 C.F.R. § 560.2(b).

22 If the state law is of one of these enumerated types, "the
23 analysis will end there; the law is preempted." Silvas, 514 F.3d
24 at 1005. If not, the court should determine "whether the law
25 affects lending." Id. If it does, the law is presumed to be
26 preempted, subject to the exceptions provided by section 560.2(c).

27 Id. Section 560.2(c) provides:

28 State laws of the following types are not
preempted to the extent that they only
incidentally affect the lending operations of
Federal savings associations or are otherwise
consistent with the purposes of [section
560.2(a)]:

(1) Contract and commercial law;

(2) Real property law;

(3) Homestead laws specified in 12 U.S.C. §
1462a(f);

(4) Tort law;

(5) Criminal law; and

1 (6) Any other law that OTS, upon review, finds:

2 (i) Furthers a vital state interest; and

3 (ii) Either has only an incidental effect
4 on lending operations or is not otherwise
5 contrary to the purposes expressed in
paragraph (a) of this section.

6 12 C.F.R. § 560.2(c). These exceptions are "to be interpreted
7 narrowly." Silvas, 514 F.3d at 1005.

8 Defendants argue that Plaintiff's claims are preempted under
9 section 560.2(b)(4) (preempting laws relating to "terms of credit,"
10 including "the circumstances under which a loan may be called due
11 and payable") and (b)(10) (preempting laws concerning
12 "[p]rocessing, origination, servicing, sale or purchase of, or
13 investment or participation in, mortgages"). Mot. at 15.

14 Defendants argue that Plaintiff's chief allegation of wrongdoing --
15 that Defendants committed fraud, acted in bad faith, or otherwise
16 violated the law through their actions taken and statements made
17 during the loan modification talks and the subsequent foreclosure
18 sale -- concerns "processing" or "servicing" of the mortgage and
19 thus compels preemption. Id. Plaintiff argues HOLA preemption
20 does not apply, claiming, "HOLA was historically passed for the
21 protection of owners and borrowers, not creditors." Opp'n at 6.

22 HOLA preemption is not as simple as either side presents it.
23 In Silvas, the Ninth Circuit focused not on the nature of the cause
24 of action allegedly preempted, but rather on the "functional effect
25 upon lending operations of maintaining the cause of action."
26 Naulty v. GreenPoint Mortg. Funding, Inc., No. 09-1542, 2009 WL
27 2870620, at *4 (N.D. Cal. Sep. 3, 2009). "The question was rather
28 whether an application of a given state law to the activities of

1 federal savings associations would 'impose requirements' regarding
2 the various activities broadly regulated by the OTS." Id. Courts
3 have thus interpreted Silvas to not preempt all state law causes of
4 action arising out of loan modification and/or foreclosure
5 proceedings. E.g., Susilo v. Wells Fargo Bank, N.A., No. 11-1814,
6 2011 WL 2471167, at *4-6 (C.D. Cal. June 21, 2011) (denying bank's
7 motion to dismiss borrower's breach of contract, negligence, bad
8 faith, and fraud claims as preempted by HOLA).

9 Several of Plaintiff's claims are based on alleged affirmative
10 statements by the bank that Plaintiff allegedly relied upon. These
11 include Plaintiff's claims for promissory estoppel, fraud, IIED,
12 and breach of the implied covenant of good faith and fair dealing.
13 The only "requirement" these claims impose on lending institutions
14 is that they be held responsible for the statements they make to
15 their borrowers. If these causes of action were preempted, federal
16 savings associations would be free to lie to their customers with
17 impunity. The Court finds these claims are not preempted by HOLA.

18 However, the Court finds Plaintiff's negligence and negligent
19 misrepresentation claims to be preempted. These claims are not
20 premised on affirmative misrepresentation, concealment, or fraud:
21 rather, they are premised on Defendants' representatives' alleged
22 failure to use proper care in communicating with Plaintiff, to
23 ensure other representatives of Defendants were not pursuing
24 foreclosure, and to verify the accuracy of the statements they
25 made. Allowing these claims to go forward would amount to an
26 imposition of new disclosure and notice requirements on federal
27 savings associations. Accordingly, the Court DISMISSES, WITH
28 PREJUDICE, Plaintiff's claims for negligence and negligent

1 misrepresentation.

2 The Court discusses Defendants' challenges to the remaining
3 causes of action below.

4 **B. Promissory Estoppel**

5 The elements of a claim for promissory estoppel are: "(1) a
6 promise clear and unambiguous in its terms; (2) reliance by the
7 party to whom the promise is made; (3)[the] reliance must be both
8 reasonable and foreseeable; and (4) the party asserting the
9 estoppel must be injured by his reliance." Aceves v. U.S. Bank,
10 N.A., 192 Cal. App. 4th 218, 225 (Ct. App. 2011).

11 Defendants argue that Plaintiff fails to allege the first
12 three elements. The Court disagrees. Plaintiff alleges that
13 Defendants told her they would not proceed with a foreclosure sale
14 so long as Plaintiff's loan modification negotiations continued.
15 Plaintiff allegedly relied on these promises by not challenging the
16 foreclosure sale, seeking alternative funding, or pursuing a short
17 sale. As a result, Plaintiff's residence was sold, causing damages
18 in the form of lost equity and, ultimately, eviction. Compl. ¶¶
19 18-24. Plaintiff properly pleads a promissory estoppel claim. As
20 such, the Court DENIES Defendants' Motion with respect to
21 Plaintiff's promissory estoppel claim.

22 **C. Fraud**

23 Defendants argue that Plaintiff has not properly pleaded her
24 second claim for fraud, misrepresentation, and reckless disregard,
25 given Federal Rule of Civil Procedure 9(b)'s heightened pleading
26 standard for claims sounding in fraud. Mot. at 4.

27 The Court agrees. "To satisfy Rule 9(b), a pleading must
28 identify the who, what, when, where, and how of the misconduct

1 charged, as well as what is false or misleading about [the
2 purportedly fraudulent] statement, and why it is false." Cafasso,
3 U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055
4 (9th Cir. 2011) (internal quotation marks omitted). Plaintiff's
5 Complaint obliquely refers to numerous unidentified "statements" by
6 unidentified representatives of Defendants; she fails to
7 sufficiently identify "what" these statements were, "when" they
8 were made, or "who" said them. As such, Plaintiff has failed to
9 properly plead her fraud claims. Because the heightened pleading
10 standard is relaxed when "the defendant must necessarily possess
11 full information concerning the facts of the controversy" or "when
12 the facts lie more in the knowledge of the opposite party," Susilo
13 v. Wells Fargo Bank, N.A., --- F. Supp. 2d ---, 2011 WL 2471167, at
14 *10 (C.D. Cal. June 21, 2011), Plaintiff may satisfy Rule 9(b)
15 without providing the names of Defendants' representatives who
16 allegedly made the statements. However, more detail is required
17 than what Plaintiff supplies here. Accordingly, Plaintiff's fraud
18 claim is dismissed WITH LEAVE TO AMEND.

19 **D. Implied Covenant of Good Faith and Fair Dealing**

20 In California, "[e]very contract imposes upon each party a
21 duty of good faith and fair dealing in its performance and its
22 enforcement." Carma Dev. (Cal.), Inc. v. Marathon Dev. California,
23 Inc., 2 Cal. 4th 342, 371 (1992). "In general, the covenant
24 imposes a duty upon a party to a contract not to deprive to other
25 party of the benefits of the contract." Sutherland v. Barclays
26 American/Mort. Corp., 53 Cal. App. 4th 299, 314 (Ct. App. 1997).

27 Defendants allege that Plaintiff's claim fails because
28 "Plaintiff does not specify what contract is at issue, does not

1 attach a contract to the complaint, and does not sufficiently plead
2 the express terms of any contract." Mot. at 9. Defendants also
3 argue that if Plaintiff's claim relates to the note or the Deed of
4 Trust, Plaintiff's claim should be barred because she "admittedly
5 breached the contract by failing to make the required payments."
6 Id.

7 The Court agrees with Defendants that Plaintiff, having failed
8 to identify the contract at issue and the benefits deprived by
9 Defendants, has failed to plead this claim with the required
10 specificity. However, the Court rejects Defendants' argument that
11 Plaintiff's failure to make payments under the note relieved
12 Defendants of their duty to act in good faith in performing under
13 the note and in enforcing it. As such, Plaintiff may be able to
14 plead a claim based on Defendants' conduct as a party to the deed
15 of trust. Because Plaintiff has not pleaded sufficient facts, the
16 Court DISMISSES, WITH LEAVE TO AMEND, Plaintiff's claim.

17 **E. Unconscionability and Waiver Claims**

18 Plaintiff alleges the unusual causes of action of
19 "unconscionability" and "waiver." Defendants argue that "the law
20 does not recognize a claim for unconscionability." Mot. at 11.
21 Plaintiff does not argue otherwise in her Opposition.

22 California law is clear that unconscionability is not a cause
23 of action, but rather a defense to the enforcement of a contract.
24 Dean Witter Reynolds, Inc. v. Super. Ct., 211 Cal. App. 3d 758, 766
25 (Ct. App. 1989). California also does not recognize a claim for
26 waiver; rather, it is "the intentional relinquishment of a known
27 right." Rubin v. Los Angeles Fed. Sav. & Loan Ass'n, 159 Cal. App.
28 3d 292, 298 (Ct. App. 1984). To the extent Plaintiff argues that

1 Defendants waived their right under the deed of trust to foreclose
2 by allegedly telling Plaintiff that they would halt foreclosure
3 proceedings and negotiate toward a modification, Plaintiff
4 essentially presents a poorly pleaded breach-of-contract claim. As
5 such, both Plaintiff's unconscionability and waiver claims are
6 DISMISSED WITH PREJUDICE.

7 **F. UCL**

8 Defendants allege that Plaintiff's UCL claim "is plagued with
9 incurable defects." Mot. at 12. Defendants argue that it is
10 unclear from Plaintiff's Complaint upon which of the three prongs
11 of UCL -- unfair, unlawful, or fraudulent -- Plaintiff premises her
12 UCL claim. Id.

13 Given Plaintiff's consistent use of the term "fraudulent" in
14 the relevant portion of Plaintiff's Complaint, the Court surmises
15 that her UCL claim is premised on the allegedly fraudulent business
16 practices of Defendants. Compl. ¶¶ 43-49. UCL claims premised on
17 fraudulent conduct trigger the heightened pleading standard of Rule
18 9(b). Kearns v. Ford Motor Co., 567 F.3d. 1120, 1125 (9th Cir.
19 2009).

20 In her Complaint, Plaintiff cites four acts or practices by
21 Defendants. First, she alleges a failure to provide Plaintiff with
22 accurate and proper information as to loan status and steps of
23 foreclosure "in accordance with the requirements of the California
24 Civil Code." Compl. ¶ 46. To the extent Plaintiff alleges that
25 this constitutes a fraudulent act, Plaintiff has failed to satisfy
26 Rule 9(b). To the extent that Plaintiff alleges an "unfair" or
27 "unlawful" act, Plaintiff has failed to allege what specific
28 disclosure requirements Defendants violated. Furthermore, because

1 HOLA preempts most disclosure requirements, see supra, such a cause
2 of action would likely be preempted under Silvas.

3 Second, Plaintiff alleges Defendants made statements to
4 Plaintiff and concealed information from Plaintiff relating to the
5 ongoing foreclosure sale. Third, Plaintiff alleges "[e]ngaging in
6 misleading and omissions as to the foreclosure sale and deprived
7 plaintiff of the opportunity to sell her residence and realize the
8 'equity' value of between \$250,000.00 and \$300,000." Compl. ¶ 46.
9 The Court cannot parse this sentence, but it appears to sound in
10 fraud. Fourth, Plaintiff alleges Defendants induced her to "not
11 resume her payments or otherwise cure alleged defaults by falsely
12 promising and stating that a modification of the First Loan and
13 Second Loan would be reasonably considered in good faith based on
14 plaintiff's circumstances." None of these are pleaded with the
15 required specificity under Rule 9(b).

16 Because Plaintiff has failed to plead her UCL claim with the
17 required specificity, the Court DISMISSES it WITH LEAVE TO AMEND.

18 **G. Intentional Infliction of Emotional Distress**

19 To plead a claim for IIED, Plaintiff must allege: "(1) extreme
20 and outrageous conduct by the defendant with the intention of
21 causing, or reckless disregard of the probability of causing,
22 emotional distress; (2) the plaintiff's suffering severe or extreme
23 emotional distress; and (3) actual and proximate causation of the
24 emotional distress by the defendant's outrageous conduct."

25 Christensen v. Super. Ct., 54 Cal. 3d 868, 903 (1991). Conduct is
26 only "extreme and outrageous" when it was "so extreme as to exceed
27 all bounds of that usually tolerated in a civilized community."

28 Davidson v. City of Westminster, 32 Cal.3d 197, 185 (1982)

1 (citation omitted). For emotional distress to be severe, it must
2 be "of such substantial quantity or enduring quality that no
3 reasonable man in a civilized society should be expected to endure
4 it." Fletcher v. Western Nat'l Life Ins. Co., 10 Cal. App. 3d 376,
5 397, (Ct. App. 1970).

6 In rather broad strokes and with little detail, Plaintiff
7 alleges that she suffered extreme emotional distress due to
8 Defendants' conduct. She fails to state what about Defendants'
9 conduct rendered it so extreme as to "exceed all bounds of that
10 usually tolerated in a civilized community." Given the lack of
11 detail, the Court finds that Plaintiff has failed to plead a
12 plausible IIED claim. As such, the Court DISMISSES, WITH LEAVE TO
13 AMEND, Plaintiff's IIED claim.

14

15 **V. CONCLUSION**

16 For the foregoing reasons, the Court GRANTS IN PART and DENIES
17 IN PART the motion of Defendants Wachovia Mortgage and Wells Fargo
18 Bank, N.A. to dismiss Plaintiff Cynthia M. Chang's Complaint, and
19 rules as follows:

- 20 • Plaintiff's second cause of action for fraud,
21 misrepresentation, and reckless disregard is DISMISSED WITH
22 LEAVE TO AMEND.
- 23 • Plaintiff's third cause of action for negligent
24 misrepresentation is DISMISSED WITH PREJUDICE.
- 25 • Plaintiff's fourth cause of action for negligence is
26 DISMISSED WITH PREJUDICE.
- 27 • Plaintiff's fifth cause of action for breach of the implied
28 covenant of good faith and fair dealing is DISMISSED WITH

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LEAVE TO AMEND.

- Plaintiff's sixth cause of action for unconscionability is DISMISSED WITH PREJUDICE.
- Plaintiff's seventh cause of action for waiver is DISMISSED WITH PREJUDICE.
- Plaintiff's eighth cause of action for violation of section 17200 of California's Business and Professions Code is DISMISSED WITH LEAVE TO AMEND.
- Plaintiff's ninth cause of action for intentional infliction of emotional distress is DISMISSED WITH LEAVE TO AMEND.

Plaintiff may proceed with her first cause of action for promissory estoppel. Plaintiff is granted thirty (30) days' leave to file an amended complaint. If Plaintiff fails to file an amended complaint within this time frame, her second through ninth causes of action are dismissed WITHOUT LEAVE TO AMEND.

IT IS SO ORDERED.

Dated: July 21, 2011


UNITED STATES DISTRICT JUDGE