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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8

	)	Case No. 12-5424 SC
	)	
GINA SANGUINETTI and GERALD	)	ORDER GRANTING MOTION TO
SANGUINETTI,	)	<u>DISMISS</u>
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITIMORTGAGE, INC., CITIBANK,	)	
N.A., AND DOES 1-10,	)	
	)	
Defendants.	)	

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18 **I. INTRODUCTION**

19 Now before the court is Defendants CitiMortgage, Inc. and  
20 Citibank, N.A.'s (collectively "Defendants") motion to dismiss  
21 Plaintiffs Gina and Gerald Sanguinetti's ("Plaintiffs") Second  
22 Amended Complaint. ECF Nos. 29 ("SAC"), 33 ("MTD"). The motion is  
23 fully briefed, ECF Nos. 34 ("Opp'n"), 35 ("Reply"), and  
24 appropriate for decision without oral argument, Civ. L.R. 7-1(b).  
25 For the reasons explained below the Court GRANTS Defendants' motion  
26 and DISMISSES this case with prejudice.

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1 **II. BACKGROUND**

2 In her first amended complaint, Plaintiff Gina Sanguinetti  
3 brought an action against Defendants, claiming that she and her  
4 husband had been harmed by Defendants' malicious lending practices.  
5 In that complaint, Ms. Sanguinetti claimed that Defendants had  
6 misled her into entering an unsustainably expensive adjustable-rate  
7 mortgage ("ARM"), despite knowing that her income was below what  
8 was reasonable (and in fact falsifying her income information in  
9 the lending documents). She also alleged that Defendants did not  
10 disclose legally required information or follow proper loan  
11 modification proceedings, and that Defendants were under a Consent  
12 Judgment that imposed a duty of care and rendered some of  
13 Defendants' activities actionably negligent.

14 Defendants contended that Ms. Sanguinetti's first amended  
15 complaint was impermissibly vague and did not allege sufficient  
16 facts as to any claim; that some of her claims were time-barred;  
17 and that she had failed to join her husband Gerald Sanguinetti as a  
18 necessary plaintiff. The Court agreed with Defendants and  
19 dismissed the complaint with leave to amend so that Plaintiffs  
20 could add more detail on the following points: the illegality of  
21 the mortgage loan, the completion of the loan application, the  
22 Consent Judgment, statutes of limitations, the specificity of  
23 Defendants' actions, and the joinder of Mr. Sanguinetti. ECF No.  
24 25 ("Order on MTD FAC"). Plaintiffs then filed the SAC.

25 The only fact that the parties do not now dispute is that  
26 Plaintiffs obtained a second mortgage from CitiMortgage, a CitiBank  
27 subsidiary, sometime in March 2008, and later defaulted on it. SAC  
28 ¶ 17. Plaintiffs allege that Defendants are alter egos of each

1 other. Id. ¶ 12. Plaintiffs allege, as background facts, that  
2 Defendants have:

3 (1) provided a loan without providing and  
4 disclosing to Plaintiffs, as required under  
law, the required Truth in Lending  
Disclosures;

5 (2) failed to provide to Plaintiffs, as  
6 required under law, the required disclosure  
of the Annual Percentage Rate ("APR") to be  
charged for the loan;

7 (3) failed to provide to Plaintiffs, as  
8 required under law, a detailed Good Faith  
estimate detailing all relevant fees to be  
charged to Plaintiffs;

9 (4) failed to provide to Plaintiffs, as  
10 required under law, a signed original of the  
Promissory Note relevant to Plaintiffs'  
loan; and

11 (5) charged an excessive and undisclosed  
12 amount in interest charges in violation of  
law.

13 SAC ¶ 14. Additionally, Plaintiffs allege that Defendants tried to  
14 get Plaintiffs to pay excessive fees related to a loan modification  
15 or settlement, and that Defendants also insisted that Plaintiffs  
16 pay all existing fees and arrears despite knowing Plaintiffs could  
17 not afford to do so. Id. Plaintiffs' SAC also adds an array of  
18 facts related to the Court's permitted amendments. See Order on  
19 MTD FAC at 7-8. The Court summarizes these facts below.

20 Plaintiffs contend that Defendants, via CitiMortgage acting as  
21 Citibank's agent or broker, misled them about the terms of the  
22 mortgage loan they received and falsified Plaintiffs' financial  
23 information, in order to force Plaintiffs into an ARM, the payments  
24 of which would escalate to more than 100 percent of Plaintiffs'  
25 income. See SAC ¶¶ 14-22. Plaintiffs add that because Defendants  
26 were incentivized to push as many of these unsustainable loans onto  
27 unsophisticated buyers as possible, Defendants simply entered false  
28 information about Plaintiffs into their applications, and did not

1 proceed with due diligence as to Plaintiffs' financial situation.  
2 See id. ¶¶ 24-26. Sometime in 2009, Plaintiffs became unable to  
3 make their monthly payments on the mortgage, and they received a  
4 Notice of Default on November 15, 2009. Id. ¶ 38.

5 Plaintiffs requested a loan modification or settlement from  
6 Defendants, but they claim that Defendants consistently mismanaged  
7 their requests by ignoring them and failing to give them correct  
8 paperwork and information. Id. ¶¶ 27-28. Plaintiffs claim that as  
9 a result of Defendants' negligent and unlawful activities, the  
10 mortgage and deed of trust are illegal and unconscionable, thereby  
11 depriving Defendants of the legal capacity to sell Plaintiffs' home  
12 or take other action against Plaintiffs based on their default.  
13 Id. ¶¶ 29-30. Nevertheless, Defendant CitiMortgage served  
14 Plaintiffs with a Notice of Trustee Sale on October 3, 2011, though  
15 no sale has yet occurred. Id. ¶ 30.

16 Plaintiffs now clarify, as to their original reference to a  
17 Consent Judgment, that around April 4, 2012, they learned of a  
18 Consent Judgment entered in a case brought against Defendants by  
19 the federal government and California as an individual state. Id.  
20 ¶ 32. Plaintiffs quote sections of the Consent Judgment that  
21 purportedly (i) require Defendants to evaluate all available loan  
22 modifications for borrowers like Plaintiffs, and (ii) forbid  
23 Defendants from referring eligible borrowers' accounts to  
24 foreclosure while applications for loan modification are pending.  
25 Id. ¶¶ 34-35.<sup>1</sup> Plaintiffs claim that they discussed the Consent

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26 <sup>1</sup> Plaintiffs did not include the Consent Judgment in any of their  
27 filings. Pursuant to a Court Order, ECF No. 43, they filed a copy  
28 on August 20, 2013, ECF No. 44 ("Consent Judgment"). Even so,  
Plaintiffs did not include the actual settlement terms of the  
Consent Judgment. However, as documents incorporated by reference

1 Judgment with Bank of America -- presumably a typo, since that bank  
2 is not a defendant in this case -- and confirmed that Defendants  
3 were bound by it. See ¶ 35. Nevertheless, Plaintiffs claim that  
4 Defendants' actions do not comport with the requirements of the  
5 Consent Judgment.

6 From these facts, Plaintiff asserts four causes of action  
7 against Defendants: (1) quiet title, (2) fraud or negligent  
8 misrepresentation, (3) negligence, and (4) unfair, unlawful, and  
9 fraudulent business practices under California's Unfair Competition  
10 Law ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq.

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 1988). "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, 556 U.S. 662, 679 (2009). However, "the tenet that a court  
23 must accept as true all of the allegations contained in a complaint  
24 is inapplicable to legal conclusions. Threadbare recitals of the

25  
26 into the Plaintiffs' complaint that are also part of the public  
27 record, the Court considers the publicly filed settlement terms  
28 incorporated by reference here and takes judicial notice of them.  
Consent Judgment Settlement Terms, United States v. Bank of America Corp., No. 1:12-cv-00361-RMC (D.D.C. Apr. 4, 2012) (ECF No. 12 Ex. 1).

1 elements of a cause of action, supported by mere conclusory  
2 statements, do not suffice." Id. (citing Bell Atl. Corp. v.  
3 Twombly, 550 U.S. 544, 555 (2007)). The court's review is  
4 generally "limited to the complaint, materials incorporated into  
5 the complaint by reference, and matters of which the court may take  
6 judicial notice." Metzler Inv. GMBH v. Corinthian Colls., Inc.,  
7 540 F.3d 1049, 1061 (9th Cir. 2008) (citing Tellabs, Inc. v. Makor  
8 Issues & Rights, Ltd., 551 U.S. 308, 322 (2007)).

9       Additionally, allegations of fraud must meet the heightened  
10 pleading standard of Federal Rule of Civil Procedure 9(b), which  
11 requires that plaintiffs alleging fraud "must state with  
12 particularity the circumstances constituting fraud." Kearns v.  
13 Ford Motor Co., 567 F.3d 1120, 1125-27 (9th Cir. 2009). "To  
14 satisfy Rule 9(b), a pleading must identify the who, what, when,  
15 where, and how of the misconduct charged, as well as what is false  
16 or misleading about the purportedly fraudulent statement, and why  
17 it is false." United States ex rel Cafasso v. Gen. Dynamics c\$  
18 Sys., 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks  
19 and citations omitted).

20       When a motion to dismiss is granted, a district court must  
21 decide whether to grant leave to amend. Generally, the Ninth  
22 Circuit has a liberal policy favoring amendments and, thus, leave  
23 to amend should be freely granted. See, e.g., DeSoto v. Yellow  
24 Freight System, Inc., 957 F.2d 655, 658 (9th Cir. 1992). However,  
25 a court does not need to grant leave to amend in cases where the  
26 court determines that permitting a plaintiff to amend would be an  
27 exercise in futility. See, e.g., Rutman Wine Co. v. E. & J. Gallo  
28 Winery, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to

1 amend is not an abuse of discretion where the pleadings before the  
2 court demonstrate that further amendment would be futile.").

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4 **IV. DISCUSSION**

5 **A. Unconscionability**

6 Plaintiffs' main argument in their SAC is that the loan  
7 agreements are unconscionable and therefore void, so Defendants'  
8 arguments are precluded and their legal bases for foreclosure are  
9 impermissible. Opp'n at 8-10; SAC ¶¶ 16-24.

10 "[U]nconscionability has both a 'procedural' and a  
11 'substantive element,' the former focusing on 'oppression' or  
12 'surprise' due to unequal bargaining power, the latter on 'overly  
13 harsh' or 'one-sided' results." Armendariz v. Found. Health  
14 Psychcare Servs., Inc., 24 Cal. 4th 83, 114 (Cal. 2000) (citations  
15 omitted). "'Oppression' arises from an inequality of bargaining  
16 power which results in no real negotiation and 'an absence of  
17 meaningful choice.'" Bruni v. Didion, 160 Cal. App. 4th 1272, 1288  
18 (Cal. Ct. App. 2008). "'Surprise' involves the extent to which the  
19 supposedly agreed-upon terms of the bargain are hidden in a prolix  
20 printed form drafted by the party seeking to enforce the disputed  
21 terms." Id. "The substantive element of unconscionability focuses  
22 on the actual terms of the agreement and evaluates whether they  
23 create 'overly harsh' or 'one-sided' results as to 'shock the  
24 conscience.'" Id. "Both elements must be present, but the more  
25 substantively oppressive the contract term, the less evidence of  
26 procedural unconscionability is required to come to the conclusion  
27 that the term is unenforceable, and vice versa." Woodside Homes of

1 Cal., Inc. v. Super. Ct., 107 Cal. App. 4th 723, 727 (Cal. Ct. App.  
2 2003).

3 Plaintiffs' grounds for unconscionability are essentially that  
4 Defendants had overwhelming bargaining power, drafted a contract  
5 with unfair terms, and presented it to the unsophisticated  
6 Plaintiffs on a "take-it-or-leave-it" basis. SAC ¶ 16. According  
7 to Plaintiffs, since Defendants' agent completed the loan documents  
8 for them and assured them that the loan documents "accurately  
9 reflected what Plaintiffs had been told, what they wanted, and what  
10 they could afford," the loan agreements are unconscionable because  
11 the underlying terms were predatory and contrary to Plaintiffs'  
12 wishes and financial means. Id. ¶¶ 17-24.

13 Defendants respond that Plaintiffs fail to allege that any of  
14 their actual obligations were unclear or surprising on the loan  
15 documents' terms, or that any specific terms were substantively  
16 unconscionable. Reply at 10-11. Defendants add that even if the  
17 Court recognized unconscionability as a claim instead of a defense,  
18 it would be governed by California Code of Civil Procedure section  
19 339(1)'s catch-all four-year statute of limitations, and would  
20 therefore be time-barred because of the more-than-four-year gap  
21 between the loan's origination in May 2008 and the present action's  
22 filing in September 2012.

23 Plaintiffs' unconscionability argument fails.  
24 Unconscionability is a defense, not a cause of action, see Dean  
25 Witter Reynolds, Inc. v. Super. Ct., 211 Cal. App. 3d 758, 766  
26 (Cal. Ct. App. 1989), so at best Plaintiffs are trying to preempt  
27 legal action by Defendants by using unconscionability as a  
28 predicate to other claims. This fails because, as Defendants note,



1 such a theory of unconscionability would be governed by  
2 California's four-year catch-all limitations period, Cal. Code Civ.  
3 Proc. § 339(1). Therefore, the Court finds that apart from being  
4 procedurally improper, Plaintiffs' unconscionability arguments are  
5 also time-barred because they are based on a May 2008 origination  
6 date and this case was filed in September 2012. All of Plaintiffs'  
7 allegations about unconscionability are DISMISSED with prejudice.

8 **B. Plaintiffs' Fraud Claims**

9 Plaintiffs again assert claims for fraud and negligent  
10 misrepresentation against Defendants, but Defendants raise the  
11 threshold argument that both of these claims are time-barred. The  
12 statute of limitations is three years for a fraud claim, Cal. Code  
13 Civ. Proc. § 338(d), and two years for a negligent  
14 misrepresentation claim, id. § 339(1). Defendants argue that  
15 Plaintiffs' fraud-based claims are time-barred because Plaintiffs  
16 obtained their mortgage in March 2008 but did not file the instant  
17 action until September 14, 2012, and that Plaintiffs have not pled  
18 facts to toll the statutes of limitations. MTD SAC at 4-6.  
19 Plaintiffs respond that (1) they filed a related action on February  
20 17, 2012, earlier than the September date; (2) their  
21 unconscionability argument renders the statute of limitations  
22 irrelevant; and (3) they could amend to allege equitable tolling  
23 should apply because they did not discover that the loan's terms  
24 had been misrepresented until May 2009. See Opp'n at 3, 10-11.

25 First, the Court finds no facts in the record that the  
26 purported February 2012 action is related to this case. At no  
27 point do Plaintiffs provide any proof of such relation. Second, as  
28 noted above, the Court rejects Plaintiffs' unconscionability

1 arguments. Finally, the Court has already granted Plaintiffs leave  
2 to amend to allege equitable tolling. Order on MTD FAC at 7-8.  
3 They did not do so. The Court finds Plaintiffs' fraud and  
4 negligent misrepresentation claims barred by the relevant statutes  
5 of limitations. They are therefore DISMISSED with prejudice.

6 **C. Negligence**

7 Plaintiffs assert a claim for negligence under California  
8 Civil Code sections 1714(a) and 3333. The elements of a claim for  
9 negligence are (1) a legal duty of care, (2) breach of that duty,  
10 (3) proximate or legal cause, and (4) damages. Ladd v. Cnty. of  
11 San Mateo, 12 Cal. 4th 913, 917 (Cal. Ct. App. 1996). Financial  
12 institutions generally owe no duty of care to borrowers if their  
13 involvement in a loan transaction does not exceed their scope as  
14 mere lenders of money. Nymark v. Heart Fed. Savings & Loan Ass'n,  
15 231 Cal. App. 3d 1089, 1096 (Cal. Ct. App. 1998).

16 The primary dispute as to Plaintiffs' negligence claim  
17 concerns whether Defendants owe Plaintiffs a duty of care.  
18 Plaintiffs have three theories of why Defendants owe them a special  
19 duty of care.

20 First, despite Nymark, Plaintiffs assert that Defendants owed  
21 a duty of care under a Consent Judgment between Defendants and the  
22 United States of America (including California as an individual  
23 state). See SAC ¶ 61. Plaintiffs state that they are third-party  
24 beneficiaries of the Consent Judgment, Opp'n at 13, and that it  
25 both imposes on Defendants a duty to evaluate borrowers for all  
26 available loan modification options before initiating foreclosure  
27 and forbids Defendants from referring accounts to disclosure while  
28 loan modifications are pending, SAC ¶ 33. Plaintiffs allege that

1 Defendants effectively amended their pre-existing loan agreements  
2 with Plaintiffs after the Consent Judgment was entered in April  
3 2012, thereby requiring Defendants to act under the Consent  
4 Judgment's duty of care even though the loan agreements in this  
5 case were entered in May 2008. See Opp'n at 12-14.

6 Second, Plaintiffs contend that even under Nymark, Defendants  
7 act beyond the role of "mere lenders of money" and therefore assume  
8 a duty of care that they would otherwise not have. Opp'n at 13.

9 Third, Plaintiffs add in their opposition brief that  
10 Defendants operate under a statutory duty of care per the  
11 California Homeowners Bill of Rights, California Civil Code  
12 sections 2923.5 et seq. According to Plaintiffs, sections 2923.5,  
13 2924.17, and 2924.18 provide the relevant statutory duties of care  
14 in this case. Section 2923.5 sets out detailed requirements for  
15 mortgage servicers seeking to send borrowers notices of default.  
16 Section 2924.17 prohibits "robo-signing," or executing foreclosure  
17 documents without "substantiat[ing] the borrower's default and the  
18 right to foreclose." Section 2924.18 prohibits dual-tracking,  
19 which is the initiation of foreclosure proceedings while evaluation  
20 of a borrower's loan modification application is ongoing.

21 The Court finds all of Plaintiffs' arguments unpersuasive.  
22 Regarding Plaintiffs' first theory, "[c]onsent decrees are  
23 construed as contracts for purposes of enforcement," and "under  
24 Ninth Circuit precedent, incidental third-party beneficiaries may  
25 not enforce consent decrees, but intended third-party beneficiaries  
26 may." United States v. FMC Corp., 531 F.3d 813, 819-20 (9th Cir.  
27 2008) (citing Hook v. Az. Dep't of Corrections, 972 F.2d 1012,  
28 1014-15 (9th Cir. 1992)). When the government is the plaintiff,

1 third-party beneficiaries of a consent judgment are presumptively  
2 incidental beneficiaries absent a clear expression in the consent  
3 decree that individual members of the public can enforce the  
4 agreement. Id. at 821; see also Klamath Water Users Protective  
5 Ass'n v. Patterson, 204 F.3d 1206, 1211 (9th Cir. 1999). Such  
6 clear intent must appear in the consent decree's precise language.  
7 Cnty. of Santa Clara v. Astra USA, Inc., 588 F.3d 1237, 1244 (9th  
8 Cir. 2009), rev'd on other grounds by Astra USA, Inc. v. Santa  
9 Clara Cnty., Cal., 131 S. Ct. 1342 (2011).

10 The Consent Judgment's enforcement provisions never reference  
11 the possibility of an enforcement proceeding being brought by an  
12 individual borrower as a third-party beneficiary. Instead they  
13 allow enforcement actions to be brought by parties to the Consent  
14 Judgment or by the monitoring committee that the Consent Judgment  
15 establishes. See Consent Judgment at 18-20, 22; see generally  
16 Settlement Terms. The Court therefore finds that the decree's  
17 precise language does not establish "a clear intent to rebut the  
18 presumption that the third parties [to the Consent Judgment] are  
19 merely incidental beneficiaries." Astra USA, 588 F.3d at 1244.  
20 The Consent Judgment does not provide a basis for Plaintiffs'  
21 claims.

22 Second, Plaintiffs argue that despite Nymark, the Consent  
23 Judgment makes it clear that Defendants have adopted a separate  
24 standard of care and are acting not as mere lenders but as some  
25 other kind of entity that entitles Plaintiffs to a negligence claim  
26 based on the loan modification proceedings. Opp'n at 13. In  
27 support of this contention, Plaintiffs cite Ansanelli v. JP Morgan  
28 Chase Bank, N.A., No. C 10-3892, 2011 WL 1134451 (N.D. Cal. Mar.

28, 2011). In that case, the court held that because a bank went beyond its role as silent lender and loan servicer when it offered a loan modification and trial modification plan, the bank assumed a duty of care that it would otherwise lack under Nymark. Id. at \*7. The Court finds that reasoning unpersuasive. Loan modifications are part of the lending process, and negotiating a lending agreement's terms is one of a bank's key functions. See Armstrong v. Chevy Chase Bank, FSB, No. 5:11-cv-05664 EJD, 2012 WL 4747165, at \*4 (N.D. Cal. Oct. 3, 2012). The Court therefore finds that this theory of the duty of care also fails.

Finally, Plaintiffs' theories of why Defendants have a duty of care under the California Homeowners Bill of Rights is newly asserted in the opposition brief. It was not pled in the complaint. Amendment might be warranted in such a case, but Plaintiffs' theory is futile because the statutes Plaintiffs cite were enacted in 2013, and absent express provision to the contrary, California statutes are not presumed to act retroactively. Myers v. Philip Morris Cos., Inc., 28 Cal. 4th 828, 840-41 (Cal. 2002). They do not apply to Plaintiffs' claims.

The Court therefore finds that Plaintiffs have not pled a claim for negligence and DISMISSES this claim. Since the Court previously gave Plaintiffs leave to amend on this point, the dismissal is with prejudice.

**D. Quiet Title**

The purpose of a quiet title action is to settle all conflicting claims to a piece of real property and to declare each interest or estate to which the parties are entitled. Newman v. Cornelius, 3 Cal. App. 3d 279, 284 (Cal. Ct. App. 1970). "A quiet

1 title action must include: (1) a description of the property in  
2 question; (2) the basis for plaintiff's title; and (3) the adverse  
3 claims to plaintiff's title." Ananiev v. Aurora Loan Servs., LLC,  
4 C 12-2275 SI, 2012 WL 4099568, at \*3 (N.D. Cal. Sept. 17, 2012)  
5 (citing Cal. Civ. Proc. Code § 760.020). "In order to satisfy the  
6 second requirement, plaintiff must allege that he has discharged  
7 his debt, regardless to whom it is owed." Id. (citing Kelley v.  
8 Mort. Elec. Registration Sys., Inc., 642 F. Supp. 2d 1048, 1057  
9 (N.D. Cal. 2009)).

10 Defendants argue that Plaintiffs fail to state a claim for  
11 quiet title, mainly because they have not discharged their debt  
12 and, in any event, Plaintiffs' unconscionability allegations must  
13 fail. MTD SAC at 14-15. Plaintiffs do not dispute Defendants'  
14 argument. The Court agrees with Defendants. Plaintiffs' quiet  
15 title claim is DISMISSED. The dismissal is with prejudice since  
16 the Court gave Plaintiffs leave to amend this claim to make it  
17 colorable, and Plaintiffs failed to do so.

18 **E. UCL**

19 The UCL prohibits unfair competition, including, inter alia,  
20 "any unlawful, unfair or fraudulent business act." Cal. Bus. &  
21 Prof. Code § 17200. "Because [section 17200] is written in the  
22 disjunctive, it establishes three varieties of unfair competition -  
23 - acts or practices which are unlawful, or unfair, or fraudulent."  
24 Berryman v. Merit Prop. Mgmt., Inc., 152 Cal. App. 4th 1544, 1554  
25 (Cal. Ct. App. 2007).

26 Plaintiffs are not very precise about the nature of their UCL  
27 claim, but their opposition brief states that they rely on their  
28 allegations of unconscionability and the Homeowners Bill of Rights'

1 bar against "dual-tracking" as predicate offenses. See Opp'n at  
2 14. These allegations would suit a claim under the unlawfulness  
3 prong, which allows plaintiffs to "borrow" from violations of  
4 underlying laws. As noted above, these are insufficient bases for  
5 a UCL violation because the Homeowners' Bill of Rights does not  
6 operate retroactively.

7 However, Plaintiffs' complaint includes several other bases  
8 for their UCL claim. First, under the unfairness prong, the  
9 allegations that Defendants failed to undertake loan servicing and  
10 modification properly, as when they steered Plaintiffs toward an  
11 unpayable loan and unfairly kept Plaintiffs circulating through a  
12 temporary modification process. SAC ¶ 75. Second, Plaintiffs  
13 allege violations of the UCL's fraud prong. Plaintiffs plead that  
14 Defendants' misrepresentations and omissions regarding Plaintiffs'  
15 payment capacity and the loan's modification process are likely to  
16 deceive reasonable consumers. SAC ¶ 77.

17 Plaintiffs' pleadings under these prongs fail to cure the  
18 defects of their first amended complaint: Plaintiffs simply do not  
19 provide precise enough facts to state claims under the UCL. They  
20 provide a list of conclusory allegations, see SAC ¶¶ 75-78, but  
21 they do not support these allegations with facts elsewhere in their  
22 pleadings. The Court gave Plaintiffs an opportunity to cure these  
23 problems, but they failed to do so. Plaintiffs' UCL claim is  
24 DISMISSED with prejudice.

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For the reasons explained above, Defendants CitiBank, N.A., and CitiMortgage, Inc.'s motion to dismiss Plaintiff Gina Sanguinetti's First Amended Complaint is GRANTED. Plaintiffs' complaint is DISMISSED with prejudice.

IT IS SO ORDERED.

Dated: September 11, 2013

*Samuel Smith*

UNITED STATES DISTRICT JUDGE