

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DEBORAH BURKE and SEAN K. BURKE,)	Case No. 13-4249 SC
)	
Plaintiffs,)	ORDER GRANTING IN PART AND DENYING IN PART MOTION TO <u>DISMISS</u>
)	
v.)	
)	
JPMORGAN CHASE BANK, N.A; WELLS FARGO BANK, N.A. AS TRUSTEE FOR JPMORGAN MORTGAGE TRUST 2008-R2 MORTGAGE PASS-THROUGH CERTIFICATE SERIES 2008-R2,)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION

Plaintiffs Deborah Burke and Sean Burke (collectively, "Plaintiffs") bring this action in connection with the threatened foreclosure of their home in Livermore, California ("the Property"). On January 14, 2014, the Court granted Defendants' motion to dismiss and gave Plaintiffs the opportunity to amend their complaint to "set forth specific and plausible allegations explaining why Defendants lack sufficient interest to foreclose on the Property." ECF No. 25 ("MTD Order") at 6. Defendants JPMorgan Chase Bank, N.A. ("JPMorgan") and Wells Fargo Bank, N.A. ("Wells

1 Fargo") now move to dismiss Plaintiffs' first amended complaint
2 ("FAC") for failure to state a claim pursuant to Federal Rule of
3 Civil Procedure 12(b)(6). ECF No. 43 ("Mot."). The motion is
4 fully briefed, ECF Nos. 47 ("Opp'n"), 51 ("Reply"), and appropriate
5 for determination without oral argument pursuant to Civil Local
6 Rule 7-1(b). Accordingly, the motion hearing set for May 15, 2015
7 is hereby VACATED. For the reasons set for below, the Motion is
8 GRANTED in part and DENIED in part.

9
10 **II. BACKGROUND**

11 On August 7, 2007, Plaintiffs refinanced their existing
12 mortgage on the Property, obtaining a \$1,256,250 loan (the "Loan").
13 ECF No. 29 ("FAC") ¶ 5, Ex. A. The deed of trust securing the
14 mortgage identifies Washington Mutual Bank, FA ("WaMu") as the
15 lender. Id. Ex. A ("DOT"). Plaintiffs allege that on or before
16 August 22, 2008, their mortgage loan was contributed to a mortgage
17 backed security ("MBS") identified as JPMorgan Mortgage Trust 2008
18 R-2 Pass-through Certificates Series 2008-R2 ("JPMMT 2008-R2"), of
19 which Wells Fargo is the trustee. Id. ¶ 12. Plaintiffs allege
20 that WaMu sold their mortgage loan temporarily to the depositor of
21 the JPMMT 2008-R2, but that the sale failed to assign the DOT. Id.
22 ¶ 16. As Plaintiffs, put it, "[t]his was the first sale of the
23 Plaintiff's mortgage loan, but without effectively assigning the
24 [DOT] and indorsing the underlying original Promissory Note to the
25 interim loan purchaser" Id. Next, JP Morgan Acceptance
26 Corporation "sold and securitized the pooled mortgages (including
27 Plaintiffs' mortgage loan) into the JPMMT 2008-R2 Trust" on or
28 before the trust's "closing date" on August 22, 2008. Id.

1 Plaintiffs allege that this sale, too, failed to properly assign
2 the DOT or original note. Id.

3 On September 25, 2008, WaMu was closed by the Office of Thrift
4 Supervision, and the Federal Deposit Insurance Corporation ("FDIC")
5 was named Receiver. On September 25, 2008, JPMorgan acquired
6 certain assets and liabilities of WaMu through an asset purchase
7 agreement with the FDIC. ECF No. 17 ("RJN I") Ex. 2. Though
8 Plaintiffs now allege that JPMorgan does not have any legal or
9 equitable interests in their loan, they applied for a loan
10 modification with JPMorgan sometime in 2010. FAC ¶ 21. JPMorgan
11 rejected the application in May 2010, stating that Plaintiffs'
12 income was insufficient. Id. Plaintiffs then reapplied for a loan
13 modification. That application was also rejected, this time on the
14 ground that Plaintiffs had the ability to pay their existing
15 mortgage using cash reserves or other assets. Id. ¶ 22.

16 On October 28, 2010, a notice of default and election to sell
17 ("NOD") was recorded with Alameda County, stating that Plaintiffs
18 were \$28,024.95 in arrears. Id. ¶ 24, Ex. E.

19 Plaintiffs allege that the NOD's statement that Plaintiffs
20 could contact JPMorgan about the foreclosure proceedings was false
21 because JPMorgan had no right to collect mortgage payments, and
22 that there is no evidence that JPMorgan is a valid loan servicer or
23 beneficiary of Plaintiffs' mortgage. Id. ¶ 24. Plaintiffs reason
24 that because their loan was sold to the MBS trust before JPMorgan
25 acquired the assets of WaMu, JPMorgan did not succeed to the
26 servicing rights of WaMu. Id. The NOD contained a statement
27 certifying that JPMorgan had complied with California law by
28 contacting the borrower to discuss the borrower's financial

1 situation and to explore options for the borrower to avoid
2 foreclosure. Id. Ex. E. Plaintiffs allege that they were never
3 contacted by a "valid mortgagee" because Defendants JPMorgan and
4 Wells Fargo were not mortgagees or authorized agents.

5 In April 2011 and April 2012, notices of trustee sales were
6 recorded with Alameda County. Id. ¶¶ 28, 30. The first notice of
7 trustee's sale indicates that the unpaid balance on the loan was
8 \$1,395,095.88. Id. Ex. F. Plaintiffs allege that these
9 instruments, like the NOD, are null and void. Id. ¶ 28-31. It is
10 unclear from the pleadings whether the foreclosure sale has yet
11 taken place.

12
13 **III. LEGAL STANDARD**

14 **A. Motion to Dismiss**

15 A motion to dismiss under Federal Rule of Civil Procedure
16 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
17 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based
18 on the lack of a cognizable legal theory or the absence of
19 sufficient facts alleged under a cognizable legal theory."
20 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
21 1988). "When there are well-pleaded factual allegations, a court
22 should assume their veracity and then determine whether they
23 plausibly give rise to an entitlement to relief." Ashcroft v.
24 Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court
25 must accept as true all of the allegations contained in a complaint
26 is inapplicable to legal conclusions. Threadbare recitals of the
27 elements of a cause of action, supported by mere conclusory
28 statements, do not suffice." Id. (citing Bell Atl. Corp. v.

1 Twombly, 550 U.S. 544, 555 (2007)).

2 **B. Rule 9(b)**

3 Claims sounding in fraud are subject to the heightened
4 pleading requirements of Federal Rule of Civil Procedure 9(b),
5 which requires that a plaintiff alleging fraud "must state with
6 particularity the circumstances constituting fraud." See Kearns v.
7 Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009). "To satisfy
8 Rule 9(b), a pleading must identify the who, what, when, where, and
9 how of the misconduct charged, as well as what is false or
10 misleading about [the purportedly fraudulent] statement, and why it
11 is false." United States ex rel. Cafasso v. Gen. Dynamics C4 Sys.,
12 Inc., 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks
13 and citations omitted).

14
15 **IV. DISCUSSION**

16 The gravamen of all seven of Plaintiffs' claims is that
17 Defendants do not have a beneficial interest in Plaintiffs'
18 mortgage either because (1) the securitization of the mortgage
19 failed, or (2) Plaintiffs' mortgage was not transferred as part
20 JPMorgan's purchase of WaMu's assets because the mortgage was
21 securitized and sold before the agreement took effect.

22 The Court already rejected Plaintiffs' first theory as legally
23 unsound. As the Court explained, "Plaintiffs lack standing to
24 challenge the securitization process because they were not parties
25 to the agreement that securitized the note." See MTD Order at 4.
26 Plaintiffs have pleaded those claims again, despite the Court's
27 clear holding that they fail as a matter of law. See FAC ¶ 33;
28 Opp'n at 7-10. To the extent that any of Plaintiffs' claims are

1 premised on the failed securitization of their mortgage alone,
2 those claims are DISMISSED with prejudice.

3 The Court previously rejected Plaintiffs' second theory
4 because it found that the original complaint did not plausibly
5 allege WaMu had transferred its interest in the DOT when it sold
6 the loan. This Court has held that a plaintiff may state a claim
7 for wrongful foreclosure based on allegations that sale of the DOT
8 precluded Defendants from retaining a beneficial interest in that
9 DOT. See Subramani v. Wells Fargo Bank N.A., C 13-1605 SC, 2013 WL
10 5913789, at *4 (N.D. Cal. Oct. 31, 2013). Though Plaintiffs' FAC
11 is verbose, unclear, and at times appears internally inconsistent,
12 Plaintiffs now allege, at the very least, that:

13
14 WAMU irrevocably sold all right, title and interest in
15 Plaintiffs' mortgage loan, for value received, to the
16 JPMorgan Mortgage Trust 2008-R2 Mortgage Pass-through
17 Certificates Series 2008-R2 ("JPMMT 2008-R2"), a private
label mortgage-backed securities trust with a Real Estate
Mortgage Investment Conduit election and continuing
qualification.

18 FAC ¶ 12. Plaintiffs provide significant detail regarding the
19 process through which WaMu allegedly sold their loan. See id. ¶¶
20 12-19.

21 It is true that "[t]here is no stated requirement in
22 California's non-judicial foreclosure scheme that requires a
23 beneficial interest in the Note to foreclose. Rather, the statute
24 broadly allows a trustee, mortgagee, beneficiary, or any of their
25 agents to initiate non-judicial foreclosure." Lane v. Vitek Real
26 Estate Indus. Grp., 713 F. Supp. 2d 1092, 1099 (E.D. Cal. 2010).
27 However, Plaintiffs now sufficiently allege that WaMu not only had
28 no beneficial interest in the Loan, but that it was no longer the

1 mortgagee when JPMorgan purchased its assets. Because Plaintiffs
2 now allege that WaMu sold its entire interest in the Loan, the
3 facts render plausible the possibility that Defendants lack
4 standing to foreclose on the mortgage. See, e.g., Subramani, 2013
5 WL 5913789, at *4; Javaheri v. JPMorgan Chase Bank, N.A., No. CV10-
6 08185 ODW FFMX, 2011 WL 2173786, at *5 (C.D. Cal. June 2, 2011)
7 ("the abovementioned [similar] facts regarding the transfer of
8 Plaintiff's Note prior to JPMorgan's acquisition of WaMu's assets
9 raise Plaintiff's right to relief above a speculative level"). The
10 Court proceeds to discuss the effect of this finding on each of
11 Plaintiffs' claims in turn.

12 **A. Wrongful Foreclosure**

13 Defendants argue that Plaintiffs' first cause of action must
14 be dismissed because Plaintiffs do not allege any irregularity or
15 illegality in the foreclosure process. As discussed above,
16 however, the Court finds that Plaintiffs now sufficiently allege
17 that WaMu ceded any interest upon which it might foreclose when it
18 sold the Loan in 2008. To the extent that Plaintiffs allege
19 wrongful foreclosure because Defendants were not the "trustee,
20 mortgagee or beneficiary or any of their authorized agents,"
21 Plaintiffs state a claim and Defendants' motion is DENIED. See
22 Cal. Civ. Code § 2924(a)(1).

23 **B. Quiet Title**

24 Defendants argue that Plaintiffs' claim for wrongful
25 foreclosure must be dismissed because "the allegations concerning
26 the 'holder of the note' have been invalidated." Mot at 5.
27 Because the Court finds that Plaintiffs have sufficiently alleged
28 that Defendants are not the holders of the note, this argument

1 fails. The motion is DENIED as to Plaintiffs' second claim, to the
2 extent that claim is premised on the allegations that Defendants do
3 not have any interest in the note as a result of WaMu's sale of the
4 Loan.

5 **C. Slander of Title**

6 "The elements of a cause of action for slander of title are
7 (1) a publication, (2) which is without privilege or justification,
8 (3) which is false, and (4) which causes direct and immediate
9 pecuniary loss." Alpha & Omega Dev., LP v. Whillock Contracting,
10 Inc., 200 Cal. App. 4th 656, 664 (Cal. Ct. App. 2011) (internal
11 quotation marks omitted) (emphasis in original). California Civil
12 Code Section 47 sets out the general definition of a privileged
13 publication, which includes a publication made "[i]n any (1)
14 legislative proceeding, (2) judicial proceeding, (3) in any other
15 official proceeding authorized by law, or (4) in the initiation or
16 course of any other proceeding authorized by law and reviewable
17 pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of
18 Part 3 of the Code of Civil Procedure" Cal. Civ. Code §
19 47(b). Section 47 also protects statements made "[i]n a
20 communication, without malice, to a person interested therein, (1)
21 by one who is also interested"

22 Plaintiffs allege that Defendants slandered their title in
23 several documents, including letters regarding the loan
24 modification. FAC ¶ 47. As Defendants point out -- and Plaintiffs
25 do not contest -- statements regarding the loan modification do not
26 slander Plaintiffs' title. See Mot. at 6, Opp'n at 12-13.
27 Plaintiffs also allege that Defendants slandered their title
28 through the foreclosure documents. FAC ¶ 47. Under California

1 law, "the filing of a notice of default is privileged, except when
2 published with malice." Barrionuevo v. Chase Bank, N.A., No. C-12-
3 0572 EMC, 2013 WL 4103606, at *5 (N.D. Cal. Aug. 12, 2013). Malice
4 requires that the publication was motivated by hatred or ill will
5 or that defendants lacked reasonable grounds for belief in truth of
6 publication and therefore acted with reckless disregard for
7 plaintiff's rights." Id. (internal quotation marks omitted).

8 Plaintiffs allege that the statements in the foreclosure
9 documents "were made with malicious intent." FAC ¶ 48. That
10 statement alone is a conclusory assertion not entitled to an
11 assumption of truth. Plaintiffs briefly make more specific
12 allegations that Defendants knew the statements in the foreclosure
13 documents to be false. See id. ¶¶ 25 (the statements were
14 "knowingly false"), 29 ("CHASE and WELLS FARGO knew that they are
15 not valid beneficiaries or servicers").¹ However, Plaintiffs'
16 allegations make clear that WaMu attempted to sell, and Defendants
17 attempted to buy, a large portion of WaMu's assets, which purported
18 to include Plaintiffs' mortgage. Id. at p.2. There are no
19 allegations that Defendants did not act in good faith in purchasing
20 WaMu's assets, and there are no facts explaining why JPMorgan

21 ¹ Plaintiffs also allege that Washington Mutual Bank, FA changed
22 its name to Washington Mutual Bank in April of 2005. See id.
23 Plaintiffs apparently assert that WaMu therefore ceased to exist as
24 a legal entity and that JPMorgan knew it could not buy any assets
25 (including Plaintiffs' loan) from WaMu. Plaintiffs in foreclosure
26 cases like this one have repeatedly advanced that theory, and
27 courts have repeatedly rejected it. See, e.g., Lanini v. JPMorgan
28 Chase Bank, No. 2:13-CV-00027 KJM, 2014 WL 1347365, at *3 (E.D.
Cal. Apr. 4, 2014) ("Plaintiffs have cited nothing to support their
claim that the bank's change of name means the bank itself ceased
to exist."). The Court agrees with the numerous other judges who
have rejected this theory and holds that Plaintiffs' claims
regarding JPMorgan's chain of title to the mortgage and Defendants'
knowledge of their lack of interest in the Loan may not be premised
on WaMu's name change in 2005.

1 should have known that WaMu lacked an interest in Plaintiffs' loan.
2 The Court therefore finds implausible Plaintiffs' bare assertions
3 that Defendants knew that the statements in the foreclosure
4 documents were false. The Court cannot find that Plaintiffs'
5 allegations render plausible the possibility that Defendants lacked
6 reasonable grounds for belief in the truth of the statements
7 included in the foreclosure documents. Therefore, Defendants'
8 statements in those documents were privileged as a matter of law,
9 and Plaintiffs' claim fails. Defendants' motion is GRANTED as to
10 Plaintiffs' slander of title claim, and the claim is DISMISSED with
11 leave to amend.

12 **D. Fraud**

13 "The elements which must be pleaded to plead a fraud claim are
14 (a) misrepresentation (false representation, concealment or
15 nondisclosure); (b) knowledge of falsity (or 'scienter'); (c)
16 intent to defraud, i.e., to induce reliance; (d) justifiable
17 reliance; and (e) resulting damage." Philipson & Simon v. Gulsvig,
18 154 Cal. App. 4th 347, 363 (Cal. Ct. App. 2007). Fraud claims are
19 governed by the stricter pleading standards of Federal Rule of
20 Civil Procedure 9(b).

21 Plaintiffs allege that the notice of default and election to
22 sell under deed of trust contained false statements. Plaintiffs
23 claim those statements are false because Defendants knew that they
24 were not valid beneficiaries of Plaintiffs' loan or owners of
25 Plaintiffs' debt. For the reasons discussed above, Plaintiffs' FAC
26 does not contain sufficient factual allegations to plausibly
27 establish that Defendants had knowledge of WaMu's alleged sale of
28 the mortgage. Instead, Plaintiffs provide only bare assertions

1 that Defendants had knowledge of the sale. Plaintiffs do not
2 explain when or how Defendants obtained that knowledge, nor do they
3 explain why Defendants should have known that WaMu's attempt to
4 sell Plaintiffs' debt to JPMorgan was null and void. Thus
5 Plaintiffs have failed to plead scienter with the requisite
6 particularity. Defendants' motion is GRANTED as to Plaintiffs'
7 fraud claim, and the claim is DISMISSED with leave to amend.

8 **E. Cancellation of Instruments**

9 Defendants' argument that Plaintiffs' cancellation of
10 instruments claim should be dismissed is again premised on the
11 assumption that Plaintiffs fail to allege WaMu's sale of the loan.
12 See Opp'n at 8-9. Because the Court finds that Plaintiffs now
13 adequately allege that their loan was sold, this argument fails.
14 Defendants' motion is DENIED as to the cancellation of instruments
15 claim.

16 **F. Violation of Section 2923.5**

17 California Civil Code Section 2923.5 requires that a "mortgage
18 servicer shall contact the borrower in person or by telephone in
19 order to assess the borrower's financial situation and explore
20 options for the borrower to avoid foreclosure" before recording a
21 notice of default. Cal. Civ. Code § 2923.5(a)(2). Plaintiffs
22 allege that, because no defendant was a legitimate mortgagee,
23 beneficiary, trustee, or authorized agent, Plaintiffs were never
24 contacted by a legitimate mortgage servicer. FAC ¶¶ 68-71.

25 Defendants first argue that Plaintiffs' claim fails because
26 JPMorgan was the mortgagee and Wells Fargo was its authorized
27 agent. That argument is insufficient because Plaintiffs have
28

1 pleaded that WaMu sold all of its interest in the loan before
2 JPMorgan purchased WaMu's assets.

3 Next, Defendants argue that Plaintiffs are required to allege
4 that they are willing and able to tender the amount due on the
5 Loan. Defendants argue that Plaintiffs' claim fails because the
6 FAC does not allege tender. According to Defendants, "[w]ithout an
7 allegation of such tender in the complaint that attacks the
8 validity of the sale, the complaint does not state a cause of
9 action."² Opp'n at 8. The California Court of Appeal has
10 explained why the tender requirement does not apply to Section
11 2923.5 claims: "the whole point of section 2923.5 is to create a
12 new, even if limited, right to be contacted about the possibility
13 of alternatives to full payment of arrearages. It would be
14 contradictory to thwart the very operation of the statute if
15 enforcement were predicated on full tender." Mabry v. Superior
16 Court, 185 Cal. App. 4th 208, 225 (2010). Moreover, "if the
17 borrower's action attacks the validity of the underlying debt, a
18 tender is not required since it would constitute an affirmation of
19 the debt." Lona v. Citibank, N.A., 202 Cal. App. 4th 89, 112 (Cal.
20 Ct. App. 2011). Thus the tender rule does not apply here, because
21 Plaintiffs' claims allege that Defendants do not own any of
22 Plaintiffs' debt. Additionally, "several courts have refused to
23 apply the tender requirement where plaintiff alleges that the
24 defendant lacks authority to foreclose on the property and, thus,
25 that any foreclosure sale would be void rather than merely

26 _____
27 ² It is unclear why Defendants make this argument only in
28 opposition to Plaintiffs' Section 2923.5 claim and not all of
Plaintiffs' claims. Regardless, some of the Court's reasons for
rejecting Defendants' argument apply to all of Plaintiffs' claims.

1 voidable." Rockridge Trust v. Wells Fargo, N.A., 985 F. Supp. 2d
2 1110, 1147 (N.D. Cal. 2013) (collecting cases). Defendants' motion
3 to dismiss Plaintiffs' Section 2923.5 claim is DENIED.

4 **G. Unfair Competition**

5 California's Unfair Competition Law ("UCL") prohibits unfair
6 competition, which is defined as "any unlawful, unfair or
7 fraudulent business act or practice." Cal. Bus. & Prof. Code §
8 17200. Each one of these prongs is a different cause of action.
9 Cel-Tech Comm'cns, Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163,
10 180. Plaintiffs bring claim under the "fraudulent" prong of the
11 UCL. See FAC ¶¶ 74-75. The Rule 9(b) heightened pleading
12 requirements apply to claims under the UCL's fraudulent prong. See
13 Kearns v. Ford Motor Co., 567 F.3d 1120, 1125 (9th Cir. 2009).

14 As described above, the Court finds that Plaintiffs have
15 failed to plead fraud with the specificity required by Rule 9(b).
16 Consequently, Plaintiffs fail to state a UCL claim as well.
17 Defendants' motion is GRANTED as to Plaintiffs' UCL claim, and this
18 claim is DISMISSED with leave to amend.

19 **H. Unjust Enrichment**

20 Defendants' arguments in favor of dismissal of the unjust
21 enrichment claim are again premised on the Court's rejection of
22 Plaintiffs' allegations that WaMu sold the Loan. Defendants'
23 motion is DENIED as to Plaintiffs' unjust enrichment claim.

24 **I. Breach of Contract, Equal Opportunity Act, and Fair**
25 **Credit Reporting Act**

26 Plaintiffs' breach of contract, equal opportunity act, and
27 fair credit reporting act claims were not brought in the original
28 complaint. The Court granted Plaintiffs leave to amend their

1 complaint only to add facts alleging that Defendants' lack
2 sufficient interest to foreclose on the Property, not to add
3 additional claims. Accordingly, Plaintiffs' breach of contract and
4 equal opportunity act claims are dismissed without prejudice.
5 Plaintiffs may make a proper motion for leave to amend if they wish
6 to add new claims. Plaintiffs have agreed to withdraw their Fair
7 Credit Reporting Act claim. See Opp'n at 19. That claim is
8 therefore DISMISSED with prejudice.

9
10 **V. CONCLUSION**

11 For the foregoing reasons, Defendants JPMorgan Chase Bank, N.A
12 and Wells Fargo Bank, N.A.'s Motion to Dismiss is GRANTED in part
13 and DENIED in part. All of Plaintiffs' claims are DISMISSED with
14 prejudice to the extent they are premised on deficiencies in the
15 securitization process. Plaintiffs' claim for violation of the
16 Fair Credit Reporting Act is DISMISSED with prejudice. Plaintiffs'
17 claims for breach of contract and violation of the Equal Credit
18 Opportunity Act are DISMISSED without prejudice. Plaintiffs'
19 claims for wrongful foreclosure, quiet title, cancelation of
20 instruments, violation of Section 2923.5, and unjust enrichment
21 survive to the extent that they are premised on the theory that
22 WaMu sold its entire interest in the Loan in 2008.

23 Plaintiffs' claims for slander of title, fraud, and unfair
24 competition are DISMISSED with leave to amend. Plaintiffs may
25 amend those claims to add allegations sufficient to allege fraud
26 under the standards set out by Federal Rule of Civil Procedure
27 9(b). If plaintiffs choose to amend their complaint to add such
28 allegations, they must do so within thirty (30) days of the

1 signature date of this Order. Failure to amend within thirty days
2 may result in dismissal of those claims with prejudice.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

May 11, 2015



UNITED STATES DISTRICT JUDGE