

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

TROY L. McNEIL and TRICIA A. McNEIL,)	Case No. 13-5519 SC
)	
Plaintiffs,)	ORDER GRANTING MOTION TO
)	<u>DISMISS</u>
v.)	
)	
WELLS FARGO BANK, N.A., U.S. BANK NATIONAL ASSOCIATION, CAL-WESTERN RECONVEYANCE, LLC, and DOES 1-10, inclusive,)	
)	
Defendants.)	
)	
)	

I. INTRODUCTION

This is a mortgage foreclosure dispute. Defendants Wells Fargo Bank, N.A. ("Wells Fargo") and U.S. Bank National Association ("U.S. Bank") (collectively, "Defendants") now move to dismiss. ECF No. 14 ("MTD"). Plaintiffs Troy and Tricia McNeil oppose the motion, ECF No. 18 ("Opp'n"),¹ and Defendants have declined to file

¹ Plaintiffs' opposition brief exceeds the page limit set forth in the Civil Local Rules. In the interest of fairness, the Court considers the excess pages filed by Plaintiff. However, Plaintiffs are advised to comply with the Local Rules going forward.

1 a reply brief. The Court held a hearing on the Motion on April 4,
2 2014. For the reasons set forth below, the Motion is GRANTED in
3 part and DENIED in part.

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5 **II. BACKGROUND**

6 Plaintiffs are residents of the property at issue in this
7 case, which is located on Senger Street in Livermore, California
8 (the "subject property"). ECF No. 1 Ex. A ("Compl.") ¶ 3. In
9 April 2004, Plaintiffs borrowed \$536,000 from Wells Fargo Home
10 Mortgage, which later merged into Wells Fargo. Compl. Ex. A. The
11 loan was secured by a deed of trust on the subject property. Id.
12 The deed of trust included an "Adjustable Rate Rider," which
13 allowed for an increase in the interest rate on the loan. Id.

14 In 2011, Wells Fargo transferred its beneficial interest in
15 the deed of trust to U.S. Bank through a Corporate Assignment Deed
16 of Trust (the "Corporate Assignment"). Compl. Ex. B. Plaintiffs
17 allege that the Corporate Assignment shows that the deed of trust
18 was transferred to a mortgage backed security trust, and that this
19 trust was governed by a Pooling Services Agreement ("PSA"). Compl.
20 ¶ 21. Plaintiffs further allege, upon information and belief, that
21 Defendants lack standing to foreclose on the deed of trust because
22 Plaintiffs' promissory note was not transferred to the investment
23 trust prior the trust's closing date. Id. ¶ 23.

24 In December 2011, a notice of default was recorded against the
25 subject property, indicating that Plaintiffs were \$24,848.53 in
26 arrears. Compl. Ex. C. In March 2012, the trustee on the deed of
27 trust recorded a notice of trustee's sale, scheduling the sale for
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1 April 4, 2012. Compl. Ex. D. The notice indicates that the total
2 unpaid balance on the loan was \$522,493.45.

3 In May 2012, Plaintiffs entered into a loan modification
4 agreement with Wells Fargo. Compl. ¶ 26. The modification
5 agreement created a secondary principal balance of \$34,212.59, on
6 which no interest accrues, and dropped the interest rate on the
7 remaining balance to 2.5 percent for six years. ECF No. 14 ("RJN")
8 Ex. 6 ¶¶ 1-2. Pursuant to the agreement, Plaintiffs promised to
9 make monthly principal and interest payments of \$2,424.62 starting
10 on July 1, 2012. Id. ¶ 2. Plaintiffs also promised to make
11 monthly escrow deposits "as defined in the Note." Id. The
12 agreement states that escrow deposits may be subject to change in
13 the future. Id.

14 Plaintiffs allege that the monthly escrow charges initially
15 amounted to \$800, bringing Plaintiffs' total monthly payments to
16 \$3,224.62. Compl. ¶ 85. Defendants subsequently assessed
17 Plaintiffs for additional charges, increasing the total monthly
18 payments to \$4,400. Id. At the hearing and in their opposition
19 brief, Plaintiffs asserted that Defendants improperly applied
20 Plaintiffs' payments, resulting in the additional charges. The
21 Complaint itself is silent on the issue. In any event, Plaintiffs
22 do allege that they could not afford the additional monthly charges
23 assessed by Defendants.

24 On February 4, 2013, the substituted trustee on the deed of
25 trust recorded yet another notice of default against the subject
26 property, indicating that Plaintiffs were \$29,644.95 in arrears.
27 Compl. Ex. F. Another notice of trustee's sale was recorded on May
28 6, 2013, setting the sale date for May 28, 2013. At the hearing,

1 Plaintiffs suggested that the foreclosure was the direct result of
2 the unauthorized charges assessed by Defendants after they executed
3 the first loan modification agreement.

4 In June 2013, Plaintiffs contacted Wells Fargo about obtaining
5 a second loan modification. Compl. ¶ 31. The request was denied
6 on the grounds that the "investor" lacked contractual authority to
7 modify the loan and Plaintiffs had exceeded the number of
8 modifications allowed by the investor. Id. Plaintiffs contend
9 that neither reason is accurate. Id. Wells Fargo subsequently
10 denied Plaintiffs' appeal of the denial of the modification
11 request. Id. ¶ 33.

12 The trustee's sale was apparently delayed during the
13 application process for the second loan modification, and a new
14 notice of trustee's sale was later recorded, setting the sale date
15 for October 16, 2013. RJN Ex. 11. According to Defendants, the
16 trustee's sale was postponed yet again to April 14, 2014.

17 Based on these facts, Plaintiffs assert causes of action for
18 (1) lack of standing to foreclose, (2) violation of California
19 Civil Code section 2923.55, (3) promissory estoppel, (4) breach of
20 the implied covenant of good faith, (5) intentional
21 misrepresentation, (6) violation of the Unfair Competition Law
22 ("UCL"), Cal. Bus. & Prof. Code § 17200, and (7) cancellation of
23 instruments.

24 Defendants now move to dismiss pursuant to Federal Rule of
25 Civil Procedure 12(b)(6).

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1 **III. LEGAL STANDARD**

2 A motion to dismiss under Federal Rule of Civil Procedure
3 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
4 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based
5 on the lack of a cognizable legal theory or the absence of
6 sufficient facts alleged under a cognizable legal theory."
7 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
8 1988). "When there are well-pleaded factual allegations, a court
9 should assume their veracity and then determine whether they
10 plausibly give rise to an entitlement to relief." Ashcroft v.
11 Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court
12 must accept as true all of the allegations contained in a complaint
13 is inapplicable to legal conclusions. Threadbare recitals of the
14 elements of a cause of action, supported by mere conclusory
15 statements, do not suffice." Id. (citing Bell Atl. Corp. v.
16 Twombly, 550 U.S. 544, 555 (2007)).

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

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1 **IV. DISCUSSION**

2 **A. Lack of Standing**

3 Plaintiffs allege, upon information and belief, that
4 Defendants lack standing to foreclose because their promissory note
5 was not transferred to the mortgage backed security trust prior to
6 the closing date established by the PSA. Compl. ¶ 44. Defendants
7 argue that Plaintiffs lack standing to enforce the terms of the PSA
8 because they are third parties to the agreement. MTD at 4-5
9 (citing Jenkins v. JPMorgan Chase Bank, N.A., 216 Cal. App. 4th
10 497, 511 (Cal. Ct. App. 2013)). Defendants further argue that
11 Plaintiffs may not bring a preemptive action challenging their
12 authority to foreclose. Id.

13 Plaintiffs respond that the promissory note and deed of trust
14 are inseparable, and that production of the note is essential to
15 determining whether Defendants are entitled to exercise the power
16 of sale. Opp'n at 12-13. However, California appellate courts
17 have consistently rejected the theory that California's nonjudicial
18 foreclosure scheme (Cal. Civ. Code §§ 2924-2924k) requires a
19 foreclosing party to have a beneficial interest in or physical
20 possession of the note.² Plaintiffs' citations to the Commercial
21 Code are also unavailing, as the California nonjudicial foreclosure
22 scheme controls in this context. See Debrunner v. Deutsche Bank
23 Nat. Tr. Co., 204 Cal. App. 4th 433, 440-41 (Cal. Ct. App. 2012).

24 Moreover, Plaintiffs' theory is barred by the California Court
25 of Appeal's decision in Jenkins. As in this case, the plaintiff in
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27 ² See, e.g., Shuster v. BAC Home Loans Servicing, LP, 211 Cal. App.
28 4th 505, 511 (Cal. Ct. App. 2012); Debrunner, 204 Cal. App. 4th at
440-41; see also Lane v. Vitek Real Estate Indus. Grp., 713 F.
Supp. 2d 1092, 1099 (E.D. Cal. 2010).

1 Jenkins challenged the defendants' standing to foreclose because
2 her home loan was pooled with other loans in a securitized
3 investment trust without compliance with the trust's PSA. 216 Cal.
4 App. 4th at 505. Specifically, the plaintiff alleged that the
5 promissory note was not transferred to the trust with an unbroken
6 chain of endorsements and that the trustee did not have actual
7 physical possession of the note prior to the closing date of the
8 trust. Id. at 510. The court found that the claim was properly
9 dismissed, reasoning that even if the nonjudicial foreclosure
10 statute was interpreted broadly, it did not provide a right to
11 bring such a preemptive action. Id. at 513.

12 As Plaintiffs point out, another California Court of Appeal
13 reached a contrary holding in Glaski v. Bank of Am., N.A., 218 Cal.
14 App. 4th 1079, 1099 (Cal. Ct. App. 2013), where the court found
15 that the plaintiff could state a claim for wrongful foreclosure
16 where he alleged that the entity claiming to be the noteholder was
17 not the true owner of the note. However, many judges in this
18 District, including the undersigned, have held that Glaski is the
19 minority view, and have joined with the majority view set forth in
20 Jenkins. See, e.g., Gieseke v. Bank of Am., N.A., 13-CV-04772-JST,
21 2014 WL 718463, at *3 (N.D. Cal. Feb. 23, 2014) (Tigar J.);
22 Subramani v. Wells Fargo Bank N.A., C 13-1605 SC, 2013 WL 5913789,
23 at *3 (N.D. Cal. Oct. 31, 2013) (Conti J.).

24 In light of the weight of authority, the Court once again
25 adopts the reasoning of Jenkins. For these reasons, Plaintiffs'
26 claim for lack of standing is DISMISSED with prejudice to the
27 extent that it is predicated on a violation of the PSA. The Court
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1 grants Plaintiffs leave to amend to extent that they can plead an
2 alternative theory.

3 **B. Civil Code Section 2923.55**

4 Section 2923.55 provides that a mortgage servicer may not
5 record a notice of default until a number of requirements are met
6 and sets forth a list of information that the mortgage servicer
7 must send to the borrower in writing. Defendants argue that
8 Plaintiffs' claim for violation of section 2923.55 fails because
9 the Complaint does not specify how Defendants ran afoul of the
10 statute or which particular provisions are at issue. MTD at 6.
11 The Court agrees. The Complaint merely quotes the statute
12 verbatim, without highlighting any particular provisions, and then
13 recites some general facts without explaining how those facts
14 relate to the claim. See Compl. ¶¶ 56-68.

15 In their opposition brief, Plaintiffs suggest that Defendants
16 violated section 2923.55(b)(1) (though Plaintiffs do not cite to
17 this particular subsection), Opp'n at 16-17, which provides that a
18 mortgage servicer may not record a notice of default until it has
19 "contact[ed] the borrower in person or by telephone in order to
20 assess the borrower's financial situation," Cal. Civ. Code §
21 2923.55(b)(1). However, according to Plaintiffs' own pleading,
22 they spoke with Defendants about a loan modification before either
23 of the notices of default were recorded. Compl. ¶¶ 26, 31.
24 Plaintiffs argue that the loan modification discussions did not
25 satisfy the statute. Opp'n at 17. The Court disagrees.
26 California Civil Code 2923.5 includes a similar provision requiring
27 a lender to contact a borrower about his or her financial
28 situations prior to the recording of a notice of default, and

1 California courts have held that this requirement may be satisfied
2 through loan modification discussions. See Rossberg v. Bank of
3 Am., N.A., 219 Cal. App. 4th 1481, 1494-95 (Cal. Ct. App. 2013).

4 Plaintiffs further argue that Defendants violated section
5 2923.55(c) "by using incompetent and unreliable evidence which the
6 mortgage servicer claimed to review to substantiate the borrower's
7 default and right to foreclose." Opp'n at 17. Plaintiffs appear
8 to be asserting that Defendants violated the statute because their
9 denial of Plaintiffs' application for a second loan modification
10 was in error and because Defendants lacked standing to foreclose.
11 As to the first theory, Section 2923.55 merely requires that the
12 lender "explore options" to avoid foreclosure. It does not entitle
13 the borrower to a loan modification, even if he or she is well
14 qualified. As to the second theory, nothing in Section 2923.55
15 entitles a borrower to challenge the standing of a foreclosing
16 entity.

17 Accordingly, Plaintiffs' second claim for violation of 2923.55
18 is DISMISSED with leave to amend. The amended complaint shall
19 explain exactly how Defendants allegedly violated the statute.

20 **C. Promissory Estoppel**

21 "Promissory estoppel applies whenever a promise which the
22 promissor should reasonably expect to induce action or forbearance
23 on the part of the promisee or a third person and which does induce
24 such action or forbearance would result in an injustice if the
25 promise were not enforced." Lange v. TIG Ins. Co., 68 Cal. App.
26 4th 1179, 1185 (Cal. Ct. App. 1998). "To be binding, the promise
27 must be clear and unambiguous." Id.

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1 Plaintiffs copy and paste a number of general factual
2 allegations into their promissory estoppel section, but fail to
3 explain how these allegations have anything to do their claim. The
4 Court DISMISSES the promissory estoppel claim to the extent that it
5 is based on these allegations.³ However, the Court declines to
6 dismiss to the extent that the claim is premised on Plaintiffs'
7 allegation that Defendants breached the loan modification
8 agreement. Compl. ¶ 86. Plaintiffs allege that the loan
9 modification contract specifies that Plaintiffs were to make
10 monthly payments of \$2,424.62, plus escrow deposit payments which
11 initially totaled \$800 per month. Id. ¶ 77. Plaintiffs further
12 allege that Wells Fargo later added other previously undisclosed
13 monthly charges, raising Plaintiffs' monthly payments from \$3,224
14 to approximately \$4,400 per month. Id. Though the pleading could
15 be clearer, it appears that Plaintiffs are alleging that they
16 relied on the agreement to their detriment, resulting in the
17 foreclosure proceedings at issue now.

18 Defendants argue that the promise lacks sufficient
19 definitiveness and clarity to justify the application of promissory
20 estoppel. MTD at 7. The Court disagrees. The promise alleged by
21 Plaintiffs is set out in the terms of the modification agreement.⁴

22 ³ In their opposition brief, Plaintiffs also claim that their
23 promissory estoppel cause of action is based on the theory that
24 Defendants promised Plaintiffs a fixed interest rate at loan
25 origination, and later raised that interest rate. Opp'n at 18-19.
26 The argument lacks merit. As an initial matter, Plaintiffs did not
27 plead this theory. More importantly, an adjustable rate rider was
28 attached to the deed of trust. Plaintiffs cannot state a claim for
promissory estoppel based on actions that were entirely consistent
with the terms of the loan.

⁴ The Complaint does make vague reference to oral representations
made by Defendants. Compl. ¶ 70. The Court agrees that these oral
representations cannot form the basis of Plaintiffs' claim for

1 Next Defendants argue that the claim fails because Plaintiffs have
2 not alleged that they made all their modified payments. Id. at 8.
3 However, Plaintiffs allege that the payments assessed by Defendants
4 added charges not agreed to through the loan modification
5 agreement. Compl. ¶ 27. At the hearing, Defendants suggested that
6 the additional charges were merely the escrow payments disclosed in
7 the agreement. But the Court cannot make such a determination
8 based on the facts alleged or the judicially noticeable documents
9 provided by Defendants.

10 Accordingly, Plaintiffs' claim for promissory estoppel remains
11 undisturbed to the extent it is based on Defendants' alleged
12 violation of the executed loan modification. It is DISMISSED with
13 leave to amend in all other respects.

14 D. Breach of the Implied Covenant of Good Faith and Fair
15 Dealing

16 Plaintiffs' claim for breach of the implied covenant is hardly
17 a model of clarity. Plaintiffs merely recite the definition of the
18 term and then copy and paste factual allegations from other
19 portions of the Complaint, without explaining how they relate.
20 Plaintiffs' opposition does nothing to clarify the matter, and it
21 appears to assert new legal theories that are not alleged in the
22 pleading. To the extent Plaintiffs' claim is premised on the
23 theory that Defendants assessed them for additional charges in
24 violation of the executed loan modification agreement, the claim
25 remains undisturbed. To the extent it is based on the theory that
26 Defendants breached the PSA or that Defendants were under some

27
28 promissory estoppel, since the representations are neither clear
nor definitive.

1 obligation to offer Plaintiffs a second loan modification, it is
2 DISMISSED with prejudice. As set forth in Section IV.A supra,
3 Plaintiffs lack standing to enforce the terms of the PSA.
4 Moreover, the Court is aware of no authority or contractual
5 provision that would require Defendants to grant Plaintiffs' second
6 request for a loan modification. The rest of the claim is
7 DISMISSED with leave to amend. The amended pleading shall provide
8 Defendants and the Court with clarity as to the basis for the
9 claim.

10 **E. Intentional Misrepresentation**

11 The elements of intentional misrepresentation, also known as
12 fraud, are: "(1) misrepresentation (false representation,
13 concealment, or nondisclosure), (2) knowledge of falsity (or
14 'scienter'), (3) intent to defraud (i.e., to induce reliance), (4)
15 justifiable reliance, and (5) resulting damage." Lazar v. Sup.
16 Ct., 12 Cal. 4th 631, 638 (Cal. 1996). Plaintiffs' pleading is
17 impermissibly vague as to the basis for their fraud claim. Once
18 again, Plaintiffs merely copy and paste random factual allegations
19 from other parts of their complaint and leave Defendants and the
20 Court to guess at their legal theory. In their opposition brief,
21 Plaintiffs assert several new grounds for fraud, all of which have
22 a tenuous connection to the fraud claim actually pleaded in the
23 Complaint.

24 To provide some guidance, the Court addresses the various
25 theories of fraud raised in Plaintiffs' opposition brief and at the
26 hearing. Plaintiffs assert that Defendants willfully concealed the
27 fact that their interest rate was adjustable, Opp'n at 22, but the
28 deed of trust attached to the pleading includes an adjustable rate

1 rider which discloses that Plaintiffs' interest rate might
2 increase. Plaintiffs' other theories of fraud are that "Defendants
3 did not make any reasonable responses to Plaintiffs' request for
4 explanations of the terms and other repayment plan [sic]";
5 Defendants mishandled mortgage payments; the deed of trust was
6 flawed at the outset; Defendants did not comply with legal
7 requirements for securitizing the loan; and Defendants failed to
8 give Plaintiffs' loan modification agreement a good faith review.
9 Id. at 23. To the extent that any of the conduct identified above
10 is actionable, it is not actionable as fraud. Plaintiffs have yet
11 to identify, among other things, a misrepresentation or reasonable
12 reliance.

13 At the hearing, Plaintiffs argued that their fraud claim is
14 premised on theory that Defendants misrepresented that they had a
15 beneficial interest in the loan, even though the loan had been
16 transferred to an investment trust. It is unclear why Defendants
17 had a duty to disclose that the loan had been securitized or how
18 the securitization harmed Plaintiffs, as it did not affect
19 Plaintiffs' obligations under the loan agreement. Absent plausible
20 allegations regarding damages and reasonable reliance, this theory
21 also fails.

22 For the reasons set forth above, Plaintiffs' claim for
23 intentional misrepresentation is DISMISSED with leave to amend.
24 The amended complaint shall specifically identify the basis for
25 Plaintiffs' claim and allege specific facts to support the claim in
26 compliance with Rule 9(b).

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1 **F. Violation of the UCL**

2 The UCL prohibits acts of "unfair competition," including any
3 "unlawful, unfair or fraudulent business act or practice." Cal.
4 Bus. & Prof. Code § 17200. "Because [the UCL] is written in the
5 disjunctive, it establishes three varieties of unfair competition—
6 acts or practices which are unlawful, or unfair, or fraudulent."
7 Berryman v. Merit Prop. Mgmt., Inc., 152 Cal. App. 4th 1544, 1554
8 (Cal. Ct. App. 2007).

9 Plaintiffs do not specify which prongs of the UCL form the
10 basis of their suit, though it appears they are alleging unlawful
11 and unfair practices. Initially, Plaintiffs allege that Defendants
12 engaged in deceptive business practices by: (1) instituting
13 improper foreclosure proceedings, (2) executing and recording false
14 and misleading documents, (3) executing and recording documents
15 without authority to do so, (4) failing to comply with California
16 Civil Code section 2923.5, and (5) failing to comply with the Home
17 Affordable Modification Program ("HAMP").

18 Defendants argue that Plaintiffs cannot predicate their UCL
19 claim on violations of section 2923.5 or HAMP because they have yet
20 to allege what those violations are. MTD at 11. Plaintiffs'
21 opposition brief entirely ignores their section 2923.5 claim. As
22 to HAMP, Plaintiffs generally argue that Defendants misrepresented
23 their eligibility for the program, but decline to go into any
24 specifics. Opp'n at 26. The Court finds that both claims are
25 impermissibly vague.⁵

26 ⁵ Plaintiffs' citation to Loftis v. Homeward Residential, Inc.,
27 SACV 13-00467-CJC, 2013 WL 4045808 (C.D. Cal. June 11, 2013) is
28 unavailing. In that case, the defendant lender offered the
plaintiffs a loan modification and then initiated foreclosure
proceedings. Id. at *1. The plaintiffs asserted a claim for

1 As to the other UCL violations alleged in the Complaint,
2 Defendants argue that Plaintiffs lack standing because they have
3 failed to allege causation. MTD at 11. In support, Defendants
4 cite to Jenkins, where the court rejected a similar UCL claim. 216
5 Cal. App. 4th at 520-24. The court reasoned that because the
6 plaintiff defaulted on her loan prior to the alleged wrongful acts,
7 she could not assert that the impending foreclosure of her home was
8 caused by the defendants' conduct. Likewise, here, Plaintiffs have
9 yet to allege the basic elements of causation with respect to their
10 theory that Defendants breached the PSA. Id. at 523.

11 Plaintiffs' UCL claim also appears to be predicated on their
12 allegation that Defendants raised their monthly loan payments in
13 violation of the executed loan modification agreement. Compl. ¶
14 124. Defendants do not address this allegation, and the Court
15 finds that it can support a claim for unfair practices under the
16 UCL. Plaintiffs' UCL claim remains undisturbed to the extent that
17 it is predicated on this allegation, but is DISMISSED in all other
18 respects. The Court grants Plaintiffs leave to amend to cure the
19 deficiencies identified above.

20 **G. Cancellation of Instruments**

21 Plaintiffs' final claim seeks to cancel the notices of
22 default, notice of trustee's sale, and other instruments recorded
23 in connection with the foreclosure proceedings commenced against
24 the subject property. To the extent that this claim is premised on
25 Defendants' violation of the PSA, it is DISMISSED with prejudice
26

27 breach of contract, which the court declined to dismiss because
28 there was an offer and acceptance. Id. at 2. Here, Plaintiffs
appear to be asserting a UCL violation in connection with a
rejected loan modification application.

1 for the reasons set forth in Section IV.A supra. To the extent
2 that it is based on the allegation that Defendants assessed
3 Plaintiffs additional monthly charges in violation of the loan
4 modification agreement, it remains undisturbed.

5

6 **V. CONCLUSION**

7 Defendants' motion to dismiss is GRANTED in part and DENIED in
8 part.

- 9 • Plaintiffs' claim for lack of standing is DISMISSED with
10 prejudice to the extent is predicated on a violation of the
11 PSA and otherwise DISMISSED with leave to amend.
- 12 • Plaintiffs' claim for violation of Civil Code Section 2923.55
13 is DISMISSED with leave to amend.
- 14 • Plaintiffs' claim for promissory estoppel remains undisturbed
15 to the extent it is predicated on violation of the loan
16 modification agreement and is otherwise DISMISSED with leave
17 to amend.
- 18 • Plaintiffs' claim for breach of the implied covenant remains
19 undisturbed to the extent it is predicated on violation of the
20 loan modification agreement and is otherwise DISMISSED with
21 leave to amend.
- 22 • Plaintiffs' claim for intentional misrepresentation is
23 DISMISSED with leave to amend.
- 24 • Plaintiffs' claim for violation of the UCL remains undisturbed
25 to the extent it is predicated on violation of the loan
26 modification agreement and is otherwise DISMISSED with leave
27 to amend.

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- Plaintiffs' claim for cancellation of instruments is DISMISSED with prejudice to the extent it is predicated on a violation of the PSA and remains undisturbed to the extent that it is predicated on a breach of the executed loan modification agreement.

As set forth above, the amended pleading shall clearly identify the basis for each claim asserted. The amended pleading shall be filed within thirty (30) days of this Order's signature date. Failure to do so may result in dismissal with prejudice of certain claims.

IT IS SO ORDERED.

July 1, 2014


UNITED STATES DISTRICT JUDGE