



1 April 30, 2009. Having considered oral argument and all of the  
2 papers submitted by the parties, the Court grants Defendants'  
3 motions in part and denies them in part and grants leave to amend.

4 BACKGROUND

5 On June 2, 2003, Plaintiffs purchased a home in Sonoma County,  
6 California for \$420,000, with the assistance of a home loan (first  
7 mortgage). The complaint does not explicitly mention the name of  
8 the company that provided Plaintiffs with this loan. However, it  
9 appears from documents attached to the complaint and the moving  
10 papers that People's Choice Home Loan supplied the loan and Popular  
11 serviced it.

12 In April, 2006, Plaintiffs spoke with HFC about obtaining a  
13 second mortgage. During this conversation, HFC "indicated that a  
14 loan could be obtained, which would be favorable to Plaintiffs by  
15 consolidating higher interest debt at a lower rate. Plaintiffs  
16 were also told they would be able to benefit from a 'good customer'  
17 interest rate reduction after a few months of timely payments on  
18 the loan." Complaint, ¶ 27. In May, 2006, HFC told Plaintiffs  
19 that, to qualify for the loan, they would also be required to  
20 consolidate their other outstanding debt, which carried low  
21 interest rates. Id. at ¶ 28. Included in the amount to be  
22 consolidated was \$26,217 in Plaintiffs' student loans, which was  
23 then accruing interest at 2.25 percent. Plaintiffs agreed and  
24 established a second mortgage with HFC, financing \$61,194 at an  
25 interest rate of 13.95 percent. Of this amount, \$41,076 was  
26 disbursed to Plaintiffs' other creditors to pay off outstanding

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27 <sup>1</sup>(...continued)  
28 brief the matter.

1 debts as part of the consolidation requirement. HFC also disbursed  
2 \$16,392 in cash to Plaintiffs to be used for future education  
3 expenses.

4 In December, 2006, Plaintiffs contacted HFC to negotiate a  
5 lower interest rate on the second mortgage. HFC offered Plaintiffs  
6 the chance to refinance it at a lower rate due to Plaintiffs' good  
7 payment history. Id. at ¶ 30. In a later conversation, but before  
8 signing the new loan, HFC informed Plaintiffs that, to qualify for  
9 the interest rate reduction, they would have to consolidate  
10 additional debt. Plaintiffs agreed and on January 26, 2007, they  
11 refinanced the second mortgage at a rate of 11.415 percent. The  
12 new amount of the second mortgage was \$82,149, which included a  
13 \$1,193 cash payout to Plaintiffs.

14 In October, 2007, Plaintiffs contacted Popular to discuss a  
15 modification of their first mortgage. In a few months, the  
16 interest rate on the first mortgage would switch from a fixed rate  
17 to a variable rate, and Plaintiffs wanted to secure a favorable  
18 fixed rate loan for an extended period of time. Popular referred  
19 Plaintiffs to Equity One. Equity One offered Plaintiffs a fixed  
20 rate loan at one percent higher than the original fixed rate on the  
21 first mortgage. Equity One "assured [Plaintiffs that they] would  
22 qualify and the modification would be completed expeditiously."  
23 Complaint ¶ 14.

24 As part of the loan application process, Plaintiffs provided  
25 Equity One with various personal financial information, including  
26 their monthly income and expenses. Equity One used this  
27 information to prepare a financial worksheet for Plaintiffs to  
28 verify, sign and date. The worksheet contained four columns with

1 the following headings: monthly expenses, stated amounts,  
2 confirmation and initial. On October 23, 2007, Equity One emailed  
3 the worksheet to Plaintiffs with the first two columns completed  
4 and stated that, when filling out the remainder of the document,  
5 they should "be sure to write numbers in the confirmation column,  
6 just like what I have in the stated amount column, and then initial  
7 in the initial column." Complaint, Exh. B. Plaintiffs did as  
8 Equity One instructed -- they copied the figure in the stated  
9 amounts column to the confirmation column, initialed next to each  
10 amount, and signed and returned the worksheet to Equity One. The  
11 next day, Plaintiffs "realized" that the financial information on  
12 the worksheet was not accurate and that it "had been changed  
13 without their knowledge." Complaint ¶ 17. The worksheet listed  
14 phone expenses as \$300 per month, education and daycare expenses as  
15 \$0 per month and insurance expenses as \$600 per month. However, in  
16 earlier discussions, Plaintiffs told Equity One that their phone  
17 expenses were \$53 per month, education and daycare expenses were  
18 \$1200 per month and insurance expenses were \$248 per month. The  
19 financial worksheet that Plaintiffs signed understated their  
20 expenses by \$601 per month.

21 Plaintiffs wrote Equity One an email about this inaccuracy.  
22 Equity One responded, "Just write what I have . . . If I made them  
23 higher, it is for a reason . . . to make it work . . . thanx." On  
24 December 11, 2007, Plaintiffs completed the loan modification  
25 agreement by sending Equity One \$11,655.92 in loan payments, and  
26 signed and notarized the loan documents.

27 In January, 2008, Plaintiffs received a monthly statement from  
28 Equity One that listed their new mortgage payment as \$3,327.22.

1 Plaintiffs allege that this amount was "contrary to the assertions  
2 of Equity one." Complaint ¶ 22. The complaint does not describe  
3 how or why this amount was contrary to anything Equity One stated.  
4 At some point between January, 2008 and August, 2008, Plaintiffs  
5 fell behind in their payments on the second mortgage. On August  
6 29, 2008, a Notice of Default regarding this loan was recorded.  
7 LandAmerica was listed as the foreclosure trustee.

8 In November, 2008, the first mortgage held by Equity One "was  
9 sold or transferred" to Wells Fargo. Complaint ¶ 35. As part of  
10 this transaction, Litton Loan Servicing became Plaintiffs' new loan  
11 servicing company for this mortgage. Id. On November 17, 2008,  
12 Plaintiffs wrote to Litton and challenged the validity of the debt  
13 underlying the mortgage. Complaint, Exh. O. Plaintiffs explained  
14 that the loan was not valid because it was based on false income  
15 information. Id. Litton responded on December 1, 2008 with a  
16 letter that acknowledged receipt of Plaintiffs' letter and noted  
17 that it would take sixty days to respond. Complaint, Exh. P.  
18 Litton advised Plaintiffs to continue to make loan payments during  
19 this time period. Id.

20 On December 22, 2008, Plaintiffs "received 36 letters  
21 concerning a Notice of Trustee Sale" via regular mail. Complaint  
22 ¶ 39. Plaintiffs attached a few of these notices to the complaint,  
23 but they are mostly illegible. It is not entirely clear from the  
24 complaint, but it appears that at least one of these notices was  
25 sent by Litton. The notices listed a January 15, 2009 trustee sale  
26 date. On December 23, 2008, Plaintiffs called Litton and were told  
27 that their loan was "not in foreclosure status, that there was no  
28 demand date set," and that the "entire account was on hold due to

1 the possibility of pending litigation." Complaint ¶ 40. The  
2 complaint is not clear as to whether the "possibility of pending  
3 litigation" refers to the present lawsuit or a different legal  
4 action.

5 Plaintiffs filed the present complaint in Sonoma County  
6 Superior Court on January 5, 2009. Plaintiffs plead twelve causes  
7 of action in their complaint: (1) Fraud; (2) Negligent  
8 Misrepresentation; (3) Negligence; (4) Breach of Fiduciary Duty;  
9 (5) Constructive Fraud; (6) Breach of Implied Covenant of Good  
10 Faith and Fair Dealing; (7) Unfair Debt Collection Practices;  
11 (8) Violations of Real Estate Settlement Procedures Act;  
12 (9) Violations of Predatory Lending Act; (10) Unfair Business  
13 Practices; (11) Declaratory Relief; and (12) Request for a  
14 Temporary Restraining Order, Preliminary Injunction and Permanent  
15 Injunction. The superior court signed a temporary restraining  
16 order enjoining the sale of Plaintiffs' home. On February 2, 2009,  
17 Defendants removed the case to federal court.

18 Defendant HFC moves to dismiss claims one through six and  
19 eight through twelve. Defendants Litton and LandAmerica move to  
20 dismiss claims one through seven and ten through twelve. Defendants  
21 Popular Mortgage and Equity One move to dismiss claims one through  
22 seven, ten and twelve.

23 LEGAL STANDARD

24 II. Motion to Dismiss for Failure to State a Claim

25 A complaint must contain a "short and plain statement of the  
26 claim showing that the pleader is entitled to relief." Fed. R.  
27 Civ. P. 8(a). When considering a motion to dismiss under Rule  
28 12(b)(6) for failure to state a claim, dismissal is appropriate



1 I. First and Second Causes of Action: Fraud and Negligent  
2 Misrepresentation

3 Under California law, "[t]he elements of fraud, which gives  
4 rise to the tort action for deceit, are (a) misrepresentation  
5 (false representation, concealment, or nondisclosure);  
6 (b) knowledge of falsity (or 'scienter'); (c) intent to defraud,  
7 i.e., to induce reliance; (d) justifiable reliance; and  
8 (e) resulting damage." Small v. Fritz Cos., Inc., 30 Cal. 4th 167,  
9 173 (2003) (quoting Lazar v. Superior Court, 12 Cal. 4th 631, 638  
10 (1996)). A claim for fraud under the tort of negligent  
11 misrepresentation does not require scienter or intent to defraud;  
12 rather, to establish fraud through nondisclosure or concealment of  
13 facts, it is necessary to show that the defendant "was under a  
14 legal duty to disclose them." Lingsch v. Savage, 213 Cal. App. 2d  
15 729, 735 (1963); Buckland v. Threshold Enterprises, Ltd., 155 Cal.  
16 App. 4th 798 (2007).<sup>2</sup>

17 "In all averments of fraud or mistake, the circumstances  
18 constituting fraud or mistake shall be stated with particularity."  
19 Fed. R. Civ. Proc. 9(b). The allegations must be "specific enough  
20 to give defendants notice of the particular misconduct which is  
21 alleged to constitute the fraud charged so that they can defend  
22 against the charge and not just deny that they have done anything  
23 wrong." Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985).

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24 <sup>2</sup>Most district courts within the Ninth Circuit have held that  
25 a negligent misrepresentation claim is subject to the heightened  
26 pleading requirements of Rule 9(b). Deitz v. Comcast Corp., 2006  
27 WL 3782902 (N.D. Cal.); Neilson v. Union Bank of California, N.A.,  
28 290 F. Supp. 2d 1101, 1141 (C.D. Cal. 2003) (stating that the  
elements of a cause of action for negligent misrepresentation are  
the same as those of a claim for fraud, with the exception that the  
defendant need not actually know the representation is false).

1 Statements of the time, place and nature of the alleged fraudulent  
2 activities are sufficient, id. at 735, provided the plaintiff sets  
3 forth "what is false or misleading about a statement, and why it is  
4 false." In re GlenFed, Inc., Securities Litigation, 42 F.3d 1541,  
5 1548 (9th Cir. 1994). Scierter may be averred generally, simply by  
6 saying that it existed. Id. at 1547; see Fed. R. Civ. Proc.  
7 9(b)("Malice, intent, knowledge, and other condition of mind of a  
8 person may be averred generally"). Allegations of fraud based on  
9 information and belief usually do not satisfy the particularity  
10 requirements of Rule 9(b); however, as to matters peculiarly within  
11 the opposing party's knowledge, allegations based on information  
12 and belief may satisfy Rule 9(b) if they also state the facts upon  
13 which the belief is founded. Wool v. Tandem Computers, Inc., 818  
14 F.2d 1433, 1439 (9th Cir. 1987).

15 A. Fraud and Negligent Misrepresentation Claim Against HFC  
16 Plaintiffs' complaint fails to plead the manner in which any  
17 of HFC's statements are false. Plaintiffs argue that five  
18 statements HFC made were misrepresentations. In each of these  
19 statements HFC indicated that Plaintiffs could obtain a loan with a  
20 favorable interest rate. Plaintiffs argue that these statements  
21 were false because when HFC first mentioned the possibility of a  
22 lower interest rate, it did not contemporaneously note that  
23 consolidating other debt, which had lower interest rates at the  
24 time, would be required.

25 For instance, Plaintiffs assert that in April, 2006, "HFC  
26 representatives indicated a loan could be obtained, which would be  
27 favorable to Plaintiffs by consolidating higher interest debt at a  
28 lower rate," complaint ¶ 27, which was a misrepresentation because

1 Plaintiffs were later told that they would have to consolidate  
2 their low-interest student loan debt into the loan. However,  
3 conditions upon which loan approval depends does not make a  
4 misrepresentation out of a statement that a loan "could be  
5 obtained."

6 Plaintiffs assert that HFC made a second and similar  
7 misrepresentation when it stated in April, 2006, that Plaintiffs  
8 "would be able to benefit from a 'good customer' interest rate  
9 reduction after a few months of timely payments on the loan."  
10 Complaint ¶ 27. This statement is allegedly false because  
11 Plaintiffs were later told about the requirement to consolidate  
12 their low interest loans. As alleged, HFC made no promises that  
13 timely payments alone would result in the reduction of the interest  
14 rate on Plaintiffs' loan. Therefore, requiring consolidation as a  
15 condition of loan approval did not make a misrepresentation out of  
16 HFC's general statement about the possibility of obtaining a "good  
17 customer" interest rate reduction.

18 Plaintiffs assert that three additional statements by HFC in  
19 May, 2006, December, 2006 and January, 2007 were also  
20 misrepresentations. However, these three statements, similar to  
21 the two described above, all concern HFC's requirement to  
22 consolidate Plaintiffs' other debt in order to obtain a lower  
23 interest rate. As plead, Plaintiffs have not alleged that HFC made  
24 any misrepresentations about this requirement.

25 B. Fraud and Negligent Misrepresentation Claim Against  
26 Litton

27 The complaint, as plead, does not put Litton on notice as to  
28 its role in the alleged fraud. The complaint merely notes that

1 Litton (1) became Plaintiffs' loan servicer in November, 2008,  
2 (2) mailed Plaintiffs a validation-of-debt notice on November 17,  
3 2008, (3) initiated foreclosure proceedings by sending out a notice  
4 of trustee's sale on December 22, 2008 and (4) notified Plaintiffs  
5 that the trustee sale would be placed on hold due to apparent  
6 pending litigation. Though Plaintiffs dispute the validity of the  
7 debt underlying the loan, they have not put Litton on notice of the  
8 particular misconduct which is alleged to constitute the fraud.

9 C. Fraud and Negligent Misrepresentation Claim Against  
10 Equity One and Popular

11 Plaintiffs argue that their fraud claim against Equity One  
12 applies equally to Popular because "the entities are one and the  
13 same," and that Equity One is Popular's alter ego. Opposition at  
14 5. Nothing in the complaint supports this theory. Therefore, the  
15 Court treats the two companies as separate entities.

16 Plaintiff has not alleged any facts pertaining to Popular's  
17 conduct that constitute fraud. The complaint notes that Plaintiffs  
18 contacted Popular to discuss refinancing and that Popular referred  
19 them to Equity One. Plaintiffs do not provide any further detail  
20 as to Popular's role in the alleged fraud. These allegations do  
21 not support a cause of action for fraud.

22 As to Equity One, Plaintiffs have adequately described with  
23 particularity the circumstances constituting fraud with respect to  
24 some of their allegations. Plaintiffs have alleged that Equity One  
25 instructed them to falsify information on a financial worksheet in  
26 order to help them qualify for a mortgage modification. The  
27 allegations in the complaint are sufficiently specific to enable  
28 Equity One to articulate a defense, and thus the requirements of

1 Rule 9(b) are satisfied.

2           However, the complaint does not contain allegations  
3 pertaining to the claim that the monthly loan payment amount that  
4 was allegedly promised by Equity One differed from the actual  
5 amount that the parties agreed to. Plaintiffs failed to allege the  
6 payment amount that they were allegedly promised, who purportedly  
7 made the promise and when these promises were made.

8           D. Fraud and Negligent Misrepresentation Claim Against  
9           LandAmerica

10           Plaintiffs fail to plead any facts with respect to  
11 LandAmerica's role in any of the causes of actions alleged in the  
12 complaint. Plaintiffs simply argue that "the same arguments as to  
13 each defendant apply equally to LandAmerica, who was acting as an  
14 agent of the directing agency." Opposition to LandAmerica's Motion  
15 to Dismiss at 6. However, Plaintiffs fail to note which agency was  
16 the "directing agency." Instead, Plaintiffs assert that each  
17 Defendant was the agent, servant, or employee of each other, acting  
18 "with the consent, express and implied, of the other defendants."  
19 Complaint ¶ 9. Though a principal may be liable for the acts of an  
20 agent, an agent is not responsible for the acts of another agent,  
21 nor is an agent responsible for the acts of the principal. To hold  
22 LandAmerica liable on this cause of action, Plaintiffs must clarify  
23 its role with respect to the facts alleged and the other  
24 Defendants. As it stands, the complaint fails to do this.

25           II. Third Cause of Action: Negligence

26           To be liable for negligence, the defendants must owe a duty  
27 of care to the person injured. Nymark v. Heart of Fed. Savings &  
28 Loan Assn., 231 Cal. App. 3d 1089, 1095 (1991). Defendants assert

1 that they do not owe Plaintiffs any duty of care.

2 A. Negligence Claim Against HFC and Equity One

3 "[A]s a general rule, a financial institution owes no duty of  
4 care to a borrower when the institution's involvement in the loan  
5 transaction does not exceed the scope of its conventional role as a  
6 mere lender of money." Id. at 1096; see also Kinner v. World  
7 Savings & Loan Assn., 57 Cal. App. 3d 724, 732 (1976) (holding no  
8 duty of care owed by lender to borrower to ensure adequacy of  
9 construction loan); Wagner v. Benson, 101 Cal. App. 3d 27, 35  
10 (1980) (finding no duty owed by lender to borrower where lender is  
11 not involved extensively in borrower's business). Plaintiffs have  
12 not plead that HFC's involvement in the loan transaction exceeds  
13 the scope of its conventional role as a mere money lender.  
14 However, Plaintiffs have adequately plead that, by encouraging  
15 Plaintiffs to falsify information on a financial worksheet, Equity  
16 One exceeded the scope of its conventional role as a money lender.  
17 Therefore, the Court will not dismiss the negligence cause of  
18 action against Equity One.

19 Plaintiffs also argue that HFC owes them a duty of care by  
20 asserting that HFC is a "broker" under California Business and  
21 Professions Code § 10131. This section defines a broker as a

22 person who, for a compensation or in expectation of a  
23 compensation, regardless of the form of payment, does or  
24 negotiates to do one or more of the following acts for  
25 another or others: . . . (d) Solicits borrowers or  
26 lenders for or negotiates or collects payments or  
performs services for borrowers or lenders or note  
owners in connection with loans secured directly or  
collaterally by liens on real property or on a business  
opportunity.

27 However, all of the alleged actions about which Plaintiffs complain  
28 were undertaken by employees of HFC itself. No one acted as a

1 broker.

2 Plaintiffs next argue that California Civil Code § 1701  
3 creates a duty of care. Section 1701 provides, "Every person is  
4 bound, without contract, to abstain from injuring the person or  
5 property of another, or infringing upon any of his or her rights."  
6 However, this section is a general statement of the law and does  
7 not create a duty where one does not otherwise exist. For these  
8 reasons, HFC does not owe Plaintiffs a duty of care.

9 B. Negligence Claim Against Litton and Popular

10 Litton relies entirely on HFC's arguments pertaining to the  
11 negligence cause of action and duty of care. Litton cannot adopt  
12 all of HFC's arguments because Litton is a loan servicing company,  
13 whereas HFC is a money lender.

14 To support Plaintiffs' negligence claim against Litton, they  
15 merely point to the existence of Exhibits N, O, P, R and S.<sup>3</sup>  
16 Standing alone, these documents do not establish a duty of care.  
17 Further, Plaintiffs have not alleged that Litton's or Popular's  
18 involvement in the loan transactions exceeded the scope of their  
19 conventional roles as mere loan servicing companies. See Nymark,  
20 231 Cal. App. 3d at 1096; Marks v. Ocwen Loan Servicing, 2008 U.S.  
21 Dist. LEXIS 12175 (N.D. Cal.).

22 C. Negligence Claim Against LandAmerica

23 A trustee in a nonjudicial foreclosure is "not a true trustee  
24 with fiduciary duties, but rather a common agent for the trustor  
25 and beneficiary." Pro Value Properties, Inc. v. Quality Loan

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27 <sup>3</sup>In many instances in their briefs, Plaintiffs responded to  
28 Defendants' motions by simply identifying exhibits to their  
complaint without any supplemental argument. This method of  
argumentation is unavailing and unhelpful to the Court.

1 Service Corp., 170 Cal. App. 4th 579, 583 (2009). As such, the  
2 scope and nature of the trustee's duties in a nonjudicial  
3 foreclosure "are exclusively defined by the deed of trust and the  
4 governing statutes. No other common law duties exist." Pro Value  
5 Properties, Inc. v. Quality Loan Service Corp., 170 Cal. App. 4th  
6 579, 583 (2009). Therefore, LandAmerica, as the foreclosure  
7 trustee, did not owe Plaintiffs a duty of care beyond that set  
8 forth in the governing statutes, California Civil Code § 2924 et  
9 seq.

10 III. Fourth Cause of Action: Breach of Fiduciary Duty

11 "A debt is not a trust and there is not a fiduciary relation  
12 between debtor and creditor as such. The same principle should  
13 apply with even greater clarity to the relationship between a bank  
14 and its loan customers." Price v. Wells Fargo Bank, 213 Cal. App.  
15 3d 465, 476 (1989) (internal quotations and citations omitted).  
16 Nothing in the complaint sufficiently describes the manner in which  
17 the loans granted to Plaintiffs by HFC and Equity One, or the  
18 servicing of those loans by Popular and Litton, create fiduciary  
19 relationships. Similarly, LandAmerica does not have a fiduciary  
20 duty to Plaintiffs because a trustee in a nonjudicial foreclosure  
21 is "not a true trustee with fiduciary duties, but rather a common  
22 agent for the trustor and beneficiary." Pro Value Properties, 170  
23 Cal. App. 4th at 583.

24 IV. Fifth Cause of Action: Constructive Fraud

25 "Constructive fraud is a unique species of fraud applicable  
26 only to a fiduciary or confidential relationship." Salahutdin v.  
27 Valley of California, Inc., 24 Cal. App. 4th 555, 562 (1994).  
28 Generally, the law states that "constructive fraud comprises any

1 act, omission or concealment involving a breach of legal or  
2 equitable duty, trust or confidence which results in damage to  
3 another even though the conduct is not otherwise fraudulent." Id.  
4 Because Plaintiffs have not properly asserted a confidential or  
5 fiduciary relationship with any Defendants, they cannot sustain a  
6 constructive fraud cause of action.

7 V. Sixth Cause of Action: Breach of Implied Covenant of Good  
8 Faith and Fair Dealing

9 At the hearing on this motion, Plaintiffs notified the Court  
10 that they will not pursue this cause of action. Therefore, the  
11 Court dismisses it with prejudice.

12 VI. Seventh Cause of Action: Unfair Debt Collection Practices

13 It is not clear from the complaint which Defendants violated  
14 which sections of the Rosenthal Fair Debt Collection Practices Act,  
15 California Civil Code § 1788 et seq., and the Federal Fair Debt  
16 Collection Practices Act, 15 U.S.C. § 1692 et seq. Therefore,  
17 Defendants are not on fair notice of these claims against them.

18 VII. Eighth Cause of Action: Real Estate Settlement Procedures Act  
(RESPA)

19 RESPA places a duty upon loan servicers to respond to  
20 "qualified written requests." A qualified written request is one  
21 that includes identifying information of the borrower and "a  
22 statement of the reasons for the belief of the borrower, to the  
23 extent applicable, that the account is in error or provides  
24 sufficient detail to the servicer regarding other information  
25 sought by the borrower." 12 U.S.C. § 2605(c)(1). Plaintiffs argue  
26 that exhibit M satisfies this requirement. Exhibit M is a letter  
27 from Plaintiffs to HFC that describes the alleged manner in which  
28 they were the victims of fraud. In bold capital letters at the top

1 of the letter, Plaintiffs wrote, "CALIFORNIA CIVIL CODE § 1782  
2 NOTICE OF DEMAND." This letter does not constitute a "qualified  
3 written request" because HFC is not a loan servicer and the letter  
4 does not mention RESPA or loan servicing.

5 VIII. Ninth Cause of Action: Predatory Lending Act

6 The Predatory Lending Act prohibits a lender from refinancing  
7 a loan if the refinancing "does not result in an identifiable  
8 benefit to the consumer, considering the consumer's stated purpose  
9 for seeking the loan, fees, interest rates, finance charges, and  
10 points." Cal. Fin. Code § 4973(j). Plaintiffs allege that they  
11 received no identifiable benefit when they obtained their second  
12 mortgage or when they refinanced that mortgage. Plaintiffs' stated  
13 goal for obtaining and refinancing that second mortgage was to keep  
14 their interest rates low. However, as a condition of obtaining and  
15 refinancing the mortgage, Plaintiffs were required to consolidate  
16 their other outstanding debt, which was at a low interest rate,  
17 into a higher rate. For instance, before obtaining their second  
18 mortgage, Plaintiffs' had a student loan of \$26,217, which was  
19 accumulating interest at a rate of only 2.25 percent. However,  
20 after consolidation, the student loan debt carried an interest rate  
21 of 13.95 percent, as did all of their other consolidated debt  
22 included in the second mortgage. Plaintiffs assert that  
23 consolidating their student loan debt only benefitted HFC, not  
24 Plaintiffs. HFC counters that, irrespective of the higher interest  
25 rate placed upon Plaintiffs' student loans after consolidation,  
26 Plaintiffs benefitted from the second mortgage and refinancing by  
27 receiving cash payments totaling over \$17,000. The Court concludes  
28 that, though the cash payment may have benefitted Plaintiffs, their

1 stated purpose for seeking a second mortgage and refinancing was to  
2 obtain a low interest rate. Overall, because of the consolidation  
3 requirement, Plaintiffs did not benefit from these transactions.  
4 Therefore, the Court denies HFC's motion to dismiss this cause of  
5 action.

6 IX. Tenth Cause of Action: California's Unfair Competition Law  
7 Claims

8 California's Unfair Competition Law (UCL) prohibits any  
9 "unlawful, unfair or fraudulent business act or practice." Cal.  
10 Bus. & Prof. Code § 17200. The UCL incorporates other laws and  
11 treats violations of those laws as unlawful business practices  
12 independently actionable under state law. Chabner v. United Omaha  
13 Life Ins. Co., 225 F.3d 1042, 1048 (9th Cir. 2000). Violation of  
14 almost any federal, state, or local law may serve as the basis for  
15 a UCL claim. Saunders v. Superior Ct., 27 Cal. App. 4th 832, 838-  
16 39 (1994). In addition, a business practice may be "unfair or  
17 fraudulent in violation of the UCL even if the practice does not  
18 violate any law." Olszewski v. Scripps Health, 30 Cal. 4th 798,  
19 827 (2003). Although the complaint is not without flaws, it  
20 adequately describes how HFC and Equity One allegedly committed  
21 unfair business practices. However, Plaintiffs have not  
22 sufficiently plead that the actions of Litton, Popular and  
23 LandAmerica constituted unfair business practices. As alleged,  
24 nothing about how these companies conducted their daily operations  
25 leads to a reasonable inference that they acted unlawfully.

26 X. Eleventh Cause of Action: Declaratory Relief

27 The Declaratory Judgment Act permits a federal court to  
28 "declare the rights and other legal relations" of parties to "a

1 case of actual controversy." 28 U.S.C. § 2201; see Wickland Oil  
2 Terminals v. Asarco, Inc., 792 F.2d 887, 893 (9th Cir. 1986). The  
3 "actual controversy" requirement of the Declaratory Judgment Act is  
4 the same as the "case or controversy" requirement of Article III of  
5 the United States Constitution. American States Ins. Co. v.  
6 Kearns, 15 F.3d 142, 143 (9th Cir. 1993). Defendants assert that  
7 an action for declaratory relief cannot lie because there is not an  
8 "actual controversy" between themselves and Plaintiffs. Although,  
9 in this order, the Court dismisses many causes of action plead  
10 against Defendants, claims survive so as to warrant the use of  
11 declaratory judgment.

12 XI. Twelfth Cause of Action: Injunctive Relief

13 Injunctive relief is a remedy, not a cause of action.  
14 Therefore, the Court dismisses this claim against all Defendants.  
15 Plaintiffs may seek injunctive relief on other causes of action as  
16 appropriate.

17 CONCLUSION

18 For the foregoing reasons, the Court grants in part  
19 Defendants' motions to dismiss and denies them in part. The Court  
20 grants Plaintiffs leave to amend their complaint. In addition to  
21 addressing the deficiencies outlined in this Order, Plaintiffs  
22 should amend their complaint to describe which of Defendants' acts  
23 pertain to each cause of action.

24 Plaintiffs may file and serve an amended complaint within  
25 twenty (20) days of this order. Defendants shall respond with an  
26 answer or a motion to dismiss twenty (20) days thereafter. If  
27 Defendants respond by filing a motion to dismiss, they are strongly  
28 encouraged to join in a single brief. A further case management

1 conference will be held on the same date as the hearing on the  
2 motion. If no motion to dismiss is filed, a further case  
3 management conference will be held on August 4th, 2009 at 2:00 p.m.

4 IT IS SO ORDERED.

5  
6 Dated: 5/21/09



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CLAUDIA WILKEN  
United States District Judge

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