

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

ARMIE CUA CRUZ; and FLORO LORENZO
CRUZ, JR.,

Plaintiffs,

v.

JP MORGAN CHASE BANK, NATIONAL
ASSOCIATION, as successor in
interest to WASHINGTON MUTUAL
BANK F.A.; QUALITY LOAN SERVICE
CORPORATION; CALIFORNIA
RECONVEYANCE COMPANY; and DOES
1-100,

Defendants.

No. C 12-3219 CW

ORDER GRANTING IN
PART AND DENYING
IN PART
DEFENDANTS' MOTION
TO DISMISS (Docket
No. 34) AND
SETTING A CASE
MANAGEMENT
CONFERENCE

United States District Court
For the Northern District of California

Defendants JPMorgan Chase Bank, N.A. (Chase) and California
Conveyance Company (CRC) move to dismiss the first amended
complaint (1AC) of Plaintiffs Armie Cua Cruz and Floro Lorenzo
Cruz, Jr.¹ Plaintiffs oppose the motion. The Court took the
motion under submission on the papers. Having considered the
papers submitted by the parties, the Court GRANTS Defendants'
motion in part and DENIES it in part.

BACKGROUND

The following allegations are taken from Plaintiffs' 1AC and
documents of which Defendants ask the Court to take judicial
notice, which Plaintiffs do not oppose.

¹ In their original complaint, Plaintiffs named Chase, CRC
and Quality Loan Service Corporations as Defendants. In their
1AC, they renamed only Chase. Accordingly, Plaintiffs have
voluntarily dismissed their claims against the other two
Defendants.

1 On or about October 29, 2005, Plaintiffs entered into a loan
2 agreement with Washington Mutual Bank, N.A. in connection with the
3 refinancing of their home, located at 23 Pinnacle Street in South
4 San Francisco, California. RJN, Ex. A; 1AC ¶ 10. Chase
5 subsequently acquired Washington Mutual's interest in the loan.

6 In February 2009, Mr. Cruz was hospitalized for blood clots
7 in his brain and, as a result of his health condition, was forced
8 to stop working. 1AC ¶ 11. In March 2009, Plaintiffs began to
9 feel the pressure of living on one income. Id. at ¶ 12. After
10 making their March 2009 payment, Plaintiffs contacted Chase to
11 inquire about a potential loan modification or other alternative
12 to foreclosure. Id. Chase told Plaintiffs that there were no
13 alternatives available and refused to consider them for a loan
14 modification or any other foreclosure alternatives. Id. at ¶¶ 13-
15 14. Plaintiffs were heartbroken at Chase's refusal. Id. at ¶ 13.

16 Due to their medical emergencies, Plaintiffs missed a few of
17 their \$4,500 monthly mortgage payments. Id. at ¶ 14.

18 On July 2, 2009, Plaintiffs received a Notice of Default
19 stating that their account was in arrears for \$22,870.71. Id. at
20 ¶ 15. Despite the fact that Plaintiffs made their last payment in
21 March 2009, the Notice of Default stated that "payment has not
22 been made of," among other things, "the 01/01/2009 installment of
23 principal and interest and all subsequent monthly installments of
24 principal and interest." RJN, Ex. C; 1AC ¶ 22. Defendants
25 recorded the Notice of Default on July 3, 2008. RJN, Ex. C.

26 Plaintiffs were shocked at the overestimation of the amount
27 that Chase claimed they were in arrears. 1AC ¶ 16. However, they
28

1 began to pool money in order to reinstate their loan prior to any
2 trustee's sale. 1AC ¶ 17.

3 On October 7, 2009, Defendants recorded a Notice of Trustee's
4 Sale of Plaintiffs' home. RJN, EX. D. Defendants did not post
5 the notice on Plaintiffs' door or anywhere on the property. 1AC
6 ¶ 17. Plaintiffs "only received the notice in the mail sometime
7 later." Id.

8 On October 26, 2009, the property was sold in a Trustee's
9 Sale to Chase. RJN, Ex. E. Plaintiffs "were ready, willing, and
10 able to tender payment to reinstate the loan prior to the
11 Trustee's Sale." 1AC ¶ 1.

12 Plaintiffs initiated the instant lawsuit on June 20, 2012,
13 asserting eleven claims against Defendants. Docket No. 1.
14 Plaintiffs also requested a temporary restraining order on June
15 20, 2012, seeking to prevent Chase from enforcing a writ of
16 possession the following day. Docket No. 3.

17 On June 21, 2012, the Court found that Plaintiffs had not
18 made a sufficient showing to obtain an ex parte temporary
19 restraining order because, among other reasons, Plaintiffs had not
20 submitted evidence that such a writ existed or that Chase intended
21 to enforce it on that date. Docket No. 7. The Court set a
22 briefing schedule for the motion, requiring Chase to file a
23 response to Plaintiffs' motion for a temporary restraining order
24 by 12:00 p.m. three court days after it has been served with
25 certain documents and permitting Plaintiffs to file a reply by
26 12:00 p.m. the following court day.

27 On June 29, 2012, Chase and CRC filed an opposition to
28 Plaintiffs' motion for a temporary restraining order. Docket No.

1 13. They argued, among other things, that Plaintiffs' motion was
2 moot because Chase had obtained possession of the property.

3 Plaintiffs did not file a reply in further support of their
4 application for a temporary restraining order or otherwise
5 challenge the argument that their motion was moot. On July 5,
6 2012, the Court denied as moot Plaintiffs' application for a
7 temporary restraining order. Docket No. 17.

8 On July 16, 2012, Defendants moved to dismiss Plaintiffs'
9 original complaint. Docket No. 18.

10 On August 1, 2012, Plaintiffs filed their 1AC. Docket No.
11 25. In their 1AC, Plaintiffs bring four claims against Chase:
12 (1) wrongful foreclosure based on the inaccuracy in the Notice of
13 Default and the failure to post the Notice of Trustee's Sale on
14 Plaintiffs' door; (2) breach of contract for taking away
15 Plaintiffs' right to reinstate the loan up until five days before
16 the Trustee's sale by not apprising them of the date of the sale;
17 (3) invasion of privacy by placing Plaintiffs in a false light
18 based on Chase's representation to the credit bureaus that
19 Plaintiffs were behind on their mortgage in January 2009 and
20 thereafter; and (4) violation of California's Unfair Competition
21 Law (UCL), California Business and Professions Code §§ 17200, et
22 seq.

23 On August 6, 2012, the Court found Defendants' first motion
24 to dismiss to be moot. Docket No. 26. Thereafter, Defendants
25 filed the instant motion to dismiss the 1AC. Docket No. 34.

26 LEGAL STANDARD

27 A complaint must contain a "short and plain statement of the
28 claim showing that the pleader is entitled to relief." Fed. R.

1 Civ. P. 8(a). On a motion under Rule 12(b)(6) for failure to
2 state a claim, dismissal is appropriate only when the complaint
3 does not give the defendant fair notice of a legally cognizable
4 claim and the grounds on which it rests. Bell Atl. Corp. v.
5 Twombly, 550 U.S. 544, 555 (2007). In considering whether the
6 complaint is sufficient to state a claim, the court will take all
7 material allegations as true and construe them in the light most
8 favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d
9 896, 898 (9th Cir. 1986). However, this principle is inapplicable
10 to legal conclusions; "threadbare recitals of the elements of a
11 cause of action, supported by mere conclusory statements," are not
12 taken as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
13 (citing Twombly, 550 U.S. at 555).

14 When granting a motion to dismiss, the court is generally
15 required to give the plaintiff leave to amend, even if no request
16 to amend the pleading was made, unless amendment would be futile.
17 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911
18 F.2d 242, 246-47 (9th Cir. 1990). In determining whether
19 amendment would be futile, the court examines whether the
20 complaint could be amended to cure the defect requiring dismissal
21 "without contradicting any of the allegations of [the] original
22 complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th
23 Cir. 1990).

24 DISCUSSION

25 I. Wrongful foreclosure

26 Defendants argue that Plaintiffs' claim for wrongful
27 foreclosure in violation of California Civil Code section 2924, et
28 seq., fails because Plaintiffs have not alleged sufficiently that

1 they were prejudiced by any such violation. Defendants also
2 contend that Plaintiffs have not sufficiently alleged tender.

3 In response, Plaintiffs argue that they have sufficiently
4 plead that Chase violated the statutory procedures for nonjudicial
5 foreclosures and that they were harmed, because they were ready,
6 willing and able to reinstate their loan had they been provided
7 sufficient notice. Plaintiffs also argue that they have alleged
8 tender properly.

9 "A nonjudicial foreclosure sale is presumed to have been
10 conducted regularly and fairly, and a wrongful foreclosure claim
11 must allege with sufficient facts that (1) proper procedure under
12 §§ 2924 to 2924k was not followed; and (2) the plaintiff was
13 prejudiced as a result." Garcia v. Fed. Home Loan Mortg. Corp.,
14 2012 U.S. Dist. LEXIS 122436, at *10 (E.D. Cal.) (citing Knapp v.
15 Doherty, 123 Cal. App. 4th 76 (2004)); see also Lona v. Citibank,
16 N.A., 202 Cal. App. 4th 89, 104 (2011).

17 A. Prejudice

18 In the 1AC, Plaintiffs allege that Chase did not follow the
19 proper statutory procedures for nonjudicial foreclosures because
20 of inaccuracies in the Notice of Default and a failure to post the
21 Notice of Default on the property. 1AC ¶¶ 22-23. In their
22 opposition, Plaintiffs also state that Chase violated the
23 statutory procedures by proceeding with a Trustee's sale less than
24 twenty days after the Notice of Trustee's Sale was recorded, in
25 violation of California Civil Code sections 2924b and 2924f;
26 Plaintiffs request leave to amend to add this allegation. Opp. at
27 1. Defendants do not contest that Plaintiffs have sufficiently
28 alleged that the nonjudicial foreclosure procedures were violated.

1 Instead, Defendants argue that Plaintiffs have not
2 sufficiently alleged that they were prejudiced as a result of
3 these procedural irregularities. In a wrongful foreclosure case,
4 "prejudice or harm is not established unless Plaintiffs
5 demonstrate that the foreclosure would have been averted but for
6 the alleged deficiencies." Christiansen v. Wells Fargo Bank, 2012
7 U.S. Dist. LEXIS 142070, at *22 (N.D. Cal.) (internal quotation
8 marks, citations and formatting omitted).

9 Because Plaintiffs alleged that they were able and willing to
10 reinstate prior to the Trustee's sale but were denied the
11 opportunity to do so by Chase's alleged failure to post the notice
12 as required by law, they have sufficiently alleged prejudice.
13 Under state law, defaulted borrowers have a right to reinstate
14 their obligation "at any time within the period commencing with
15 the date of recordation of the notice of default until five
16 business days prior to the date of sale set forth in the initial
17 recorded notice of sale." Cal. Civ. Code § 2924c(e). Defendants
18 argue that Plaintiffs "merely claim that they were attempting to
19 gather the money to reinstate, but have not conclusively alleged
20 that even if they had notice, they would have been able to
21 reinstate." Reply at 2. However, Plaintiffs in fact alleged that
22 they "were ready, willing and able to tender payment to reinstate
23 the loan prior to the Trustee's Sale," 1AC ¶ 1, and that, because
24 Chase failed to post the Notice of Trustee's Sale on their
25 property, they were not told when the Trustee's sale would
26 actually take place and thus when the time period for their right
27 to reinstate would expire, id. at ¶ 17. Defendants further argue
28 that Plaintiffs have not plead prejudice because they admit that

1 they had actual notice of the Notice of Trustee's Sale, having
2 received it in the mail, and thus could have reinstated prior to
3 the sale. Mot. at 5. In fact, Plaintiffs alleged that they
4 received the notice "in the mail sometime later." 1AC ¶ 17. They
5 have not admitted that they received this notice prior to the
6 Trustee's sale.

7 Finally, Defendants contend that Plaintiffs had notice that
8 nonjudicial foreclosure proceedings were underway because they
9 received the Notice of Default in July 2009 and that Plaintiffs
10 had never tried to reinstate during the time period after they
11 received that notice and the foreclosure sale. Mot. at 5. The
12 Notice of Default, however, did not tell Plaintiffs when their
13 right to reinstate expired. Without being served the Notice of
14 Trustee's Sale, Plaintiffs were not aware that they had to
15 exercise this right by a particular date or lose the opportunity
16 to do so. They had a statutory right to reinstate until five days
17 before the Trustee's sale. That Plaintiffs did not attempt to
18 reinstate prior to this time does not mean that they would not
19 have exercised this right by the expiration date had they been
20 told of it, and they have alleged that they were willing and able
21 to do so.

22 However, Plaintiffs have not alleged sufficiently any
23 prejudice that they suffered from the claimed inaccuracies on the
24 Notice of Default. The Notice of Default was issued on July 2,
25 2009 and Plaintiffs admit that they made their last \$4,500 monthly
26 payment in March 2009; thus, when the Notice was sent, Plaintiffs
27 had missed a minimum of three payments, for April, May and June
28 2009, totaling at least \$13,500. As a result, the errors alleged

1 in the Notice of Default consist of an incorrect amount of
2 arrearages and an incorrect date of their first missed
3 installment, and do not include the fact that they were in
4 default. If Plaintiffs had been given proper notice of the
5 deadline for reinstatement, they could have reinstated by
6 proffering the amount that they believed was correct. See 4
7 Miller & Starr, Cal. Real Est. § 10:188 (3d ed.) ("When the
8 beneficiary fails or refuses to inform the trustor or other person
9 seeking reinstatement of the amount necessary to cure the default,
10 or the person seeking reinstatement believes that the
11 beneficiary's demand is excessive, reinstatement can be made by a
12 tender of the amount which the person reinstating believes to be
13 the proper amount."). Thus, absent additional allegations,
14 Plaintiffs have not plead sufficiently how the foreclosure would
15 have been averted but for the deficiencies in the Notice of
16 Default.

17 B. Tender

18 "Under California law, in an action to set aside a trustee's
19 sale, a plaintiff must demonstrate that he has made a 'valid and
20 viable tender [offer] of payment of the indebtedness.'" Pantoja
21 v. Countrywide Home Loans, Inc., 640 F. Supp. 2d 1177, 1183-1184
22 (N.D. Cal. 2009) (quoting Karlsen v. American Sav. & Loan Assn, 15
23 Cal. App. 3d 112, 117 (1971), and Arnolds Mgmt. Corp. v. Eischen,
24 158 Cal. App. 3d 575, 578 (1984) ("[A]n action to set aside a
25 trustee's sale for irregularities in sale notice or procedure
26 should be accompanied by an offer to pay the full amount of the
27 debt for which the property was security.")). "California
28 district courts apply the tender rule in examining wrongful

1 foreclosure claims." Dubin v. BAC Home Loans Servicing, 2011 U.S.
2 Dist. LEXIS 19921, at *6 (N.D. Cal.) (citations omitted). The
3 tender rule "is premised upon the equitable maxim that a court of
4 equity will not order that a useless act be performed." Arnolds
5 Management Corp. v. Eischen, 158 Cal. App. 3d 575, 579 (1984).
6 The rationale is that, "without tender, a plaintiff cannot redeem
7 the property and so unwinding a completed foreclosure sale would
8 be 'useless.'" Tang v. Bank of Am., N.A., 2012 U.S. Dist. LEXIS
9 38642, at *16 (C.D. Cal.). "A plaintiff must (1) demonstrate a
10 willingness to pay and (2) show the ability to pay." Pantoja, 640
11 F. Supp. 2d at 1184 (citing In re Worcester, 811 F.2d 1224, 1231
12 (9th Cir. 1987)). "A valid and viable tender offer is the
13 plaintiff's ability to pay back what the plaintiff has received
14 less interest and finance charges." Id. (citation omitted).
15 "However, an offer to pay debt may not be required where it is
16 inequitable." Id.

17 Plaintiffs do not dispute that tender is required. Instead,
18 they argue that they sufficiently alleged tender. In the 1AC,
19 Plaintiffs alleged that they were ready, willing and able to
20 tender the amount required to reinstate the loan, not the full
21 amount of the indebtedness. See 1AC ¶¶ 1, 17.

22 In Solomon v. Aurora Loan Servs. LLC, 2012 U.S. Dist. LEXIS
23 92368 (E.D. Cal.), the plaintiff alleged that "she had sufficient
24 funds to pay all of her arrearage at the time that the foreclosure
25 sale occurred" and that she "offers to pay all amounts due and
26 owing so that the claimed default may be cured and Plaintiff may
27 be reinstated to all former rights and privileges under the
28 subject deed of trust." Id. at *26. The court found that, in

1 light of these allegations and those that her default was due to
2 the defendant's misrepresentations, it did "not appear that it
3 would be useless to set aside the foreclosure sale and reinstate
4 plaintiff's loan." Id.

5 Similarly, here, Plaintiffs have alleged that they were ready
6 and willing to tender the payment required to reinstate the loan
7 prior to the Trustee's sale but that they were unable to do so
8 because of Chase's failure to tell them the date of the sale.
9 Under these circumstances, it appears at this stage of the
10 litigation that it would not be useless to set aside the
11 foreclosure sale and reinstate Plaintiffs' loan. Thus, an
12 allegation of full tender is not required.

13 C. Summary

14 For the reasons set forth above, the Court GRANTS in part
15 Defendants' motion to dismiss this claim and dismisses this claim
16 to the extent it is premised on claimed inaccuracies on the Notice
17 of Default. The Court DENIES the motion to dismiss the claim to
18 the extent it is premised on Chase's alleged failure to post the
19 notice as required by law.

20 Plaintiffs are granted leave to amend to plead prejudice from
21 the incorrect Notice of Default. Plaintiffs are also granted
22 leave to plead that the Trustee's sale improperly took place less
23 than twenty days after the recording of the Notice of Trustee's
24 Sale if they can truthfully plead that they were prejudiced by
25 this deficiency.

26 II. Breach of Contract

27 Section 19 of the Deed of Trust provides that the borrower
28 has the right to reinstate the loan after acceleration until five

1 days before the sale of the property pursuant to the power of sale
2 in the deed. RJN, Ex. A ¶ 19. Plaintiffs allege that Chase
3 breached this section by not apprising them of the date of
4 Trustee's sale. 1AC ¶ 28.

5 To assert a cause of action for breach of contract, a
6 plaintiff must plead: (1) the existence of a contract; (2) the
7 plaintiff's performance or excuse for non-performance; (3) the
8 defendant's breach; and (4) damages to the plaintiff as a result
9 of the breach. Armstrong Petrol. Corp. v. Tri-Valley Oil & Gas
10 Co., 116 Cal. App. 4th 1375, 1391 n.6 (2004).

11 Defendants argue that this claim is deficient for several
12 reasons. First, they contend that Plaintiffs cannot assert a
13 breach of contract claim because they failed to perform their
14 obligations under the contract when they defaulted on the loan.
15 Mot. at 7. However, this section of the deed presumes that
16 Plaintiffs have defaulted on their payments and sets forth
17 bargained-for provisions governing the parties' conduct in the
18 event of such a breach. Because this section cannot be invoked
19 unless Plaintiffs were in default, Defendants cannot rely on
20 Plaintiffs' default to escape their obligations under this section
21 regarding their conduct in the event of default.

22 Second, Defendants argue that Plaintiffs have not alleged
23 sufficiently that there was a breach because Plaintiffs were not
24 precluded from exercising their rights under this section simply
25 because Chase did not post the Notice of Default on their
26 property. Again, Plaintiffs respond that Chase's failure to give
27 them notice of the date of the sale deprived them of their right
28 to reinstate within five days before that date.

1 Although Chase may not have explicitly denied Plaintiffs
2 their right to reinstate, Plaintiffs have sufficiently alleged
3 that Chase interfered with their exercise of this right and failed
4 to provide the notice that they needed to enable them to do so.
5 "There is implied in every contract a covenant by each party not
6 to do anything which will deprive the other parties thereto of the
7 benefits of the contract." Harm v. Frasher, 181 Cal. App. 2d 405,
8 417 (1960). "A breach of contract may be established on the basis
9 of either an express provision of the contract or on the implied
10 covenant of good faith and fair dealing." McNeary-Calloway v. JP
11 Morgan Chase Bank, N.A., 2012 U.S. Dist. LEXIS 40989, at *63 (N.D.
12 Cal.) (citing Storek & Storek, Inc. v. Citicorp Real Estate, Inc.,
13 100 Cal. App. 4th 44, 55 (2002)). "This covenant not only imposes
14 upon each contracting party the duty to refrain from doing
15 anything which would render performance of the contract impossible
16 by any act of his own, but also the duty to do everything that the
17 contract presupposes that he will do to accomplish its purpose."
18 Harm, 181 Cal. App. 2d at 417. However, it "cannot contradict the
19 express terms of a contract" and "cannot impose substantive duties
20 or limits on the contracting parties beyond those incorporated in
21 the specific terms of the parties' agreement." McNeary-Calloway,
22 2012 U.S. Dist. LEXIS 40989, at *64 (internal quotation marks,
23 citations and formatting omitted).

24 As explained above, Plaintiffs have alleged sufficiently that
25 Chase interfered with their ability to obtain the benefits of
26 section 19 of the Deed of Trust by failing to tell them of the
27 date of the Trustee's sale. Accordingly, the Court denies
28 Defendants' motion to dismiss this claim.

1 III. False Light Invasion of Privacy

2 Plaintiffs allege that Chase invaded their privacy by placing
3 them in a false light when it reported to the credit bureaus that
4 they were behind on their mortgage in January 2009, although they
5 made their last payment two months later in March 2009.

6 Defendants move to dismiss this claim on the basis that,
7 because the claim arose in 2009 and the statute of limitations for
8 the claim is two years, Plaintiffs were required to file suit by
9 2011 and their claim is now barred. Defendants also argue that
10 Plaintiffs cannot rely on the delayed discovery rule to extend the
11 statute of limitations because they could have easily discovered
12 the credit reports earlier with reasonable diligence and should
13 have known that there would have been an adverse entry as of at
14 least April 2009 when they admittedly stopped making their
15 mortgage payments.

16 Plaintiffs do not deny that the statute of limitations has
17 run on this claim based on the face of the 1AC, but request leave
18 to amend to plead that they only learned of the wrongdoing
19 "sometime after" it occurred.

20 "Under the discovery rule, the statute of limitations begins
21 to run when the plaintiff suspects or should suspect that her
22 injury was caused by wrongdoing, that someone has done something
23 wrong to her." Jolly v. Eli Lilly & Co., 44 Cal. 3d 1103, 1110
24 (1988); see also Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th
25 797, 807 (2005) ("An important exception to the general rule of
26 accrual is the 'discovery rule,' which postpones accrual of a
27 cause of action until the plaintiff discovers, or has reason to
28 discover, the cause of action."). "In order to rely on the

1 discovery rule for delayed accrual of a cause of action, '[a]
2 plaintiff whose complaint shows on its face that his claim would
3 be barred without the benefit of the discovery rule must
4 specifically plead facts to show (1) the time and manner of
5 discovery and (2) the inability to have made earlier discovery
6 despite reasonable diligence.'" Id. at 808 (citation omitted).

7 This case was filed on June 20, 2012. Thus, for the
8 discovery rule to help Plaintiffs, they would need to show that
9 they did not discover or have reason to discover the erroneous
10 entry on their credit reports until at least June 20, 2010.
11 Plaintiffs need not make this showing through the date of filing
12 of this action, as Defendants suggest. See Reply at 5 ("the
13 credit reports would have been made by 2009 and this case was not
14 filed until June 2012. There is no conceivable set of
15 circumstances under which it would be reasonable for someone not
16 to check their credit for three and a half years."). Further, the
17 Court declines to find that, as a matter of law, the failure to
18 check one's credit report for approximately a year and a half is
19 per se unreasonable.²

20 Accordingly, the Court GRANTS Defendants' motion to dismiss
21 this claim and grants Plaintiffs leave to amend to show the time
22

23 _____
24 ² For example, the Fair Credit Reporting Act (FCRA) statute
25 of limitations provides that claims under that statute must be
26 brought "not later than the earlier of--(1) 2 years after the date
27 of discovery by the plaintiff of the violation that is the basis
28 for such liability; or (2) 5 years after the date on which the
violation that is the basis for such liability occurs." 15 U.S.C.
§ 1681p. Thus, the FCRA appears to contemplate as reasonable that
individuals may not check their credit reports for up to three
years.

1 and manner of their discovery of this violation and that such a
2 delay was reasonable.

3 IV. Violation of the UCL

4 California's UCL prohibits any "unlawful, unfair or
5 fraudulent business act or practice." Cal. Bus. & Prof. Code
6 § 17200. The UCL incorporates other laws and treats violations of
7 those laws as unlawful business practices independently actionable
8 under state law. Chabner v. United of Omaha Life Ins. Co., 225
9 F.3d 1042, 1048 (9th Cir. 2000). Violation of almost any federal,
10 state or local law may serve as the basis for a UCL claim premised
11 on unlawful business acts or practices. Saunders v. Superior
12 Court, 27 Cal. App. 4th 832, 838-39 (1994). In addition, a
13 business practice may be "unfair or fraudulent in violation of the
14 UCL even if the practice does not violate any law." Olszewski v.
15 Scripps Health, 30 Cal. 4th 798, 827 (2003).

16 Defendants move to dismiss Plaintiffs' UCL claim under the
17 unlawful, unfair and fraudulent prongs. Plaintiffs defend only
18 the sufficiency of their allegations under the unlawful prong.

19 Because Plaintiffs have alleged sufficiently claims for
20 wrongful foreclosure and breach of contract as discussed above,
21 they have also alleged sufficiently a claim for violation of the
22 UCL based on unlawful business acts or practices. Thus, the Court
23 DENIES Defendants' motion to dismiss the UCL claim under the
24 unlawful prong. However, the Court GRANTS as unopposed
25 Defendants' motion to dismiss the UCL claim to the extent it
26 arises under the unfair or fraudulent prong.

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CONCLUSION

For the reasons set forth above, the Court GRANTS in part Defendants' motion to dismiss and DENIES it in part (Docket No. 34). The Court DENIES Defendants' motion to dismiss the claims for wrongful foreclosure based on the alleged failure to post the notice, breach of contract and violation of the UCL under the unlawful prong. The Court GRANTS Defendants' motion to dismiss the claims for wrongful foreclosure based on the alleged deficiencies in the Notice of Default, false light invasion of privacy and violation of the UCL under the unfair and fraudulent prongs.

Within fourteen days of the date of this Order, Plaintiffs may file a second amended complaint to remedy the deficiencies identified above in their claims for wrongful foreclosure and false light invasion of privacy. Plaintiffs also may add allegations that the Trustee's sale improperly took place less than twenty days after the recording of the Notice of Trustee's Sale and how they were harmed by this deficiency. Plaintiffs may not add further claims or allegations not authorized by this Order.


If Plaintiffs file a second amended complaint, Chase shall respond to it within fourteen days after it is filed. If Chase moves to dismiss the second amended complaint, Plaintiffs shall respond to the motion within fourteen days after it is filed. Chase's reply, if necessary, shall be due seven days thereafter. Any motion to dismiss will be decided on the papers.

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The Court SETS a case management conference for Thursday,
January 10, 2013 at 2:00 p.m.

IT IS SO ORDERED.

Dated: 10/17/2012



CLAUDIA WILKEN
United States District Judge