



1 Prior to entering into the underlying mortgage transaction, Plaintiffs' home was subject to a  
2 mortgage with an unpaid balance of \$269,012.40, an interest rate of 5.99%, and monthly payments  
3 of \$1,292. (Compl. ¶13). In June 2006 a broker from ACFS contacted Plaintiff Santana with an offer  
4 to refinance her home. Even though Plaintiff Moreno did not live at the home and informed ACFS  
5 that he would not occupy nor make any loan payments, (Compl. ¶16), ACFS requested that he co-sign  
6 for the loan, which he did. On September 29, 2006, Plaintiffs borrowed an additional \$20,704 and,  
7 after points, fees and property taxes, had a new loan in the principal amount of \$306,000, a disclosed  
8 interest rate of 12.99%, and payments of \$2,360.37 per month for 24 months, \$3,075.80 for six  
9 months, \$3,443.38 for six months, \$3,472.94 for 323 months and a balloon payment of \$230,493.45  
10 on November 1, 2036. (Compl. ¶¶20, 21). Plaintiffs allege that they provided NLC with notice of  
11 rescission on July 10, 2008 and that NLC has not responded to its notice of rescission. (Compl. ¶¶36,  
12 37).

13 Based upon the above generally described conduct, Plaintiffs seek to rescind the contract and  
14 prosecute their claims for damages under TILA, HOEPA, and Cal.Bus. and Prof. Code §17200, et seq.  
15 Saxon now moves for judgment on the pleadings on each claim. Plaintiffs oppose the motion.

## 16 DISCUSSION

### 17 Legal Standards

18 A Rule 12(c) motion challenges the legal sufficiency of an opposing party's pleadings.  
19 Fed.R.Civ.P. 12(c). Like a Rule 12(b)(6) motion, the court must assume the truthfulness of the  
20 material facts alleged in the complaint and all inferences reasonably drawn from the allegations must  
21 be construed in favor of the responding party. See General Conference Corp. of Seventh-Day  
22 Adventists v. Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th Cir. 1989); Hal  
23 Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9<sup>th</sup> Cir. 1990). Defendants are  
24 not entitled to judgment on the pleadings if the complaint raises issues of fact, which, if proved would  
25 support the Plaintiffs' legal theories. See id.

26 For purposes of this motion, courts should grant 12(b)(6) relief only where a plaintiff's  
27 complaint lacks a "cognizable legal theory" or sufficient facts to support a cognizable legal theory.  
28 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). Courts should dismiss a

1 complaint for failure to state a claim when the factual allegations are insufficient “to raise a right to  
2 relief above the speculative level.” Bell Atlantic Corp v. Twombly, \_\_550 U.S. \_\_, 127 S.Ct. 1955  
3 (2007) (the complaint’s allegations must “plausibly suggest[.]” that the pleader is entitled to relief);  
4 Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009) (under Rule 8(a), well-pleaded facts must do more than  
5 permit the court to infer the mere possibility of misconduct). The defect must appear on the face of  
6 the complaint itself. Thus, courts may not consider extraneous material in testing its legal adequacy.  
7 Levine v. Diamantheset, Inc., 950 F.2d 1478, 1482 (9th Cir. 1991). The courts may, however,  
8 consider material properly submitted as part of the complaint. Hal Roach Studios, Inc. v. Richard  
9 Feiner and Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1989).

10 Finally, courts must construe the complaint in the light most favorable to the plaintiff. Concha  
11 v. London, 62 F.3d 1493, 1500 (9th Cir. 1995), cert. dismissed, 517 U.S. 1183 (1996). Accordingly,  
12 courts must accept as true all material allegations in the complaint, as well as reasonable inferences  
13 to be drawn from them. Holden v. Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992). However,  
14 conclusory allegations of law and unwarranted inferences are insufficient to defeat a Rule 12(b)(6)  
15 motion. In Re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

## 16 **The Motion**

### 17 **The HOEPA and TILA Claims**

18 Saxon argues that Plaintiffs fail to state a claim under either HOEPA or TILA for failure to  
19 adequately disclose the Annual Percentage Rate (“APR”) because the disclosed interest rate is less  
20 than the triggering amount required for application of these statutes. The APR trigger for purposes  
21 of HOEPA is set forth in 15 U.S.C. § 1602(aa)(1)(B). That section provides:

22 A mortgage referred to in this subsection means a consumer credit transaction that is  
23 secured by the consumer’s principal dwelling, . . . if

24 (A) the annual percentage rate at consummation of the transaction will exceed by more  
25 than 10 percentage points the yield on Treasury securities having comparable periods  
of maturity on the fifteenth day of the month immediately preceding the month in  
which the application for extension of credit is received by the creditor;

26 The TILA implementation regulation, known as Regulation Z, 12 C.F.R. §226.32, modifies HOEPA  
27 coverage to when:

28 The annual percentage rate at consummation will exceed by more than 8 percentage  
point for first-lien loans, or by more than 10 percentage points for subordinate-lien

1 loans, the yield on Treasury securities having comparable periods of maturity to the  
2 loan maturity as of the fifteenth day of the month immediately preceding the month in  
which the application for extension of credit is received by the creditor.

3 Plaintiff alleges that the disclosed APR of 12.9972% is subject to HOEPA and TILA because  
4 the “yield on the Treasury securities having comparable periods of maturity (i.e. 30 years) on the 15<sup>th</sup>  
5 day of the month immediately preceding October 2006 (i.e. September 2006) was 4.92%. Thus, the  
6 APR trigger for purposes of HOEPA is 12.9200% (i.e. 4.92% + 8%),” (Compl. ¶26). Plaintiffs then  
7 conclude that the disclosed rate exceeds the triggering amount by .0772% and is therefore actionable.

8 The difficulty with Plaintiffs’ argument is that the base line Treasury APR is statutorily  
9 calculated by looking to the rate “as of the fifteenth day of the month immediately preceding the  
10 month in which the application for extension of credit is received by the creditor.” 12 C.F.R. §226.32.  
11 As the complaint alleges that “Plaintiffs submitted their credit application in September 2006,”  
12 (Comp. ¶26), the applicable rate corresponds to the APR rate as of the preceding month, August 2006.  
13 As the Treasury rate on August 14, 2006 was 5.05%, (RJN, Exh. A), the triggering amount was  
14 13.05%, an amount in excess of the disclosed APR of 12.9972%. Accordingly, HOEPA and TILA  
15 do not apply to the disclosed APR.

16 Plaintiffs argue that the loan closed on October 2, 2006 and therefore the court should apply  
17 the September 2006 Treasury rate. This argument is not supported by the statutory scheme which  
18 provides that the applicable period is the “month immediately preceding the month in which the  
19 application for extension of credit is received by the creditor.” 12 C.F.R. §226.32. Moreover,  
20 Plaintiffs specifically allege that they “submitted their credit application in September 2006.” (Compl.  
21 ¶26). In light of this admission, the court grants the motion for judgment on the pleadings.

22 The §17200, et seq. Claims

23 Saxon moves to dismiss the §17200 claim on the ground that the alleged wrongful conduct is  
24 not actionable in the case of the TILA or HOEPA related allegations, and that the generic allegations -  
25 - “entering into loans with consumers in which they have charged interest rates above those allowable  
26 by law” and “self-dealing at the expense of borrowers” (Compl. ¶46(a) and (b)) - - fail to state a claim  
27 for relief. Section 17200 makes unlawful “three varieties of unfair competition – acts or practices  
28 which are unlawful, or unfair, or fraudulent.” Cel-Tech Communications, Inc. v. Los Angeles Cellular


1 Telephone Co., 20 Cal.App.4th 163, 180 (1999).

2 Here, the court concludes that the above identified allegations of wrongdoing fail to state a  
3 claim under §17200. With respect to allegations of unlawfulness based upon TILA or HOEPA  
4 violations, for the above stated reasons, Plaintiffs fail to state a claim that the APR was  
5 misrepresented. With respect to the “self-dealing at the expense of borrowers” claim, this allegation  
6 is too conclusory and imprecise to state a claim. Plaintiffs argue that the complaint alleges that  
7 “Defendants charged excessive interest,” “Defendants have engaged in a pattern or practice of  
8 extending credit to consumers under high rate mortgages,” and “Defendants induced them to borrow  
9 substantially more money than they were seeking and in an amount beyond their ability to repay.”  
10 (Oppo. at p.5:18-22). The difficulty with these allegations is that Plaintiffs paint the lender, broker,  
11 and loan services with the same brush, without distinguishing the role Saxon, as loan servicer, played  
12 in the alleged §17200 scheme. While the court does not apply the Rule 9(b) standard to the §17200  
13 claim, the claim must still comply with Rule 8. Plaintiff’s central allegation that Defendants engaged  
14 in “self-dealing at the expense of borrowers” (Compl. ¶46(b)) is insufficient “to raise a right to relief  
15 above the speculative level.” Twombly, \_\_550 U.S. \_\_, 127 S.Ct. 1955 (2007); Iqbal, - -S.Ct. - -,  
16 2009 WL 1361536 (under Rule 8(a), well-pleaded facts must do more than permit the court to infer  
17 the mere possibility of misconduct). Accordingly, the conclusory allegations of alleged wrongful acts  
18 of unfair competition fail to state a claim.

19 In sum, the court grants the motion for judgment on the pleadings without prejudice. The court  
20 declines Plaintiffs request that they be permitted to amend the complaint. However, nothing in this  
21 order prevents Plaintiffs from timely moving to amend the complaint. Plaintiffs are advised that any  
22 such motion must be accompanied by the proposed amended complaint.

23 **IT IS SO ORDERED.**

24 DATED: June 11, 2009

25   
26 Hon. Jeffrey T. Miller  
United States District Judge

27 cc: All parties

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