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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JACOBO LEVY,

12 Plaintiff,

13 v.

14 GMAC WHOLESALE MORTGAGE
CORP.,

15 Defendant.

Case No. 10cv1701 BTM(CAB)

**ORDER GRANTING MOTION TO
DISMISS**

16
17 Defendant GMAC Wholesale Mortgage Corp. ("Defendant" or "GMAC") has filed a
18 motion to dismiss the Complaint for failure to state a claim. For the reasons discussed below
19 Defendant's motion is **GRANTED**.

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21 **II. STANDARD**

22 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should be granted
23 only where a plaintiff's complaint lacks a "cognizable legal theory" or sufficient facts to
24 support a cognizable legal theory. Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th
25 Cir. 1988). When reviewing a motion to dismiss, the allegations of material fact in plaintiff's
26 complaint are taken as true and construed in the light most favorable to the plaintiff. See
27 Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Although detailed
28 factual allegations are not required, factual allegations "must be enough to raise a right to

1 relief above the speculative level.” Bell Atlantic v. Twombly, 550 U.S. 544, 127 S.Ct. 1955,
2 1965 (2007). “A plaintiff’s obligation to prove the ‘grounds’ of his ‘entitle[ment] to relief’
3 requires more than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do.” Id. “[W]here the well-pleaded facts do not permit the court to
5 infer more than the mere possibility of misconduct, the complaint has alleged - but it has not
6 show[n] that the pleader is entitled to relief.” Ashcroft v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937,
7 1950 (2009) (internal quotation marks omitted).

8 9 **II. DISCUSSION**

10 Defendant contends that the Complaint should be dismissed because the Complaint
11 is virtually incomprehensible and fails to meet basic pleading standards. The Court agrees.

12 Plaintiff alleges that he was induced by “Defendants” into entering into a predatory
13 loan, which he used to refinance his residence located at 3510-12 Helix Street, Spring Valley,
14 CA 91977. (Compl. at 2.) Plaintiff contends that the Lender (who is not identified) has no
15 legal standing to bring collection or foreclosure claims against the property and that the
16 Defendants fraudulently induced Plaintiff to enter into the loan. (Compl. at 7-8.) Plaintiff also
17 makes nonsensical allegations regarding the securitization of the note and the defrauding
18 of investors and backers of derivatives. (Id.) Plaintiff asserts causes of action for breach of
19 duty, negligence/negligence per se, fraud, breach of the implied covenant of good faith and
20 fair dealing, violation of the Truth in Lending Act, 15 U.S.C. §§ 1601, et seq., and intentional
21 infliction of emotional distress.

22 Although Plaintiff’s Complaint is thirty-one pages long, it is completely devoid of facts.
23 The Complaint is a rambling assortment of vague and confusing allegations. It is completely
24 unclear what GMAC’s role was in connection with the loan, or what GMAC did to harm
25 Plaintiff. Accordingly, GMAC’s motion to dismiss for failure to state a claim is **GRANTED**.

26 27 **III. CONCLUSION**

28 For the reasons discussed above, Defendant’s motion to dismiss is **GRANTED**.

1 Plaintiff's Complaint is **DISMISSED** for failure to state a claim. The Court grants Plaintiff
2 leave to file an amended complaint correcting the deficiencies identified above. If Plaintiff
3 chooses to file an amended complaint, he must do so within 15 days of the entry of this
4 Order. If no amended complaint is filed, the Clerk shall enter judgment dismissing the case.

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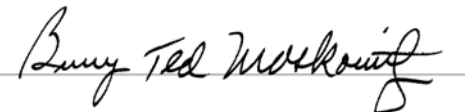
6 **IT IS SO ORDERED.**

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DATED: November 22, 2010

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Honorable Barry Ted Moskowitz
United States District Judge

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