

CASES CITING WEST v. JP Morgan Chase by
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West v. JPMorgan Chase Bank, N.A., 154 Cal. Rptr. 3d 285 (Ct. App.), rev. denied, 2013 Cal. LEXIS 5801 (July 10, 2013)

West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780 (Cal. Ct. App. 2013)

Westv.JPMorgan Chase Bank, N.A.

Compared

Court of Appeal, Fourth District, Division 3, California.Mar 18, 2013Full title

214 Cal.App.4th 780 (Cal. Ct. App. 2013)Copy Citation

214 Cal.App.4th 780•154 Cal. Rptr. 3d 285

Cases citing this document

- [Bushell v. JPMorgan Chase Bank, N.A.](#)

Specifically, plaintiffs allege that defendant, under a trial modification mortgage plan, offered to...

- [Pestana v. Bank of America, N.A.](#)

On appeal, Pestana concedes that, in general, an oral modification agreement of the type he alleges is...

271 Citing cases

Summaries written by judges

- Holding plaintiff could not satisfy adverse claim element of quiet title where defendant no longer had interest in the property

Summary of this case from [Parra v. Parra](#)

- Holding the TPP was a contract, despite language stating, “[i]f all payments are made as scheduled, we will reevaluate your application for assistance and determine if we are able to offer you a permanent workout solution to bring your loan current”

Summary of this case from [Meixner v. Wells Fargo Bank, N.A.](#)

- Holding that a demurrer was properly sustained as to a cause of action to set aside a trustee sale where the plaintiff "did not allege she tendered or could tender the full amount of the indebtedness"

Summary of this case from [Mor v. U.S. Bank National Association](#)

25 Summaries

G046516

2013-07-10

Genevieve WEST, Plaintiff and Appellant, v. JPMORGAN CHASE BANK, N.A., as Receiver, etc., Defendant and Respondent.

See 5 Witkin, Summary of Cal. Law (10th [ed. 2005](#)) Torts, § 773 et seq. Appeal from a judgment of the Superior Court of Orange County, Gregory Munoz, Judge. Affirmed in part, reversed in part, and remanded. (Super. Ct. No. 30–2010–00425322)

FYBEL

See 5 Witkin, Summary of Cal. Law (10th [ed. 2005](#)) Torts, § 773 et seq. Appeal from a judgment of the Superior Court of Orange County, Gregory Munoz, Judge. Affirmed in part, reversed in part, and remanded. (Super. Ct. No. 30–2010–00425322) Genevieve West, in pro. per., for Plaintiff and Appellant.

AlvaradoSmith, John M. Sorich, S. Christopher Yoo, Santa Ana, Yunnie Youn Ahn, Fountain Valley, and Jenny L. Merris, Santa Ana, for Defendant and Respondent.

FYBEL, J.

OPINION

Introduction

As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crisis of 2008. “The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.” (*Bosque v. Wells Fargo Bank, N.A.* (D.Mass. 2011) [762 F.Supp.2d 342, 347.](#))

After her home loan went into default, plaintiff Genevieve West agreed to a trial period plan (TPP), a form of temporary loan payment reduction under HAMP, from defendant JPMorgan Chase Bank, N.A. (Chase Bank),

which had acquired her loan from the original lender. West complied with the terms of the TPP, and timely made every reduced monthly payment on her loan during the trial period and afterwards. Nonetheless, Chase Bank denied West a permanent loan modification, and West's home was sold at a trustee's sale just two days after Chase Bank told her, so West alleged, that no foreclosure sale was scheduled.

Chase Bank appeared as JPMorgan Chase Bank, N.A., as acquirer of certain assets and liabilities of Washington Mutual Bank from the Federal Deposit Insurance Commission, acting as receiver for Washington Mutual Bank.

West brought this lawsuit alleging fraud, breach of written contract, promissory estoppel, and other causes of action, against Chase Bank. The trial court sustained without leave to amend Chase Bank's demurrer to the third amended complaint, and West appealed from the subsequent judgment. We hold that West stated causes of action for fraud, negligent misrepresentation, breach of written contract, promissory estoppel, and unfair competition, and therefore reverse the judgment on those causes of action. We affirm only on the causes of action for conversion, to set aside or vacate void trustee sale, for slander of title, and to quiet title.

In holding that West stated a cause of action for breach of written contract, we agree with the analysis and interpretation of HAMP presented in the recent opinion of the United States Court of Appeals for the Seventh Circuit in *Wigod v. Wells Fargo Bank, N.A.* (7th Cir.2012) [673 F.3d 547, 556–557](#) (*Wigod*). Core to our decision is the court's conclusion in *Wigod, supra*, [673 F.3d at page 557](#), that when a borrower complies with all the terms of a TPP, and the borrower's representations remain true and correct, the loan servicer must offer the borrower a permanent loan modification. As a party to a TPP, a borrower may sue the lender or loan servicer for its breach. (*Id.* at p. 559, fn. 4.) Because West complied with all the terms of the TPP, Chase Bank had to offer her a permanent loan modification.

HAMP

To explain HAMP, we quote extensively from *Wigod, supra*, [673 F.3d at pages 556–557](#):

“In response to rapidly deteriorating financial market conditions in the late summer and early fall of 2008, Congress enacted the Emergency Economic Stabilization Act, P.L. 110–343, 122 Stat. 3765. The centerpiece of the Act was the Troubled Asset Relief Program (TARP), which required the Secretary of the Treasury, among many other duties and powers, to ‘implement a plan that seeks to maximize assistance for homeowners and ... encourage the servicers of the underlying mortgages ... to take advantage of ... available programs to minimize foreclosures.’ [12 U.S.C. § 5219\(a\)](#). Congress also granted the Secretary the authority to ‘use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures.’ *Id.*

“Pursuant to this authority, in February 2009 the Secretary set aside up to \$50 billion of TARP funds to induce lenders to refinance mortgages with more favorable interest rates and thereby allow homeowners to avoid foreclosure. The Secretary negotiated Servicer Participation Agreements (SPAs) with dozens of home loan servicers.... Under the terms of the SPAs, servicers agreed to identify homeowners who were in default or would likely soon be in default on their mortgage payments, and to modify the loans of those eligible under the program. In exchange, servicers would receive a \$1,000 payment for each permanent modification, along with other incentives. The SPAs stated that servicers ‘shall perform the loan modification ... described in ... the Program guidelines and procedures issued by the Treasury ... and ... any supplemental documentation, instructions, bulletins, letters, directives, or other communications ... issued by the Treasury.’ In such supplemental guidelines, Treasury directed servicers to determine each borrower's eligibility for a modification by following what amounted to a three-step process:

“First, the borrower had to meet certain threshold requirements, including that the loan originated on or before January 1, 2009; it was secured by the borrower's primary residence; the mortgage payments were more than 31 percent of the borrower's monthly income; and, for a one-unit home, the current unpaid principal balance was no greater than \$729,750.

“Second, the servicer calculated a modification using a ‘waterfall’ method, applying enumerated changes in a specified order until the borrower’s monthly mortgage payment ratio dropped ‘as close as possible to 31 percent.’

“Third, the servicer applied a Net Present Value (NPV) test to assess whether the modified mortgage’s value to the servicer would be greater than the return on the mortgage if unmodified. The NPV test is ‘essentially an accounting calculation to determine whether it is more profitable to modify the loan or allow the loan to go into foreclosure.’ [Citation.] If the NPV result was negative—that is, the value of the modified mortgage would be lower than the servicer’s expected return after foreclosure—the servicer was not obliged to offer a modification. If the NPV was positive, however, the Treasury directives said that ‘the servicer MUST offer the modification.’ Supplemental Directive 09–01. [¶] ... [¶]

“Where a borrower qualified for a HAMP loan modification, the modification process itself consisted of two stages. After determining a borrower was eligible, the servicer implemented a Trial Period Plan (TPP) under the new loan repayment terms it formulated using the waterfall method. The trial period under the TPP lasted three or more months, during which time the lender ‘must service the mortgage loan ... in the same manner as it would service a loan in forbearance.’ Supplemental Directive 09–01. After the trial period, if the borrower complied with all terms of the TPP Agreement—including making all required payments and providing all required documentation—and if the borrower’s representations remained true and correct, *the servicer had to offer a permanent modification*. See Supplemental Directive 09–01 (‘If the borrower complies with the terms and conditions of the [TPP], the loan modification will become effective on the first day of the month following the trial period....’).” (Fourth ellipsis & italics added, fn. omitted.)

In *Wigod, supra*, [673 F.3d at pages 576–586](#), the Seventh Circuit Court of Appeals concluded HAMP does not preempt or otherwise displace state law causes of action. The court also recognized a borrower may assert state law claims, such as breach of contract, based directly on a TPP agreement because the borrower is in direct privity with the lender or loan servicer. (*Wigod, supra*, at p. 559 & fn. 4.) We do not address whether HAMP creates a private right of action because West has asserted only California state law claims.

Allegations

West’s third amended complaint alleged the following facts.

West obtained an adjustable rate home loan in the sum of \$645,000, secured by a deed of trust on her home. The deed of trust, which was recorded in September 2006, named Washington Mutual Bank, F.A. (Washington Mutual), as the lender and beneficiary, California Reconveyance Company as the trustee, and West as the borrower. In 2008, Chase Bank acquired Washington Mutual and purchased certain of its assets, including West’s loan.

West failed to make payments on the home loan. As a consequence, a notice of default and election to sell under the deed of trust was recorded in March 2009. According to the notice of default, West was \$17,795.91 in arrears as of March 17, 2009.

In April 2009, a substitution of trustee was recorded. It named Quality Loan Service Corporation (QLSC) as trustee in place of California Reconveyance Company.

In July 2009, Washington Mutual informed West she had been approved for a TPP, which Washington Mutual called a "Trial Plan Agreement." The approval letter stated: "Since you have told us you're committed to pursuing a stay-in-home option, you have been approved for a Trial Plan Agreement. If you comply with all the terms of this Agreement, we'll consider a permanent workout solution for your loan once the Trial Plan has been completed." In August 2009, West entered into the Trial Plan Agreement with Washington Mutual. The Trial Plan Agreement required West to make an initial payment of \$1,931.86 by August 1, 2009, and additional payments in that amount on September 1 and October 1. The Trial Plan Agreement stated: "If you do not make your payments on time, or if any of your payments are returned for nonsufficient funds, this Agreement will be in breach and collection and/or foreclosure activity will resume."

West made all three payments under the Trial Plan Agreement and continued thereafter to make monthly payments in the required amount. In January 2010 and again in March 2010, Chase Bank confirmed receipt of documents that West had submitted in support of her request for a permanent loan modification under HAMP. In the letters confirming receipt of those documents, Chase Bank advised West to "continue to make your trial period payments on time."

By letter dated April 5, 2010, Chase Bank notified West that "we have determined that you do not qualify for a modification through the Making Home Affordable ('MHA') modification program or through other modification programs offered by Chase at this time." Chase Bank's determination was based on a calculation of West's "Net Present Value" (NPV) under a formula developed by the Department of the Treasury. The letter stated: "If we receive a request from you within thirty (30) calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If, within thirty (30) calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your Loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information."

On April 8, 2010, West "and or" her representative contacted Chase Bank, informed the bank it had used outdated financial information, and requested a "re-evaluation" (boldface & underscoring omitted) using updated financial information. Chase Bank did not send West the NPV data and input values that she had requested.

On May 24, 2010, West again informed Chase Bank that it had used outdated financial information and that she would submit "updated financial information, and any other information necessary to make the input data accurate." West alleged: "On or about May 24, 2010, [West] and or her representative conducted a conference call with the loan modification department of CHASE BANK, who [sic] agreed and promised [West] that [she] could resubmit her updated financial data for re-evaluation for HAMP modification solutions, and that there was no foreclosure sale date or sale scheduled."

(Boldface & underscoring omitted.)

West also asserts that during the conference call, she was told "not to worry, that her 'payments would be going down \$200 from \$1931.86 to about \$1731.86.'" (Italics omitted.) That assertion is based on a declaration West submitted in opposition to Chase Bank's demurrer to the third amended complaint,

which did not allege Chase Bank represented that West's payments would be reduced.

Also on May 24, West made her 10th reduced payment of \$1,931.86, which Chase Bank rejected and returned to her.

Although Chase Bank had told West no foreclosure sale had been scheduled, her home was sold at a trustee's sale conducted on May 26, 2010. "In violation of its promises and said letter, and HAMP rules (and Supplemental Directives), two (2) days later, CHASE BANK secretly, sold [West]'s home, on May 26, []2010 during the re-evaluation period. CHASE BANK issued letters dated May[]20, 2010, received May 24, 2010, rejecting [West]'s 10th payment ..., made pursuant to the continuing forbearance agreement."

A trustee's deed upon sale was recorded on June 10, 2010. The deed identified Green Island Holdings, LP, as the grantee, and recited, "[s]aid property was sold by said Trustee at public auction on 5/26/2010 at the place named in the Notice of Sale...."

On May 28, 2010, two days after the trustee's sale, Chase Bank's Homeownership Preservation Office sent West a letter telling her: "More and more Americans are struggling to keep up with their mortgage payments. If you are experiencing financial difficulty, you have a variety of options that might help you get back on track, and keep you out of foreclosure." The letter invited West to meet with "specialists from Chase" at a "local event" to "work out the best solution to your current needs."

On August 18, 2010, nearly three months after the trustee's sale, the "Chase FulfillmentCenter" sent West information about the Home Affordable Foreclosure Alternatives (HAFA) program. The letter stated: "HAFA is a United States Treasury program providing financial incentives to servicers and eligible borrowers working together on foreclosure alternatives, such as a short sale or deed-in-lieu. These alternatives may provide a more favorable outcome than a foreclosure sale by avoiding extended vacancy periods and costly foreclosures. [¶] If you are interested in the requirements for participating in HAFA, please sign the enclosed Borrower Request for HAFA Consideration and return it to the following address or fax number...."

Procedural History

West filed the initial complaint in November 2010. A series of demurrers and amendments resulted in the third amended complaint, which asserted these causes of action: fraud (first cause of action); negligent misrepresentation (second cause of action); conversion (third cause of action); set aside or vacate void trustee sale (fourth cause of action); unfair business practices under [Business and Professions Code section 17200](#) et seq. (fifth cause of action); slander of title (sixth cause of action); breach of written contract (seventh cause of action); verified quiet title (10th cause of action); and promissory estoppel (11th cause of action).

Chase Bank demurred to the third amended complaint on the ground none of the causes action stated facts sufficient to state a cause of action. Chase Bank filed a request for judicial notice in support of its demurrer. West opposed the demurrer and also filed a request for judicial notice.

The trial court sustained Chase Bank's demurrer in its entirety without leave to amend. The court granted West's request for judicial notice, and, while no ruling on Chase Bank's request for judicial notice appears in the record, the court cited Chase Bank's request in the minute order sustaining the

demurrer. In that minute order, the trial court noted: “This case has now been pending for over one year and ... West has had four opportunities to properly state a claim and has failed to do so, despite the Court specifically pointing out the same or similar problems with the Complaint on previous Demurrers.” An order sustaining the demurrer without leave to amend, and a judgment against West and in favor of Chase Bank, were entered on January 3, 2012.

Standard of Review

“On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, ... [w]e give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law.” (*City of Dinuba v. County of Tulare* (2007) [41 Cal.4th 859, 865](#), [62 Cal.Rptr.3d 614](#), [161 P.3d 1168](#).) We independently review a ruling on a demurrer to determine whether the pleading alleges facts sufficient to state a cause of action. (*McCall v. PacifiCare of Cal., Inc.* (2001) [25 Cal.4th 412, 415](#), [106 Cal.Rptr.2d 271](#), [21 P.3d 1189](#).)

Discussion

I.

Fraud and Negligent Misrepresentation Causes of Action

West asserted fraud in the first cause of action and negligent misrepresentation in the second cause of action. In the fraud cause of action, West alleged that starting on August 6, 2009, Chase Bank made false representations in the Trial Plan Agreement and “verbally” that she was granted “a continuing Making Home Affordable (HAMP) Trial Modification, and or forbearance agreement, during the re-evaluation of the HAMP Modification.” She alleged that Chase Bank concealed from her “the fact that there was a foreclosure sale date pending against the subject Property, and that it did intend to [foreclose] during the re-evaluation period.”

The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. (*Lazar v. Superior Court* (1996) [12 Cal.4th 631, 638](#), [49 Cal.Rptr.2d 377](#), [909 P.2d 981](#).) The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true. (*Wells Fargo Bank, N.A. v. FSI, Financial Solutions, Inc.* (2011) [196 Cal.App.4th 1559, 1573](#), [127 Cal.Rptr.3d 589](#); *National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) [171 Cal.App.4th 35, 50](#), [89 Cal.Rptr.3d 473](#).)

Chase Bank argues the trial court was correct to sustain the demurrer to those causes of action without leave to amend because West did not allege (1) fraud with the required particularity, (2) justifiable reliance, and (3) causation. **A. Specificity**

Fraud must be pleaded with specificity rather than with “ ‘general and conclusory allegations.’ ” (*Small v. Fritz Companies, Inc.* (2003) [30 Cal.4th 167, 184](#), [132 Cal.Rptr.2d 490](#), [65 P.3d 1255](#).) The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made. (*Lazar v. Superior Court*, *supra*, [12 Cal.4th at p. 645](#), [49 Cal.Rptr.2d 377](#), [909 P.2d 981](#).)

We enforce the specificity requirement in consideration of its two purposes. The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) [35 Cal.3d 197, 216](#), [197 Cal.Rptr. 783](#), [673 P.2d 660](#).) The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, “the pleading should be sufficient ‘to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.’ ” (*Id.* at pp. 216–217, [197 Cal.Rptr. 783](#), [673 P.2d 660](#).)

West met that specificity requirement. She alleged quite specifically that Chase Bank made misrepresentations in the Trial Plan Agreement, in the April 5, 2010 letter, and in telephone conferences on April 8 and May 24, 2010. Both the Trial Plan Agreement and the April 5 letter were attached to the third amended complaint. The Trial Plan Agreement was sent to West on July 24, 2009 by a Washington Mutual loan workout specialist identified as Russell Buelna.

West alleged that, in the April 5, 2010 letter, Chase Bank falsely represented that it would reevaluate her case and send her the NPV input data if she so requested within 30 days. The April 5 letter is from the Chase Fulfillment Center and, though the letter does not identify the preparer, West did not have to plead that information because it was uniquely within Chase Bank's knowledge. (*Committee on Children's Television, Inc. v. General Foods Corp.*, *supra*, [35 Cal.3d at p. 217](#), [197 Cal.Rptr. 783](#), [673 P.2d 660](#); see also *Boschma v. Home Loan Center, Inc.* (2011) [198 Cal.App.4th 230, 248](#), [129 Cal.Rptr.3d 874](#) [“ ‘While the precise identities of the employees responsible ... are not specified in the loan instrument, defendants possess the superior knowledge of who was responsible for crafting these loan documents’ ”].)

West alleged that on April 8, 2010, she spoke with a supervisor in the loan modification department of Chase Bank, and, on May 24, 2010, spoke with someone in that department. She specifically described the misrepresentations allegedly made during those conferences and alleged the misrepresentations were communicated by telephone. She alleged that, in a telephone call on May 24, 2010, a Chase Bank representative told her she “could resubmit her updated financial data for re-evaluation for HAMP modification solutions, and that there was no foreclosure sale date or sale scheduled.” (Boldface & underscoring omitted.) Her allegation of the persons who made the alleged misrepresentations was sufficient to give notice to Chase Bank of the charges. The identification of the Chase Bank employees who spoke with West on those dates is or should be within Chase Bank's knowledge. **B. Justifiable Reliance**

“ ‘Besides actual reliance, [a] plaintiff must also show “justifiable” reliance, i.e., circumstances were such to make it *reasonable* for [the] plaintiff to accept [the] defendant's statements without an independent inquiry or investigation.’ [Citation.] The reasonableness of the plaintiff's reliance is judged by reference to the plaintiff's knowledge and experience. [Citation.] ‘ “Except in the rare case where the undisputed

facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff's reliance is reasonable is a question of fact." [Citations.]' [Citation.]" (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) [157 Cal.App.4th 835, 864–865, 68 Cal.Rptr.3d 828](#).) "Reliance can be proved in a fraudulent omission case by establishing that 'had the omitted information been disclosed, [the plaintiff] would have been aware of it and behaved differently.'" (*Boschma v. Home Loan Center, Inc.*, *supra*, [198 Cal.App.4th at pp. 250–251, 129 Cal.Rptr.3d 874](#).)

West alleged in the third amended complaint that she "justifiably relied [on] the representations made by CHASE BANK, on the phone, and in its letters" and, "[a]t all related times, Defendants knew or should have known that Plaintiff would justifiably rely on its representations made in writing, and on the phone."

Chase Bank argues those allegations did not satisfy the justifiable reliance requirement because (1) the Trial Plan Agreement makes no promise of a permanent loan modification agreement and (2) the April 5, 2010 letter informed West that Chase Bank had determined she did not qualify for a permanent loan modification.

The Trial Plan Agreement represented only that Chase Bank would reevaluate West's application for a permanent loan modification if West made all payments as scheduled. But the April 5, 2010 letter stated that Chase Bank would provide West with the NPV input values if she requested them within 30 days and that Chase Bank would conduct a new evaluation if West provided evidence that any of those input values were inaccurate. West could justifiably rely on those representations, and she alleged she asked for those input values on April 8 and on May 24, 2010. Chase Bank never sent them to her before foreclosing.

West also alleged that from the time of the Trial Plan Agreement, Chase Bank concealed the fact it was pursuing foreclosure and that on May 24, a Chase Bank representative told West that no trustee's sale was scheduled. West could have justifiably relied on that representation too, particularly considering she was requesting a reevaluation of Chase Bank's decision to deny her a permanent loan modification. **C. Causation**

Chase Bank argues West has not pleaded, and cannot plead, her reliance on the alleged misrepresentations caused her to suffer damages; that is, she did not " 'establish a complete causal relationship' between the alleged misrepresentations and the harm claimed to have resulted therefrom." (See *Mirkin v. Wasserman* (1993) [5 Cal.4th 1082, 1092, 23 Cal.Rptr.2d 101, 858 P.2d 568](#).)

West alleged that in reliance on the representations and Chase Bank's alleged concealment of the foreclosure sale, she suffered damages "including loss of mortgage payments made under false pretenses, attorney fees, legal costs, personal injuries, pain and suffering, anxiety, humiliation, fear, extreme emotional distress, and physical injuries." As Chase Bank argues, West already owed the mortgage payments and was obligated to make them notwithstanding the alleged misrepresentations. West also alleged, however, that Chase Bank "lull[ed]" her into "a false sense of security, so she would not hire an attorney to protect her rights," and then pursued the foreclosure sale despite telling her, on May 24, 2010, that no foreclosure sale had been scheduled.

The third amended complaint, read as a whole, may be reasonably construed to allege that West's reliance on Chase Bank's alleged misrepresentations caused West to forego taking legal action to stop

the foreclosure sale. Under the allegations of the third amended complaint, West likely would have been successful in taking legal action to stop the sale. In the April 5, 2010 letter denying a loan modification, Chase Bank offered to conduct a new NPV evaluation if West made a timely request for input values and provided evidence those values were inaccurate. West alleged she timely requested the input values, but Chase Bank never provided her the information. In January 2010 and again in March 2010, Chase Bank advised West to “continue to make your trial period payments on time.” She made all of her payments.

II.

Breach of Written Contract Cause of Action

In the seventh cause of action for breach of written contract, West alleged the Trial Plan Agreement constituted a written contract, which Chase Bank breached by denying her a permanent loan modification after “secretly” selling her home. We conclude the third amended complaint stated a cause of action for breach of written contract.

Chase Bank does not dispute the Trial Plan Agreement constituted a written contract. Many federal courts have concluded a trial loan modification under HAMP constitutes a valid, enforceable contract under state law, at least at the pleading stage of litigation. (E.g., *Wigod supra*, [673 F.3d at pp. 560–561](#) [valid contract under Illinois law]; *Gaudin v. Saxon Mortgage Services, Inc.* (N.D.Cal. 2011) [820 F.Supp.2d 1051, 1053–1054](#) [valid contract]; *Bosque v. Wells Fargo Bank, N.A., supra*, [762 F.Supp.2d at pp. 352–353](#) [valid contract under Massachusetts law]; *Sutcliffe v. Wells Fargo Bank, N.A.* (N.D.Cal. 2012) [283 F.R.D. 533, 550](#) [valid contract under California law]; *Turbeville v. JPMorgan Chase Bank* (C.D.Cal., Apr. 4, 2011, No. SA CV 10–01464 DOC (JCGx)) 2011 WL 7163111, pp. *4–*5, 2011 U.S. Dist. Lexis 42290, pp. *8–*12 [valid contract under California law].) Chase Bank does not argue lack of offer and acceptance, consideration, certain terms, or any element necessary to create an enforceable contract.

Instead, Chase Bank argues it did not as a matter of law breach the terms of the Trial Plan Agreement because the exhibits to the third amended complaint establish that Chase Bank did reevaluate West's application for a permanent loan modification. Chase Bank relies on the term of the Trial Plan Agreement stating, “[i]f all payments are made as scheduled, we will reevaluate your application for assistance and determine if we are able to offer you a permanent workout solution to bring your loan current.” Attached to the third amended complaint was Chase Bank's letter, dated April 5, 2010, notifying West that Chase Bank had determined she did not qualify for a loan modification based on a calculation of her NPV under a formula developed by the Department of the Treasury.

This argument ignores Chase Bank's obligations under HAMP and the express and implied obligations under the Trial Plan Agreement. When Chase Bank received public tax dollars under the Troubled Asset Relief Program,

it agreed to offer TPP's and loan modifications under HAMP according to guidelines, procedures, instructions, and directives issued by the Department of the Treasury. (*Wigod, supra*, [673 F.3d at p. 556](#).) Under the United States Department of the Treasury, HAMP Supplemental Directive 09–01 (Apr. 6, 2009) (Directive 09–01), if the lender approves a TPP, and the borrower complies with all the terms of the TPP and all of the borrower's representations remain true and correct, the lender *must offer a*

permanent loan modification. (*Wigod, supra*, at p. 557.) Directive 09–01, *supra*, at page 18, states: “If the borrower complies with the terms and conditions of the [TPP], the loan modification will become effective on the first day of the month following the trial period....”

The Emergency Economic Stabilization Act of 2008, title [12 United States Code section 5201](#) et seq., gave the Secretary of the Treasury the power to establish the Troubled Asset Relief Program to purchase, make, and fund commitments to purchase troubled assets from any financial institution, on such terms and conditions as set by the Secretary. ([12 U.S.C. § 5211\(a\)\(1\)](#).) The Emergency Economic Stabilization Act of 2008 defines a “troubled asset” as a financial instrument the purchase of which is necessary to promote financial stability. ([12 U.S.C. § 5202\(9\)\(B\)](#).)

Construction of the United States Department of the Treasury directives is a question of law for the court to decide. (*Wigod, supra*, [673 F.3d at p. 580](#).)

In *Wigod, supra*, [673 F.3d at page 558](#), the defendant bank issued the plaintiff a four-month TPP. The TPP stated that if the plaintiff was in compliance with the plan and her representation on which the plan was issued continued to be true, then the defendant “ ‘will provide me with a [permanent] Loan Modification Agreement.’ ” (*Ibid.*) The plaintiff alleged she made all the payments required under the TPP, but the defendant bank improperly reevaluated her eligibility and declined to offer her a permanent loan modification. (*Ibid.*) The Seventh Circuit Court of Appeals concluded the plaintiff adequately pleaded causes of action under Illinois law for breach of contract, promissory estoppel, and fraudulent misrepresentations against the defendant bank. (*Id.* at p. 559.) The court held the TPP constituted a valid and enforceable contract under Illinois law and the defendant bank breached the express terms of the contract by declining to offer the plaintiff a permanent loan modification. (*Id.* at pp. 561–566.) Under HAMP guidelines, the defendant bank had “some limited discretion to set the precise terms of an offered permanent modification” if “[the plaintiff] fulfilled the TPP’s conditions.” (*Id.* at p. 565.) Nonetheless, the defendant bank was required to offer “ *some* sort of good-faith modification to [the plaintiff] consistent with HAMP guidelines.” (*Ibid.*)

Unlike the TPP in *Wigod*, the Trial Plan Agreement signed by West, and prepared by Chase Bank, did not expressly include the proviso that Chase Bank would offer a permanent loan modification if she complied with that agreement’s terms. But such a proviso is imposed by the United States Department of the Treasury through Directive 09–01, *supra*, page 18 (see *Wigod, supra*, [673 F.3d at p. 557](#)), and a contract must be interpreted in a way to make it lawful ([Civ.Code, § 1643](#)). To make the Trial Plan Agreement lawful, it must be interpreted to include the proviso imposed by Directive 09–01. In addition, HAMP guidelines “informed the reasonable expectations of the parties to [the Trial Plan Agreement].” (*Wigod, supra*, at p. 565.)

Thus, in light of Directive 09–01 and HAMP guidelines, the reasonable interpretation of the Trial Plan Agreement—and the one necessary to make it lawful and in compliance with HAMP—is that Chase Bank’s reevaluation upon completion of the trial period would be limited to determining whether West complied with the terms of the Trial Plan Agreement and whether West’s original representations remained true and correct. Applying *Wigod* to this case, “[a]lthough [Chase Bank] may have had some limited discretion to set the precise terms of an offered permanent modification, it was certainly

required to offer *some* sort of good-faith permanent modification to [West] consistent with HAMP guidelines. It has offered none.” (*Wigod, supra*, [673 F.3d at p. 565.](#))

In addition, Chase Bank stated in its April 5, 2010 letter that, upon timely request from West, it would provide her with the input values used to calculate her NPV and, if within 30 days of receiving that information, West provided Chase Bank with evidence that any of the input values were inaccurate, and those inaccuracies were material, Chase Bank would conduct a new NPV evaluation. As a matter of contract law, the import of this letter is twofold. First, under Chase Bank's interpretation of the Trial Plan Agreement, the April 5, 2010 letter constituted a modification of that agreement. A modification of a contract is a change in the obligations of a party by a subsequent mutual agreement of the parties. (1 Witkin, Summary of Cal. Law (10th [ed. 2005](#)) Contracts, § 964, p. 1055.) A contract in writing may be modified by a contract in writing. ([Civ.Code, § 1698, subd. \(a\).](#)) Though not signed by anyone at Chase Bank, the April 5, 2010 letter bears the Chase Bank letterhead, which suffices as a signature. (*Rest.2d Contracts*, § 134.)

Second, to the extent the Trial Plan Agreement is ambiguous, the April 5, 2010 letter is relevant under the practical construction doctrine in determining Chase Bank's intent. “ ‘[W]hen a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight, and will, when reasonable, be adopted and enforced by the court. [Citation.] The reason underlying the rule is that it is the duty of the court to give effect to the intention of the parties where it is not wholly at variance with the correct legal interpretation of the terms of the contract, and a practical construction placed by the parties upon the instrument is the best evidence of their intention.’ ” (*Employers Reinsurance Co. v. Superior Court* (2008) [161 Cal.App.4th 906, 921, 74 Cal.Rptr.3d 733.](#)) The April 5, 2010 letter, which was drafted before a controversy arose over the Trial Plan Agreement, shows that Chase Bank intended, at the very least, to give West the option and ability—before any foreclosure sale—to challenge the decision to deny her a permanent loan modification.

Thus, as alleged in the third amended complaint, the Trial Plan Agreement required Chase Bank to offer West a permanent loan modification because she had complied with the terms of that agreement. In addition, West alleged she was entitled to challenge Chase Bank's decision to deny her a permanent loan modification by providing information to support a different NPV calculation. She is correct. The third amended complaint alleged Chase Bank breached the Trial Plan Agreement in these two ways, and therefore stated a cause of action for breach of written contract.

III.

Conversion and Slander of Title Causes of Action

The third cause of action of the third amended complaint was for conversion, and the sixth cause of action was for slander of title. In her opening brief, West does not offer any argument or authority in support of those causes of action, a point stressed by Chase Bank in the respondent's brief. In the reply brief, West argues the third amended complaint stated causes of action for conversion and slander of title. We deem the arguments made for the first time in the reply brief to be waived. (*Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) [188 Cal.App.4th 401, 427–428, 115 Cal.Rptr.3d 707](#); *Employers Mutual Casualty Co. v. Philadelphia Indemnity Ins. Co.* (2008) [169 Cal.App.4th 340, 349–350, 86 Cal.Rptr.3d 383](#); *Cold Creek Compost, Inc. v. State Farm Fire & Casualty Co.* (2007) [156 Cal.App.4th 1469,](#)

[1486, 68 Cal.Rptr.3d 216](#) [“Arguments cannot properly be raised for the first time in an appellant's reply brief, and accordingly we deem them waived in this instance”].)

IV.

Set Aside or Vacate Void Trustee Sale Cause of Action

In the fourth cause of action, West alleged Chase Bank failed to comply with statutory foreclosure procedures and, on that basis, she sought to set aside or vacate the trustee's sale as wrongful.

We conclude the fourth cause of action did not state a claim.

Chase Bank argues West waived her challenge to the dismissal of the fourth cause of action by not addressing it in her opening brief. That is not correct. West addressed the fourth cause of action at pages 31–40 of her opening brief and argued she “adequately alleged a claim for wrongful foreclosure.”

“After a nonjudicial foreclosure sale has been completed, the traditional method by which the sale is challenged is a suit in equity to set aside the trustee's sale. [Citation.] Generally, a challenge to the validity of a trustee's sale is an attempt to have the sale set aside and to have the title restored.” (*Lona v. Citibank, N.A.* (2011) [202 Cal.App.4th 89, 103, 134 Cal.Rptr.3d 622.](#)) The elements of a cause of action to set aside a foreclosure sale are (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale suffered prejudice or harm; and (3) the trustor or mortgagor tenders the amount of the secured indebtedness or was excused from tendering. (*Id.* at p. 104, [134 Cal.Rptr.3d 622.](#))

The first element may be satisfied by allegations that (1) the trustee or beneficiary failed to comply with the statutory procedural requirements for the notice or conduct of the sale; (2) the trustee did not have the power to foreclose; (3) the trustor was not in default, no breach had occurred, or the lender waived the breach; or (4) the deed of trust was void. (*Lona v. Citibank, N.A., supra*, [202 Cal.App.4th at pp. 104–105, 134 Cal.Rptr.3d 622.](#))

In the fourth cause of action, West alleged the trustee's sale was void under either of two theories: (1) QLSC, which issued the notice of default and notice of trustee's sale, and conducted the nonjudicial foreclosure sale, did not have authority to act as trustee under the deed of trust or (2) “[d]efendants failed to give plaintiff[] notice of the foreclosure sale and the actual foreclosure date” (underscoring omitted).

In her opening brief, West asserts several other procedural irregularities not alleged in the third amended complaint. She argues Chase Bank failed to comply with [Civil Code section 2923.5](#) by recording the notice of default before the mandatory 30–day wait period, the notice of default does not state the correct amount due under the note and deed of trust, and Chase Bank failed to mail her a copy of the recorded notice of default in the manner required by [Civil Code section 2924b](#), subdivision (c)(1).

West also alleged she was entitled to an injunction to stay the trustee's sale due to Chase Bank's violations of [Civil Code section 2923.5](#). The trustee's sale had been conducted when the third amended complaint was filed. West's claim for injunctive relief therefore was moot from the outset.

We consider only those theories presented in the third amended complaint in determining whether the trial court erred by sustaining without leave to amend Chase Bank's demurrer to the fourth cause of action. West had several opportunities to amend her complaint in the trial court and on appeal has not asked for leave to amend.

The first theory asserted in the third amended complaint is incorrect based on documents which may be judicially noticed. In support of its demurrer to the third amended complaint, Chase Bank requested the trial court take judicial notice of several documents and instruments, including (1) the notice of default and election to sell, recorded on March 18, 2009, and (2) the substitution of trustee, recorded on April 30, 2009. If a substitution of trustee is effected after recordation of a notice of default but before recordation of the notice of sale, the beneficiary or its agent must cause a copy of the substitution to be mailed to all persons to whom a notice of default is required to be mailed under [Civil Code section 2924b](#). ([Civ.Code, § 2934a, subd. \(c\)](#).) “Once recorded, the substitution shall constitute conclusive evidence of the authority of the substituted trustee or his or her agents to act pursuant to this section.” (*Id.*, § 2934a, subd. (d).) Here, the substitution of trustee was recorded and therefore constitutes conclusive evidence that QLSC had authority to conduct the trustee's sale.

West also contends the notice of default was void because it was signed by QLSC and recorded before it became trustee. A notice of default may be filed for record by the beneficiary, trustee, or their authorized agents. ([Civ.Code, § 2924, subd. \(a\)\(1\)](#).) The notice of default in this case was signed and filed for record by QLSC “as agent for beneficiary” (capitalization omitted).

The second theory alleged in the third amended complaint was “[d]efendants failed to give plaintiff[] notice of the foreclosure sale and the actual foreclosure date” (underscoring omitted). No details supporting this theory were alleged in the body of the third amended complaint. Attached to that complaint as exhibit 2 is a notice of trustee's sale, recorded on June 24, 2009, stating the sale would be conducted on July 13, 2009 at 12:00 p.m. The trustee's deed upon sale, attached as exhibit 3 to the third amended complaint, recites that the sale was conducted on May 26, 2010. A reasonable implication is that West is alleging Chase Bank failed to comply with the notice requirements of Civil Code section 2924g, subdivision (d) for postponing a trustee's sale.

.Civil Code section 2924g, subdivision (d) reads, in relevant part: “The notice of each postponement and the reason therefor shall be given by public declaration by the trustee at the time and place last appointed for sale. A public declaration of postponement shall also set forth the new date, time, and place of sale and the place of sale shall be the same place as originally fixed by the trustee for the sale. No other notice of postponement need be given.”

An allegation of tender of the indebtedness is necessary when the person seeking to set aside the foreclosure sale asserts the sale is voidable due to irregularities in the sale notice or procedure. (*Lona v. Citibank, N.A.*, *supra*, [202 Cal.App.4th at p. 112](#), [134 Cal.Rptr.3d 622](#); *Abdallah v. United Savings Bank* (1996) [43 Cal.App.4th 1101](#), [1109](#), [51 Cal.Rptr.2d 286](#).) “ ‘The rationale behind the rule is that if [the borrower] could not have redeemed the property had the sale procedures been proper, any irregularities in the sale did not result in damages to the [borrower].’ ” (*Lona v. Citibank, N.A.*, *supra*, at p. 112, [134 Cal.Rptr.3d 622](#).)

West did not allege she tendered or could tender the full amount of the indebtedness. She argues instead an allegation of tender was not required: “While a tender may be required when a plaintiff alleges a procedural irregularity, West alleges the theory that the process, sale and trustee[']s deed upon sale w[ere] void for failure to comply with California statutory law [citation]. Under these facts, an offer, or tender to pay the debt, is *not required*, (where it would be inequitable), such as where plaintiffs *have a legal right to avoid the sale* [citation].”

The third amended complaint alleged only procedural irregularities in the sale notice and procedure. The trustee's deed upon sale recites that the trustee complied with the deed of trust and all applicable statutory requirements of the State of California. No inconsistent recitals appear on the face of the trustee's deed. Thus, any notice defects are deemed voidable, not void. (*Dimock v. Emerald Properties* (2000) [81 Cal.App.4th 868, 877](#), [97 Cal.Rptr.2d 255](#).) West therefore was required to allege tender of the indebtedness to seek to set aside the trustee's sale. The trial court did not err by sustaining without leave to amend the demurrer to the fourth cause of action.

V.

Quiet Title Cause of Action

In the 10th cause of action, West sought to quiet title against Chase Bank, Washington Mutual, and QLSC on the ground Chase Bank failed to comply strictly with the statutory nonjudicial foreclosure procedures. Chase Bank argues the quiet title cause of action is defective for several reasons, among which is that Chase Bank no longer holds title to the property. This argument has merit.

An element of a cause of action for quiet title is “[t]he adverse claims to the title of the plaintiff against which a determination is sought.” (Code [Civ. Proc., § 761.020, subd. \(c\)](#).) West did not satisfy this element because none of the defendants to the third amended complaint has adverse claims to title. In support of the demurrer to the third amended complaint, Chase Bank requested the trial court take judicial notice of the recorded trustee's deed upon sale issued to Green Island Holdings, LP, as grantee. A court may take judicial notice of a recorded deed. (*Ragland v. U.S. Bank National Assn.* (2012) [209 Cal.App.4th 182, 194](#), [147 Cal.Rptr.3d 41](#).) The trustee's deed upon sale includes a recitation that “[t]he grantee herein WASN'T the foreclosing beneficiary.” (Original capitalization.)

Thus, based on the third amended complaint and the documents judicially noticed, none of the defendants named in the third amended complaint had adverse claims to title. West did not name Green Island Holdings, LP, or any subsequent purchasers as a defendant in the third amended complaint. Accordingly, the trial court did not err by sustaining without leave to amend the demurrer to West's quiet title cause of action. Nothing we say precludes West from seeking leave to amend to allege quiet title based on other facts or theories.

VI.

Promissory Estoppel Cause of Action

In the cause of action for promissory estoppel, West alleged Chase Bank made various promises to induce her to enter into the Trial Plan Agreement. Chase Bank argues the promissory estoppel cause of action is defective because West failed to allege the promises with clarity and specificity and failed to allege detrimental reliance.

The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise. (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) [23 Cal.4th 305, 310](#), [96 Cal.Rptr.2d 747, 1 P.3d 63](#); see Rest.2d Contracts, § 90, subd. (1).)

“ [A] promise is an indispensable element of the doctrine of promissory estoppel. The cases are uniform in holding that this doctrine cannot be invoked and must be held inapplicable in the absence of a showing that a promise had been made upon which the complaining party relied to his prejudice....’ [Citation.] The promise must, in addition, be ‘clear and unambiguous in its terms.’ [Citation.]” (*Garcia v. World Savings, FSB* (2010) [183 Cal.App.4th 1031, 1044](#), [107 Cal.Rptr.3d 683](#).) For a promise to be enforceable, it need only be “ ‘definite enough that a court can determine the scope of the duty[,] and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages.’ [Citations.]” (*Bustamante v. Intuit, Inc.* (2006) [141 Cal.App.4th 199, 209](#), [45 Cal.Rptr.3d 692](#).)

In the promissory estoppel cause of action, West alleged: “Defendant made clear, definite and certain promises to Plaintiff to induce her to enter into oral executed and written HAMP agreements, including promises not to sell during the HAMP reevaluation, that there was no foreclosure date pending, that it would send Plaintiff the NPV input data, that Plaintiff would have 60 days to obtain a reevaluation for a HAMP permanent modification, all of which were false causing Plaintiff to forbear from taking legal action against it, to relinquish mortgage payments (under false pretenses), and incur damages and personal injuries.”

Read in isolation, this allegation did not clearly and specifically allege a promise made by Chase Bank. But we do not read passages from a complaint in isolation; in reviewing a ruling on a demurrer, we read the complaint “as a whole and its parts in their context.” (*City of Dinuba v. County of Tulare, supra*, [41 Cal.4th at p. 865](#), [62 Cal.Rptr.3d 614](#), [161 P.3d 1168](#).) Read as a whole, the third amended complaint clearly and specifically alleged these promises meeting the requirements for promissory estoppel: (1) in the Trial Plan Agreement, Chase Bank promised West that it had offered her a trial loan modification under the HAMP guidelines and, during the trial modification period, Chase Bank would not pursue foreclosure; (2) the April 5, 2010 letter promised West that Chase Bank would reevaluate the denial of a permanent loan modification if she timely submitted evidence the NPV input values used by Chase Bank were inaccurate; (3) on May 24, 2010, a Chase Bank representative promised West she could resubmit her updated financial data for reevaluation for HAMP modification; and (4) on the same day, the Chase Bank representative promised West there was no foreclosure sale date or sale scheduled. The promises alleged are “ ‘definite enough’ ” for us to determine “ ‘the scope of the duty’ ” imposed by them. (*Bustamante v. Intuit, Inc., supra*, [141 Cal.App.4th at p. 209](#), [45 Cal.Rptr.3d 692](#).)

On the requirement of detrimental reliance, the promissory estoppel cause of action itself alleged: “Plaintiff relied upon such promises to her detriment. Plaintiff's reliance was justified and reasonable. Plaintiff has been injured by such reliance.” Read in isolation, this allegation is insufficient. But the third amended complaint, read as a whole, may be reasonably interpreted to allege that West's reliance on Chase Bank's alleged misrepresentations caused West not to take legal action to stop the trustee's sale. In her opening brief, West also claims that, if she had known Chase Bank would not offer her a

permanent loan modification, “she would have pursued other options, including possibly selling her home, retaining counsel earlier, and/or finding a co-signer to save her home.”

In *Wigod*, the Seventh Circuit Court of Appeals held the plaintiff's cause of action for promissory estoppel alleged a “sufficiently clear promise” and detrimental reliance: “[The plaintiff] asserts that Wells Fargo made an unambiguous promise that if she made timely payments and accurate representations during the trial period, she would receive an offer for a permanent loan modification calculated using the required HAMP methodology.” (*Wigod, supra, 673 F.3d at p. 566.*) The court concluded the plaintiff relied on that promise to her detriment by foregoing the opportunity to use other remedies to save her home and by devoting her resources to making the lower monthly payments under the TPP rather than attempting to sell her home or defaulting. (*Ibid.*) In *Turbeville v. JPMorgan Chase Bank, supra, 2011 WL 7163111 at p. *5, 2011 U.S. Dist. Lexis 42290 at pages *17–*18*, the plaintiffs alleged that in reliance on the defendant bank's promise, they made the trial plan payments rather than pursue other opportunities to cure the default. The court concluded that allegation was sufficient for detrimental reliance. (*Id. at p. *5, 2011 U.S. Dist. Lexis 42290 at p. *18.*) West's third amended complaint adequately alleges promissory estoppel under these authorities.

VII.

Unfair Competition Cause of Action

In the fifth cause of action, West alleged violations of the California unfair competition law (UCL), [Business and Professions Code section 17200](#) et seq. She alleged: “In furtherance of Defendants' common plan and scheme, as alleged, including but not limited to obtaining mortgage payment money by false pretenses, false representations regarding HAMP modification re-evaluation acts, deadlines and other promises, and concealing the true trustee ... in its notices, s[ale] and trustee's deed upon sale, Defendants, and each of them, committed an unlawful, unfair, deceptive or fraudulent business practice.”

The UCL permits civil recovery for “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising...” ([Bus. & Prof. Code, § 17200.](#)) “ ‘Because [Business and Professions Code section 17200](#) is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent...’ ” (*Cel – Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) [20 Cal.4th 163, 180, 83 Cal.Rptr.2d 548, 973 P.2d 527.](#))

By defining “unfair competition” to include any unlawful act or practice, the UCL permits violations of other laws to be treated as independently actionable as unfair competition. (*Cel – Tech Communications, Inc. v. Los Angeles Cellular Telephone Co., supra, 20 Cal.4th at p. 180, 83 Cal.Rptr.2d 548, 973 P.2d 527.*) Several definitions of “unfair” under the UCL have been formulated. They are:

1. “An act or practice is unfair if the consumer injury is substantial, is not outweighed by any countervailing benefits to consumers or to competition, and is not an injury the consumers themselves could reasonably have avoided.” (*Daugherty v. American Honda Motor Co., Inc.* (2006) [144 Cal.App.4th 824, 839, 51 Cal.Rptr.3d 118.](#))
2. “ ‘[A]n “unfair” business practice occurs when that practice “offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to

consumers.” [Citation.]’ [Citation.]” (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) [93 Cal.App.4th 700, 719](#), [113 Cal.Rptr.2d 399](#).)

3. An unfair business practice means “ ‘the public policy which is a predicate to the action must be “tethered” to specific constitutional, statutory or regulatory provisions.’ ” (*Scripps Clinic v. Superior Court* (2003) [108 Cal.App.4th 917, 940](#), [134 Cal.Rptr.2d 101](#).)

A fraudulent practice under the UCL “require[s] only a showing that members of the public are likely to be deceived” and “can be shown even without allegations of actual deception, reasonable reliance and damage.” (*Daugherty v. American Honda Motor Co., Inc.*, *supra*, [144 Cal.App.4th at p. 838](#), [51 Cal.Rptr.3d 118](#).)

We conclude the third amended complaint stated a cause of action under the UCL based on unfair or fraudulent practices. Liberally construed, the third amended complaint alleged Chase Bank engaged in a practice of making TPP's that did not comply with HAMP guidelines and the United States Department of the Treasury directives; made misrepresentations regarding a borrower's right and ability to challenge the bank's calculation of the NPV; made misrepresentations about pending foreclosure sales; and wrongfully had trustee's sales conducted when the borrower was in compliance with a TPP. Under such allegations, Chase Bank engaged in unfair business practices under any of the three definitions. Chase Bank concedes that West's cause of action under the UCL “depends on the viability of the underlying claims,” and the claims for fraud, negligent misrepresentation, breach of written contract, and promissory estoppel are viable.

Disposition

The judgment is affirmed as to the causes of action for conversion, to set aside or vacate void trustee sale, for slander of title, and to quiet title. In all other respects, the judgment is reversed and the matter remanded for further proceedings. West shall recover costs incurred on appeal. WE CONCUR: O'LEARY, P.J. MOORE, J.

271 Citing cases

1. [Bushell v. JPMorgan Chase Bank, N.A.](#)

220 Cal.App.4th 915 (Cal. Ct. App. 2013) Cited 99 times 1 Legal Analyses

- Motion to dismiss
- Contract - Good Faith and Fair Dealing
- Contract - Other

5 more...

Holding that plaintiffs had adequately pled damages where they alleged they were injured by the time spent dealing with the defendant throughout the loan modification process, among other things Specifically, plaintiffs allege that defendant, under a trial modification mortgage plan, offered to permanently modify the plaintiffs' mortgage loan, provided plaintiffs complied with the terms of the trial modification plan by returning certain requested documents, making timely trial modification payments, and qualifying under a federal program that seeks to reduce home foreclosures, the Home Affordable Mortgage Program (hereafter, HAMP). Two recent appellate decisions provide guidance on this subject, one from the California Court of Appeal, Fourth Appellate District, Division Three ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285](#) (West)) and the other from the federal Seventh Circuit Court of Appeals ([Wigod v. Wells Fargo Bank, N.A. \(7thCir.2012\) 673 F.3d 547](#) (Wigod)). These two decisions, which were issued after the trial court ruled here, concluded that when a borrower has alleged that he or she has complied with all the terms of a trial modification plan offered under HAMP—including making all required payments and providing all required documentation—and if the borrower's representations on which the modification is based remain true and correct, the lender or loan servicer (collectively hereafter, the lender) must offer the borrower a good faith permanent modification; and if the lender fails to do so, the borrower may sue the lender, under state law, for breach of contract of the trial modification plan, among other causes of action.

2. [Pestana v. Bank of America, N.A.](#)

No. A137566 (Cal. Ct. App. Jun. 12, 2014)

- Motion to dismiss
- Fraud - Other
- Equitable Contract - Equitable Estoppel

7 more...

On appeal, Pestana concedes that, in general, an oral modification agreement of the type he alleges is unenforceable under the statute of frauds. But he argues that, under [West v.](#)

JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780 (West), this principle does not apply to HAMP loan modifications. Pestana is incorrect.

3. [Lueras v. BAC Home Loans Servicing, LP](#)

221 Cal.App.4th 49 (Cal. Ct. App. 2013) Cited 315 times

- Motion to dismiss
- Tort - Negligence
- Contract - Other

10 more...

Holding loan service providers do not owe a plaintiff a duty of care when considering a loan modification application

[Citation.]” ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785, 154 Cal.Rptr.3d 285](#) (West).) In 2009, Fannie Mae instituted the HomeSaver Forbearance program, which was available to those who did not qualify for HAMP loan modifications.

4. [Fleet v. Bank of America N.A.](#)

229 Cal.App.4th 1403 (Cal. Ct. App. 2014) Cited 49 times

- Motion to dismiss
- Fraud - Other
- Contract - Other

5 more...

Holding that the plaintiffs “alleged facts that could support a cause of action for promissory estoppel against [Bank of America] in the event that they cannot establish a cause of action for breach of contract”

(See [Corvello v. Wells Fargo Bank, NA \(9th Cir.2013\) 728 F.3d 878, 885](#) (conc. opn. of Noonan, J.)) One such case comes from our court—[West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285](#) (West). The homeowner, West, defaulted on her loan, and a notice to sell was recorded.

5. [In re Marriage of Yu and Luo](#)

No. G047033 (Cal. Ct. App. May. 6, 2014)

- Con. Law - Due Process
- Regulatory - Attorney

1 more...

It is well established that an appellate court will generally not consider arguments made for the first time in a reply brief. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th](#)

780, 799.) That is particularly true in this case, where the unrepresented respondent did not have an opportunity to address the new issues argued in the appellant's reply brief.

6. [Reiydelle v. J.P. Morgan Chase Bank, N.A.](#)

Case No. 12-cv-06543-JCS (N.D. Cal. Jan. 28, 2014) Cited 8 times

- Motion to dismiss
- Contract - Good Faith and Fair Dealing
- Contract - Other

6 more...

Id. at 2. Plaintiff contends that the TPP is an enforceable contract. Id. at 3-4 (citing [Ansanelli v. JP Morgan Chase Bank, N.A.](#), No. C 10-03892 WHA, 2011 WL 1134451 (N.D. Cal. Mar. 28, 2011); [Jolley v. Chase Home Finance, LLC](#), 213 Cal.App.4th 872, 153 Cal.Rptr.3d 546 (2013); [West v. JPMorgan Chase Bank, N.A.](#), 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285 (2013)). Plaintiff argues that, in light of Defendant's assurances, Defendant promised in the TPP not to include a final balloon payment, or anything else that substantially differed from the TPP.

7. [Madrideojos v. HSBC Bank USA, N.A.](#)

No. C071982 (Cal. Ct. App. Aug. 11, 2014)

- Motion to dismiss
- Fraud - Other
- Contract - Other

8 more...

It is true that recent legislation in California and a few recent cases have provided some relief to distressed homeowners. (Civ. Code, §§ 2923.6, subd. (c), 2923.7, 2924.11; e.g., [Corvello v. Wells Fargo Bank, NA](#) (9th Cir. 2013) 728 F.3d 878; [Maynard v. Wells Fargo Bank, N.A.](#) (S.D.Cal., Sept. 11, 2013, No. 12cv1435 AJB (JMA)) 2013 U.S. Dist. Lexis 130800 (Maynard); [Glaski v. Bank of America](#) (2013) 218 Cal.App.4th 1079 (Glaski); [West v. JPMorgan Chase Bank, N.A.](#) (2013) 214 Cal.App.4th 780 (West); [Jolley v. Chase Home Finance, LLC](#) (2013) 213 Cal.App.4th 872 (Jolley).) But the evolution of the law does not discharge plaintiffs' burden to plead specific facts sufficient to state viable causes of action against defendants in this case rather than generalized, wholesale allegations of wrongdoing in the industry.

8. [Rufini v. CitiMortgage, Inc.](#)

227 Cal.App.4th 299 (Cal. Ct. App. 2014) Cited 63 times 1 Legal Analyses

- Motion for summary judgment
- Consumer - Unfair and Deceptive Practices

8 more...

Holding that plaintiff's allegation that the lender deprived plaintiff of the opportunity to pursue other means of avoiding foreclosure, leading to the loss of his home and the equity he had in it, was sufficient to constitute "lost money or property" under the UCL

For guidance on remand, we refer the parties to recent opinions, issued after the trial court's ruling in this case, addressing the obligations of lenders and borrowers who engage in attempts to modify home mortgages under the federal Home Affordable Modification Program (HAMP). (See *Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 922–923, 163 Cal.Rptr.3d 539 (*Bushell*); *Chavez, supra*, 219 Cal.App.4th 1052, 162 Cal.Rptr.3d 382; *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285 (*West*); *Barroso v. Ocwen Loan Servicing, LLC* (2012) 208 Cal.App.4th 1001, 146 Cal.Rptr.3d 90 (*Barroso*); *Corvello v. Wells Fargo Bank, N.A.* (9th Cir.2013) 728 F.3d 878 (*Corvello*); *Wigod v. Wells Fargo Bank, N.A.* (7th Cir.2012) 673 F.3d 547, 557 (*Wigod*); see also *Sutcliffe v. Wells Fargo Bank, N.A.* (N.D.Cal.2012) 283 F.R.D. 533, 550.) Under HAMP, enacted to minimize home foreclosures following the massive financial upheaval in 2008 (*Bushell, supra*, at pp. 922–923, 163 Cal.Rptr.3d 539; *Corvello, supra*, 728 F.3d at p. 880), qualifying homeowners may obtain permanent loan modifications that reduce their mortgage payments.

9. [Escobar v. Wells Fargo Bank](#)

No. B265077 (Cal. Ct. App. Dec. 12, 2016)

- o Contract - Other
- o Tort - Negligence
- o Banks

2 more...

Offered to homeowners eligible for HAMP relief, a TPP reduces a homeowner's monthly loan payment for a specified period. If, at the conclusion of this time period, the homeowner, among other things, has complied with all requirements of the TPP agreement, including making all required payments, the servicer will provide the homeowner with a permanent loan modification. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 788 (*West*); *Corvello v. Wells Fargo Bank, NA* (9th Cir. 2013) 728 F.3d 878, 880-881 (*Corvello*); *Wigod v. Wells Fargo Bank, N.A.* (7th Cir. 2012) 673 F.3d 547, 556-557 (*Wigod*).) "As authorized by Congress, the United States Department of the Treasury implemented [HAMP] to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.'"

10. [Ram v. OneWest Bank, FSB](#)

234 Cal.App.4th 1 (Cal. Ct. App. 2015) Cited 115 times 1 Legal Analyses

- Motion to dismiss
- Property - Foreclosure
- Contract - Good Faith and Fair Dealing

5 more...

Affirming sustaining of demurrer in wrongful foreclosure

Three elements must be proven: “(1) the trustee ... caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a ... deed of trust; (2) the party attacking the sale suffered prejudice or harm; and (3) the trustor ... tenders the amount of the secured indebtedness or was excused from tendering.” ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 800, 154 Cal.Rptr.3d 285](#) (West).) The first element--wrongfulness--can be satisfied by a variety of procedural defects, such as noncompliance with the requirements for notice or the trustee's lack of authority to foreclose.

271 Citing cases

1. [Rufini v. CitiMortgage, Inc.](#)

No. A138480 (Cal. Ct. App. May. 28, 2014)

- Motion for summary judgment
- Consumer - Unfair and Deceptive Practices
- Breach of Fiduciary Duty - Other

8 more...

For guidance on remand, we refer the parties to recent opinions, issued after the trial court's ruling in this case, addressing the obligations of lenders and borrowers who engage in attempts to modify home mortgages under the federal Home Affordable Modification Program (HAMP). (See [Bushell v. JPMorgan Chase Bank, N.A. \(2013\) 220 Cal.App.4th 915, 922-923](#) (Bushell); [Chavez, supra, 219 Cal.App.4th 1052](#); [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West); [Barroso v. Ocwen Loan Servicing, LLC \(2012\) 208 Cal.App.4th 1001](#) (Barroso); [Corvello v. Wells Fargo Bank, N.A. \(9th Cir. 2013\) 728 F.3d 878](#) (Corvello); [Wigod v. Wells Fargo Bank, N.A. \(7th Cir. 2012\) 673 F.3d 547, 557](#) (Wigod); see also [Sutcliffe v. Wells Fargo Bank, N.A. \(N.D. Cal. 2012\) 283 F.R.D. 533, 550](#).) Under HAMP, enacted to minimize home foreclosures following the massive financial upheaval in 2008 (Bushell, *supra*, at pp. 922-923; Corvello, *supra*, 728 F.3d at p. 880), qualifying homeowners may obtain permanent loan modifications that reduce their mortgage payments.

2. [Fairbanks v. Bank of America, N.A.](#)

No. C072086 (Cal. Ct. App. Mar. 12, 2014)

- Motion to dismiss
- Fraud - Other

o Contract - Other

6 more...

In this case plaintiffs John and Kathryn Fairbanks ask for relief from a judgment dismissing their lawsuit arising from implementation of the federal government's Home Affordable Modification Program (HAMP). Plaintiffs urge us to follow the lead of the Fourth Appellate District in [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West), wherein the Court of Appeal, reversing the trial court, held the homeowner had stated viable causes of action for fraud, negligent misrepresentation, breach of a written contract, promissory estoppel, and unfair business practices. While we agree with the court's analysis in West based on the compelling factual allegations the homeowner asserted in that case, plaintiffs' complaint is devoid of many of the facts upon which West was decided.

3. [Nersesyan v. Bank of America, N.A.](#)

No. C071934 (Cal. Ct. App. Feb. 5, 2014)

o Contract - Good Faith and Fair Dealing
o Consumer - Unfair and Deceptive Practices

7 more...

Plaintiff appeals, arguing the trial court abused its discretion in denying her leave to amend, and defendant breached the covenant of good faith and fair dealing implied in the loan agreement and violated Business and Professions Code section 17200. A spate of recent appellate decisions provide guidance on this subject: [West v. JP Morgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West); [Wigod v. Wells FargoBank, N.A. \(7th Cir. 2012\) 673 F.3d 547](#) (Wigod); [Corvello v. Wells Fargo Bank, N.A. \(9th Cir. 2013\) 728 F.3d 878](#) (Corvello); and this court's decision in [Bushell v. JP Morgan Chase Bank, N.A. \(2013\) 220 Cal.App.4th 915](#) (Bushell). These decisions, issued after the trial court ruled in the present case, conclude that when a borrower has alleged that he or she complied with all the terms of a trial modification plan offered under the Home Affordable Modification Program (HAMP), including making required payments and providing requested documents, and if the borrower's representations on which the modification is based remain true and correct, the lender must offer the borrower a good faith permanent modification.

4. [Sevilla v. JPMorgan Chase Bank](#)

No. A150806 (Cal. Ct. App. Apr. 26, 2019)

o Motion for summary judgment
o Consumer - Debt Collection
o Contract - Good Faith and Fair Dealing

3 more...

HAMP Two cases, *Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 923 (*Bushell*) and *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 787-788 (*West*), explain the purpose of HAMP and discuss HAMP regulations that were in place in 2009 and 2010, the period when the parties in this case discussed and entered into the TPP and defendants offered plaintiffs a permanent loan modification. The U.S. Treasury Department adopted HAMP in the wake of the 2008 financial meltdown "to induce lenders to refinance mortgages to reduce monthly payments for struggling homeowners."

5. [Rossetta v. CitiMortgage, Inc.](#)

No. C078916 (Cal. Ct. App. Dec. 18, 2017)

- Motion for summary judgment
- Motion to dismiss
- Tort - Negligence
- Tort - Intentional

10 more...

Plaintiff's counsel, who successfully prevailed in *Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915 [*Bushell*], cited by them in their opposition, is certainly conversant about the requirements of pleading a similar case such as this one. Notwithstanding, the allegations here fail to properly differentiate between and/or connect the trial payment plans and forbearance agreements alleged with HAMP modification, rendering analysis incomplete because the parties and court cannot determine if, for example, the *Bushell / West [v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780 (West)]* line of cases applies (HAMP cases) or whether the analysis must be done without reference to HAMP under traditional common law principles. As argued by the defendants, forbearance plans do not create a binding contract for modification.

6. [Dampf v. Bac Home Loans Servicing, L.P.](#)

No. B248246 (Cal. Ct. App. Oct. 22, 2014)

- Fraud - Other
- Fraud - Misrepresentation

9 more...

(See *Cansino v. Bank of America*, supra, 224 Cal.App.4th at p. 1469 ["[l]ess specificity in pleading fraud is required 'when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy"']; *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 158 ["requirement of specificity is relaxed when the allegations indicate that 'the defendant must necessarily possess full information concerning the facts of the controversy'"].) As in *West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780*, the Dampfs did not need to plead the name, title, and authority of each of the authors of letters they received from the bank because "that information . . . was uniquely with [the bank's] knowledge" (*id.* at p.

793), nor did the Dampfs have to identify the last names of Clarissa and Sue because "[t]he identification of the [bank] employees who spoke with [Mrs. Dampf] on those dates is or should be within [the bank's] knowledge" (id. at p. 794).

7. [Goodman v. Wells Fargo Bank, N.A.](#)

No. B243614 (Cal. Ct. App. Jan. 30, 2014)

- Motion for summary judgment
- Contract - Other
- Contract - Good Faith and Fair Dealing
- Banks

6 more...

2. Analysis After the trial court ruled on defendant's demurrer, several state and federal appellate decisions were issued that provide guidance of TPP's under HAMP. For example, in [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West), the borrower was approved for a TPP, complied with the terms of the TPP, including making the monthly payments required by the TPP. (Id. at p. 786.)

8. [Hart v. Wells Fargo Bank, N.A.](#)

No. B241513 (Cal. Ct. App. Nov. 18, 2013)

- Motion for summary judgment
- Fraud - Other
- Tort - Intentional
- Banks

12 more...

None of the recent amendments to section 2924 or to California's broader statutory scheme governing loan modifications or nonjudicial foreclosures is at issue in this case. Similarly, the provisions of the federal Emergency Economic Stabilization Act (12 U.S.C. §§ 5201-5253), under which the Home Affordable Mortgage Program (HAMP) was instituted in 2008 to encourage servicers of underlying mortgages "to take advantage . . . of other available programs to minimize foreclosures" (12 U.S.C. § 5219, subd. (a); see [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785](#) [discussing HAMP]; [Wigod v. Wells Fargo Bank, N.A. \(7th Cir. 2012\) 673 F.3d 547, 566-567](#) [same]), are not at issue here. The statutes governing nonjudicial foreclosure "provide the trustor with opportunities to prevent foreclosure by curing the default.

9. [Goldstein v. Stahl \(In re Goldstein\)](#)

526 B.R. 13 (B.A.P. 9th Cir. 2015) Cited 22 times

- Fraud - Other
- Contract - Other

o Banks

3 more...

Distinguishing Schmitz because the regulations in Schmitz created new rights postpetition
HAMP, like the TPP here, required Wells Fargo either to provide the Goldsteins a permanent loan modification, if the Goldsteins made the three trial payments and otherwise complied with the TPP or to notify them that they did not qualify for a permanent loan modification. See Corvello, 728 F.3d at 880–81 (discussing background and provisions of HAMP); and West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 797–98, 154 Cal.Rptr.3d 285 (2013) (interpreting the United States Department of the Treasury Directive 09–01 and HAMP guidelines as imposing the proviso that if the borrower complies with a HAMP trial plan agreement, the lender must offer a permanent loan modification). B. The State Court Action

10. Jamali v. Bank of Am. Home Loans

No. B256199 (Cal. Ct. App. Apr. 13, 2017)

o Property - Foreclosure
o Contract - Other

6 more...

(Jibilian v. Franchise Tax Bd. (2006) 136 Cal.App.4th 862, 864, fn. 1; Building Permit Consultants, Inc. v. Mazur (2004) 122 Cal.App.4th 1400, 1409.) Furthermore, the trial court may judicially notice recorded documents under Evidence Code sections 452, subdivisions (c) and (h) and 453. (Yvanova, supra, 62 Cal.4th at p. 924, fn. 1 [judicial notice of recorded trust deed, assignment of trust deed, substitution of trustee, notices of default and of trustee's sale, and trustee's deed upon sale]; West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 803 [judicial notice of trustee's deed upon sale].) C. Standard of Review for Demurrer

271 Citing cases

1. Syverson v. Countrywide Home Loans, Inc.

No. D069829 (Cal. Ct. App. Mar. 14, 2017)

o Motion for summary judgment
o Motion to dismiss
o Fraud - Other
o Equitable Contract - Equitable Estoppel

9 more...

The NPV test is an accounting calculation to determine whether it is more profitable for the lender to modify the loan or instead to foreclose. (See West v. JPMorgan Chase Bank, N.A.

(2013) 214 Cal.App.4th 780, 787-788 (West).) In the Syversons' case, the lower the property value, the more profitable it would be for the lender to modify their loan rather than to foreclose.

2. [Nunn v. JPMorgan Chase Bank, N.A.](#)

No. A139718 (Cal. Ct. App. May. 13, 2016) Cited 1 times

- Motion for summary judgment
- Tort - Other
- Tort - Negligence

10 more...

" [Citation.] " (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 787 (West).) In July 2010, the Nunns reapplied for a loan modification through the HAMP program.

3. [Orcilla v. Big Sur, Inc.](#)

244 Cal.App.4th 982 (Cal. Ct. App. 2016) Cited 105 times 1 Legal Analyses

- Motion to dismiss
- Contract - Other
- Property - Quiet Title

8 more...

Holding a plaintiff pleaded exceptions to the tender ruling elsewhere in the complaint

"The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 793, 154 Cal.Rptr.3d 285 (West).) However, "the requirement of specificity is relaxed when the allegations indicate that 'the defendant must necessarily possess full information concerning the facts of the controversy' [citations] or 'when the facts lie more in the knowledge of the' " defendant.

4. [Jamali v. Bank of Am. Home Loans](#)

No. B256199 (Cal. Ct. App. Jan. 6, 2016) Cited 1 times

- Contract - Other
- Property - Foreclosure

5 more...

(Jibilian v. Franchise Tax Bd. (2006) 136 Cal.App.4th 862, 864 fn. 1; Building Permit Consultants, Inc. v. Mazur (2004) 122 Cal.App.4th 1400, 1409.) Furthermore, the court may take judicial notice of recorded documents under Evidence Code section 452, subdivisions (c), (g) and (h). ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 803](#) [judicial notice of trustee's deed upon sale]; Ragland v. U.S. Bank National Assn. (2012) 209 Cal.App.4th 182, 194; Fontenot v. Wells Fargo Bank, N.A., supra, 198 Cal.App.4th at p. 264 [judicial notice of trust deed]; Lockhart v. MVM, Inc. (2009) 175 Cal.App.4th 1452, 1460-1461 [judicial notice of grant deed]; Evans v. California Trailer Court, Inc., supra, 28 Cal.App.4th at p. 549 [judicial notice of trustee's deed]; Cal-American Income Property Fund II v. County of Los Angeles (1989) 208 Cal.App.3d 109, 112, fn. 2.)
C. Standard of Review for Demurrer

5. [Sorokko v. Bank of America, N.A.](#)

No. A140544 (Cal. Ct. App. Aug. 27, 2015)

- Motion to dismiss
- Contract - Good Faith and Fair Dealing
- Fraud - Other

9 more...

This is because "[w]hen [a lender] received public tax dollars under the [federal] Troubled Asset Relief Program, it agreed to offer [trial period plans] and loan modifications under [the Home Affordable Modification Program] according to [regulations] . . . issued by the Department of the Treasury." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 796-797.](#)) A practice of "dual tracking" emerged: " 'When a borrower in default seeks a loan modification, the institution often continues to pursue foreclosure at the same time.' "

6. [Cardoni v. Wells Fargo Bank N.A.](#)

No. D066351 (Cal. Ct. App. Mar. 26, 2015) Cited 1 times

- Motion for summary judgment
- Motion to dismiss
- Contract - Other
- Contract - Good Faith and Fair Dealing
- Banks

15 more...

Requiring plaintiff to prove the defendant's "conduct is tethered to an underlying constitutional, statutory or regulatory provision, or that it threatens an incipient violation of an antitrust law, or violates the policy or spirit of an antitrust law" for an unfair competition claim

HAMP has been described thusly: "As authorized by Congress, the United States Department of the Treasury implemented . . . HAMP to help homeowners avoid foreclosure during the housing market crisis of 2008. The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by

reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' " (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 785 (West).) Treasury guidelines set forth threshold criteria to define the class of eligible borrowers, and those guidelines set forth accounting steps using a standardized net present value test to determine whether it is more profitable to modify the loan or to allow it to proceed to foreclosure.

7. Haroutunian v. GMAC Mortgage, LLC

No. B237722 (Cal. Ct. App. Dec. 19, 2013)

- Consumer - Unfair and Deceptive Practices
- Equitable Contract - Equitable Estoppel

5 more...

"The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise. [Citations.]" (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 803.) Promise

8. Aspiras v. Wells Fargo Bank, N.A.

162 Cal. Rptr. 3d 230 (Cal. Ct. App. 2013) Cited 9 times

- Motion for summary judgment
- Motion to dismiss
- Fraud - Other
- Tort - Negligence
- Banks

6 more...

In Aspiras v. Wells Fargo Bank, N.A. (2013) 219 Cal.App.4th 948, 952, 963–964, 162 Cal.Rptr.3d 230, the court distinguished Jolley and declined to impose a duty of care on an institutional lender in handling a loan modification.

“As authorized by Congress, the United States Department of the Treasury implemented the ... HAMP to help homeowners avoid foreclosure during the housing market crisis of 2008. ‘The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.’ ” (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 785, 154 Cal.Rptr.3d 285.) Treasury guidelines set forth threshold criteria to define the class of eligible borrowers, and those guidelines set forth accounting steps using a standardized net present value test to determine whether it is more profitable to modify the loan or to allow it to proceed to foreclosure.

9. [Corvello v. Wells Fargo Bank, NA](#)

728 F.3d 878 (9th Cir. 2013) Cited 151 times

- Motion to dismiss
- Consumer - Debt Collection
- Contract - Other
- Mortgage Banking
- Banks

2 more...

Holding that a loan servicer was contractually obligated under the terms of a HAMP trial period plan ("TPP") to borrowers who had complied with the terms of the TPP

Other courts have since followed the reasoning of Wigod. See, e.g., [Young v. Wells Fargo Bank, N.A.](#), 717 F.3d 224, 233–34 (1st Cir.2013); [Sutcliffe](#), 283 F.R.D. at 549–52; [West v. JPMorgan Chase Bank, N.A.](#), 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285, 299 (2013). The Seventh Circuit in Wigod rejected the very proposition that Wells Fargo asserts here, and which the district court accepted when it concluded that there was no contract. Wells Fargo contends, as it did in Wigod, that Paragraph 2G of the TPP means there can be no contract unless the servicer sends the borrower a signed Modification Agreement.

10. [Corvello v. Wells Fargo Bank, NA](#)

No. 11-16234 (9th Cir. Aug. 8, 2013) Cited 4 times 1 Legal Analyses

- Motion to dismiss
- Consumer - Debt Collection
- Fraud - Other
- Mortgage Banking
- Banks

4 more...

Other courts have since followed the reasoning of Wigod. See, e.g., [Young v. Wells Fargo Bank, N.A.](#), No. 12-1405, 2013 WL 2165262, at *6 (1st Cir. May 21, 2013); [Sutcliffe](#), 283 F.R.D. at 549-52; [West v. JPMorgan Chase Bank, N.A.](#), 154 Cal. Rptr. 3d 285, 299 (Ct. App. 2013). The Seventh Circuit in Wigod rejected the very proposition that Wells Fargo asserts here, and which the district court accepted when it concluded that there was no contract. Wells Fargo contends, as it did in Wigod, that Paragraph 2G of the TPP means there can be no contract unless the servicer sends the borrower a signed Modification Agreement.

271 Citing cases

1. [Flextronics Int'l USA, Inc. v. Sparkling Drink Sys. Innovation Ctr. Ltd.](#)

186 F. Supp. 3d 852 (N.D. Ill. 2016) Cited 13 times

- Motion to dismiss
- Fraud - Other
- Contract - Other
- Electronic Components and Accessories
- Electronics

4 more...

Concluding that Hong Kong limited companies should be treated as corporations under § 1332

"The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is [that] the defendant made the representation without reasonable ground for believing it to be true." [West v. JPMorgan Chase Bank, N.A.](#), 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285 (2013). Only statements about present facts, rather than predictions or statements of opinion, can create liability for fraud or negligent misrepresentation.

2. [Meixner v. Wells Fargo Bank, N.A.](#)

101 F. Supp. 3d 938 (E.D. Cal. 2015) Cited 16 times

- Motion to dismiss
- Tort - Negligence
- Contract - Other
- Banks
- Commercial Banking

10 more...

Finding that the plaintiff had properly pleaded an intentional misrepresentation claim against a bank for conduct taken in a loan modification process

Corvello, 728 F.3d at 884. See also Wigod, 673 F.3d at 563 (“Wells still had an obligation to offer Wigod a permanent modification once she satisfied all her obligations under the agreement”); [Bushell v. JPMorgan Chase Bank, N.A.](#), 220 Cal.App.4th 915, 925–26, 163 Cal.Rptr.3d 539 (2013) (“if a borrower complies with all terms of the TPP—including making all required payments and providing all required documentation—and if the borrower’s representations on which modification is based remain true and correct, the lender must offer the borrower a good faith permanent loan modification, because the borrower has qualified under HAMP and has complied with the TPP”); [W. v. JPMorgan Chase Bank, N.A.](#), 214 Cal.App.4th 780, 788, 154 Cal.Rptr.3d 285 (2013), reh’g denied (Apr. 11, 2013), review denied (July 10, 2013) (“[a]fter the trial period, if the borrower complied with all terms of the TPP Agreement [...] and if the borrower’s representations remained true and correct, the servicer had to offer a permanent modification”). 5 Here, Plaintiff alleges that the HAMP TPP was a contract between the parties conditioned on Plaintiff making the three payments required under the TPP. (ECF No. 1–1 at 22, ¶ 73.)

3. [Alimena v. Vericrest Financial, Inc.](#)

964 F. Supp. 2d 1200 (E.D. Cal. 2013) Cited 15 times

- Motion to dismiss
- Fraud - Other
- Equitable Contract - Equitable Estoppel

7 more...

Holding that plaintiffs sufficiently alleged reasonable and foreseeable reliance on the lender's promise by "tendering four trial payments of \$1667 and submitting the requested documentation"

At least one California Court of Appeals has held that a misrepresentation which causes a party to forego taking legal action to stop a foreclosure sale, such as retaining an attorney, is sufficient to state a claim for damages for fraud and negligent misrepresentation. See [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 795, 154 Cal.Rptr.3d 285 \(2013\)](#). The court is also of the view that Plaintiffs' four trial payments may also constitute damages.

4. [In re Goldstein](#)

BAP CC-14-1346-TaDPa (B.A.P. 9th Cir. Mar. 3, 2015)

- Fraud - Other
- Contract - Other
- Banks

3 more...

HAMP, like the TPP here, required Wells Fargo either to provide the Goldsteins a permanent loan modification, if the Goldsteins made the three trial payments and otherwise complied with the TPP or to notify them that they did not qualify for a permanent loan modification. See [Corvello, 728 F.3d at 880-81](#) (discussing background and provisions of HAMP); and [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 797-98 \(2013\)](#) (interpreting the United States Department of the Treasury Directive 09-01 and HAMP guidelines as imposing the proviso that if the borrower complies with a HAMP trial plan agreement, the lender must offer a permanent loan modification). B. The State Court Action

5. [Maleti v. Wickers](#)

No. H048393 (Cal. Ct. App. Aug. 15, 2022) Cited 1 times

- Motion for summary judgment
- Motion to dismiss
- Con. Law - Other
- Tort - Other

11 more...

One element of a quiet title claim "is '[t]he adverse claims to the title of the plaintiff against which a determination is sought.' [Citation.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802](#) (West), quoting § 761.020, subd. (c).) Thus, in an action brought

under the statute, the plaintiff seeking to quiet title to real or personal property "shall name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought."

6. [Quicken Mortg. Corp. v. Bank of Am.](#)

No. G059249 (Cal. Ct. App. Jan. 21, 2022)

- Fraud - Misrepresentation
- Fraud - Other
- Mortgage Banking
- Banks

"Besides actual reliance, [a] plaintiff must also show "justifiable" reliance, i.e., circumstances were such to make it reasonable for [the] plaintiff to accept [the] defendant's statements without an independent inquiry or investigation.' [Citation.] The reasonableness of the plaintiff's reliance is judged by reference to the plaintiff's knowledge and experience." (OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp. (2007) 157 Cal.App.4th 835, 864 (OCM); accord [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 794.](#)) "The recipient of a fraudulent misrepresentation is not justified in relying upon its truth if he knows that it is false or its falsity is obvious to him."

7. [Finsand v. Nationstar Mortg., LLC](#)

No. H045052 (Cal. Ct. App. Dec. 27, 2019)

- Motion for summary judgment
- Motion to dismiss
- Consumer - Unfair and Deceptive Practices
- Tort - Intentional
- Mortgage Banking
- Banks

9 more...

We are also not convinced by plaintiffs' argument that the federal Home Affordable Mortgage Program [HAMP] for loan modification applied to "non-owner occupied rental properties." "The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' [Citation.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785](#) (West).) HAMP had an occupancy requirement for borrowers: "[T]he borrower had to meet certain threshold requirements, including that the loan originated on or before January 1, 2009; [and] it was secured by the borrower's primary residence;"

8. [Perales v. Select Portfolio Servicing](#)

No. D075087 (Cal. Ct. App. Sep. 5, 2019)

- Motion to dismiss
- Fraud - Other
- Fraud - Misrepresentation

5 more...

Intentional misrepresentation requires (1) a misrepresentation of material fact; (2) knowledge of falsity; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damages. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#) (West).) Only the second element differs for negligent misrepresentation—a plaintiff must show that the defendant made the misrepresentation without reasonable ground for believing it was true.

9. [Perl v. Bank of Am.](#)

No. B278356 (Cal. Ct. App. Jun. 25, 2019)

- Equitable Contract - Equitable Estoppel
- Equitable Contract - Promissory Estoppel

3 more...

) The alleged promise was sufficiently definite to support a promissory estoppel claim. Although we agree with Plaintiffs that they were not required to identify the bank representative who made the alleged promises, as the matter is one that "is or should be within [Defendants'] knowledge" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 794](#) (West)), we note that Plaintiffs' proposed second amended complaint did identify the employee by name. b. Reasonable, foreseeable, and detrimental reliance

10. [Kryvoshey v. Ahmsi Default Servs., Inc.](#)

No. C078308 (Cal. Ct. App. Feb. 27, 2019)

- Fraud - Other
- Consumer - Unfair and Deceptive Practices

9 more...

(Id. at pp. 926-931.) Defendants attempt to distinguish *Bushell*, supra, 220 Cal.App.4th 915, and the similar holding in [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West), as follows: "The servicers in those cases initiated foreclosure before denying the borrowers' HAMP loan modification applications and never offered the borrowers any loan modification of any sort. [Cites to *Bushell* and *West*.] Here, in contrast, after denying Kryvoshey's HAMP application, AHMSI did not immediately foreclose. It offered Kryvoshey an in-house modification with terms consistent with what she would have received under HAMP.

271 Citing cases

1. [McCaa v. Ocwen Loan Servicing LLC](#)

No. D072893 (Cal. Ct. App. Dec. 6, 2018)

- Motion for summary judgment
- Fraud - Misrepresentation
- Contract - Other

3 more...

The McCaas allege they sustained damages in connection with the Ocwen failed application, although they ultimately obtained a different loan modification from one of the successor loan servicers. ([West v. JP Morgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 796-799](#) (West) [loan modification trial payment plan constitutes an enforceable contract, when HAMP terms apply and are considered]; [Lueras v. BAC Home Loans Servicing, LP \(2013\) 221 Cal.App.4th 49, 68-69](#) (Lueras) [although ordinary negligence cause of action did not lie against lender, a borrower could amend to plead negligent misrepresentation of material information regarding status of loan modification application, based on close connection between misrepresentation and the alleged injury].) HAMP refers to the federally enacted Home Affordable Modification Program, under which the Treasury Department issued guidelines for loan servicers to process permanent loan modification requests submitted by eligible homeowner borrowers who are at risk of default.

2. [Arefi v. JP Morgan Chase Bank](#)

No. B263947 (Cal. Ct. App. Jul. 2, 2018)

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair Competition

5 more...

"" (Walent v. Commission on Professional Competence etc. of the LAUSD (2017) 9 Cal.App.5th 745, 752; see [Lucioni v. Bank of America, N.A., supra](#), 3 Cal.App.5th at pp. 159, 161 [declining to make injunctive relief under HBOR "impliedly available" for a violation not listed in the statute and noting that in enacting HBOR "the Legislature addressed when courts may intercede in the nonjudicial foreclosure scheme"].) The Arefis cite [Lueras v. BAC Home Loans Servicing, L.P., \(2013\) 221 Cal.App.4th 49, 76](#) (Lueras), and [West v. JPMorgan Chase Bank, N.A., \(2013\) 214 Cal.App.4th 780, 797](#) (West) for the proposition, which counsel for the Arefis described at oral argument as a "judicial gloss" on the statute, that former section 2923.6 imposed a duty on first lien lenders to review a loan modification application in good faith. Neither of these cases, however, supports the Arefis' contention.

3. [Mackey v. Ocwen Loan Servicing, LLC](#)

No. F074094 (Cal. Ct. App. May. 18, 2018)

- Motion to dismiss
- Fraud - Other
- Contract - Good Faith and Fair Dealing

3 more...

In her brief on appeal, plaintiff makes general assertions that her complaint stated a cause of action. She asserts [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West) supports her assertion of causes of action for fraud and breach of contract against the loan servicing agent. She does not, however, draw parallels between the allegations in the complaint in West and the allegations in her second amended complaint to show that her pleading was sufficient.

4. [Parker v. Norris Grp. Cmty. Reinvestment, LP](#)

No. E064742 (Cal. Ct. App. Jul. 11, 2017) Cited 1 times

- Motion to dismiss
- Contract - Other
- Property - Foreclosure

7 more...

To state a cause of action for quiet title, the plaintiff must allege, among other elements, "[t]he adverse claims to the title of the plaintiff against which a determination is sought." (Code Civ. Proc., § 761.020, subd. (c); [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#) [quiet title claim not stated where none of the named defendants had title claim adverse to plaintiff's claim].) That is, the complaint must allege that the defendant has a title claim to the property adverse to the plaintiff's claim.

5. [Daniels v. Select Portfolio Servicing, Inc.](#)

246 Cal.App.4th 1150 (Cal. Ct. App. 2016) Cited 212 times 2 Legal Analyses

- Motion to dismiss
- Fraud - Misrepresentation
- Tort - Negligence
- Mortgage Banking
- Banks

11 more...

Holding complaint failed to adequately plead successor liability at California's demurrer stage where it did not allege that the defendant "purchased or otherwise acquired [the corporation's] principal assets" "The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." ([West v. JPMorgan Chase Bank, N.A.](#)

(2013) 214 Cal.App.4th 780, 793, 154 Cal.Rptr.3d 285 (West).) However, “the requirement of specificity is relaxed when the allegations indicate that ‘the defendant must necessarily possess full information concerning the facts of the controversy’ [citations] or ‘when the facts lie more in the knowledge of the’ ” defendant.

6. [Samaduroff v. Bank of Am., N.A.](#)

No. G052135 (Cal. Ct. App. Jan. 12, 2016)

- Motion for summary judgment
- Tort - Intentional
- Fraud - Other

5 more...

(Cf. [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 786, 795, 804-805](#) [allegations that plaintiffs made additional payments in reliance on promise foreclosure would not happen, but bank broke promise and foreclosed on home].)

7. [Odimbur v. Wells Fargo Bank, N.A.](#)

No. B257219 (Cal. Ct. App. Sep. 16, 2015)

- Contract - Other
- Property - RESPA
- Banks

9 more...

With respect to HAMP, appellant does not contend "that the HAMP [modification] or other modification must be offered," but instead simply asserts "those programs must be considered." Appellant bases her arguments on [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West) and its interpretation of a trial payment plan (TPP) under HAMP as incorporating United States Department of Treasury's Supplemental Directive 09-01 under Civil Code section 1643 in order to make the TPP "lawful." (West, supra, 214 Cal.App.4th at pp. 797-798 ["To make the Trial Plan Agreement lawful, it must be interpreted to include the provisio imposed by Directive 09-01"].)

8. [Valencia v. Wells Fargo Bank](#)

No. B254999 (Cal. Ct. App. Jun. 2, 2015)

- Fraud - Other
- Equitable Contract - Equitable Estoppel
- Banks

3 more...

The elements of the claim are: (1) the trustee caused an illegal, fraudulent or willfully oppressive sale of real property pursuant to a deed of trust; (2) the plaintiff suffered prejudice or harm; and (3) the trustor tendered the amount of the secured indebtedness or was excused from tendering. (Ram, at p. 11; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 800.](#)) The Legislature authorizes a "trustee, mortgagee, or beneficiary, or any of their authorized agents" to initiate foreclosure with a notice of default.

9. [Gonzalez v. JPMorgan Chase Bank, N.A..](#)

No. B252568 (Cal. Ct. App. Feb. 24, 2015) Cited 1 times

- Regulatory - Federal
- Fraud - Other

6 more...

After demurrers were sustained to his complaint and first amended complaint with leave to amend, plaintiff filed a second amended complaint to which defendants again demurred. Following oral argument, the trial court sustained the demurrer to the second amended complaint, but provided plaintiff leave to amend " to address the issues raised in [West \[v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780 \(West\)\].](#)" The trial court further stated that it would provide plaintiff "an opportunity to file a third amended complaint, but in a way that addresses the defendant's concerns raised both in their demurrer and today in oral argument as to why the West case didn't apply."

10. [Hidalgo v. Kazi Foods, Inc.](#)

No. B247488 (Cal. Ct. App. Nov. 26, 2014) Cited 1 times

- Fraud - Other
- Contract - Good Faith and Fair Dealing

10 more...

The elements of fraud are a false representation of a material fact, knowledge of the falsity, intent to induce another to rely on the representation, reliance, and resulting damage. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792 \(West\).](#)) Fraud allegations must be pleaded with specificity.

271 Citing cases

1. [Susan Henry v. J.P. Morgan Chase Bank](#)

No. B249535 (Cal. Ct. App. Apr. 16, 2014)

- Fraud - Other
- Consumer - Unfair Competition

4 more...

(Boschma, supra, 198 Cal.App.4th at p. 248, quoting Small v. Fritz Companies, Inc. (2003) 30 Cal.4th 167, 184.) Courts enforce the specificity requirement for two purposes: "The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. [Citation.] The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, 'the pleading should be sufficient "'to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.'"" (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 793, quoting Committee on Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 216-217, superseded by statute on another ground as stated in Californians for Disability Rights v. Mervyn's, LLC (2006) 39 Cal.4th 223, 227.) Accordingly, the normal policy of liberally construing pleadings against a demurrer cannot be invoked to sustain an insufficiently specific fraud cause of action.

2. Baldwin v. Bank of America, N.A.

No. B243789 (Cal. Ct. App. Feb. 7, 2014) Cited 1 times

- Motion to dismiss
- Contract - Other
- Consumer - Unfair and Deceptive Practices

5 more...

Since those factors are unknown and unknowable, the amount of damages, if any, is necessarily speculative. The absence of an obligation to modify the loan or to provide other permanent relief distinguishes this case from West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780 (West) and Wigod v. Wells Fargo Bank, N.A. (7th Cir. 2012) 673 F.3d 547 (Wigod), which were brought under the separate Home Affordable Mortgage Program (HAMP). HAMP was intended to "provide relief to borrowers who have defaulted on their mortgage payment or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt." [Citation.]" (West, supra, 214 Cal.App.4th at p. 785.)

3. Aspiras v. Wells Fargo Bank, N.A.

No. D061449 (Cal. Ct. App. Sep. 17, 2013)

- Motion for summary judgment
- Motion to dismiss
- Fraud - Other
- Tort - Negligence
- Banks

6 more...

"As authorized by Congress, the United States Department of the Treasury implemented the . . . HAMP to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' " ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785.](#)) Treasury guidelines set forth threshold criteria to define the class of eligible borrowers, and those guidelines set forth accounting steps using a standardized net present value test to determine whether it is more profitable to modify the loan or to allow it to proceed to foreclosure.

4. [Haynish v. Bank of Am., N.A.](#)

284 F. Supp. 3d 1037 (N.D. Cal. 2018) Cited 15 times

- Motion for summary judgment
- Motion to dismiss
- Tort - Negligence
- Property - Foreclosure

5 more...

Finding that plaintiffs had stated a claim against defendant for dual-tracking but dismissing wrongful foreclosure claim predicated on dual-tracking because plaintiffs had not alleged that the foreclosure would not have occurred but for the alleged dual-tracking

Dkt. No. 38 at 3–4. Both sides contend that [West v. JPMorgan Chase Bank, N.A. , 214 Cal. App. 4th 780, 154 Cal.Rptr.3d 285 \(2013\)](#), supports their view of the law. Finally, SPS and Bank of New York say the Haynishes failed to allege "substantial prejudice."

5. [Hatton v. Bank of America, N.A.](#)

Case No.: 1:15-cv-00187-GSA (E.D. Cal. Jul. 8, 2015) Cited 11 times

- Motion to dismiss
- Fraud - Other
- Fraud - Misrepresentation

3 more...

Denying motion to dismiss where plaintiffs alleged they "chose not to make later payments based solely on [d]efendant's insistence that payments were not required during the course of applying for a modification"

Plaintiffs have thus adequately alleged that they suffered damages as a result of BofA's misrepresentations. [Alimena, 964 F.Supp.2d at 1213](#) ("a misrepresentation which causes a party to forego taking legal action to stop a foreclosure sale, such as retaining an attorney, is sufficient to state a claim for damages for fraud and negligent misrepresentation"), citing [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 795 \(2013\)](#).

6. [Carlin v. Dairyamerica, Inc.](#)

978 F. Supp. 2d 1103 (E.D. Cal. 2013) Cited 2 times

- Motion to dismiss
- Fraud - Misrepresentation
- Consumer - Unfair and Deceptive Practices
- Food and Beverage
- Dairy Products

8 more...

The elements of negligent misrepresentation are: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant made the representation without reasonable ground for believing it to be true; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. See [West v. JPMorgan Chase Bank, 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285 \(4th Dist.2013\)](#) (elements are identical to the elements of fraud except that the defendant need not have knowledge the representation is false). 1. False Representation of Material Fact

7. [Carlin v. DairyAmerica, Inc.](#)

1:09-cv-0430 AWI DLB (E.D. Cal. Oct. 11, 2013)

- Motion to dismiss
- Fraud - Misrepresentation
- Consumer - Unfair and Deceptive Practices

8 more...

The elements of negligent misrepresentation are: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant made the representation without reasonable ground for believing it to be true; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. See [West v. JPMorgan Chase Bank, 214 Cal.App.4th 780, 792 \(4th Dist. 2013\)](#) (elements are identical to the elements of fraud except that the defendant need not have knowledge the representation is false). 1. False Representation of Material Fact

8. [Velez v. JPMorgan Chase Bank](#)

No. C084147 (Cal. Ct. App. Oct. 7, 2019)

- Motion for summary judgment
- Fraud - Other
- Fraud - Misrepresentation

1 more...

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. [Citation.] The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true. [Citations.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Thus, both fraud and negligent misrepresentation causes of action require a false representation of past or existing fact.

9. [Tran v. Martingale Invs.](#)

No. G055571 (Cal. Ct. App. Sep. 30, 2019)

- Equitable Contract - Equitable Estoppel
- Equitable Contract - Promissory Estoppel

3 more...

The record includes no evidence the Trans reasonably relied on W.B.'s statements. The Trans rely on [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West), to support their claim of reasonable reliance. West is inapposite.

10. [Moore v. Wells Fargo Bank](#)

39 Cal.App.5th 280 (Cal. Ct. App. 2019) Cited 9 times

- Contract - Good Faith and Fair Dealing
- Tort - Negligence
- Banks

5 more...

Robie, J. "As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' " ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785, 154 Cal.Rptr.3d 285.](#)) In this case, plaintiff Gregory Moore contacted defendant Wells Fargo, N.A. (Wells Fargo) to discuss possible assistance programs while he was unemployed.

271 Citing cases

1. [Gauna v. JPMorgan Chase Bank](#)

No. C078490 (Cal. Ct. App. Mar. 6, 2019)

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair and Deceptive Practices

6 more...

As for the last fraud element, continuing to make modified loan payments does not constitute detrimental reliance because Gauna was contractually obligated to make loan payments. (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 79 (*Lueras*); *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 795 (West).) Gauna fails to allege specific facts showing how her reliance on defendants' promise to modify her loan caused her to default on her loan or prevented her from curing that default.

2. *Mohsen v. Cadence Design Sys., Inc.*

No. H042787 (Cal. Ct. App. Oct. 22, 2018)

- Fraud - Other
- Criminal - Other
- Computer Software

To establish fraud a plaintiff must allege and prove that "(1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792 (West), citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*).) Each element of fraud must be pleaded with specificity, not with general, conclusionary allegations.

3. *Ochi v. Anthem Blue Cross*

No. D071966 (Cal. Ct. App. Jul. 20, 2018)

- Motion for summary judgment
- Fraud - Other
- Equitable Contract - Quasi-Contract
- Pharmaceuticals and Biotechnology
- Pharmaceuticals Wholesale

1 more...

As such, plaintiff cannot meet his burden to establish a triable issue of material fact that Anthem (mis)represented he always would be paid more for providing services out-of-network than an in-network provider. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792 (West) [noting the elements of a fraud claim include among others a "false representation as to a past or existing material fact"].) Plaintiff also could not meet

his burden to make a prima facie showing of a triable issue of material fact that he relied on any alleged misrepresentation by Anthem, inasmuch as there is no dispute that the EOB's were issued by Anthem after plaintiff had provided out-of-network services to its members.

4. [Parker v. 5 Arch Income Fund 1, LLC](#)

No. E066231 (Cal. Ct. App. Dec. 20, 2017)

- Contract - Other
- Property - Foreclosure

5 more...

(Id. at p. 104.)" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 800.](#)) "The first element [of a cause of action for wrongful foreclosure or to set aside a foreclosure sale] may be satisfied by allegations that (1) the trustee or beneficiary failed to comply with the statutory procedural requirements for the notice or conduct of the sale; (2) the trustee did not have the power to foreclose; (3) the trustor was not in default, no breach had occurred, or the lender waived the breach; or (4) the deed of trust was void.

5. [Mackovska v. Bank of Am., N.A.](#)

No. B271080 (Cal. Ct. App. Aug. 15, 2017)

- Motion for summary judgment
- Fraud - Other
- Consumer - Unfair and Deceptive Practices

6 more...

The purpose of the particularity requirement in pleading fraud is to give the defendant sufficient notice of the charges and to allow a court to weed out meritless fraud claims. (See [Tenet Healthsystem Desert, Inc. v. Blue Cross of California \(2016\) 245 Cal.App.4th 821, 838](#); [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) ""A plaintiff asserting fraud by misrepresentation is obliged to . . ."establish a complete causal relationship" between the alleged misrepresentations and the harm claimed to have resulted therefrom." [Citation.]' [Citation.] This requires a plaintiff to allege specific facts not only showing he or she actually and justifiably relied on the defendant's misrepresentations, but also how the actions he or she took in reliance on the defendant's misrepresentations caused the alleged damages."

6. [Kalnoki v. First Am. Tr. Servicing Solutions, LLC](#)

8 Cal.App.5th 23 (Cal. Ct. App. 2017) Cited 85 times

- Motion for summary judgment
- Motion to dismiss
- Consumer - Debt Collection

- Contract - Other
- Short-Term Business Loans and Credit
- Banks

8 more...

Holding that even assuming the truth of similar securitization allegations, they would be insufficient to set aside foreclosure

The elements of fraud are a false representation of a material fact, knowledge of the falsity, intent to induce another to rely on the representation, reliance, and resulting damages. ([West v. JP Morgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285](#) (West)); [Tarmann v. State Farm Mut. Auto. Ins. Co. \(1991\) 2 Cal.App.4th 153, 157, 2 Cal.Rptr.2d 861.](#)) To assert a cause of action for fraud against a corporation, a plaintiff must allege the name of the person who allegedly made the fraudulent representation, his or her authority to speak, to whom he or she spoke, what was said and when it was said. ([Tarmann](#), at p. 157, 2 Cal.Rptr.2d 861.)

7. [Bolds v. Wells Fargo Bank, N.A.](#)

No. A144235 (Cal. Ct. App. Oct. 20, 2016)

- Tort - Negligence
- Fraud - Misrepresentation
- Banks

2 more...

[Citation.] The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#) (West).) " 'Actual reliance occurs when a misrepresentation is " 'an immediate cause of [a plaintiff's] conduct, which alters his legal relations,' " and when, absent such representation, " 'he would not, in all reasonable probability, have entered into the contract or other transaction.

8. [Rosenblum v. Mortg. Elec. Registration Sys., Inc.](#)

No. A146526 (Cal. Ct. App. Sep. 28, 2016) Cited 2 times

- Motion to dismiss
- Property - Quiet Title
- Enforcement - Judgment

1 more...

"An element of a cause of action for quiet title is '[t]he adverse claims to the title of the plaintiff against which a determination is sought.' " ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802](#), quoting Code Civ. Proc., § 761.020, subd. (c).) MERS has no such claim. A. MERS's Authority to Assign the Deed of Trust

9. [Guardia v. Wells Fargo Home Mortg.](#)

No. B261287 (Cal. Ct. App. Sep. 1, 2016) Cited 1 times

- Consumer - Unfair and Deceptive Practices
- Tort - Negligence
- Mortgage Banking
- Banks

1 more...

Under the Net Present Value test, a loan servicer is not required to modify a loan under HAMP where the expected return after foreclosure is higher than the value of a modified mortgage based on a monthly payment that is (not more than) 31 percent of the borrower's monthly income. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 787-788.](#)) Guardia asserts he demonstrated he qualified for a loan modification "because he proposed a loan payment that was 31% of even his reduced monthly income, as HAMP required."

10. [Melgar v. Deutsche Bank Nat'l Tr. Co.](#)

No. G050257 (Cal. Ct. App. Aug. 17, 2016) Cited 1 times

- Motion for summary judgment
- Motion to compel discovery
- Consumer - Debt Collection
- Property - Foreclosure
- Commercial Banking
- Banks

9 more...

A. Home Affordable Mortgage Program (HAMP) "As authorized by Congress, the United States Department of the Treasury implemented the [HAMP] to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' [Citation.]" ([West v. JP Morgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 786](#) (West).) The program was best explained in [Wigod v. Wells Fargo Bank, N.A. \(7th Cir. 2012\) 673 F.3d 547, 556-557](#) (Wigod).

271 Citing cases

1. [Park v. Aurora Loan Servs. LLC](#)

No. D068076 (Cal. Ct. App. Jul. 28, 2016)

- [Property - Foreclosure](#)
- [Property - Quiet Title](#)

- [Mortgage Banking](#)
- [Banks](#)

8 more...

A quiet title cause of action generally has two elements: (1) "the plaintiff is the owner and in possession of the land," and (2) "the defendant claims an interest therein adverse to [the plaintiff]." (South Shore Land Co. v. Petersen (1964) 226 Cal.App.2d 725, 740; see [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#); Code Civ. Proc., § 761.020.) A. Aurora Loan Services and Nationstar

2. [Obillo v. Arvest Bank Grp., Inc.](#)

No. D068364 (Cal. Ct. App. Jun. 28, 2016)

- [Motion to dismiss](#)
- [Consumer - Debt Collection](#)
- [Contract - Good Faith and Fair Dealing](#)
- [Regional Banks](#)
- [Banks](#)

15 more...

Relevant here, a borrower typically has no private right of action under HAMP, as the servicer's obligation to follow the HAMP guidelines arises only out of Servicer Participation Agreements (SPAs) contracts to which the borrower is not a party. ([West v. JP Morgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 787-788, 799](#) (West).) SPAs are entered into between the Secretary of Treasury and the mortgage servicers pursuant to a federal program aimed at reducing foreclosures by offering incentives to the servicers in exchange for their agreement to offer loan modifications in accordance with HAMP guidelines.

3. [Riggs v. Wells Fargo Bank, N.A.](#)

No. G051770 (Cal. Ct. App. Jun. 22, 2016)

- [Fraud - Other](#)
- [Contract - Other](#)
- [Banks](#)

5 more...

(Civ. Code, § 1698, subd. (c); *Secretst*, supra, 167 Cal.App.4th at p. 553.) The Riggses rely on [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 786](#) (West), and *Chavez*, but those cases do not aid them. The Riggses cite West for "the proposition that when a lender fails to complete a permanent modification after a successful trial plan period . . . , such failure constitutes a cause of action for Breach of Contract."

4. [Del Rio v. U.S. Bank Nat'l Ass'n](#)

No. E060609 (Cal. Ct. App. May. 6, 2016)

- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Tort - Negligence](#)
- [Commercial Banking](#)
- [Banks](#)

4 more...

As to the element of detrimental reliance, plaintiffs alleged that they "failed to pursue other options to save their home" including "a hard money loan, creative financing or pursuing a loan with another lender," or a short sale or traditional marketing of the property. In [West v. JPMorgan Chase Bank, NA. \(2013\) 214 Cal.App.4th 780](#) (West), the court concluded that the plaintiff's complaint, read as a whole, sufficiently alleged justifiable reliance on a promise. The court held that the complaint could "be reasonably interpreted to allege that [the plaintiff's] reliance on [the defendant's] alleged misrepresentations caused [her] not to take legal action to stop the trustee's sale."

5. [Macritchie v. Wells Fargo Bank, N.A.](#)

No. C071645 (Cal. Ct. App. Apr. 12, 2016)

- [Fraud - Misrepresentation](#)
- [Contract - Good Faith and Fair Dealing](#)
- [Banks](#)

5 more...

It provided incentives for lenders to modify existing loans for borrowers who were eligible under the program. (Ibid; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 787.](#)) The program guidelines provided that if the borrower met certain requirements and it was determined that it was more profitable to the loan servicer to modify the loan than to allow it to go into foreclosure, the servicer must offer a loan modification.

6. [T. H. v. Novartis Pharms. Corp.](#)

245 Cal.App.4th 589 (Cal. Ct. App. 2016) Cited 1 times 2 Legal Analyses

- [Fraud - Misrepresentation](#)
- [Tort - Negligence](#)
- [Specialty Pharmaceuticals](#)
- [Pharmaceuticals and Biotechnology](#)

4 more...

[Citation.] The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true.” ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285.](#)) “The elements of an action for fraud based on concealment are: (1) the defendant concealed or suppressed a material fact; (2) the defendant had a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed the fact with the intent to defraud the plaintiff; (4) the plaintiff was unaware of the fact and would not have acted as he did if he had known of the concealed fact; and (5) as a result of the concealment of the fact, the plaintiff sustained damage.” ([Knox v. Dean \(2012\) 205 Cal.App.4th 417, 433, 140 Cal.Rptr.3d 569.](#))

7. [Bank of S. Cal., N.A. v. D&D Goryoka, LLC](#)

No. D068093 (Cal. Ct. App. Feb. 18, 2016) Cited 2 times

- [Motion for summary judgment](#)
- [Fraud - Other](#)
- [Fraud - Fraudulent Inducement](#)

5 more...

The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. ([Lazar v. Superior Court \(1996\) 12 Cal.4th 631, 638; West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) " It is hornbook law that an actionable misrepresentation must be made about past or existing facts; statements regarding future events are merely deemed opinions.' "

8. [Sepehry-Fard v. Aurora Bank](#)

No. H039052 (Cal. Ct. App. Feb. 16, 2016)

- [Motion to dismiss](#)
- [Contract - Other](#)
- [Fraud - Other](#)

1 more...

To prove fraud, plaintiff must show: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#) (West).) Fraud causes of action are also held to a higher pleading standard.

9. [Sepehry-Fard v. Bank of N.Y. Mellon](#)

No. H039493 (Cal. Ct. App. Feb. 16, 2016)

- [Motion to dismiss](#)
- [Contract - Other](#)
- [Fraud - Other](#)

1 more...

To prove fraud, a plaintiff must show: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#) (West).) Fraud causes of action are held to a higher pleading standard.

10. [HSBC Bank U.S. v. Wood](#)

2d Civil No. B263577 (Cal. Ct. App. Jan. 19, 2016)

- [Contract - Other](#)
- [Enforcement - Civil Forfeiture](#)

1 more...

HAMP was born out of this plan. If a borrower qualifies for a loan modification under HAMP, the loan servicer implements a TPP. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 788.](#)) If after a three-month trial period the borrower has complied with all the terms of the TPP and all of the borrower's representations remain true and correct, the servicer is required to offer a loan modification.

271 Citing cases

1. [Medrano v. West](#)

No. B260528 (Cal. Ct. App. Jan. 11, 2016)

- [Fraud - Other](#)
- [Tort - Negligence](#)

6 more...

This specificity requirement means "a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) We enforce the specificity requirement guided by its two purposes: (1) "to give notice to the defendant with sufficiently definite

charges that the defendant can meet them" and (2) in an effort to weed out meritless fraud claims, ""to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud."" [Citation.]" (West v. JPMorgan Chase Bank, N.A., supra, 214 Cal.App.4th at p. 793; Curcini v. County of Alameda (2008) 164 Cal.App.4th 629, 649 [facts constituting the alleged fraud must be pled with "sufficient specificity to allow [the] defendant to understand fully the nature of the charge made"].)

2. [Melgar v. Deutsche Bank Nat'l Tr. Co.](#)

No. G050257 (Cal. Ct. App. Jan. 4, 2016) Cited 1 times

- [Motion for summary judgment](#)
- [Motion to compel discovery](#)
- [Consumer - Debt Collection](#)
- [Contract - Other](#)
- [Commercial Banking](#)
- [Banks](#)

9 more...

A. Home Affordable Mortgage Program (HAMP) "As authorized by Congress, the United States Department of the Treasury implemented the [HAMP] to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' [Citation.]" (West v. JP Morgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 786 (West).) The program was best explained in Wigod v. Wells Fargo Bank, N.A. (7th Cir. 2012) 673 F.3d 547, 556-557 (Wigod).

3. [Mor v. U.S. Bank National Association](#)

No. B257406 (Cal. Ct. App. Dec. 7, 2015)

- [Fraud - Other](#)
- [Fraud - Misrepresentation](#)
- [Commercial Banking](#)
- [Banks](#)

4 more...

"An allegation of tender of the indebtedness is necessary when the person seeking to set aside the foreclosure sale asserts the sale is voidable due to irregularities in the sale notice or procedure. [Citations.]" (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 801 (West); Arnolds Management Corp. v. Eischen (1984) 158 Cal.App.3d 575, 578 (Arnolds) ["It is settled that an action to set aside a trustee's sale for irregularities in sale notice or procedure should be accompanied by an offer to pay the full amount of the debt for which the property was security. [Citations.]

4. [Orrill v. CitiMortgage, Inc.](#)

No. B258347 (Cal. Ct. App. Sep. 28, 2015)

- [Property - Quiet Title](#)
- [Fraud - Other](#)

1 more...

Plaintiffs' quiet title claim against Citi fails because Citi no longer holds title to or has an interest in the Property. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#) (West).) In West, the plaintiff-borrower obtained a home loan from Washington Mutual Bank, secured by a deed of trust.

5. [Madrid v. CitiMortgage, Inc.](#)

No. B248714 (Cal. Ct. App. Aug. 10, 2015)

- [Motion to dismiss](#)
- [Consumer - Unfair and Deceptive Practices](#)
- [Consumer - Debt Collection](#)

10 more...

" The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' " ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785.](#)) Under HAMP, if a defaulting borrower qualifies, the loan servicer implements a trial period plan under which the borrower makes payments under new terms for a trial period of three or more months.

6. [Rogers v. Wells Fargo Bank, N.A..](#)

No. A141416 (Cal. Ct. App. Jun. 10, 2015)

- [Motion for summary judgment](#)
- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Contract - Good Faith and Fair Dealing](#)
- [Banks](#)

14 more...

While a plaintiff charging a bank with fraud might be excused for not knowing and pleading the name of a bank employee who drafted a letter or who participated on a particular teleconference (those names might well be known to the bank), the plaintiff must still specify the letter or give the date and time of the teleconference, and specify the statements at issue. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 794](#) (West).) Plaintiff alleged Wells Fargo made several misrepresentations between January 2011 and the filing of her complaint, including that "there would be no foreclosure

of the property if she made [three] trial payments and submitted financial information for a loan modification review."

7. [County of Los Angeles v. Superior Gunitite, Inc.](#)

No. B254801 (Cal. Ct. App. May. 19, 2015)

- [Fraud - Other](#)
- [Tort - Tortious Interference](#)
- [Architecture Services](#)
- [Construction and Building Materials](#)

4 more...

However, "[l]ess specificity in pleading fraud is required 'when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy"' (Cansino v. Bank of America, supra, 224 Cal.App.4th at p. 1469, quoting Committee on Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 217.) Thus, a complaint need not identify the person responsible for a misrepresentation attributed to a corporation when the allegations establish the corporation can obtain that information from its records ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#) (West)) or through discovery (People ex rel. Sepulveda v. Highland Fed. Savings & Loan (1993) 14 Cal.App.4th 1692, 1717-1718 (Sepulveda)). Here, the SACC alleges that ABI and SGI are alter egos, and that the pertinent submissions were submitted by ABI, "with the assistance [of,] and under the direction of SGI and its employees who had been seconded to ABI."

8. [Sato v. Bank of America, N.A.](#)

No. A138944 (Cal. Ct. App. Mar. 2, 2015) Cited 2 times

- [Motion for summary judgment](#)
- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Tort - Negligence](#)

12 more...

Thus, while a plaintiff charging a bank with fraud might be excused for not knowing and pleading the name of a bank employee who drafted a letter or who participated on a particular teleconference (those names might well be known to the bank), the plaintiff must still specify the letter or give the date and time of the teleconference, and specify the statements at issue. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 794](#) (West).) The Satos generically alleged "defendants" made several misrepresentations between 2009 and the filing of their pleading: loan modifications "would be able to be made" if the Satos submitted certain documentation; the Satos would have to work with BofA to obtain a loan modification; a strategic default on loan payments was necessary for

a modification; and there would be no trustee's sale until the loan modification review process was complete.

9. [Butler v. Wells Fargo Bank, N.A.](#)

No. G050260 (Cal. Ct. App. Dec. 19, 2014)

- [Property - Foreclosure](#)
- [Tort - Defamation](#)
- [Banks](#)

5 more...

A wrongful foreclosure claim requires allegations that "(1) the defendants caused an illegal, fraudulent, or willfully oppressive sale of the property pursuant to a power of sale in a mortgage or deed of trust; (2) the plaintiff suffered prejudice or harm; and (3) the plaintiff tendered the amount of the secured indebtedness or was excused from tendering." (Chavez v. Indymac Mortgage Services (2013) 219 Cal.App.4th 1052, 1062; see [West v. JPMorgan Chase Bank, N.A.](#) (2013) 214 Cal.App.4th 780, 800.) Proof that the trustor was not in default can satisfy the first element.

10. [Halen v. Berkeley Hall School Foundation, Inc.](#)

No. B252059 (Cal. Ct. App. Dec. 17, 2014)

- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Tort - Other](#)

9 more...

Berkeley Hall argues that Van Halen and Rogers "failed to allege both that any injury resulting from unfair business practices was substantial or that they suffered an injury that could not have been reasonably avoided." "The UCL permits civil recovery for 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising' (Bus. & Prof. Code, § 17200.)" ([West v. JPMorgan Chase Bank, N.A.](#) (2013) 214 Cal.App.4th 780, 805.) "A claim made under [Business and Professions Code] section 17200 "is not confined to anticompetitive business practices, but is also directed toward the public's right to protection from fraud, deceit, and unlawful conduct.

271 Citing cases

1. [Silkes v. Select Portfolio Servicing](#)

No. B252857 (Cal. Ct. App. Dec. 11, 2014)

- [Contract - Good Faith and Fair Dealing](#)

o Tort - Tortious Interference

9 more...

Silkes contends it was sufficient to name only the corporate defendants as the parties making promises they did not intend to perform, rather than identifying specific individuals. While this may generally be true under some circumstances (see [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793-794](#) (West)), the complaint in this case does not even specifically identify the corporate entity or entities who made the promises at issue. Instead, the complaint alleges only that Silkes filled out forms, had telephone calls, and "was finally offered" a loan modification.

2. [Le Beau v. Bank of America, N.A.](#)

No. G050079 (Cal. Ct. App. Sep. 29, 2014)

o Consumer - Debt Collection
o Consumer - Unfair and Deceptive Practices

16 more...

We can find no such requirement. Presumably plaintiffs were referring to the Home Affordable Mortgage Program discussed in [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#) (West). As explained in West, there is a three step process for determining the borrower's eligibility:

3. [Udi v. Fein](#)

No. B249321 (Cal. Ct. App. Aug. 21, 2014)

o Motion for summary judgment
o Motion to dismiss
o Tort - Negligence
o Tort - Medical Malpractice
o Hospitals and Healthcare
o Ophthalmic Equipment

1 more...

It is well established that an appellate court will generally not consider points raised for the time in a reply brief. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 799](#); [Consumer Advocates v. Echostar Satellite Corp. \(2003\) 113 Cal.App.4th 1351, 1358-1359, fn. 2](#); [Malmstrom v. Kaiser Aluminum & Chemical Corp. \(1986\) 187 Cal.App.3d 299, 320](#).) Appellate courts "will not consider points raised for the first time in a reply brief for the obvious reason that opposing counsel has not been given the opportunity to address those points."

4. [Fonteno v. Wells Fargo Bank, N.A.](#)

- Consumer - Debt Collection
- Property - Quiet Title
- Banks

5 more...

Finding an allegation that "plaintiffs were ready, willing, and able to make certain limited payments based on their own view of the law" insufficient to satisfy the tender requirement

Instead, these cases focus on whether a party had a private right of action or a particular remedy pursuant to statute, which is not the issue here. (See *Stebley v. Litton Loan Servicing, LLP*, supra, 202 Cal.App.4th at p. 526, 134 Cal.Rptr.3d 604; *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1615–1617, 126 Cal.Rptr.3d 174; *Mabry*, supra, 185 Cal.App.4th at pp. 235–236, 110 Cal.Rptr.3d 201; *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 800, fn. 6, 154 Cal.Rptr.3d 285.) To be clear, we are being asked to permit enforcement of a contract, not a statute.

5. [Rodriguez v. Bank of America, N.A.](#)

2d Civil No. B247529 (Cal. Ct. App. Nov. 19, 2013)

- Motion to dismiss
- Equitable Contract - Equitable Estoppel
- Fraud - Other

6 more...

Defendants contend plaintiffs waived any arguments regarding these claims on appeal by failing to address them in their opening brief. We agree. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 799; *Davies v. Sallie Mae, Inc.* (2008) 168 Cal.App.4th 1086, 1096; *Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125 ["an appellant's failure to discuss an issue in its opening brief forfeits the issue on appeal"].) Plaintiffs concede their brief focused only on the tender rule, but contend they did not abandon their promissory estoppel claim, which they address for the first time in their reply brief.

6. [Lopez v. Bank of America, N.A.](#)

(Cal. Ct. App. Aug. 22, 2013)

- Contract - Other
- Contract - Good Faith and Fair Dealing

8 more...

" "As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crisis of 2008. "The goal of HAMP is to provide relief to

borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' [Citation.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785](#) (West).) On July 20, 2010, appellant both faxed and sent via Federal Express the HAMP paperwork to Bank of America.

7. [Neil v. Wells Fargo Bank, N.A.](#)

No. 15-1998 (4th Cir. Apr. 27, 2017) Cited 2 times

- Motion for summary judgment
- Motion to dismiss
- Contract - Other
- Tort - Defamation
- Mortgage Banking
- Banks

1 more...

However, the court clearly reasoned that Wells Fargo needed to make a final determination as to whether the borrower qualified prior to the trial period beginning. In [West v. JP Morgan Chase, 154 Cal. Rptr. 3d 285, 299 \(2013\)](#), the California Court of Appeals, applying the Wigod approach, considered whether the lender in that case, Chase Bank, could deny a permanent modification to a borrower, West, who failed to meet the NPV requirement during a later evaluation. The court determined that "Chase Bank's reevaluation upon completion of the trial period would be limited to determining whether West complied with the terms of the Trial Plan Agreement and whether West's original representations remained true and correct."

8. [Badame v. J.P. Morgan Chase Bank, N.A.](#)

641 F. App'x 707 (9th Cir. 2016) Cited 27 times

- Motion for summary judgment
- Tort - Negligence
- Fraud - Misrepresentation

4 more...

Finding no duty of care because "a loan modification is the renegotiation of loan terms, which falls squarely within the scope of a lending institution's conventional role as a lender of money"

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." [West v. JPMorgan Chase Bank, N.A., 154 Cal. Rptr. 3d 285, 295 \(Ct. App. 2013\)](#). "The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true."

9. [Deschaine v. Indymac Mortg. Servs.](#)

617 F. App'x 690 (9th Cir. 2015) Cited 33 times

- Motion to dismiss
- Contract - Other
- Equitable Contract - Equitable Estoppel

5 more...

Finding that plaintiff was not entitled to appeal the denial of his loan modification application when he had previously defaulted on a modification

After determining Deschaine did not qualify for a permanent HAMP loan modification, IndyMac notified Deschaine of its determination and offered him the Modification Agreement, a good-faith permanent modification consistent with HAMP guidelines. See [West v. JPMorgan Chase Bank, N.A., 154 Cal. Rptr. 3d 285, 299 \(Ct. App. 2013\)](#). 3.

10. [Carson v. Bank of America NA](#)

611 F. App'x 379 (9th Cir. 2015) Cited 6 times

- Equitable Contract - Equitable Estoppel
- Equitable Contract - Promissory Estoppel

1 more...

See [Padgett v. Wright, 587 F.3d 983, 985 n.2 \(9th Cir. 2009\)](#) (per curiam) (noting we do not consider matters not specifically and distinctly raised and argued in the opening brief). Given this waiver, the Carsons' reliance on [West. v. JP Morgan Chase Bank, N.A., 154 Cal. Rptr. 3d 285, 298 \(Ct. App. 2013\)](#) is unavailing. In West, the court found that the lender was required to offer West a permanent loan modification (under the Home Affordable Mortgage Program "HAMP" proviso imposed by U.S. Department of Treasury).

271 Citing cases

1. [Adesokan v. U.S. Bank, N.A.](#)

582 F. App'x 672 (9th Cir. 2014) Cited 1 times

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair Competition
- Commercial Banking
- Banks

1 more...

See [Arnolds Mgmt. Corp. v. Eischen, 158 Cal.App.3d 575, 205 Cal.Rptr. 15, 17-18 \(Ct.App. 1984\)](#) (affirming dismissal of fraud claim because failure to tender bars any claims "

implicitly integrated" with foreclosure); *Karlsen v. Am. Sav. & Loan Ass'n*, 15 Cal.App.3d 112, 92 Cal.Rptr. 851, 854 (Ct.App. 1971) (" A valid and viable tender of payment of the indebtedness owing is essential to an action to cancel a voidable sale under a deed of trust."); see also Cal. Civ. Code § 2934a(d) (recorded substitution of trustee constitutes conclusive evidence of the authority of the substituted trustee); *West v. JPMorgan Chase Bank, N.A.*, 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285, 301-02 (Ct.App. 2013) (rejecting claim that trustee's sale was void because substituted trustee had authority to act as trustee under section 2934a(d)). Dismissal of Adesokan's claim alleging violations of California's Unfair Competition Law (" UCL"), Cal. Bus. & Prof. Code § 17200, was proper because Adesokan lacked standing to maintain a UCL claim based on the alleged fraud.

2. [Adesokan v. U.S. Bank, N.A.](#)

No. 12-15560 (9th Cir. Jun. 25, 2014) Cited 1 times

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair Competition
- Commercial Banking
- Banks

1 more...

The district court properly dismissed Adesokan's wrongful foreclosure, quiet title, cancellation of instruments, and fraud claims because Adesokan failed to allege facts showing tender in the amount of his indebtedness or that the foreclosure sale was void. See *Arnolds Mgmt. Corp. v. Eischen*, 205 Cal. Rptr. 15, 17-18 (Ct. App. 1984) (affirming dismissal of fraud claim because failure to tender bars any claims "implicitly integrated" with foreclosure); *Karlsen v. Am. Sav. & Loan Ass'n*, 92 Cal. Rptr. 851, 854 (Ct. App. 1971) ("A valid and viable tender of payment of the indebtedness owing is essential to an action to cancel a voidable sale under a deed of trust."); see also Cal. Civ. Code § 2934a(d) (recorded substitution of trustee constitutes conclusive evidence of the authority of the substituted trustee); *West v. JPMorgan Chase Bank, N.A.*, 154 Cal. Rptr. 3d 285, 301-02 (Ct. App. 2013) (rejecting claim that trustee's sale was void because substituted trustee had authority to act as trustee under section 2934a(d)). Dismissal of Adesokan's claim alleging violations of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, was proper because Adesokan lacked standing to maintain a UCL claim based on the alleged fraud.

3. [Parra v. Parra](#)

Case No.: 20-cv-839-DMS-JLB (S.D. Cal. May. 20, 2021)

- Motion to dismiss
- Property - Quiet Title
- Fraud - Other

4 more...

Plaintiff cannot state a claim for a determination of quiet title as of February 16, 2021, the day the FAC was filed, because at that time, the Grant Deed had already been cancelled, eliminating any allegedly adverse claim by Defendants against the Property. See [West v. JPMorgan Chase Bank, N.A.](#), 154 Cal. Rptr. 3d 285, 303 (Cal. Ct. App. 2013) (holding plaintiff could not satisfy adverse claim element of quiet title where defendant no longer had interest in the property); [Colyear v. Rolling Hills Cmty. Assn. of Rancho Palos Verdes](#), 9 Cal. App. 5th 119, 136, 214 Cal. Rptr. 3d 767, 781 (Cal. Ct. App. 2017) (holding quiet title claim was moot because there was no adverse claim against plaintiff's property at the time FAC was filed). However, under California's quiet title statute, a plaintiff may seek a date of determination other than the date the action was filed. Cal. Code Civ. Proc. § 761.020.

4. [Kraft v. Office of Comptroller of Currency](#)

4:20-CV-04111-RAL (D.S.D. Apr. 5, 2021)

- Motion to dismiss
- Tort - Other
- Tort - Negligence
- Commercial Banking
- Banks

11 more...

Once again, Nevada and California law are substantially similar to South Dakota law on fraudulent misrepresentation. See [Barmettler v. Reno Air, Inc.](#), 956 P.2d 1382, 1386 (Nev. 1998) (restating the elements of fraudulent misrepresentation under Nevada law, which are virtually the same as the elements required to prove fraudulent misrepresentation under South Dakota law) (citation omitted); [West v. JPMorgan Chase Bank, N.A.](#), 154 Cal. Rptr. 3d 285, 295 (Cal. Ct. App. 2013) (restating the elements of fraudulent misrepresentation under California law, which are also virtually the same as the elements required to prove fraudulent misrepresentation under South Dakota law). 4.

5. [Utts v. Bristol-Myers Squibb Co.](#)

251 F. Supp. 3d 644 (S.D.N.Y. 2017) Cited 46 times 2 Legal Analyses

- Motion for summary judgment
- Motion to dismiss
- Fraud - Other
- Tort - Failure to Warn
- Pharmaceuticals and Biotechnology
- Diversified Pharmaceuticals

14 more...

Holding "[t]he court may also consider 'documents upon which the complaint relies and which are integral to the complaint' " and that "[t]he ... labeling is integral to the [complaint]"

The elements of fraud under California law are: (1) the defendant made a false representation; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285, 295 \(2013\)](#). The elements of negligent misrepresentation mirror those of fraud except for the second element, which for negligent misrepresentation is that the defendant made the representation "without reasonable ground for believing it to be true."

6. [Oushana v. Lowe's Home Ctrs., LLC](#)

Case No. 1:16-cv-01782-AWI-SAB (E.D. Cal. Apr. 7, 2017) Cited 3 times

- Motion to dismiss
- Fraud - Other
- Contract - Implied Warranty

4 more...

The essential elements of a count for negligent misrepresentation are the same as the elements for intentional misrepresentation except it does not require knowledge of falsity, but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true. See [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 792 \(2013\)](#). Plaintiffs assert in the second amended complaint that "Plaintiffs were foreseeable users and/or consumers in the class of persons the Defendants knew would rely upon the representations that the refrigerator was safe and would work as it was advertised."

7. [Utts v. Bristol-Myers Squibb Co.](#)

226 F. Supp. 3d 166 (S.D.N.Y. 2016) Cited 30 times 1 Legal Analyses

- Motion to dismiss
- Tort - Products Liability
- Tort - Failure to Warn
- Pharmaceuticals and Biotechnology
- Diversified Pharmaceuticals

9 more...

Finding all design defect claims preempted and dismissing the plaintiffs' design defect cause of action without leave to amend

The elements of negligent misrepresentation mirror those of fraud except for the second element, which for negligent misrepresentation is that the defendant made the representation "without reasonable ground for believing it to be true." [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285, 295 \(2013\)](#). The elements of an action for fraudulent concealment are: (1) the defendant concealed or suppressed a material fact; (2) the defendant had a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed the fact with the intent to defraud the plaintiff; (4) the plaintiff was unaware of the fact and would not have acted as he did if he had known of the

concealed fact; and (5) as a result of the concealment of the fact, the plaintiff sustained damage.

8. [Chang v. Fage USA Dairy Indus., Inc.](#)

14-CV-3826 (MKB) (E.D.N.Y. Sep. 28, 2016) Cited 5 times

- Motion to dismiss
- Tort - Other
- Fraud - Misrepresentation

8 more...

Under California law, "[t]he elements of negligent misrepresentation are [that]: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant made the representation without reasonable ground for believing it to be true; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." [Majd v. Bank of Am., N.A.](#), 197 Cal. Rptr. 3d 151, 162-63 (Ct. App. 2015) (citing [West v. JPMorgan Chase Bank, N.A.](#), 154 Cal. Rptr. 3d 285, 295 (Ct. App. 2013)), as modified (Jan. 14, 2016). "[T]he tort of negligent misrepresentation requires a 'positive assertion' and does not apply to implied misrepresentations."

9. [Hawkins v. Seterus, Inc.](#)

Civ. No. 16-1407 (KM) (D.N.J. Sep. 27, 2016)

- Motion to dismiss
- Consumer - Other
- Consumer - Unfair and Deceptive Practices

3 more...

Ibid.; see also [Corvello v. Wells Fargo Bank, N.A.](#), 728 F.3d 878, 883-85 (9th Cir. 2013); [Young](#), *supra*, 717 F.3d at 234; [Bosque v. 277 Wells Fargo Bank, N.A.](#), 762 F.Supp.2d 342 (D. Mass. 2011); [West v. JPMorgan Chase Bank, N.A.](#), 214 Cal.App.4th 780, [154 Cal.Rptr.3d 285](#), *rev. denied*, 2013 Cal. LEXIS 5801 (July 10, 2013). [Arias v. Elite Mortgage Grp., Inc.](#), 439 N.J. Super. 273, 276-77, 108 A.3d 21, 22-23 (App.

10. [Vurimi v. Wells Fargo Bank, N.A.](#)

No. 2:15-cv-02614-JAM-EFB (E.D. Cal. May. 4, 2016)

- Motion to dismiss
- Contract - Good Faith and Fair Dealing
- Consumer - Unfair and Deceptive Practices
- Banks
- Mortgage Banking

4 more...

"An unfair business practice [exists when] the public policy which is a predicate to the action [is] tethered to specific constitutional, statutory or regulatory provisions." [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 806 \(2013\)](#) (internal citations omitted). Defendants contend that "[b]ecause the UCL claim is derivative, and . . . Plaintiffs' other claims fail . . . , so too does their third claim for violation of the UCL."

271 Citing cases

1. [Gerard v. Wells Fargo Bank, N.A.](#)

CV 14-03935 MMM (SHx) (C.D. Cal. May. 19, 2015)

- Motion for summary judgment
- Motion to dismiss
- Fraud - Other
- Fraud - Misrepresentation
- Banks

10 more...

Under California law, "[t]he essential elements of a claim for negligent misrepresentation are the same as for intentional misrepresentations, except that it does not require knowledge of falsity, but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true." [Cisco Systems, Inc. v. STMicroelectronics, Inc., F.Supp.3d, 2014 WL 7387962, *4 \(N.D. Cal. Dec. 29, 2014\)](#) (citing [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285 \(2013\)](#)). As a result, cases addressing the adequacy of allegations of the "misrepresentation" element of negligent misrepresentation claims are instructive as the court considers the adequacy of Gerard's allegations supporting her intentional misrepresentation claim.

2. [Halajian v. Deutsche Bank Nat'l Trust Co.](#)

1:12-cv-00814-AWI-GSA (E.D. Cal. Jan. 9, 2015) Cited 1 times

- Motion for summary judgment
- Motion to dismiss
- Property - Foreclosure
- Criminal - False Arrest
- Commercial Banking
- Banks

Assuming that the foreclosure sale was "voidable due to irregularities in the sale notice or procedure," an allegation of tender of the indebtedness is necessary to set aside the foreclosure sale. [Fidelity Nat. Title Co. v. U.S. Small Business Admin., 2014 WL 5823097, *5 \(E.D. Cal. 2014\)](#) (slip op.); [Nugent v. Federal Home Loan Corp., 2014 WL 4960902, *7 \(E.D. Cal. 2014\)](#) (slip op.) (quoting [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 800 \(2013\)](#)). A party must allege full tender (i.e. the entirety of the defaulted debt,

without qualification) in order to maintain any cause of action for irregularity in the sale procedure after the completion of the sale.

3. [Cisco Systems, Inc. v. Stmicroelectronics, Inc.](#)

77 F. Supp. 3d 887 (N.D. Cal. 2014) Cited 25 times

- Motion to dismiss
- Tort - Tortious Interference
- Tort - Negligence
- Telecommunications Equipment
- Telecommunications

5 more...

Stating that a conspiracy "may be inferred from the nature of the acts done, the relations of the parties, the interests of the alleged conspirators, and other circumstances."

The essential elements of a claim for negligent misrepresentation are the same as for intentional misrepresentations, except that it does not require knowledge of falsity, but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true. [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285 \(2013\)](#). In California, "omissions" or nondisclosures cannot give rise to liability for negligent misrepresentation.

4. [Carlin v. Dairy Am., Inc.](#)

1:09-cv-0430 AWI GSA (E.D. Cal. Nov. 17, 2014)

- Motion to dismiss
- Fraud - Other
- Fraud - Fraudulent Conveyance

4 more...

In contrast, the elements for negligent misrepresentation, a "lesser" form of misrepresentation, are: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant made the representation without reasonable ground for believing it to be true; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. See [West v. JP Morgan Chase Bank, 214 Cal.App.4th 780, 792 \(4th Dist. 2013\)](#) (elements are identical to the elements of fraud except that the defendant need not have knowledge the representation is false). For the reasons that follow, the court will find that Defendants' opposition to Plaintiffs' motion to amend raises substantial concerns regarding the futility of further amendment of the complaint and that Plaintiffs must be provided an opportunity to address Defendants' contentions.

5. [Contreras v. JPMorgan Chase](#)

EDCV 14-01145 JGB (DTBx) (C.D. Cal. Nov. 6, 2014) Cited 1 times

- Motion to dismiss
- Property - Foreclosure
- Contract - Other

1 more...

" An allegation of tender of the indebtedness is necessary when the person seeking to set aside the foreclosure sale asserts the sale is voidable due to irregularities in the sale notice or procedure." [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 801, 154 Cal.Rptr.3d 285 \(2013\)](#). Plaintiff tries to skirt West's holding by arguing the foreclosure sale of his property was void, not voidable.

6. [Campos v. Federal Home Loan Services Corp.](#)

No. 2:13-cv-494-MCE-EFB PS (E.D. Cal. Oct. 16, 2014)

- Motion to dismiss
- Tort - Tortious Interference
- Tort - Negligence

4 more...

Plaintiffs rely on two cases to support their conclusion that a Trial Loan Modification renders a previously recorded Notice of Default ineffective. First, plaintiffs cite to [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780 \(4th Dist. 2013\)](#). In that case, the plaintiff alleged, among other things, that the defendant bank breached a Trial Plan Agreement by denying the plaintiff a permanent loan modification.

7. [Naranjo v. Aurora Loan Services, LLC](#)

Civil No. 14cv0065 JAH (JMA) (S.D. Cal. Sep. 25, 2014)

- Motion to dismiss
- Consumer - Unfair and Deceptive Practices
- Mortgage Banking
- Banks

In support she points to California's Homeowners Bill of Rights and California Court of Appeals case law. Plaintiff cites to [Jolley v. Chase Home Finance, LLC, 213 Cal.App.4th 827 \(2013\)](#); and [West v. JP Morgan Chase Bank, N.A., 214 Cal.App.4th 780 \(2013\)](#). In reply, Defendants argue Plaintiff provides no authority that her unilateral decision to abandon "pursuit of a loan modification" is the genesis of the existence of her claims.

8. [Delgado v. Ocwen Loan Servicing, LLC](#)

13-CV-4427 (NGG) (RML) (E.D.N.Y. Sep. 23, 2014) Cited 48 times 1 Legal Analyses

- Motion to dismiss
- Fraud - Other

- Consumer - Unfair and Deceptive Practices
- Property and Casualty Insurance
- Insurance

15 more...

Holding that plaintiffs have standing to seek injunctive relief because the defendants' practices are allegedly ongoing, "exposing" the plaintiffs to future misleading statements

(3) An unfair business practice means the public policy which is a predicate to the action must be "tethered" to specific constitutional, statutory or regulatory provisions. [West v. J.P. Morgan Chase Bank, N.A.](#), 154 Cal. Rptr. 3d 285, 305 (Ct. App. 2013) (internal citations, quotations marks, and alterations omitted). Under the second definition (the "balancing test") a court must also "weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim."

9. [Lazo v. Summit Mgmt. Co.](#)

Case No.: 1:13-cv-02015 - AWI - JLT (E.D. Cal. Jul. 9, 2014) Cited 8 times

- Motion to dismiss
- Fraud - Other
- Consumer - Debt Collection
- Mortgage Banking
- Banks

15 more...

Recently, the Ninth Circuit held in [Corvello](#) that if borrowers "fulfilled all of their obligations under the TPP, and the loan servicer has failed to offer a permanent modification, the borrowers have valid claims for breach of the TPP agreement." [Corvello](#), 728 F.3d at 884 (citing [West v. JPMorgan Chase Bank, N.A.](#), 214 Cal.App.4th 780 (4th Dist. 2013)). Facts supporting a breach of an agreement, "like all essential elements of a breach of contract cause of action, must be pleaded with specificity."

10. [Newman v. Bank of New York Mellon](#)

CASE NO. 1:12-CV-1629 AWI GSA (E.D. Cal. Oct. 10, 2013) Cited 25 times

- Motion to dismiss
- Fraud - Other
- Tort - Negligence

5 more...

Holding that plaintiff could not state a voidable claim for violations of a PSA and New York securities law

There is no remedy for a violation of § 2923.5 if the foreclosure sale has already occurred. See [West v. JPMorgan Chase Bank, N.A.](#), 214 Cal.App.4th 780, 800 n.6 (2013); [Stebley v. Litton Loan Servs.](#), 202 Cal.App.4th 522, 526 (2011). In order to plead a violation of §

2923.5, a plaintiff should include allegations that: (1) he did not receive mail or telephone calls from the mortgage servicer/lender regarding assessing his financial situation and exploring alternatives to foreclosure; (2) he was not purposefully avoiding corresponding with the mortgage servicer/lender, and; (3) he could have been contacted if due diligence had been exercised.

271 Citing cases

1. [Emick v. JPMorgan Chase Bank](#)

No. 13-cv-00340 JAM-AC (E.D. Cal. Jul. 18, 2013) Cited 2 times

- Motion to dismiss
- Criminal - Other
- Fraud - Other

Wrongful Conduct During the Loan Modification Process Relying on [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780 \(2013\)](#), Plaintiff argues that Defendant acted negligently and/or fraudulently when it offered Plaintiff a trial modification that she could not afford because it was based on incorrect information and therefore, she requests leave to amend her complaint to add these allegations. Defendant argues that this request to amend is inappropriate and Plaintiff has not set forth facts to support the new claims.

2. [Calderon v. Bank of Am.](#)

CASE NO. 12-CV-3028-LAB (S.D. Cal. Jun. 24, 2013)

- Motion to dismiss
- Fraud - Misrepresentation
- Fraud - Other
- Mortgage Banking
- Banks

6 more...

Intentional and negligent misrepresentation both require a false representation of fact. [West v. JPMorgan Chase Bank, N.A., 154 Cal. Rptr. 3d 285, 295 \(Cal. Ct. App. 2013\)](#). Fraudulent concealment requires the suppression of a material fact with intent to defraud.

3. [Newman v. Bank of N.Y. Mellon](#)

1:12-CV-1629 AWI GSA (E.D. Cal. Apr. 10, 2013) Cited 10 times

- Motion to dismiss
- Tort - Negligence
- Consumer - Debt Collection

5 more...

Finding no violation of § 1095 where "assignments are signed by individuals who are expressly identified as acting for MERS"

There is no remedy for a violation of § 2923.5 if the foreclosure sale has already occurred. See [West v. JPMorgan Chase Bank, N.A., 214 Cal.App.4th 780, 800 n.6 \(2013\)](#); [Stebley, 202 Cal.App.4th at 526](#). Here, the § 2923.5 allegation is a mere legal conclusion that amounts to no more than "Defendants violated the statute."

4. [Evans v. Bosa Dev. Cal. II, Inc.](#)

No. D078272 (Cal. Ct. App. Jul. 27, 2022)

- Motion for summary judgment
- Motion to dismiss
- Contract - Other
- Equitable Contract - Equitable Estoppel

3 more...

To adequately plead a cause of action for promissory estoppel, a complaint must allege: "(1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 803.](#)) Here, Evans failed to allege a promise for all of the same reasons already discussed with respect to the previous causes of action.

5. [Adams Antioch Warehouse L.P. v. City of Antioch](#)

No. A161915 (Cal. Ct. App. Dec. 15, 2021)

- Process Causes - Discovery
- Contract - Other

1 more...

"In an ordinary action to quiet title it is sufficient to allege in simple language that the plaintiff is the owner and in possession of the land and that the defendant claims an interest therein adverse to him." ([S. Shore Land Co. v. Petersen \(1964\) 226 Cal.App.2d 725, 740](#); see also [Gray v. Walker \(1910\) 157 Cal. 381, 384 \[same\]](#); [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#) ["An element of a cause of action for quiet title is '[t]he adverse claims to the title of the plaintiff against which a determination is sought.'"]).

6. [Painter v. Francis Realty, Inc.](#)

No. C092241 (Cal. Ct. App. Aug. 31, 2021)

- Motion for summary judgment
- Property - Other

o Tort - Defamation

3 more...

“An element of a cause of action for quiet title is ‘[t]he adverse claims to the title of the plaintiff against which a determination is sought.’” (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 802.) Pretrial adjudication of a plaintiff’s quiet title cause of action may be properly sustained where defendants have no adverse claims to title.

7. Avila v. Caruso

No. B303496 (Cal. Ct. App. May. 13, 2021)

o Fraud - Other
o Breach of Fiduciary Duty - Other

7 more...

"We enforce the specificity requirement in consideration of its two purposes. The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. [Citation.] The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, 'the pleading should be sufficient "'to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.'"" (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 793; see Daniels v. Select Portfolio Servicing, Inc., supra, 246 Cal.App.4th at p. 1167.) 1. Fraudulent Misrepresentation

8. Avetisyan v. Drinker Biddle & Reath LLP

No. B294671 (Cal. Ct. App. Apr. 2, 2021)

o Motion for summary judgment
o Motion to compel discovery
o Fraud - Other
o Contract - Good Faith and Fair Dealing
o Legal Services
o Corporate Services

7 more...

To prevail on a cause of action for promissory fraud, a plaintiff must prove both that "she actually relied" on the false promise (Mirkin v. Wasserman (1993) 5 Cal.4th 1082, 1088; accord, OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp. (2007) 157 Cal.App.4th 835, 864) and that the reliance was ""justifiable' . . ., i.e., circumstances were such to make it reasonable for [the] plaintiff to accept [the] defendant's statements without an independent inquiry or investigation."" (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 794.) Drinker Biddle argued in the trial court, and argues on appeal, Avetisyan could not establish she actually relied on Brown's promise, that Drinker Biddle

would continue to employ her if her performance was average, because Avetisyan admitted she talked to recruiters and reviewed job postings "as early as March 2013."

9. Real Props. Network v. D'Alessio

No. G058351 (Cal. Ct. App. Feb. 22, 2021)

- Property - Quiet Title
- Tort - Defamation

"An element of a cause of action for quiet title is '[t]he adverse claims to the title of the plaintiff against which a determination is sought.'" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802.](#)) There is an internal contradiction in defendants' positions with respect to Investments in the two actions.

10. Gould v. Ocwen Loan Servicing, LLC

No. B303876 (Cal. Ct. App. Jan. 21, 2021)

- Tort - Negligence
- Fraud - Other

3 more...

"The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) Here, Patricia could potentially allege a misrepresentation based on Ocwen's reassurances that so long as Patricia's loan application were in process, the foreclosure sale would be postponed.

271 Citing cases

1. Midwest Motor Supply Co. v. Superior Court

56 Cal.App.5th 702 (Cal. Ct. App. 2020) Cited 4 times 1 Legal Analyses

- Motion to dismiss
- Labor & Employ. - Collective Bargaining Agreement
- Labor & Employ. - Other

1 more...

In *Midwest Motor Supply Co. v. Superior Court of Contra Costa County*, 56 Cal.App. 5th 702, 709 (Cal.Ct.App. 2020), the court held that § 925 applies and a forum selection clause is voidable if it is contained in a contract that is modified on or after January 1, 2017.

A modification is understood to refer to a "change in the obligations of a party by a subsequent mutual agreement of the parties." (*West v. JPMorgan Chase Bank* (2013) 214 Cal.App.4th 780, 798, 154 Cal.Rptr.3d 285 ; see also 1 Witkin, Summary of Cal. Law (11th ed. 2020) Contracts, § 995, p. 1040 ["Modification is a change in the obligation by a modifying agreement, which requires mutual assent, and must ordinarily be supported by consideration."].) An extension, by contrast, refers to "[t]he continuation of the same contract for a specified period."

2. [Banks v. Wells Fargo Bank](#)

No. A156501 (Cal. Ct. App. Sep. 11, 2020)

- Motion to dismiss
- Property - Quiet Title
- Contract - Other
- Banks

10 more...

A quiet title cause of action generally has two elements: (1) "the plaintiff is the owner and in possession of the land," and (2) "the defendant claims an interest therein adverse to [the plaintiff]." (*SouthShore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 740; see *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 802-803; Code Civ. Proc., § 761.020.) The courts have recognized an exception to the plaintiff as title owner where there has been a "void" foreclosure sale.

3. [Basil v. New Razor & Tie Enters.](#)

No. B299985 (Cal. Ct. App. Aug. 27, 2020)

- Motion to dismiss
- Intellectual Property - Copyright
- Tort - Tortious Interference

6 more...

Third, and also for the first time in her reply brief, Basil argues that courts are confined to the "face of the complaint" when assessing whether a claim falls within the scope of federal jurisdiction, and she never pled a copyright claim on the face of her complaint. This argument is not only waived for not being raised in

the opening brief ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 799](#)), it is frivolous. The authority Basil cites all deals with the "well-pleaded complaint" rule that governs whether removal to federal court based on federal question jurisdiction is warranted.

4. [Le v. Oxford Glob. Res., LLC](#)

No. H044955 (Cal. Ct. App. Jul. 29, 2020)

- Motion for summary judgment
- Contract - Good Faith and Fair Dealing
- Equitable Contract - Other

6 more...

"The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, 'the pleading should be sufficient " 'to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.' " ' [Citation.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#).) In its demurrer, Oxford contended that (1) its alleged misrepresentation or concealment of facts did not occur until after plaintiff's alleged act of reliance in resigning, (2) the other allegation of reliance that he "refrain[ed] from pursuing other opportunities after he agreed to commence work for [Nutenix]" was an allegation that "lack[ed] any particularity," and (3) plaintiff could not allege justifiable reliance when the written consultant agreement explicitly provided that his start date was subject to cancellation.

5. [Masajedian v. Kim](#)

No. B300440 (Cal. Ct. App. Jul. 14, 2020)

- Motion for summary judgment
- Equitable Contract - Equitable Estoppel
- Equitable Contract - Promissory Estoppel

1 more...

"The elements of promissory estoppel are (1) a promisee, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) [injustice can be avoided only by enforcement of the promise. \[Citations.\]](#)" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 803](#).) Here, plaintiff did not present any evidence in support of her claims for promissory estoppel.

6. [Levy v. Silverman Realty Corp.](#)

No. B296238 (Cal. Ct. App. Jul. 14, 2020)

- Motion to dismiss
- Tort - Intentional
- Fraud - Other

3 more...

"The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) Here, the FAC fails to meet these pleading requirements.

7. [Ratliff v. Trojan Capital Invs.](#)

No. A153044 (Cal. Ct. App. Jun. 8, 2020)

- Motion for summary judgment
- Tort - Negligence
- Consumer - Unfair and Deceptive Practices

1 more...

" 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' " ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785](#), quoting [Bosque v. Wells Fargo Bank, N.A. \(D.Mass. 2011\) 762 F.Supp.2d 342, 347.](#)) To achieve that goal, the Department of the Treasury offered incentives to home loan servicers who entered into Servicer Participation Agreements in which they agreed to modify the loans of eligible borrowers in compliance with existing and supplemental program guidelines.

8. [Hooked Media Grp. v. Apple Inc.](#)

55 Cal.App.5th 323 (Cal. Ct. App. 2020) Cited 18 times 3 Legal Analyses

- Motion for summary judgment
- Intellectual Property - Trade Secret
- Breach of Fiduciary Duty - Other

- o Computer Hardware

10 more...

The elements of negligent misrepresentation are the same, except for the intent to deceive; for negligent misrepresentation it is enough that the defendant made a representation without a reasonable basis for believing it to be true. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285.](#)) Hooked alleges three separate misrepresentations: (1) Apple would keep confidential any information it got from Hooked; (2) Apple would not use any confidential information it got from Hooked; and (3) Apple would deal directly and negotiate only with Hooked's CEO regarding hiring the Hooked engineers.

9. [Johnson v. Pac. Mar. Ass'n](#)

No. A152300 (Cal. Ct. App. May. 18, 2020)

- o Motion for summary judgment
- o Motion to dismiss
- o Equitable Contract - Equitable Estoppel
- o Fraud - Other

1 more...

" "[A] promise is an indispensable element of the doctrine of promissory estoppel. The cases are uniform in holding that this doctrine cannot be invoked and must be held inapplicable in the absence of a showing that a promise had been made upon which the complaining party relied to his prejudice" ([West v. JPMorgan Chase Bank \(2013\) 214 Cal.App.4th 780, 803-804.](#)) Moreover, when attempting to prove these elements, "[a]dmissions against interest have high credibility value, particular [sic] when, as here, they are made in the context of proceedings designed to elicit the facts.

10. [Banks v. Wells Fargo Bank](#)

No. A156501 (Cal. Ct. App. Apr. 23, 2020)

- o Motion to dismiss
- o Property - Quiet Title
- o Contract - Other
- o Banks

9 more...

A quiet title cause of action generally has two elements: (1) "the plaintiff is the owner and in possession of the land," and (2) "the defendant claims an interest therein adverse to [the plaintiff]." (SouthShore Land Co. v. Petersen (1964) 226 Cal.App.2d 725, 740; see [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#); Code Civ. Proc., § 761.020.) The courts have recognized an exception to the plaintiff as title owner where there has been a "void" foreclosure sale.

271 Citing cases

1. [Hernandez v. Bank of Am.](#)

No. B297986 (Cal. Ct. App. Apr. 14, 2020)

- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Tort - Defamation](#)

1 more...

"The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) Here, the complaint fails to meet these pleading requirements.

2. [Whitaker v. Wells Fargo, N.A.](#)

No. C081559 (Cal. Ct. App. Mar. 26, 2020)

- [Motion for summary judgment](#)

The letter stated: "We carefully reviewed the information you sent us. At this time, you do not meet the requirements of the Home Affordable Modification Program because: [¶] We have not been able to reach you to discuss your situation, and without input from you, we are not able to review you for a loan modification." HAMP is a federal program implemented during the 2008 housing crisis to help homeowners avoid foreclosure by reducing mortgage payments to sustainable levels without discharging any of the underlying debt. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785.](#)) The letter continued, "There may be other mortgage assistance options available to help you avoid a foreclosure sale."

3. [Escandari v. U.S. Bank](#)

No. F075830 (Cal. Ct. App. Mar. 25, 2020) Cited 1 times

- [Motion for summary judgment](#)
- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Equitable Contract - Equitable Estoppel](#)
- [Commercial Banking](#)
- [Banks](#)

13 more...

"The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, ... their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) Further, when a plaintiff asserts fraud against a corporation, the plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written."

4. [A Plus Fabrics Inc. v. Yates & Assocs. Ins. Servs.](#)

No. B288389 (Cal. Ct. App. Feb. 26, 2020)

- [Motion for summary judgment](#)
- [Fraud - Misrepresentation](#)
- [Fraud - Other](#)

2 more...

An essential element of both fraud and negligent misrepresentation is that "the defendant made a false representation as to a past or existing material fact." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) A Plus contends that Yates misrepresented it had binding authority and would bind coverage on Friday, October 12, and A Plus relied on this misrepresentation to its detriment.

5. [Hudspeth v. U.S. Bank](#)

No. E071353 (Cal. Ct. App. Jan. 10, 2020)

- [Tort - Intentional](#)
- [Contract - Other](#)
- [Commercial Banking](#)
- [Banks](#)

4 more...

Hudspeth is claiming, at most, that it was voidable. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802.](#)) Nevertheless, the tender rule does not apply here, although for a different reason.

6. [Keating v. Caliber Home Loans, Inc.](#)

2d Civ. No. B291806 (Cal. Ct. App. Dec. 4, 2019)

- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Criminal - Other](#)
- [Mortgage Banking](#)
- [Banks](#)

3 more...

" (Ibid.) Keating cites no contrary authority, but argues her case is analogous to [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#). The lender in that case denied the plaintiff's request for a loan modification but promised that her home would not be sold while a loan re-evaluation occurred.

7. [Jordan-Macias v. OneWest Bank, FSB](#)

No. H043766 (Cal. Ct. App. Nov. 25, 2019)

- [Motion for summary judgment](#)
- [Tort - Negligence](#)
- [Enforcement - Civil Forfeiture](#)

"As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' " ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785](#).) On October 18, 2010, bank advised Jordan that her application was denied because she had failed to timely provide a complete application.

8. [Pellitteri v. Wellquest Int'l, Inc.](#)

No. B289865 (Cal. Ct. App. Oct. 30, 2019)

- [Motion for summary judgment](#)
- [Fraud - Other](#)
- [Contract - Other](#)

11 more...

Appellant further argues that her allegations met the purpose for the particularity requirement in fraud pleading, as they informed the respondents of the charges to be met, and allowed the court to weed out meritless claims without factual foundation. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#).) Appellant relies on [Douglas v. Superior Court \(1989\) 215 Cal.App.3d 155 \(Douglas\)](#), where that appellant filed

suit against his former employer and others (collectively "Weiner") to recover commissions he allegedly earned selling home improvement services.

9. [Masajedian v. L.A. Cmty. Coll. Dist.](#)

No. B294379 (Cal. Ct. App. Oct. 2, 2019) Cited 1 times

- [Equitable Contract - Equitable Estoppel](#)
- [Equitable Contract - Promissory Estoppel](#)
- [Schools and Education](#)
- [Community Colleges](#)

1 more...

"The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise. [Citations.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 803.](#)) Here, the SAC fails to allege facts to support each of these requisite elements.

10. [Hollis-Arrington v. Cendant Mortg. Corp.](#)

No. B287083 (Cal. Ct. App. Aug. 27, 2019)

- [Motion to dismiss](#)
- [Tort - Intentional](#)
- [Process Causes - Other](#)
- [Mortgage Banking](#)
- [Banks](#)

12 more...

"An element of a cause of action for quiet title is "[t]he adverse claims to the title of the plaintiff against which a determination is sought." (Code Civ. Proc., § 761.020, subd. (c).)" ([Orcilla v. Big Sur, Inc. \(2016\) 244 Cal.App.4th 982, 1010](#); accord, [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803.](#)) Hollis-Arrington's quiet title claim fails against Cendant because Cendant sold the property at the June 29, 2001 foreclosure sale to Feldman and Tennen, and therefore it does not have an adverse claim to the property.

271 Citing cases

1. [HB Park, LLC v. Specialized Loan Servicing, LLC](#)

No. G056419 (Cal. Ct. App. Jul. 29, 2019)

- [Motion to dismiss](#)

- [Property - Foreclosure](#)
- [Con. Law - Due Process](#)

1 more...

"We deem the arguments made for the first time in the reply brief to be waived." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 799.](#)) C. HB Park Failed to Allege Facts Demonstrating Standing

2. [Moghadam v. Chalon Rd. Assocs., LLC](#)

No. B282309 (Cal. Ct. App. Jun. 20, 2019)

- [Motion for summary judgment](#)
- [Consumer - Unfair and Deceptive Practices](#)
- [Contract - Other](#)

5 more...

"The essential elements of a count for negligent misrepresentation are the same except that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true." (Id. at p. 231; Civ. Code, § 1710, subd. 2; [Gagne v. Bertran \(1954\) 43 Cal.2d 481, 488](#); [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Even crediting Moghadam's allegation that Chalon negligently or intentionally misrepresented the rate of interest it intended to charge on the note and wrongfully induced Moghadam to enter into the forbearance agreement, Moghadam was required to show the existence of a triable issue of fact as to each and every element of Chalon's misrepresentation claims—including damages—in order to avoid summary judgment.

3. [Cartaya v. M&T Bank](#)

No. D075105 (Cal. Ct. App. Jun. 18, 2019)

- [Motion for summary judgment](#)
- [Contract - Good Faith and Fair Dealing](#)
- [Fraud - Other](#)

7 more...

The elements of promissory estoppel are: (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (i.e., detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 803.](#)) For reasons we have discussed, Cartaya's claim for promissory estoppel fails because defendants established on summary judgment that he did not comply with the TPP; the "promise" not to foreclose on his property was expressly conditioned on his compliance.

4. [Reiner v. Regents of Univ. of Cal.](#)

No. G055719 (Cal. Ct. App. May. 30, 2019)

- [Motion to dismiss](#)
- [Tort - Medical Malpractice](#)
- [Fraud - Other](#)

1 more...

Reiner's lack of justifiable reliance also dooms his claim for fraud against defendants. (§ 338, subd. (d) [fraud claims subject to three-year statute of limitations]; [West v. JP Morgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 794](#) [fraud claim requires showing of justifiable reliance on the alleged misrepresentation].) With respect to the failure to provide Reiner with a complete copy of his medical records, the failure to disclose evidence, as opposed to the failure to disclose facts, does not constitute intentional concealment for purposes of section 340.5. (See [Mark K. v. Roman Catholic Archbishop \(1998\) 67 Cal.App.4th 603, 613.](#))

5. [Brake v. Ocwen Loan Servicing, LLC](#)

No. A153699 (Cal. Ct. App. Mar. 21, 2019)

- [Motion to dismiss](#)
- [Tort - Negligence](#)
- [Property - Foreclosure](#)

7 more...

Each prong of the UCL is a separate and distinct theory of liability. (See [West v. JP Morgan Chase Bank \(2013\) 214 Cal. App. 4th 780, 805.](#)) Although the UCL coverage is broad, it " 'is not an all-purpose substitute for a tort or contract action [Citation].' "

6. [Root v. Deutsche Bank Nat'l Trust Co.](#)

No. C077140 (Cal. Ct. App. Mar. 11, 2019)

- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Fraud - Misrepresentation](#)
- [Commercial Banking](#)
- [Banks](#)

5 more...

Several courts, including this court, have found that a borrower who has allegedly complied with the requirements of a written TPP may sue the lender under state contract law for failing or refusing to offer a permanent loan modification. (See, e.g., [Rufini v. CitiMortgage, Inc., supra, 227 Cal.App.4th at pp. 305-306](#); [Bushell, supra, 220 Cal.App.4th](#)

at pp. 925-928; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 786](#); [Wigod v. Wells Fargo Bank, N.A. \(7th Cir. 2012\) 673 F.3d 547, 560-561.](#)) Root's fourth cause of action fails as a matter of law.

7. [Bohanek v. Balliger](#)

No. E069804 (Cal. Ct. App. Feb. 26, 2019)

- [Motion to dismiss](#)
- [Enforcement - Judgment](#)

We deem this claim waived or forfeited. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 799.](#)) IV. DISPOSITION

8. [Borhan v. Bassis](#)

No. B282789 (Cal. Ct. App. Jan. 30, 2019)

- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Tort - Negligence](#)

9 more...

Consequently, "a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) Appellant has not stated a claim for fraud.

9. [Billings v. Wells Fargo Bank](#)

No. C084369 (Cal. Ct. App. Jan. 29, 2019)

- [Motion to dismiss](#)
- [Tort - Intentional](#)
- [Consumer - Unfair and Deceptive Practices](#)
- [Banks](#)

10 more...

" [Citation.] The reasonableness of the plaintiff's reliance is judged by reference to the plaintiff's knowledge and experience." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 794.](#)) Although the question of whether reliance is reasonable is generally one of fact, the issue " 'may be decided as a matter of law if reasonable minds can come to only one conclusion based on the facts.' "

10. [Rojas v. Bank of Am., N.A.](#)

No. E068405 (Cal. Ct. App. Jan. 29, 2019)

- [Motion to dismiss](#)
- [Property - Quiet Title](#)
- [Consumer - Unfair and Deceptive Practices](#)

4 more...

A quiet title cause of action generally has two elements: (1) "the plaintiff is the owner and in possession of the land," and (2) "the defendant claims an interest therein adverse to [the plaintiff]." (Code Civ. Proc., § 761.020; [South Shore Land Co. v. Petersen \(1964\) 226 Cal.App.2d 725, 740](#); see [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#).) "To bring an action to quiet title, a plaintiff must allege he or she has paid any debt owed on the property."

271 Citing cases

1. [Johansen v. PHH Mortg. Corp.](#)

No. B283616 (Cal. Ct. App. Nov. 20, 2018)

- [Motion to dismiss](#)
- [Enforcement - Judgment](#)
- [Property - Foreclosure](#)
- [Mortgage Banking](#)
- [Banks](#)

7 more...

Bushell addressed a lender's obligations under a trial modification plan offered pursuant to the federal Home Affordable Modification Program, which is governed by directives of the United States Department of the Treasury and mandates lenders offer a permanent modification to borrowers who comply with the terms of a written trial plan. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 796-798](#).) Because no such requirements are present here, the case is inapposite.

2. [Hofheinz v. Wells Fargo Bank](#)

No. C077841 (Cal. Ct. App. Aug. 29, 2018)

- [Contract - Good Faith and Fair Dealing](#)
- [Equitable Contract - Other](#)
- [Banks](#)

6 more...

Accordingly, Hofheinz's breach of contract cause of action fails for lack of a valid contract, and the trial court properly sustained the demurrer to that cause of action. We express no opinion as to whether Wells Fargo's actions violated HAMP's mandates as claimed by Hofheinz because even assuming that they did, Hofheinz still could not state a cause of action for breach of contract absent a valid contract. While courts have read HAMP's

provisions into "HomeSaver forbearance agreements" (Lueras v. BAC Home Loans Servicing, LP (2013) 221 Cal.App.4th 49, 73-76) and "Trial Plan Agreements" (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 796-799), here there is no underlying agreement in which to incorporate those provisions. Moreover, while this court has held that lenders owe a duty of care in handling loan modification applications (Rossetta v. CitiMortgage, Inc. (2017) 18 Cal.App.5th 628, 640), a negligence cause of action is subject to a two-year statute of limitations.

3. [Chidester v. Nationstar Mortg., LLC](#)

No. G055358 (Cal. Ct. App. Aug. 27, 2018)

- [Motion for summary judgment](#)
- [Motion to dismiss](#)
- [Contract - Other](#)
- [Fraud - Misrepresentation](#)
- [Mortgage Banking](#)
- [Banks](#)

3 more...

"The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise. [Citations.]" (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 803.) ""[A] promise is an indispensable element of the doctrine of promissory estoppel.

4. [Stoller v. U.S. Bank](#)

No. B276902 (Cal. Ct. App. Aug. 15, 2018)

- [Motion to dismiss](#)
- [Contract - Other](#)
- [Fraud - Other](#)
- [Commercial Banking](#)
- [Banks](#)

10 more...

In support of their theory, plaintiffs rely on a series of cases discussing TPPs offered under a federal program called the Home Affordable Modification Program (HAMP). (See, e.g., Corvello v. Wells Fargo Bank, NA (9th Cir. 2013) 728 F.3d 878; West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780.) These cases are inapposite because plaintiffs have not alleged their trial payment agreement was, in fact, a TPP under HAMP.

5. [Bronson v. EMC Mortg. Corp.](#)

No. C079911 (Cal. Ct. App. Jul. 17, 2018)

- [Motion for summary judgment](#)
- [Consumer - Unfair and Deceptive Practices](#)
- [Tort - Intentional](#)
- [Mortgage Banking](#)
- [Banks](#)

8 more...

And, in any event, their \$1 million loan exceeded the maximum amount for HAMP eligibility. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 787](#) [stating HAMP eligibility criteria].) Moreover, the Bronsons assert in their appellants' reply brief that they "do not contend" defendants "breached a federal obligation to modify their mortgage" under the HAMP and they "have never contended that their loan was governed by HAMP."

6. [Smith v. Aegis Funding Corp.](#)

No. E067595 (Cal. Ct. App. Jul. 10, 2018)

- [Motion to dismiss](#)
- [Property - Quiet Title](#)
- [Consumer - Truth in Lending](#)

1 more...

Second, a necessary element of every quiet title claim is an adverse claim to the property, and here Aegis has no adverse claim to title. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 801-802](#) [plaintiff's quiet title claim against the lender fails because the lender no longer holds any interest in the property].) Aegis's interest in the property extinguished when it assigned Smith's debt to Wells Fargo.

7. [Thomas v. Wells Fargo Bank](#)

No. D072726 (Cal. Ct. App. Jun. 25, 2018)

- [Motion for summary judgment](#)
- [Fraud - Other](#)
- [Consumer - Unfair and Deceptive Practices](#)
- [Banks](#)

5 more...

Because neither Thomas nor Wells Fargo is the owner of the property, Thomas's quiet title claim fails. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#) [rejecting postforeclosure quiet title claim when subject property sold to a third party].) "To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is

void or voidable due to, for example, fraud, and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of one's position."

8. [Goldstein v. Egan](#)

No. B267790 (Cal. Ct. App. May. 30, 2018)

Indeed, it has been recognized that "[t]he conduct of the parties after execution of the contract and before any controversy has arisen as to its effect affords the most reliable evidence of the parties' intentions." [Citation.] (Employers Reinsurance, supra, at p. 921; see also [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 798](#) [course of performance evidence ""is entitled to great weight"" in resolving a dispute about the meaning of a contract].) Moreover, "[a]s with all extrinsic evidence, course of performance evidence can be used not only to interpret an ambiguity, but also to reveal one in language otherwise thought to be clear."

9. [Wicked Deals, Inc. v. Purtle](#)

No. D072840 (Cal. Ct. App. Apr. 23, 2018)

- [Motion for summary judgment](#)
- [Fraud - Other](#)
- [Fraud - Misrepresentation](#)

1 more...

(Conroy v. Regents of University of California (2009) 45 Cal.4th 1244, 1255.) The elements of negligent misrepresentation are the same as those for fraud with the exception of the knowledge element, which requires a defendant's representation to be made without reasonable ground for believing it to be true. ([West v. JPMorgan Chase Bank \(2013\) 214 Cal.App.4th 780, 792](#); Apollo Capital Fund, LLC v. Roth Capital Partners, LLC (2007) 158 Cal.App.4th 226, 243.) A defendant who makes false statements " ' "honestly believing that they are true, but without reasonable ground for such belief, . . . may be liable for negligent misrepresentation . . . " ' " (Apollo Capital, at p. 243.)

10. [Daldumyan v. World Fin. Grp. Ins. Agency, Inc.](#)

No. B277973 (Cal. Ct. App. Apr. 17, 2018)

- [Motion for summary judgment](#)
- [Tort - Tortious Interference](#)
- [Fraud - Other](#)

11 more...

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4)

the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. (Lazar v. Superior Court (1996) 12 Cal.4th 631, 638.)" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) No justifiable reliance has been alleged as to these representations.

- [«](#)
- [1](#)
- ...
- [15](#)
- [16](#)
- [17 \(current\)](#)

271 Citing cases

1. [Shetty v. HSBC Bank United States, N.A.](#)

No. B271183 (Cal. Ct. App. Apr. 16, 2018)

- Motion to dismiss
- Property - Quiet Title
- Consumer - Unfair and Deceptive Practices
- Commercial Banking
- Banks

4 more...

Although Shetty's quiet title claim must be allowed to proceed against HSBC, it fails as to the other parties named as defendants because none asserts any claim to title to the Tarzana property. (See [West v. JPMorgan Chase Bank N.A. \(2013\) 214 Cal.App.4th 780, 803](#) [demurrer to quiet title cause of action properly sustained; "based on the third amended complaint and the documents judicially noticed, none of the defendants named in the third amended complaint had adverse claims to title"].) Shetty's allegation in his fifth cause of action (quiet title) that these defendants "purport[ed] to sell plaintiff's property at another foreclosure sale, in violation of Plaintiff's ownership rights to the Property" does not identify a claim of adverse title, and nothing else in the first amended complaint or the documents judicially noticed indicate Bank of America, MERS or the individual defendants have made any such claim.

2. [Rezaipour v. L. A. Cnty. Civil Serv. Comm'n](#)

No. B281589 (Cal. Ct. App. Apr. 11, 2018)

- Con. Law - Discrim. - Gender

- o Labor & Employ. - Other

5 more...

When an issue raised in the petition is not properly addressed through argument and citation to evidence in a party's trial brief, the issue is waived. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 799.](#)) Furthermore, the failure to raise an issue in the trial court in a writ proceeding waives the issue on appeal.

3. [Brewster v. Am. Brokers Conduit](#)

No. E066830 (Cal. Ct. App. Apr. 9, 2018)

- o Motion to dismiss
- o Property - Quiet Title
- o Property - Liens

1 more...

Second, a necessary element of every quiet title claim is an adverse claim to the property, and here ABC has no adverse claim to title. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 801-802](#) [where another party purchased the property in a foreclosure sale, plaintiff's quiet title claim against the lender fails because the lender no longer holds any interest in the property]; [Orcilla v. Big Sur, Inc. \(2016\) 244 Cal.App.4th 982, 1010](#) [same].) ABC's interest in the property extinguished when it assigned Brewster's debt to Deutsche.

4. [Aniel v. ETS Servs. LLC](#)

No. A134461 (Cal. Ct. App. Mar. 23, 2018)

- o Motion to dismiss
- o Consumer - Debt Collection
- o Fraud - Other

7 more...

We reach the same conclusion as to the sixth cause of action for quiet title, because, following the second sale confirmed in the grant deed, neither the Aniels nor the defendants now have possession of the property. (See [South Shore Land Co. v. Petersen \(1964\) 226 Cal.App.2d 725, 740](#) [To pursue a quiet title cause of action, a plaintiff must be "the owner and in possession of the land," and the defendant must claim "an interest therein adverse to [the plaintiff]"]; accord, Code

Civ. Proc., § 761.020; see also [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#) [plaintiff could not pursue quiet title cause of action against defendants following sale of the property, because none of defendants thereafter had an adverse claim to the title].) The Aniels contend the matter is not moot because they have a right to challenge and set aside the sale.

5. [Boni v. Ocwen Loan Servicing, LLC](#)

2d Civil No. B280766 (Cal. Ct. App. Feb. 22, 2018)

- Fraud - Misrepresentation
- Fraud - Other

1 more...

"The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#), citation omitted.) None of those facts are set forth in the FAC. Appellant alleges that "Ocwen's representation was false" and Ocwen "knew or should have known that [it] did not, in fact, follow through and reduce the principal balance of the loan to \$223,000.00."

6. [Nguyen v. Nationstar Mortg. LLC](#)

No. G046818 (Cal. Ct. App. Feb. 22, 2018)

- Motion to dismiss
- Property - Foreclosure
- Fraud - Other
- Mortgage Banking
- Banks

5 more...

"As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.'" ([West v.](#)

JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 785.) Despite the litany of causes of action alleged in the TAC, Plaintiff asserts in her opening brief on appeal that the gravamen of the TAC is the wrongful foreclosure of her property following an improper denial of a HAMP modification of her loan. Plaintiff contends defendants "us[ed] defective foreclosing documents," the documents are "void ab initio," and respondents have no "standing to demand tender."

7. [Gayosso v. Wells Fargo Bank](#)

No. G054408 (Cal. Ct. App. Feb. 15, 2018)

- Tort - Negligence
- Contract - Good Faith and Fair Dealing
- Banks

As a general matter, cases finding that a forbearance agreement requires a loan modification have only required a "good faith" permanent loan modification. In [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780](#), for example, the borrower entered into a trial period plan (TPP), which, pursuant to federal regulations, required the bank to offer a permanent loan modification if the borrower made the trial payments. (Id. at pp. 796-797.)

8. [Grace Chinese All. Church of Christian & Missionary All. of W. Covina v. Lin Ma DDS Inc.](#)

No. B272415 (Cal. Ct. App. Jan. 25, 2018)

- Contract - Other
- Property - Other

3 more...

"The elements of fraud [or intentional misrepresentation] are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. [Citation.] The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true. [Citations.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Even if DDS were correct in its assertion of the errors it cited, it fails to address the trial court's finding that Dr. Ma did not rely upon any alleged

representation concerning boundaries in making his decision to purchase the Hayden property.

9. [Rossetta v. CitiMortgage, Inc.](#)

18 Cal.App.5th 628 (Cal. Ct. App. 2017) Cited 29 times 2 Legal Analyses

- Motion to dismiss
- Tort - Negligence
- Tort - Intentional

6 more...

Finding a duty existed where servicer encouraged borrower to default on loan to obtain a loan modification, allowed plaintiff to enter into a trial repayment plan then denied a permanent modification, informed her she had not submitted information that servicer had mishandled and that plaintiff had submitted, and generally strung plaintiff around for years in the hope of obtaining a loan modification

Plaintiff's counsel, who successfully prevailed in *Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 163 Cal.Rptr.3d 539 [(*Bushell*)], cited by them in their opposition, is certainly conversant about the requirements of pleading a similar case such as this one. Notwithstanding, the allegations here fail to properly differentiate between and/or connect the trial payment plans and forbearance agreements alleged with HAMP modification, rendering analysis incomplete because the parties and court cannot determine if, for example, the *Bushell / West [v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 154 Cal.Rptr.3d 285 (West)]* line of cases applies (HAMP cases) or whether the analysis must be done without reference to HAMP under traditional common law principles. As argued by the defendants, forbearance plans do not create a binding contract for modification.

10. [Conroy v. Wells Fargo Bank, N.A.](#)

No. C078914 (Cal. Ct. App. Nov. 28, 2017)

- Motion to dismiss
- Tort - Negligence
- Fraud - Misrepresentation
- Banks

8 more...

'The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the

persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made.' ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#) (West).) However, 'the requirement of specificity is relaxed when the allegations indicate that "the defendant must necessarily possess full information concerning the facts of the controversy" [citations] or "when the facts lie more in the knowledge of the" ' defendant.

271 Citing cases

1. [Fuentes v. Callisto Grp., Inc.](#)

No. B271363 (Cal. Ct. App. Sep. 19, 2017)

- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Contract - Other](#)

4 more...

To prove fraud, a plaintiff must show: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#).) Fuentes received loan proceeds to refinance her mortgage.

2. [Cupp v. Fed. Nat'l Mortg. Ass'n](#)

No. A148011 (Cal. Ct. App. Aug. 2, 2017)

- [Motion to dismiss](#)
- [Property - Foreclosure](#)
- [Property - Quiet Title](#)
- [Mortgage Banking](#)
- [Banks](#)

2 more...

([City of Santa Maria v. Adam \(2012\) 211 Cal.App.4th 266, 298](#); accord, Code Civ. Proc., § 760.020, subd. (a).) A quiet title cause of action has two elements: (1) "the plaintiff is the owner and in possession of the land," and (2) "the defendant claims an interest therein adverse to [the plaintiff]." ([South Shore Land Co. v. Petersen \(1964\) 226 Cal.App.2d 725, 740](#); accord, Code Civ. Proc., § 761.020; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802](#).) Furthermore, a borrower cannot quiet his title against a secured lender without paying the debt.

3. [Conroy v. Wells Fargo Bank, N.A.](#)

13 Cal.App.5th 1012 (Cal. Ct. App. 2017) Cited 2 times

- [Motion to dismiss](#)
- [Tort - Negligence](#)
- [Fraud - Misrepresentation](#)
- [Banks](#)

9 more...

“The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made.” ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#) (West).) However, “the requirement of specificity is relaxed when the allegations indicate that “the defendant must necessarily possess full information concerning the facts of the controversy” [citations] or “when the facts lie more in the knowledge of the” defendant.

4. [Sterling v. Montgomery](#)

2d Civ. No. B267038 (Cal. Ct. App. Jul. 25, 2017)

- [Fraud - Other](#)
- [Equitable Contract - Quasi-Contract](#)

2 more...

“The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. [Citation.]” ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#).) Negligent misrepresentation requires proof of the same elements, except that it “does not require scienter or intent to defraud.

5. [Nation v. La Posta Band of Diegueno Mission Indians](#)

No. D069556 (Cal. Ct. App. Jun. 28, 2017)

- [Motion to dismiss](#)
- [Fraud - Other](#)
- [Contract - Other](#)

2 more...

The only reasonable conclusion from the first answer is that the jury found that YAN did not meet its burden of proof to show that that La Posta made a false statement. Because a false statement is also a predicate to a negligent misrepresentation claim (see [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#)), and YAN's negligent misrepresentation claim was based on the same factual assertions as the intentional misrepresentation claim, the court's refusal to instruct on this negligence theory was not prejudicial. Based on the jury's finding, it necessarily would have found La Posta was not liable for negligent misrepresentation.

6. [Bell Hosp. Corp. v. New Aid Med. Supply, Inc.](#)

No. B268177 (Cal. Ct. App. May. 16, 2017)

- [Motion to dismiss](#)
- [Fraud - Misrepresentation](#)
- [Tort - Defamation](#)
- [Hospitals and Healthcare](#)
- [General Medical and Surgical Hospitals](#)

6 more...

These judicially noticed documents contradict and negate the operative complaint's allegation that "BELL HOSPITAL CORPORATION is and at all times has been a California corporation." (Evans, supra, 38 Cal.4th at p. 20; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 801](#); [Alfaro v. Community Housing Imp. System & Planning Assn, Inc. \(2009\) 171 Cal.App.4th 1356, 1382](#) ["In addition, '[a] court may take judicial notice of something that cannot reasonably be controverted [such as a recorded deed], even if it negates an express allegation of the pleading'" (Alfaro).) Under the circumstances, the state of incorporation listed on the Trust Deed is at most a "mere inadvertence or typographical error that was not material and did not affect the validity of" the Trust Deed. (See [Kalnoki v. First American Trustee Servicing Solutions, LLC \(2017\) 8 Cal.App.5th 23, 37](#) [omission of "Inc."])

7. [Gee v. Joseph J. Blake & Assocs., Inc.](#)

No. G052064 (Cal. Ct. App. May. 8, 2017)

- [Fraud - Other](#)
- [Fraud - Misrepresentation](#)

5 more...

[Citation.] [¶] We enforce the specificity requirement in consideration of its two purposes. The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. [Citation.] The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, 'the pleading should be sufficient "'to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.'" [Citation.]" ([West v. JPMorgan Chase Bank, N.A.](#))

(2013) 214 Cal.App.4th 780, 793.) In making her ruling, Judge Andler did not directly discuss Blake or the fraud-related highway widening allegations.

8. [Ari-SCC 3, LLC v. Joseph J. Blake & Assocs., Inc.](#)

No. G052063 (Cal. Ct. App. May. 8, 2017)

- [Fraud - Other](#)
- [Agency - Aiding and Abetting](#)

5 more...

[Citation.] [¶] We enforce the specificity requirement in consideration of its two purposes. The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. [Citation.] The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, 'the pleading should be sufficient "'to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.'" [Citation.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) In making her ruling, Judge Andler did not directly discuss the issues raised in Blake's demurrer or the Medtronic allegations.

9. [Kim v. Kim](#)

No. B263487 (Cal. Ct. App. Apr. 19, 2017)

- [Enforcement - Constructive Trust](#)
- [Property - Liens](#)

2 more...

And here, there is sufficient evidence of detrimental reliance and unjust enrichment to justify the imposition of an equitable lien in the 18 Covered Wagon Lane property. Detrimental reliance occurs when a party justifiably takes, or refrains from taking, certain actions based on the representations of another party. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 794-795](#); *Farmers Ins. Exchange v. Zerin*, supra, 53 Cal.App.4th at p. 456.) Here, based on Myungja's repeated representations in 2008 and 2009 that she would sell the 18 Covered Wagon Lane property and repay the \$500,000 that she borrowed through the proceeds of that sale, Lee and Wendy refrained from formally securitizing Myungja's debt and demanding that the property serve as collateral for the loans.

10. [Winstrom v. Bank of Am., N.A.](#)

2d Civil No.B266680 (Cal. Ct. App. Apr. 4, 2017) Cited 1 times

- [Tort - Intentional](#)
- [Fraud - Misrepresentation](#)

9 more...

The elements of negligent misrepresentation are the same as intentional misrepresentation except for the second element. Negligent misrepresentation requires that representation is made without reasonable grounds for believing it to be true. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Here, the alleged misrepresentation is that if Winstrom complied with the TPP he would be offered a loan modification.

271 Citing cases

1. [Kent v. Celink](#)

No. G052039 (Cal. Ct. App. Mar. 30, 2017)

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair and Deceptive Practices

9 more...

[Citation.] [¶] We enforce the specificity requirement in consideration of its two purposes. The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. [Citation.] The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, 'the pleading should be sufficient "'to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.'" [Citation.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) The co-trustees assert the fraud elements were sufficiently pled, stating, "all defendants acted in concert when they forged the loan documents with Bonnie['s] signature and had her husband fax over a copy of her driver's license and social security card when the [d]efendants knew that the law required an in person signing and also spousal counseling before giving permission for another spouse to take out [a reverse mortgage]."

2. [Shetty v. Veriprise Processing Sols.](#)

2d Civil No. B267909 (Cal. Ct. App. Mar. 27, 2017) Cited 1 times

- Tort - Defamation
- Fraud - Other

2 more...

Affirming trial court's demurrer of Shetty's complaint

The facts are derived from Shetty's first amended complaint, the exhibits attached to the pleading, and recorded deeds subject to judicial notice. ([Yvanova v. New Century Mortgage Corp. \(2016\) 62 Cal.4th 919, 924, fn. 1 \(Yvanova\)](#); [Thaler v. Household Finance Corp. \(2000\) 80 Cal.App.4th 1093, 1101 \(Thaler\)](#); [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 803.](#)) The Dacayanan family purchased property at the Big Sky

housing development in Simi Valley (the Property) with a purchase money loan for \$629,000 from Shea Mortgage (the Loan).

3. [Fee v. Jpmorgan Chase Bank, N.A.](#)

2d Civil No. B263042 (Cal. Ct. App. Mar. 21, 2017) Cited 1 times

- Motion for summary judgment
- Tort - Negligence
- Tort - Intentional

4 more...

To state a cause of action for fraud, a plaintiff must allege with particularity a false representation of material fact, knowledge it is false, intent to induce another to rely on it, actual reliance, and resulting damages. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) In an action against a corporation, a plaintiff must also allege the name of the person who made the representation, his or her authority to speak, to whom he or she spoke, what was said and when it was said. ([Tarmann v. State Farm Mut. Auto. Ins. Co. \(1991\) 2 Cal.App.4th 153, 157 \(Tarmann\).](#))

4. [LVNV Funding LLC v. Sepehry-Fard](#)

No. H041170 (Cal. Ct. App. Feb. 16, 2017)

- Fraud - Other
- Consumer - Debt Collection

3 more...

To prove fraud, Sepehry-Fard must show: (1) LVNV made a false representation as to a past or existing material fact; (2) LVNV knew the representation was false at the time it was made; (3) in making the representation, LVNV intended to deceive Sepehry-Fard; (4) Sepehry-Fard justifiably relied on the representation; and (5) Sepehry-Fard suffered resulting damages. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Fraud causes of action are held to a higher pleading standard and require allegations "showing how, when, where, to whom, and by what means the [fraudulent] representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made."

5. [De Edwards v. First Am. Title Ins. Co.](#)

No. B264490 (Cal. Ct. App. Jan. 19, 2017) 1 Legal Analyses

- Contract - Other
- Consumer - Unfair and Deceptive Practices

5 more...

"[T]he specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) The SAC contained allegations that "Alliance" represented that appellants "would be covered by title insurance for issues arising out of the refinancing transaction," that all tax liens would be paid from escrow, and that the lender's deed of trust would be recorded in first position.

6. [Patel v. Bank of N.Y. Mellon](#)

No. A140858 (Cal. Ct. App. Jan. 18, 2017)

- Contract - Other
- Fraud - Other

6 more...

This fails to meet the requirement that fraud be pled with specificity. (See [Heritage Pac. Fin., LLC v. Monroy \(2013\) 215 Cal.App.4th 972, 989](#) ["In California, fraud must be pled specifically; general and conclusory allegations do not suffice"]; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#) ["The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made"].) In addition, Patel has failed to allege the element of reliance.

7. [Preciado v. Bank of Am., N.A.](#)

No. H040583 (Cal. Ct. App. Nov. 30, 2016)

- Motion to dismiss
- Property - Foreclosure
- Equitable Contract - Equitable Estoppel

9 more...

" '[Citation.] The specificity requirement means [that] a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made.' " ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#); Daniels, supra, at pp. 1166-1167.) "However, 'the requirement of specificity is relaxed when the allegations indicate that "the defendant must necessarily possess full information concerning the facts of the controversy" [citations] or "when the facts lie more in the knowledge of the" ' defendant.

8. [In re F.A.](#)

No. G051681 (Cal. Ct. App. Sep. 23, 2016)

This argument is raised for the first time in F.A.'s reply brief on appeal, and we can reject it on that basis alone. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 799.](#)) This is particularly true in this case, as neither party has addressed the length of F.A.'s probation, what part of it would be spent during his minority versus his majority, whether, assuming F.A. is still subject to probation, he is now being supervised by an adult probation officer rather than a juvenile probation officer, and whether and how the juvenile court's probation conditions would have differed if the court was aware there might be a change in how those conditions would be interpreted following F.A.'s 18th birthday.

9. [Corman v. Corman](#)

No. B251513 (Cal. Ct. App. Aug. 29, 2016) Cited 2 times

- Breach of Fiduciary Duty - Other
- Fraud - Other

2 more...

Roger W. and Julie also point to the fact that they made no distributions under section 2.1.2 when Catherine, Roger M., or Brian turned 30 (which occurred before Roger M. and Brian began this litigation), nor is there any evidence Catherine, Roger M., or Brian requested a distribution when they turned 30. Quoting *Universal Sales Corp. v. California Press Mfg. Co.* (1942) 20 Cal.2d 751, 761, Roger W. and Julie argue that this is significant because "[w]hen a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight, and will, when reasonable, be adopted and enforced by the court." (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 798.](#)) In other words, Roger W. and Julie urge us to consider the family members' "course of performance" in interpreting the trust document.

10. [Alajayan v. Fed. Ins. Co.](#)

No. B263203 (Cal. Ct. App. Aug. 18, 2016)

- Motion for summary judgment
- Con. Law - Discrim. - Other
- Tort - Intentional

11 more...

The Alajajyans' UCL, fraud, and negligent misrepresentation causes of action against Federal, and their UCL cause of action against Hygiene fail because they cannot demonstrate that they relied on either defendants' misrepresentations or that they suffered damages as a result. (See *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 326 [under the

UCL's fraud prong, "a plaintiff must show that the defendant's misrepresentation . . . was 'an immediate cause' of the injury-producing conduct"; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#) ["The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages."]; [Ragland v. U.S. Bank National Assn. \(2012\) 209 Cal.App.4th 182, 196](#) ["The elements of negligent misrepresentation are (1) a misrepresentation of a past or existing material fact, (2) made without reasonable ground for believing it to be true, (3) made with the intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage."].

- [«](#)

271 Citing cases

1. [Houston v. Wells Fargo Bank, N.A.](#)

No. B263834 (Cal. Ct. App. Jul. 6, 2016)

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair and Deceptive Practices
- Banks

4 more...

The elements of the claim are: (1) the trustee caused an illegal, fraudulent or willfully oppressive sale of real property pursuant to a deed of trust; (2) the plaintiff suffered prejudice or harm; and (3) the trustor tendered the amount of the secured indebtedness or was excused from tendering. ([Ram v. OneWest Bank, FSB \(2015\) 234 Cal.App.4th 1, 10-11](#); [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 800.](#)) Plaintiffs have not established a wrongful foreclosure claim.

2. [Tenet Healthsystem Desert, Inc. v. Eisenhower Med. Ctr.](#)

No. D069296 (Cal. Ct. App. May. 3, 2016)

- Motion for summary judgment
- Motion to dismiss
- Fraud - Other
- Equitable Contract - Other
- Hospitals and Healthcare
- General Medical and Surgical Hospitals

13 more...

Hospital provided sufficient information in the TAC to permit Eisenhower's agent Anthem, as a party with superior knowledge of who was responsible for preparing the medical necessity certification letters, to identify its unnamed case managers who sent them. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#) [plaintiff was not required to plead the identity of the preparer of a letter from "the Chase Fulfillment Center" because that information "was uniquely within Chase Bank's knowledge"], see Committee on Children's Television, *supra*, 35 Cal.3d 197, 217 [less specificity is required in pleading fraud when " 'it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy,' " italics added]; *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248 [" 'While the precise identities of the employees responsible . . . are not specified in the loan instrument, defendants possess the superior knowledge of who was responsible for crafting these loan documents.' "].

3. [Kern Health Sys. v. Allied Mgmt. Grp. Special Investment Unit, Inc.](#)

No. B258326 (Cal. Ct. App. Apr. 25, 2016)

- Motion to dismiss
- Fraud - Misrepresentation
- Tort - Negligence

4 more...

"In ruling on a motion to vacate the judgment the court cannot "in any way change any finding of fact."" (Glen Hill Farm, LLC v. California Horse Racing Bd. (2010) 189 Cal.App.4th 1296, 1302; accord, *Garibotti*, at p. 477.) The judgment in favor of Kern Health, based solely on its claim for negligent misrepresentation, was patently inconsistent with the jury's findings that the three defendants honestly believed the representations at issue in that cause of action were true (question 20) and had reasonable grounds for believing the representations were true when they were made (question 21): An essential element of a claim for negligent misrepresentation is proof the misrepresentation was made by person who had no reasonable grounds for believing it to be true. (*Small v. Fritz Companies, Inc.*, *supra*, 30 Cal.4th at p. 174; *Gagne v. Bertran* (1954) 43 Cal.2d 481, 488; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#).) Because the jury found Kern Health had failed to establish that element of its claim, the trial court erred in denying AMG, Demetre and Lewis's timely motion to vacate the judgment and to enter a new judgment in their favor.

4. [Jackson v. America's Servicing Co.](#)

No. B261409 (Cal. Ct. App. Apr. 6, 2016)

- Motion to dismiss
- Fraud - Other
- Tort - Negligence

6 more...

" [Citation.] The reasonableness of the plaintiff's reliance is judged by reference to the plaintiff's knowledge and experience. [Citation.]" " (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 794.) Although the question of whether reliance is reasonable is generally one of fact, the issue " 'may be decided as a matter of law if reasonable minds can come to only one conclusion based on the facts.' "

5. Kieu v. Quinal

No. G051072 (Cal. Ct. App. Mar. 29, 2016)

- Motion for summary judgment
- Fraud - Misrepresentation
- Fraud - Other

1 more...

The misrepresentation claim therefore fails. (Small v. Fritz Companies, Inc. (2003) 30 Cal.4th 167, 173, 184 [elements of fraud are misrepresentation (false representation, concealment, or nondisclosure), knowledge of falsity (scienter), intent to defraud/induce reliance, justifiable reliance, and resulting damage; fraud must be pleaded with specificity rather than with general conclusory allegations]; West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 792 [negligent misrepresentation where defendant made the representation without reasonable ground for believing it to be true].) D. The Trial Court Did Not Abuse Its Discretion in Denying Kieu's Request to Amend Her Complaint

6. Mechanic v. Bank of Am., N.A.

No. D067080 (Cal. Ct. App. Mar. 18, 2016)

- Motion to dismiss
- Fraud - Other
- Fraud - Fraudulent Conveyance

6 more...

A plaintiff shows justifiable reliance where he actually relies on the representation and where " 'circumstances were such to make it reasonable for [the] plaintiff to accept [the] defendant's statements without independent inquiry or investigation.' " (West v. JP Morgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 794; italics omitted.) Here, Mechanic alleges that a law firm he hired was working on obtaining a loan modification from Bank of America for 16 months prior to his meeting with Michael in July 2010.

7. Tenet HealthSystem Desert, Inc. v. Blue Cross of Cal.

245 Cal.App.4th 821 (Cal. Ct. App. 2016) Cited 57 times

- Motion for summary judgment
- Fraud - Other

- Consumer - Unfair and Deceptive Practices
- Pharmaceuticals and Biotechnology
- Pharmaceuticals Wholesale

3 more...

Holding that an insurance company's repeated requests to a hospital about whether a patient's treatments were medically necessary falsely implied that the patient's insurance policy covered the treatments, and so could give rise to claims for fraud and misrepresentation

To the extent that Hospital may be relying on the communications it received from unnamed case managers at Anthem, Hospital provided sufficient information to permit Anthem, the party with superior knowledge of who was responsible for preparing the documents in question, to identify the specific individual or individuals; Hospital is relieved from having to plead that particular information with specificity under such circumstances. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793, 154 Cal.Rptr.3d 285](#) [plaintiff was not required to plead the identity of the preparer of a letter from “the Chase Fulfillment Center” because that information “was uniquely within Chase Bank's knowledge”]; see also Committee on Children's Television, *supra*, 35 Cal.3d at p. 217, 197 Cal.Rptr. 783, 673 P.2d 660 [less specificity is required in pleading fraud when “ ‘it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy,’ ” italics added]; *Boschma v. Home Loan Center, Inc. (2011) 198 Cal.App.4th 230, 248, 129 Cal.Rptr.3d 874* [“ ‘While the precise identities of the employees responsible ... are not specified in the loan instrument, defendants possess the superior knowledge of who was responsible for crafting these loan documents.’ ”]).

8. [In re Ambac Bond Ins. Cases. \[Two Consol. Cases.\]](#)

No. A139765 (Cal. Ct. App. Feb. 18, 2016) Cited 1 times

- Motion for summary judgment
- Consumer - Antitrust
- Con. Law - Other

7 more...

The trial court recognized two alternative definitions of "unfair" that may be applicable in this action and found that nonprofit plaintiffs had presented a probability of prevailing under each standard. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 806](#) ["Several definitions of 'unfair' under the UCL have been formulated. They are: ¶] 1. 'An act or practice is unfair if the consumer injury is substantial, is not outweighed by any countervailing benefits to consumers or to competition, and is not an injury the consumers themselves could reasonably have avoided.' [Citation.] ¶] 2. '[A]n 'unfair' business practice occurs when that practice 'offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.'

9. [Majd v. Bank of America, N.A.](#)

- Motion to dismiss
- Consumer - Unfair and Deceptive Practices
- Property - Foreclosure

5 more...

Finding that alleged dual-tracking violation supported a claim for wrongful foreclosure where "plaintiff alleged prejudice in that he may have been able to avoid the foreclosure had [defendant] completed the modification review process in good faith."

The elements of negligent misrepresentation are: (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant made the representation without reasonable ground for believing it to be true; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285.](#)) Plaintiff's claim fails at the first element.

10. [Thomas v. Bank of America N.A.](#)

No. A142224 (Cal. Ct. App. Nov. 25, 2015)

- Motion for summary judgment
- Motion to dismiss
- Equitable Contract - Equitable Estoppel
- Equitable Contract - Promissory Estoppel

6 more...

Bushell, *supra*, 220 Cal.App.4th 915 is inapplicable because it addressed a loan modification under HAMP. Directives of the United States Department of the Treasury govern HAMP loans, and these directives mandate that lenders offer a permanent modification to borrowers who comply with the terms of a written trial plan. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 796-798.](#)) Here, Thomas and Varghese did not assert participation in HAMP; nor did they allege that there was any trial modification plan.

271 Citing cases

1. [Hot Rods, LLC v. Northrop Grumman Systems Corp.](#)

242 Cal.App.4th 1166 (Cal. Ct. App. 2015) Cited 30 times 4 Legal Analyses

- Fraud - Misrepresentation
- Tort - Other

5 more...

In Hot Rods, the court observed that it was "clear from the entirety of the contract" that a "primary concern" of one party was the property's environmental condition, and the contract accordingly permitted it to conduct diligence and included representations by the counterparty regarding environmental conditions. 196 Cal. Rptr. 3d at 65.

The elements of negligent misrepresentation are: (1) the defendant made a false representation as to a past or present material fact; (2) the defendant made the representation without reasonable ground for believing it to be true; (3) the defendant intended to deceive the plaintiff by making the representation; "(4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." ([West v. JPMorgan Chase Bank, NA \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285.](#))

Accordingly, we must conclude that any finding of negligent misrepresentation is erroneous and must be reversed, as the statement of decision does not reflect that all of the elements of the tort, specifically, damages, are present.

2. [Bergman v. JP Morgan Chase Bank, N.A.](#)

No. E060148 (Cal. Ct. App. Sep. 30, 2015)

- Contract - Good Faith and Fair Dealing
- Fraud - Other

5 more...

Nevertheless, Bergman identified one person by name and Chase had to know its own employees based on its own records. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) There was no error causing a miscarriage of justice and no prejudice in refusing Chase's special instruction.

3. [Ilyin v. NDEx West, LLC](#)

No. C072170 (Cal. Ct. App. Sep. 30, 2015)

- Fraud - Other
- Consumer - Unfair and Deceptive Practices

4 more...

[Citation.]" ([Lazar v. Superior Court \(1996\) 12 Cal.4th 631, 638.](#)) The elements of negligent misrepresentation (the third cause of action) are the same, except for the element of knowledge, which for negligent misrepresentation is that the representation was made without reasonable ground for believing it to be true. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Constructive fraud (the second cause of action) is a species of fraud that involves a breach of a fiduciary duty that results in damage to another even though the conduct is not otherwise fraudulent.

4. [Chang v. Chang](#)

No. G048799 (Cal. Ct. App. Sep. 29, 2015) Cited 1 times

- Tort - Negligence
- Equitable Contract - Equitable Relief

1 more...

Because this argument was not raised in the opening brief, it is waived. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 799.](#)) The Order Surcharging Eric for the Sale of Oil Stocks Was Error

5. [Kalicki v. E*trade Bank](#)

No. D066236 (Cal. Ct. App. Sep. 28, 2015)

- Fraud - Other
- Tort - Defamation
- Regional Banks
- Banks

8 more...

The purpose of the specificity requirement is to (1) give defendant sufficient notice of the charges and (2) permit a court to weed out meritless fraud claims. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) Here, the Kalickis alleged that on June 21, 2012, E*Trade's managing agent, Benton, falsely represented to them that E*Trade was the owner of the loan.

6. [Boyle v. Bank of America, N.A.](#)

No. C074713 (Cal. Ct. App. Sep. 28, 2015)

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair and Deceptive Practices

4 more...

Each element of fraud must be alleged factually and specifically. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#); [Tarmann v. State Farm Mut. Auto. Ins. Co. \(1991\) 2 Cal.App.4th 153, 157.](#)) To assert a cause of action for fraud against a corporation, a plaintiff must allege the name of the person who allegedly made the fraudulent representation, his or her authority to speak, to whom he or she spoke, what was said and when it was said. (Tarmann, at p. 157.)

7. [Rodriguez v. Bank of America, N.A.](#)

No. B258819 (Cal. Ct. App. Aug. 10, 2015)

- Motion to dismiss
- Consumer - Unfair and Deceptive Practices

4 more...

(Lazar v. Superior Court (1996) 12 Cal.4th 631, 638; Mirkin v. Wasserman (1993) 5 Cal.4th 1082, 1088-1089 & fn. 2.) The essential elements of a count for negligent misrepresentation are the same except that [negligent misrepresentation] does not require knowledge of falsity but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true. (Civ. Code, § 1710, subd. 2; Gagne v. Bertran (1954) 43 Cal.2d 481, 488; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Each element of a fraud count must be pleaded with particularity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action, although less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff.

8. [Nelson v. Lucien](#)

No. B247723 (Cal. Ct. App. Aug. 4, 2015)

- o Motion to dismiss
- o Fraud - Other
- o Enforcement - Judgment

9 more...

The Trial Court Properly Sustained the Demurrer to the Fraud Count The essential elements of a cause of action for intentional misrepresentation are (1) the defendant made a false representation of fact; (2) the defendant knew the representation was false at the time it was made; (3) the defendant intended to induce the plaintiff's reliance; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered damages as a result. (Lazar v. Superior Court (1996) 12 Cal.4th 631, 638; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) The essential elements of a cause of action for fraudulent concealment are (1) the defendant concealed or suppressed a material fact; (2) the defendant had a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known the fact; and (5) the plaintiff suffered damages as a result. (Bank of America Corp. v. Superior Court (2011) 198 Cal.App.4th 862, 870.)

9. [White v. Wells Fargo Home Mortgage](#)

No. A140195 (Cal. Ct. App. Jul. 2, 2015)

- o Fraud - Other
- o Contract - Other
- o Mortgage Banking
- o Banks

5 more...

Several courts have found that a borrower who has been provided with a HAMP TTP may sue the lender under state contract law for failing or refusing to offer a permanent loan modification. (See, e.g., *Rufini*, supra, 227 Cal.App.4th at pp. 305-306; *Bushell*, supra, 220 Cal.App.4th at pp. 922-923; *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 786-788; *Wigod v. Wells Fargo Bank, N.A.* (7th Cir. 2012) 673 F.3d 547, 556-557.) C. White's Pleadings

10. *Shore v. Waring Court Pediatric & Adult Medical Group*

No. D065306 (Cal. Ct. App. Jun. 3, 2015)

- Motion for summary judgment
- Contract - Other
- Labor & Employ. - Collective Bargaining Agreement

We conclude that the trial court properly determined that Waring established that Shore's breach of contract claim is premised upon a misinterpretation of the Agreement, and that the trial court properly granted judgment as a matter of law for Waring on Shore's breach of contract cause of action. Shore also contends that the trial court improperly applied the "practical construction" doctrine (see, e.g., *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 798 [" '[W]hen a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight' "]), and improperly considered extrinsic evidence in granting judgment as a matter of law for Waring on her breach of contract claim. There is nothing in the trial court's order suggesting that the court applied the practical construction doctrine or considered extrinsic evidence in granting judgment as a matter of law for Waring on Shore's breach of contract. Accordingly, Shore is not entitled to reversal of the judgment on either of these grounds.

271 Citing cases

1. *Mirtorabi v. Action Foreclosure Services, Inc.*

No. B252084 (Cal. Ct. App. May. 13, 2015)

- Motion for summary judgment
- Consumer - Debt Collection
- Fraud - Other

8 more...

The elements of the claim are: (1) the trustee caused an illegal, fraudulent or willfully oppressive sale of real property pursuant to a deed of trust; (2) the plaintiff suffered prejudice or harm; and (3) the trustor tendered the amount of the secured indebtedness or was excused from tendering. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 800.) The Mirtorabis cannot establish their claim, as a matter of law.

2. Iota Five, LLC v. Dobron

No. G050738 (Cal. Ct. App. May. 11, 2015)

- Motion for summary judgment
- Contract - Other
- Contract - Insurance

Iota did not claim in its opening brief, however, that the trial court erred with respect to these questions. Iota therefore forfeited any argument with respect to these questions. (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 799 [appellate court generally will not consider arguments made for the first time in a reply brief].) California's secondary evidence rule provides that "oral testimony is not admissible to prove the content of a writing."

3. Walsh v. PNC Bank

No. C074145 (Cal. Ct. App. May. 8, 2015)

- Motion to dismiss
- Fraud - Other
- Breach of Fiduciary Duty - Other

4 more...

[Citation.] 'It is bad for courts to allow and lawyers to use vague but artful pleading of fraud simply to get a foot in the courtroom door.' " (Ibid.; see West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 793; Perlas v. GMAC Mortgage, LLC (2010) 187 Cal.App.4th 429, 434 (Perlas); Tarmann v. State Farm Mut. Auto Ins. Co. (1991) 2 Cal.App.4th 153, 157 (Tarmann) ["The requirement of specificity in a fraud action against a corporation requires the plaintiff to allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written"].) Walsh's briefing does not clearly explain how her complaint alleges a good claim of fraud.

4. Bala v. Bank of America, N.A

No. B252302 (Cal. Ct. App. Apr. 29, 2015)

- Motion to dismiss
- Fraud - Other
- Contract - Good Faith and Fair Dealing

12 more...

We disagree. First, under HAMP the loan must have originated before January 2009. (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 786-787 [summarizing HAMP].) Appellants' refinance loan was made in 2010.

5. [Novak v. Bank of America, N.A.](#)

No. G050711 (Cal. Ct. App. Apr. 1, 2015)

- Equitable Contract - Equitable Estoppel
- Equitable Contract - Promissory Estoppel

3 more...

The elements of a promissory estoppel claim are a clear and unambiguous promise, reasonable and foreseeable reliance by the promisee, detrimental reliance, and the necessity of enforcement of the promise to avoid injustice. ([West v. JPMorgan Chase \(2013\) 214 Cal.App.4th 780, 803.](#)) Under promissory estoppel, "a promisor is bound when he should reasonably expect a substantial change of position, either by act or forbearance, in reliance on his promise, if injustice can be avoided only by its enforcement."

6. [Husband v. Household Finance Corp. of California](#)

No. C073182 (Cal. Ct. App. Mar. 4, 2015)

- Equitable Contract - Equitable Estoppel
- Equitable Contract - Promissory Estoppel

1 more...

A modification based on HAMP is governed by directives of the United States Department of the Treasury which mandate that lenders offer a permanent modification to borrowers who comply with the terms of a written trial plan. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 796-798.](#)) Borrowers do not assert participation in HAMP.

7. [Bala v. Bank of America, N.A.](#)

No. B252302 (Cal. Ct. App. Feb. 2, 2015)

- Motion to dismiss
- Fraud - Other
- Contract - Good Faith and Fair Dealing

12 more...

First, under HAMP the loan must have originated before January 2009. ([Westv. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 786-787](#) [summarizing HAMP].) Appellants' refinance loan was made in 2010.

8. [Tyshkevich v. Countrywide Home Loans, Inc.](#)

No. C070764 (Cal. Ct. App. Dec. 26, 2014) Cited 2 times

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair and Deceptive Practices

3 more...

The elements of fraud and intentional misrepresentation are a false representation of a material fact or concealment by a party under a duty to disclose, with intent to induce reliance, justifiable reliance by the plaintiff, and resulting damage. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Each element must be pleaded with specificity.

9. [Ong v. Wells Fargo Bank, N.A.](#)

No. G050396 (Cal. Ct. App. Dec. 9, 2014)

- Fraud - Other
- Fraud - Misrepresentation
- Banks

6 more...

"" [Citation.]" (Id. at p. 184; [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792-793.](#)) Ong contends she adequately pleaded a fraud cause of action against Wells Fargo based on the December 29, 2011, letter sent by Wells Fargo's attorney to Ong's attorney stating the amount required to reinstate her loan as of that date was \$65,129.10.

10. [Johnson v. Senior Funding Associates, Inc.](#)

No. G050113 (Cal. Ct. App. Nov. 26, 2014)

- Fraud - Other
- Tort - Intentional

7 more...

An element of a cause of action for quiet title is "[t]he adverse claims to the title of the plaintiff against which a determination is sought." (Code Civ. Proc., § 761.020, subd. (c); see [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802.](#)) Johnson failed to allege in the verified third amended complaint that defendants had any adverse claim as to Johnson, regarding the title of the property.

271 Citing cases

1. [Hetrick v. Deutsche Bank National Trust Co.](#)

No. F067675 (Cal. Ct. App. Nov. 24, 2014) Cited 1 times

- Motion for summary judgment
- Motion to dismiss
- Tort - Negligence
- Fraud - Other
- Commercial Banking
- Banks

7 more...

(Some capitalization omitted.) "As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crises of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' [Citation.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785.](#)) Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

2. [Peralta v. Bank of America Corp.](#)

No. E058190 (Cal. Ct. App. Oct. 30, 2014)

- Fraud - Other
- Consumer - Unfair Competition
- Commercial Banking
- Banks

3 more...

In that situation, the plaintiffs must allege as much information as they can, such as the date of the conversation in which the representation was made, the title of the person making the representation, and the name of the department in which the person worked. (See e.g. [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793-794](#) [complaint sufficiently identified persons making representations on defendant's behalf where plaintiff alleged that on one date, she spoke with "a supervisor" in defendant's "loan modification department" and on another date, with another employee in that department; fraud claim also supported by letter from defendant, attached to the complaint, bearing no signature].) The Peraltas alleged that "lending personnel" of U.S. Bank, Bank of America, Recontrust, MERS, and/or Does one through 10, made false representations regarding the fair market value of the property, the availability of future refinancing, and the appreciation that could be expected.

3. [Mackinnon v. Imvu, Inc.](#)

No. H039236 (Cal. Ct. App. Oct. 30, 2014)

- Motion to dismiss

- Consumer - Unfair and Deceptive Practices
- Contract - Other
- Computer Software
- Collaborative Software

9 more...

"The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made." ([West v. JPMorgan ChaseBank, N.A. \(2013\) 214 Cal.App.4th 780, 793.](#)) MacKinnon's misrepresentation cause of action was based on the September 2008 announcement and the Web site representation that purchased inventory is "available to be used whenever you like."

4. [Solus Industrial Innovations, LLC v. Superior Court \(The People\)](#)

229 Cal.App.4th 1291 (Cal. Ct. App. 2014) Cited 2 times 2 Legal Analyses

- Consumer - Unfair Competition
- Labor & Employ. - Other

1 more...

As is typical when we review the propriety of the trial court's ruling on a demurrer, “ ‘we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law.’ ” ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285.](#)) Solus makes plastics at an Orange County manufacturing facility.

5. [Solus Industrial Innovations, LLC v. Superior Court \(The People\)](#)

178 Cal. Rptr. 3d 122 (Cal. Ct. App. 2014)

- Consumer - Unfair Competition
- Labor & Employ. - Other

1 more...

As is typical when we review the propriety of the trial court's ruling on a demurrer, “ ‘we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law.’ ” ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285.](#)) Solus makes plastics at an Orange County manufacturing facility.

6. [Ceraolo v. Citibank, N.A.](#)

No. H039579 (Cal. Ct. App. Sep. 19, 2014)

- Motion for summary judgment
- Contract - Good Faith and Fair Dealing

o Fraud - Other

12 more...

"The elements of promissory estoppel are (1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 803](#)); In addition, the promise must be " 'clear and unambiguous in its terms,' " and " 'the party asserting the estoppel must be injured by his reliance.' [Citation]" ([US Ecology, Inc. v. State of California \(2005\) 129 Cal.App.4th 887, 901; 904](#); [Aceves v. U.S. Bank, N.A. \(2011\) 192 Cal.App.4th 218, 227.](#))

7. [Walker v. Citibank, N.A.](#)

No. C072247 (Cal. Ct. App. Aug. 22, 2014)

o Motion to dismiss
o Consumer - Unfair and Deceptive Practices
o Fraud - Other

2 more...

The elements of fraud are a false representation of a material fact, knowledge of the falsity, intent to induce another to rely on the representation, reliance, and resulting damage. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 782.](#)) Each element of fraud must be alleged factually and specifically.

8. [Signature Log Homes, LLC v. Fidelity National Title Co.](#)

No. E056683 (Cal. Ct. App. Aug. 21, 2014)

o Motion for summary judgment
o Tort - Negligence
o Property - Foreclosure

5 more...

We use the designation wrongful foreclosure to refer to a claim for damages against the trustee and/or beneficiaries based on alleged negligence in pursuing a nonjudicial foreclosure. We use the designation to distinguish wrongful foreclosure from an equitable action to set aside an improperly conducted foreclosure sale. (See, e.g., [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 800.](#)) Signature responded to Fidelity's summary judgment motion first by filing a motion seeking leave to amend its complaint to include theories of recovery based on negligence per se, reckless and gross negligence, concealment, and deceit.

9. [Ochoa v. NDEX West LLC](#)

No. B246702 (Cal. Ct. App. Aug. 6, 2014)

- Motion to dismiss
- Tort - Defamation
- Contract - Other

3 more...

Appellant did not allege that there was any fraud or illegality in executing the deed of trust only that he did not understand what he was executing. At most, the allegations of the complaint establish a voidable transaction not a void transaction. (See [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 801-802](#); [Dimock v. Emerald Properties \(2000\) 81 Cal.App.4th 868, 877](#).) The failure to allege facts showing any basis to avoid the tender rule renders his complaint insufficient as a matter of law.

10. [Mikulaco v. J.P. Morgan Chase Bank, N.A.](#)

No. H039061 (Cal. Ct. App. Jul. 28, 2014)

- Motion to dismiss
- Fraud - Other
- Property - Foreclosure

1 more...

Under *Lazar*, these allegations are insufficient because they lack the requisite allegations of " ' "how, when, where, to whom, and by what means the representations were tendered." ' [Citation.]" (*Lazar*, supra, 12 Cal.4th at p. 645; see also *Scott v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 743, 763* [fraud allegations insufficient where no allegations as to who made statements or when they were made]; *Glaski v. Bank of America (2013) 218 Cal.App.4th 1079, 1091* (*Glaski*) [fraud allegations insufficient due to conclusory allegations of reliance]; compare with [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#) [fraud allegations sufficient where it was alleged that the defendant made misrepresentations in specific dated documents and during telephone conferences on certain dates, and the documents were attached to the complaint].) For these reasons, we determine that the allegations in the first amended complaint are insufficient to state a cause of action for fraud.

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271 Citing cases

1. [Zamora v. PNC Bank, N.A.](#)

No. A139604 (Cal. Ct. App. Jul. 11, 2014)

- Motion for summary judgment
- Fraud - Other
- Contract - Other

7 more...

(Chavez v. Indymac Mortgage Services (2013) 219 Cal.App.4th 1052, 1062.) Although plaintiff undoubtedly views himself as the harmed victim of an illegal sale (see [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 800](#) [illegal, fraudulent, or willfully oppressive sale shown if "the trustee or beneficiary failed to comply with the statutory requirements for the notice or conduct of the sale"]), the evidence shows otherwise. The third element of the cause of action is "the plaintiff tendered the amount of the secured indebtedness or was excused from tendering."

2. [Sarnecky v. Barratt Developments, PLC](#)

No. D063848 (Cal. Ct. App. Jun. 26, 2014)

- Motion to dismiss
- Fraud - Other
- Fraud - Misrepresentation
- Residential General Contractors
- Construction and Building Materials

3 more...

(Robinson Helicopter Co., Inc. v. Dana Corp. (2004) 34 Cal.4th 979, 990.) The essential elements of negligent misrepresentation are the same as the above, except that a cause of action for negligent misrepresentation does not require knowledge of falsity but instead, requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true. (Civ. Code, § 1710, subd. 2; [Gagne v. Bertran \(1954\) 43 Cal.2d 481, 488](#); [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#).) Concealment is a species of fraud or deceit.

3. [Dumas v. JPMorgan Chase Bank, N.A.](#)

No. C072651 (Cal. Ct. App. Jun. 23, 2014)

- Motion for summary judgment
- Motion to dismiss
- Fraud - Other
- Consumer - Unfair and Deceptive Practices

6 more...

Each element of fraud must be alleged factually and specifically. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#); [Tarmann v. State Farm Mut. Auto Ins. Co. \(1991\) 2 Cal.App.4th 153, 157](#).) To assert a cause of action for fraud against a corporation, a plaintiff must allege the name of the person who allegedly made the

fraudulent representation, his or her authority to speak, to whom he or she spoke, what was said, and when it was said. (Tarmann, at p. 157.)

4. [Dehaven v. JPMorgan Chase Bank, N.A.](#)

No. C072032 (Cal. Ct. App. Jun. 16, 2014)

- Motion for summary judgment
- Motion to dismiss
- Consumer - Unfair and Deceptive Practices
- Fraud - Other

8 more...

The elements of fraud that give rise to a cause of action for deceit are (1) the defendant made a false representation as to a material fact; (2) the defendant knew the representation was false when made; (3) in making the representation, the defendant intended to deceive; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) Fraud must be pleaded with specificity rather than with general and conclusory allegations.

5. [McCann v. J.P. Morgan Chase Bank](#)

No. A137413 (Cal. Ct. App. Apr. 16, 2014)

- Property - Quiet Title

Respondents requested judicial notice of both of these documents, a request appellant did not oppose and the court granted. (See [West v. J.P. Morgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 802-803](#); [Ragland v. U.S. Bank National Assn. \(2012\) 209 Cal.App.4th 182, 194](#); [Maryland Casualty Co. v. Reeder \(1990\) 221 Cal.App.3d 961, 977](#); see also [Evid. Code, §§ 452, 453.](#)) Finally, the law is clear that judicially-noticed matters are relevant in considering a demurrer.

6. [Aniel v. EMC Mortgage Corporation](#)

No. A136399 (Cal. Ct. App. Apr. 15, 2014)

- Fraud - Other
- Property - Foreclosure
- Mortgage Banking
- Banks

The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. [Citation.] The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, 'the pleading should be sufficient " 'to enable the court to determine whether, on the facts pleaded, there is any

foundation, prima facie at least, for the charge of fraud.' " " " (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 793.) Hamilton, supra, 194 Cal.App.4th is illustrative.

7. Moore v. Aurora Loan Services, LLC

No. A137220 (Cal. Ct. App. Mar. 28, 2014) Cited 1 times

- Motion to dismiss
- Contract - Other
- Consumer - Debt Collection
- Mortgage Banking
- Banks

5 more...

No valid quiet title claim lies against U.S. Bank or Quality Loan because neither of these parties claims title to the property. (Code Civ. Proc., § 761.020; West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 802-803.) The claim fails as to Aurora because Moore does not allege she tendered or is willing and able to tender all amounts due under the deed of trust.

8. Cansino v. Bank of America

224 Cal.App.4th 1462 (Cal. Ct. App. 2014) Cited 129 times

- Motion to dismiss
- Fraud - Other
- Regulatory - Federal

4 more...

Holding that a representation that a home would appreciate in value was a prediction about the future and thus could not support a fraud claim

Plaintiffs argue that they should be relieved of specifying the identity of the individuals making the representations because “as the borrowers, [plaintiffs] are always identified by their names in all relevant documents, however, those same documents indicate that [plaintiffs] were involved in transactions with corporations, institutions, and entities, but not with any particular individual acting on behalf of these entities.” Based on the facts alleged in the second amended complaint, the relevant document would appear to be the appraisal; plaintiffs could have but did not provide the trial court with this document, or with any documents supporting the alleged misrepresentations of the value of the home in July 2005. (C.f. West v. JPMorgan Chase, N.A. (2013) 214 Cal.App.4th 780, 793, 154 Cal.Rptr.3d 285 [attaching relevant written document to complaint]; Boschma v. Home Loan Center, Inc. (2011) 198 Cal.App.4th 230, 248, 129 Cal.Rptr.3d 874 (Boschma) [same].) Further, to the extent any misrepresentation was verbal, the complaint fails to demonstrate why defendants would “necessarily possess full information” regarding their employees' conversations with plaintiffs.

9. [Solus Industrial Innovations, LLC v. Superior Court of Orange Cnty.](#)

224 Cal.App.4th 17 (Cal. Ct. App. 2014) Cited 2 times

- Labor & Employ. - Other
- Consumer - Unfair and Deceptive Practices

1 more...

As is typical when we review the propriety of the trial court's ruling on a demurrer, "we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792](#) .) Solus makes plastics at an Orange County manufacturing facility.

10. [Moncada v. W. Coast Quartz Corp.](#)

221 Cal.App.4th 768 (Cal. Ct. App. 2014) Cited 75 times 2 Legal Analyses

- Motion to dismiss
- Tort - Intentional
- Equitable Contract - Equitable Estoppel

9 more...

Finding allegation of a "false promise to pay a retirement bonus" did "not reach the level of extreme and outrageous conduct that is necessary" to state a claim for intentional infliction of emotional distress

[Citation.] The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true. [Citations.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285.](#)) This court has explained that "an action based on a false promise is simply a type of intentional misrepresentation, i.e., actual fraud.

271 Citing cases

1. [Danney v. Hopper](#)

No. E054840 (Cal. Ct. App. Mar. 4, 2014)

- Motion to dismiss
- Tort - Negligence
- Contract - Good Faith and Fair Dealing

7 more...

The elements of a cause of action for promissory estoppel are: "(1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the

part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise. [Citation.]" ([West v. JP Morgan Chase Bank, NA \(2013\) 214 Cal.App.4th 780, 803](#).) The doctrine does not apply "'in the absence of a showing that a promise had been made upon which the complaining party relied to his prejudice. . . ." [Citation.] The promise must, in addition, be 'clear and unambiguous in its terms.'"

2. [People v. Superior Court \(Solus Industrial Innovations, LLC\)](#)

224 Cal.App.4th 33 (Cal. Ct. App. 2014) Cited 6 times

- Labor & Employ. - Other
- Property - Nuisance

As is required when we review the propriety of the trial court's ruling on a demurrer, " 'we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law.' " ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285](#).) Solus makes plastics at an Orange County manufacturing facility.

3. [Nguyen v. Bank of America Home Loans Servicing, LP](#)

No. H038544 (Cal. Ct. App. Feb. 24, 2014)

- Motion to dismiss
- Fraud - Other
- Consumer - Unfair and Deceptive Practices

5 more...

Moreover, since the Nguyens were allegedly the recipients of the alleged misrepresentations regarding the \$1.6 million appraisal, the market value of their home, and the terms of the ARM, defendants have no more reason than the Nguyens to know " ' "how, when, where, to whom, and by what means the representations were tendered." ' [Citation.]" (Lazar, supra, 12 Cal.4th at p. 645; see also Scott v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 743, 763 [fraud allegations insufficient where no allegations as to who made statements or when they were made]; compare with [West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 793](#) [fraud allegations sufficient where it was alleged that the defendant made misrepresentations in specific dated documents and during telephone conferences on certain dates, and the documents were attached to the complaint].) We therefore determine that the allegations in the second amended complaint are insufficient to state a cause of action for fraud.

4. [Total Access Payments, Inc. v. Shaw](#)

No. G048188 (Cal. Ct. App. Feb. 21, 2014)

- Fraud - Other
- Consumer - Unfair and Deceptive Practices

4 more...

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) "Fraud must be pleaded with specificity rather than with "general and conclusory allegations." [Citation.] The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made.

5. [Savoy v. CitiMortgage Inc.](#)

No. B242460 (Cal. Ct. App. Feb. 18, 2014)

- Fraud - Other
- Property - Liens

2 more...

In particular, Savoy did not allege he tendered or could tender the full amount of the debt, which was \$329,477.09. "An allegation of tender of the indebtedness is necessary when the person seeking to set aside the foreclosure sale asserts the sale is voidable due to irregularities in the sale notice or procedure." ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 801](#); [Lona v. Citibank, N.A. \(2011\) 202 Cal.App.4th 89, 112](#); [Abdallah v. United Savings Bank \(1996\) 43 Cal.App.4th 1101, 1109.](#)) "The rationale behind the rule is that if [the borrower] could not have redeemed the property had the sale procedures been proper, any irregularities in the sale did not result in damages to the [plaintiff]."

6. [Ash v. N. Am. Title Co.](#)

223 Cal.App.4th 1258 (Cal. Ct. App. 2014) Cited 40 times

- Breach of Fiduciary Duty - Other
- Contract - Other

5 more...

Denying consequential damages where court found "[t]here is no evidence in the record that [plaintiff] communicated to [defendants] at the time of contracting" the special circumstances resulting in consequential damages

edu/report (Financial Crisis Report).) From there, financial market conditions deteriorated rapidly in the late summer and early fall of 2008. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 786, 154 Cal.Rptr.3d 285.) On September 7, 2008, the federal government placed two iconic mortgage institutions, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), into conservatorship.

7. [Spinosi v. Quality Loan Service Corp.](#)

No. G047664 (Cal. Ct. App. Jan. 31, 2014)

The record reflects they did not qualify for the Home Affordable Modification Program. (See *West v. JP Morgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 785 [U.S. Dept. of the Treasury implemented the Home Affordable Modification Program to "help homeowners avoid foreclosure during the housing market crises of 2008"].) The record does not show that the Special Forbearance/Workout Agreement between the parties was entered into pursuant to FannieMae's HomeSaver Forbearance program.

8. [Altisource Solutions, Inc. v. Quick Home Restore](#)

No. E055902 (Cal. Ct. App. Jan. 29, 2014)

- Contract - Other
- Fraud - Other

In their reply brief, appellants argue that the evidence showed, at most, a tort rather than a breach of contract. They forfeited this argument, however, by failing to raise it in their opening brief. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 799.) Separately and alternatively, the argument lacks merit.

9. [Haritunian v. Wells Fargo Bank, N.A.](#)

No. B247250 (Cal. Ct. App. Jan. 23, 2014)

- Motion to dismiss
- Fraud - Other
- Equitable Contract - Equitable Estoppel
- Banks

3 more...

We affirm. "As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crisis of 2008. The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are

likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' [Citation.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 785.](#)) FACTUAL AND PROCEDURAL BACKGROUND

10. [Rubio v. JPMorgan Chase Bank, N.A.](#)

No. B243639 (Cal. Ct. App. Dec. 13, 2013)

- Motion to dismiss
- Fraud - Misrepresentation
- Equitable Contract - Equitable Estoppel

3 more...

Although the November 17, 2010, letter allegedly states Chase would assist Rubio apply for assistance through HAMP, it does not state anything regarding delaying or stopping the foreclosure process before Rubio submitted an application. HAMP is a federal program which assists eligible borrowers who have defaulted on their mortgage payments or who are likely to default by reducing their monthly payments to sustainable levels without discharging any of the underlying debt. (Aspiras, supra, 219 Cal.App.4th at p. 952, fn. 2; see [West v. JPMorgan Chase, N.A. \(2013\) 214 Cal.App.4th 780, 786-788](#) [describing the program]; see also Chavez v. Indymac Mortgage Services (2013) 219 Cal.App.4th 1052, 1055-1056 [describing a trial period plan under HAMP].) Moreover, the complaint does not allege that Rubio could have cured the default even if she had filed a bankruptcy petition.

271 Citing cases

1. [Moncada v. W. Coast Quartz Corp.](#)

No. H036728 (Cal. Ct. App. Nov. 22, 2013) 1 Legal Analyses

- Motion to dismiss
- Tort - Intentional
- Equitable Contract - Equitable Estoppel

9 more...

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. [Citation.] The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true. [Citations.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#))

This court has explained that "an action based on a false promise is simply a type of intentional misrepresentation, i.e., actual fraud.

2. [Salazar v. Salazar](#)

No. D061716 (Cal. Ct. App. Nov. 4, 2013)

- Enforcement - Judgment
- Regulatory - Attorney

1 more...

We deem arguments made for the first time in the reply brief, however, to be waived. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 799.](#)) Further, Albert has waived the argument because he cites no law on the hearsay rule and exceptions thereto, or on the substantial evidence standard of review.

3. [Moncada v. W. Coast Quartz Corp.](#)

No. H036728 (Cal. Ct. App. Oct. 28, 2013)

- Motion to dismiss
- Tort - Intentional
- Equitable Contract - Equitable Estoppel

9 more...

"The elements of fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. [Citation.] The elements of negligent misrepresentation are the same except for the second element, which for negligent misrepresentation is the defendant made the representation without reasonable ground for believing it to be true. [Citations.]" ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 792.](#)) This court has explained that "an action based on a false promise is simply a type of intentional misrepresentation, i.e., actual fraud.

4. [Chapman v. Skype Inc.](#)

220 Cal.App.4th 217 (Cal. Ct. App. 2013) Cited 165 times 2 Legal Analyses

- Consumer - False Advertising
- Fraud - Other

5 more...

Finding that the plaintiff's unjust enrichment claim cannot be construed as a restitution claim because the plaintiff "does not allege that the subscription agreement is unenforceable or that she rescinds the agreement"

(Lazar v. Superior Court (1996) 12 Cal.4th 631, 638, 49 Cal.Rptr.2d 377, 909 P.2d 981; Mirkin v. Wasserman (1993) 5 Cal.4th 1082, 1088–1089 & fn. 2, 23 Cal.Rptr.2d 101, 858 P.2d 568.) The essential elements of a count for negligent misrepresentation are the same except that it does not require knowledge of falsity, but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true. (Civ.Code, § 1710, subd. 2; Gagne v. Bertran (1954) 43 Cal.2d 481, 488, 275 P.2d 15; West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 792, 154 Cal.Rptr.3d 285.) Each element of a fraud count must be pleaded with particularity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action, although less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff.

5. [Rossberg v. Bank of America, N.A.](#)

219 Cal.App.4th 1481 (Cal. Ct. App. 2013) Cited 232 times 1 Legal Analyses

- Motion to dismiss
- Fraud - Other
- Contract - Other

5 more...

Holding that a borrower may state a cause of action under § 2923.5 by alleging the lender did not actually contact the borrower or otherwise make the required efforts to contact the borrower despite a contrary declaration in the recorded notice of default

Moreover, the Rossbergs fail to explain how continuing to pay on their loans caused them damages when BofA credited those payments toward the amount they undisputedly owed and allowed them to remain in their home. (See West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 795, 154 Cal.Rptr.3d 285.) The Rossbergs also failed to provide facts showing they had sufficient equity in their home and sufficient income to qualify for a replacement loan.

6. [Rudat v. Wells Fargo Bank, N.A.](#)

(Cal. Ct. App. Aug. 26, 2013)

- Property - Quiet Title
- Banks

(Code of Civ. Proc., § 430.30, subd. (a); McKell v. Washington Mutual, Inc. (2006) 142 Cal.App.4th 1457, 1469.) Specifically relevant in the present case, "[a] court may take judicial notice of a recorded deed. [Citation.]" (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 803.) On those occasions when judicially noticeable facts render the pleading defective, the court may disregard allegations in the complaint that are contrary to facts judicially noticed.

7. [Feldman v. Bac Home Loans Servicing, LP](#)

(Cal. Ct. App. Aug. 22, 2013) Cited 2 times

- Motion to dismiss
- Tort - Defamation
- Contract - Other

4 more...

) As the trial court found, it was of no consequence that MERS did not record the SOT, which substituted ReconTrust as the trustee and assigned its beneficial interest under the DOT to BNY, until after the Notice of Default had been recorded. ReconTrust had authority to record the May 7, 2010 Notice of Default without the SOT. ([West v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 780, 801.](#)) Moreover, the beneficiary under a deed of trust is entitled to make a substitution of trustee to conduct a nonjudicial foreclosure and sale.

8. [Van Horst v. JP Morgan Chase Bank, N.A.](#)

2d Civil No. B241982 (Cal. Ct. App. Jul. 22, 2013)

- Motion to dismiss
- Equitable Contract - Equitable Estoppel
- Equitable Contract - Promissory Estoppel

The elements of a cause of action for promissory estoppel are: "(1) a promise, (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (which we refer to as detrimental reliance), and (4) injustice can be avoided only by enforcement of the promise." ([West v. JP Morgan Chase Bank, NA \(2013\) 214 Cal.App.4th 780, 803.](#)) The doctrine does not apply " ' in the absence of a showing that a promise had been made upon which the complaining party relied to his prejudice . . . ' [Citation.] The promise must, in addition, be 'clear and unambiguous in its terms.' "

9. [Steinke v. Bank of Am., N.A.](#)

No. E055944 (Cal. Ct. App. Jul. 17, 2013)

- Fraud - Other
- Contract - Other

"An allegation of tender of the indebtedness is necessary when the person seeking to set aside the foreclosure sale asserts the sale is voidable due to irregularities in the sale notice or procedure. [Citations.] ""The rationale behind the rule is that if [the borrower] could not have redeemed the property had the sale procedures been proper, any irregularities in the sale did not result in damages to the [borrower]." [Citation.]" ([West v. JPMorgan](#)

Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 801-802.) In the present case, there is no allegation of tender in the first amended complaint.

10. Lawrence v. JR Enters., L.P.

No. G044999 (Cal. Ct. App. May. 15, 2013)

- Fraud - Other
- Contract - Other

5 more...

Reversal is not warranted. Evidence of justifiable reliance is necessary in order for a plaintiff to prevail on a cause of action for fraud based on concealment. (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 794.) Landlords argue they established this element because had they known tenant was underreporting the gross receipts, they would have taken steps to correct it, as shown by their assertion of claims in 2009 and 2010.

271 Citing cases

1. Arias v. Elite Mortg. Grp., Inc.

DOCKET NO. A-4599-12T1 (App. Div. Jan. 23, 2015)

- Motion for summary judgment
- Contract - Good Faith and Fair Dealing
- Consumer - Unfair and Deceptive Practices
- Mortgage Banking
- Banks

1 more...

The court reasoned that "a reasonable person in Wigod's position would read the TPP as a definite offer to provide a permanent modification that she could accept so long as she satisfied the conditions." Ibid.; see also Corvello v. Wells Fargo Bank, N.A., 728 F.3d 878, 883-85 (9th Cir. 2013); Young, supra, 717 F.3d at 234; Bosque v. Wells Fargo Bank, N.A., 762 F. Supp. 2d 342 (D. Mass. 2011); West v. JPMorgan Chase Bank, N.A., 154 Cal. Rptr. 3d 285 (Ct. App.), rev. denied, 2013 Cal. LEXIS 5801 (July 10, 2013). HAMP provides financial incentives for mortgage servicers to assist debtors to obtain loan modifications.