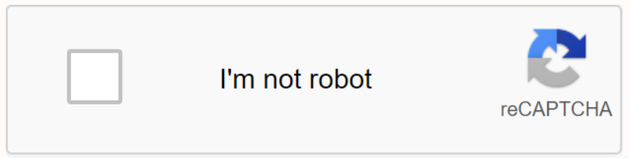

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Greenpoint mortgage funding inc successor

Greenpoint Mortgage was closed today by Father Capital One Financial Corp., who said weak demand for home loans forced the company to close the mortgage lender. Capital One announced that it would cease loan origination operations at Greenpoint Mortgage immediately, and initial reports would cut approximately 1,900 jobs. Loans that are already in process and blocked will continue to be processed and ultimately must be financed as scheduled. It is unclear what will happen to loans far away in the process that have not been blocked. The news followed statements made by Capital One's vice president of investor relations last week, prompting employees' fear that the company was preparing to close Greenpoint Mortgage.Greenpoint Mortgage rookie headquarters in, California will close, along with 31 other branches in 19 states in the United States.Greenpoint Mortgage specializing in Alt-A loans , offering programs for borrowers with low credit scores for every 620, as well as option weapons, second mortgages, jumbo loans and other high-risk products. Greenpoint's demise began with fewer loans, but earlier this year, Greenpoint significantly reduced its product offering, effectively sinking the volume of loans and forcing the closure of 13 branches and some 440 layoffs. Surprisingly, Capital One picked up the wholesale mortgage lender in its $13.2 billion north Fork Bancorp purchase just last December, with high hopes that Greenpoint would be a solid player. Unfortunately, the housing market became at the wrong time, quickly turning the lender's profits into catastrophic losses. Capital One had no intention of keeping home loans on its balance sheet, and after liquidating with more than $600 million in second mortgages on the books earlier this year, the company finally made the decision to close the losing unit. I received several emails from Greenpoint Mortgage employees this week who were concerned about their future at the company. They mentioned that emergency meetings were held after comments from their vice president of investor relations last week, and that the business was very slow, to the point that they felt it would not continue. And it seems that your concerns were well founded, as another lender closes its doors. Greenpoint was the seventh largest high-profile mortgage originator Alt-A, so this is great news. Closing will cost Capital One about $860 million, or $2.15 per share, reducing its earnings forecast from 2007 to $5 from $7.15.Capital A stock fell $2.03, or 2.95%, to $66.72 in late trades, and an additional 22 cents on off-hours trading on the news. Update: According to an internal Greenpoint email, the commercial lending division remains open. TRIAL - IT IS ORDERED, JUDGED and DECREED in accordance with the court's order entered on July 10, 2012, that the insolvency court's decision Said. Signed by Julie A. Richards, Clerk of the Court on 07/10/2012. (Baker, C.) Reflects complaints, responses, motions, orders, and test notes entered as of January 1, 2011.Additional or older documents may be available on Pacer. In the legal profession, information is the key to success. You need to know what's happening with customers, competitors, practice areas, and industries. Law360 provides the intelligence you need to remain an expert and beat the competition. Direct access to case information and documents. All new significant filings in U.S. federal district courts, updated hourly on business days. Full-text searches on all patent complaints in federal courts. Free downloads of complaints and much more! TRY LAW360 FREE FOR SEVEN DAYS View the parts now a subscriber? Click here to log in to EL US Bank appealed the district court's dismissal of its second modified consolidated complaint as unwelcome. The Second Circuit claimed and maintained that ACE Secs. Corp. v. DB Structured Prods., Inc., 25 N.Y.3d 581 (2015), and Deutsche Bank Nat'l Tr. Co. v. Quicken Loans Inc., 810 F.3d 861, 868 n.8 (2d Cir. 2015), governed by contractual claims from the Bank of the United States in this case. The court held that the district court duly granted a summary judgment to GreenPoint, where the first two cases of action for breach of contract were unwelcome under established New York law, because they were filed for six years after the statute of limitations began to run. The court also held that the district court duly dismissed the third cause of action for compensation under section 9 of the Flow Mortgage Loan Purchase and Guarantee Agreement, because the U.S. Bank's claim was actually a repackaged version of its breach of contractual claims. Finally, the court held that the fourth cause of action for non-compliance with the compensation agreements concerned the original filing of claims based on any of the Trusts, and was therefore untimely stated. Submitted 12/17/13 Arons v. Greenpoint Mortgage Funding CA1/1 NOT BE PUBLISHED IN OFFICIAL REPORTS California Court Rules, Rule 8.1115(a), prohibits courts and parties from quoting or relying on opinions not certified for publication or ordered to be published, except as specified by Rule 8.1115(b). This opinion has not been certified for publication or ordered published for the purposes of Article 8.1115. IN CALIFORNIA STATE APPARATUS COURT FIRST APPELLATE DISTRICT DIVISION STEVEN ARONS et al., Plaintiffs and Appellants, A135046 v. GREENPOINT MORTGAGE FUNDING (Solano County INC. et al., Super. Ct. No. FCS036780) Defendants and Defendants. After defaulting on their refinanced home loan, Steven and Mary Arons sued their mortgage broker, home lender, and other financial institutions. While the broker sat on the sidelines, the lender and other defendants refused the Arons' first amended complaint. Arons. court held the delayers without permission to amend and issue dismissal sentences. The Arons appeal. We revert, in part limited, to the originating lender, Greenpoint Mortgage Funding Inc. (Greenpoint), and its alleged successor in interest, Capital One N.A. (Capital One). Otherwise, we affirm. BACKGROUND FACTUALES AND PROCEDURALEs The Arons owned a property owned by the Sunset Court property in Fairfield, California. In 2005, they wanted to sell the property to raise funds to buy a different property. Success One Financial (Success One), a mortgage broker, was asked if he could help with the sale. A Success One employee, Ernest Cunamay, convinced the Arons to keep The Sunset Court property, refinance it, and thus get the money needed for 1 to acquire the new property. Thus, on July 27, 2005, Mary Arons (but not Steven) entered an adjustable-rate mortgage of $372,000, 40, with Greenpoint as lender. Five years later, in May 2010, a notice of default was recorded, claiming that Arons was more than $11,000 in arrears in loan payments. In October 2010, the Arons filed a lawsuit and in March 2011, they filed a first modified complaint (FAC) appointing Success One, the broker, and Greenpoint, the original lender, as defendants. The Arons alleged an agency agreement between Success One and Greenpoint. They claimed that Greenpoint authorized Success One and Cunamay to represent and link Greenpoint in refinancing and were allowed to represent the plaintiffs that the loan... it was approved and would be issued by [Greenpoint]. In addition, Greenpoint allegedly directed and authorized the broker's conduct by directing the broker on what to tell plaintiffs and potential borrowers to induce them to make loans with Greenpoint. For example, Greenpoint allegedly ordered the broker to inform the plaintiffs that the subject loan was the 'best available loan', that the plaintiffs had the ability to repay the loan with their income, and that the plaintiffs could be refinanced. The Arons claimed that Greenpoint's control was complete, immediate and daily in which the bank conducted the broker through closing conditions, financing conditions and 'fee locks'. The Arons also sued numerous other loan-related entities. Defendant Capital One allegedly acquired Greenpoint, including its assets and liabilities, in 2007. Defendants JPMorgran Chase Bank N.A. (JPMorgan) and Wells Fargo Bank N.A. (Wells Fargo) had successor interest on the loan, and Wells Fargo claimed to be the current beneficiary. The Electronic Mortgage Registration System Inc. (MERS) had been the beneficiary and candidate of the beneficiary of the deed of trust for the loan, while Defendant NDEX West, LLC (NDEX) had been the trustee under the Trust Writing. 2 EMC Mortgage Corporation Corporation Respondent had become the loan servicer. The Arons claimed that none of the defendants named, however, were the actual current owner of the loan. The FAC contained several causes of action, only some of which are relevant on appeal. The first cause of action, against all defendants, was by deception. The Arons alleged false statements from the defendants—mainly those of Cunamay, who imputed the other defendants—led them to accept the refinancing loan. Cunamay alleged that the Arons, acting as a Success One and Greenpoint agent, falsely told them (1) that the adjustable-rate mortgage offered was the best and only loan option available, and (2) they could refinance again without penalty if the monthly payment became unaffordable. Cunamay also did not reveal that he, and Success One, would receive a commission (a margin of return premium) that would be greater than the commission he would have received for negotiating a different loan or for assisting with the original sales plan. The Arons further claimed that the notary hastened them through the closing process and did not have time to review the bulky loan documents. They could not understand any of the documents and signed them based on what Cunamay had told them. The second cause of action, against all defendants, was entitled to civil conspiracy. With regard to information and belief, the Arons claimed that the efendants conspired and agreed to implement a plan to deceive and victimize the [p]laintiffs through their predatory lending practices and did the acts and things alleged herein in accordance with, and in its addition to, their conspiracy to deceive and victimize the [p]laintiffs. The third cause of action was negligence. The Arons alleged that Greenpoint was negligent in knowingly accepting false information (exaggerated income) about the loan application, Wells Fargo, and NDEX by falsely asserting an interest in the loan, MERS by allowing direct registration for loan transfers, and EMC in collecting loan payments from plaintiffs after plaintiffs claim that they were no longer required to repay. The Arons 3 also claimed that the defendants failed to complete the duties set out in sections 2923.5 and 2924 of the California Civil Code. The fifth cause of action, including against all defendants, alleges violations of the Unfair Competition Act (UCL), section 17200 of the Code of Unfair Competition (UCL). The ninth cause of action alleges that an unfair foreclosure occurred. Although many of the events surrounding refinancing took place in 2005, when the Arons entered the loan, they claimed that they only discovered the irregularities of the defendants last year and claimed that any applicable limitation law had been a fair tariff because they had not been in a position to uncover the irregularities of the accused. JPMorgan, Wells Fargo, MERS, and EMC collectively refused the FAC. Fac. Success One, the runner and NDEX did not demine. The court of first, second, third and fifth causes of action (mainly linked to the conduct at source of the loan) were prohibited by the applicable statutes of limitations. He also found that the Arons' accusations for these causes of action and the ninth cause of action (for unfair foreclosure) were fatally insufficient. The court of first instance issued dismissal judgments, and the Arons filed a timely notice of appeal. DISCUSSION Scope of Appeal On appeal, the Arons seek to revive only part of their FAC. They only address their causes of action for deception (first), civil conspiracy (second), negligence (third), unfair competition (fifth) and unfair foreclosure (ninth). In addition, they are only directed to the liability of some defendants under these five causes of action. To the extent that they have not reported other causes of action, we consider these causes to be abandoned. Similarly, to the extent that they have not reported the liability of some defendants on the basis of the five grounds of action they continue to pursue, we consider that these claims have also been abandoned. (See Buller v. Sutter 4 Health (2008) 160 Cal. App. 4th 981, 984, fn. 1 [do not discuss the cause of the appeal of the order of the court of first instance holding the demurrer constitutes the abandonment of that appeal on appeal]; Ellenberger v. 4th 943, 948 [Where a brief does not contain a legal argument subpoena from the authorities on the points made, we may 'address any errors claimed in the court's decision to sustain the demurrer as renounced or abandoned', therefore our review is limited only to those causes of brief action on appeal.].) In addition, Steven Arons did not sign the loan, so the defendants argue that he lacks standing to pursue the causes of action in the FAC. He hasn't answered. Therefore, we consider that you have acknowledged the issue, and we conclude that only Mary Arons has standing to pursue the causes of the action raised on appeal and that the dismissal of all causes of the actions in terms of Steven was appropriate.1 The demurrer In reviewing an order that supports a deportation, we employed the de novo review standard. (Bjorndal v. Superior Court (2012) 211 Cal. App. 4th 1100, 1106.) 'A delay proves the adequacy of the complaint as a matter of law; as such, it only raises a question of law. [Citation.] ' The reviewing court gives the complaint a reasonable interpretation, and treats the delay as admitting all duly alleged material facts. [Citations.] However, the court does not assume the veracity of the contentions, deductions or conclusions the law. [Citation.] The judgment must be stated 'if any of the various reasons for the demining is well taken. [Quotes.]' ' (San Mateo Union High School 1 We also note at this juncture that the Arons briefing on appeal has been less than useful. To say that is dense and prolix is a euphemism. Your response report only aggravates the obtusity of the briefing, as it repeatedly refers to Wells Fargo, when it appears that you should be referring to Greenpoint. Such carelessness at the briefing is inexcusable and we could (and perhaps should) simply refuse to read it. (See Cal. Rules of Court, Article 8.204(a) & (e) [requirements to organize and support arguments with legal and factual authority, and consequences of non-compliance].) However, we have slogged through the reports to discern, as best we can, their arguments on appeal. 5 District v. San Mateo County (2013) 213 Cal. App. 4th 418, 425.) 'In addition to the allegations of the complaint, we consider matters that should or may be noted judicially. [Citations.] We also consider the presentations of the complaint. (Ibid.) First and Second Causes of Action: Deception and Conspiracy Fraudulent deception consists of: (a) misrepresentation (false representation, concealment or non-disclosure); (b) knowledge of falsehood; (c) intent to induce trust; (d) justifiable trust; (e) resulting damages. (Lazar v. High Court (1996) 12 Cal. 4th 631, 638; Code of Civ., No. 1709.) In addition, in order to establish fraud through non-disclosure or concealment of facts, it is necessary to demonstrate that the respondent 'was obliged to disclose them'. [Citation.] (OCM Principal Opportunities Fund v. CIBC World Markets Corp. (2007) 157 Cal. App. 4th 835, 845 (CMO).) Arons's first and second cause of action is actually a single cause of action for deception. Each cause of action simply invokes a different theory to hold defendants accountable by muttering for Cunamay's alleged statements and omissions: the first cause of action invokes an agency theory, the second, civil conspiracy. (See Applied Equipment Corp. v. Litton Saudi Arabia Ltd. (1994) 7 Cal. 4th 503, 510; City of Industry v. City of Fillmore (2011) 198 Cal. App. 4th 191, 211 (Fillmore) [conspiracy is not an independent grievance].) Therefore, we deal with these two causes of actions together. Statute of Limitations Regardless of the theory of liability, defendants claim that the claim of deception is prohibited over time. Allegedly misleading conduct occurred in 2005 in connection with the realization of the refinancing loan, and the deception has a three-year limitation period (Civ Code. Proc., no. 338, subd. (d)). Arons, however, alleged that the discovery was delayed, claiming that he had no knowledge of the defendants' misconduct and had no reason to find out until he hired his lawyer in July 2010, within a year of filing his lawsuit. 6 Normally a party to a contract cannot rightly claim the of the express provisions of the contract, but this is not the basis of the plaintiffs' action for deception. First Franklin Financial Corp. (2013) 216 Cal. App. 4th 955, 964–965 (Fuller).) As in Arons alleges that the lender, through the broker, told him that the loan was the only one for which he qualified, told him that he could refinance in the future if necessary, and did not tell the broker the full nature of commission-based compensation. The evidentiary facts may ultimately demonstrate the unwelcome discovery of the plaintiffs. (Id. on page 966; see, for example, Rivera v. BAC Home Loans Servicing, L.P. (N.D. Cal. 2010) 756 F. Supp. 2d 1193, 1200 [change in loan interest rate may require investigation of certain facts].) However, the alleged statements and omissions could not have been verified by reference to the loan documents. As a result, Arons has claimed enough (albeit barely) discovery to survive the delay. Adequacy of allegations We now move on to the adequacy of Arons' accusations of deception. We begin with her agency theory, which, on appeal, she presses only against Greenpoint. She claims that Greenpoint assumes responsibility for her alleged agent, Cunamay, who tricked her at the start of the loan by telling her that the loan she agreed for was the only loan she qualified for2 telling her that she could refinance again (without penalty) if she could not repay payments, and not reveal the full nature of Cunamay's commission-based compensation. 'An agent is any person who undertakes to conduct any business, or manage any matter, on the other hand, by authority and because of the latter, and to be accountable for such transactions. ' (Violette v. Shoup (1993) 16 Cal. App. 4th 611, 620 (Violette), citing 3 Cal.Jur.3d, Agency, 1, p. 10.) An agent for a particular act or transaction is 2 Based on your opening letter, Arons apparently no longer bases his deception claim on the alleged statement this is the best loan, granting that it may be too vague to be actionable. 7 called a special agent. Everyone else is a general agent. (Civ. Code, No 2297.) ' The main feature of the agency is that of representation, the authority to act by and in the place of the director in order to bring it to legal relations with third parties. [Citations.] [Citation.] Significant proof of an agency relationship is the director's right to control the agent's activities. [Citations.] It is not essential that the right of control is exercised or that there is real supervision of the agent's work; the existence of the right establishes the relationship. ' (Violette, supra, 16 Cal.App.4th on p. 620; Code of Civ., No. 2295 [An agent is one representing another, called the director, in relations with third parties.]; see also Vallely Investments v. BancAmerica Commercial Corp. (2001) 88 Cal. App. 4th 816, 826; Stilson v. Moulton– Niguel Water Dist. 21 Cal. App. 3d 928, 936 (Stilson) [the most important factor in the relationship between the agency or employees is the right to control the way and means of achieving the desired outcome].) An execution business relationship is not an agency relationship. (See, for example, Kaplan v. Coldwell Banker Residential Affiliates, Inc. (1997) 59 Cal. App. 4th 741, 746 [franchisor derived royalties from non-principal franchisee].) Therefore, lenders do not normally act as the main one against sellers of goods to be financed. (LaChapelle v. Toyota Motor Credit Corp. (2002) 102 Cal. 4th 977, 991–992 [the car dealership the seller does not act as an agent of the financing agency simply because the concessionaire used forms provided by the financing agency when the agency was not the exclusive source of financing and did not control the contracting process between the dealer and the buyer , so the summary judgment for the appropriate agency]; Kisses v. Bank of America (2003) 105 Cal. App. 4th 378, 395–396 (Bescos) [according to LaChapelle], citing Pescia v. Auburn Ford-Lincoln Mercury Inc. (M.D.Ala. 1999) 68 F. Supp. 2d 1269, 1282–1283 (Pescia) [although the financial institution instructed the car dealership how to fill out the forms, gave the dealer access to his computer, and directed the dealer to use a specific detailed method to explain the terms of the financing, the financial institution had no control over the particular misconduct alleged].) 8 Moreover, since 'a loan transaction is at hand' and a 'commercial provider pursues its own economic interests in the loan of money' (Pearls v. GMAC Mortg., LLC (2010) 187 Cal. App. 4th 429, 436), several federal courts have held (predictably, in the light of the above cases) loan providers do not normally act as major viz-a-viz mortgage brokers. (ING Bank, FSB v. Chang Seob Ahn (N.D. Cal. 2010) 758 F. Supp. 2d 936, 942 [Hire [a broker as] an independent contractor does not require the waiver of supervisory powers. The law simply requires that the day-to-day management of the independent contractor's businesses be left to the independent contractor. Here, I was. Bona was free to keep any time he chose. He was free to decide how best to educate borrowers about the loan process, and decide which appraiser to hire. Bona decided how much contact with borrowers was regular enough, and what to say to keep them informed. The contract expressly told Bona to modify disclosure agreements 'as necessary or appropriate to comply with any applicable state or local law or practice.']; Champlaie v. BAC Home Loans Servicing, LP (E.D. Cal. 2009) 706 F. Supp. 2d 1029, 1056-1057 the plaintiff has argued that [the lender] offered brokers incentives to act in a manner that would continue [the lender's] interests, there is no claim that the [lender] gave brokers authority to represent or link [the lender], or that [the lender] took any action that would have been taken by the plaintiff that such a relationship existed]; see also Rupisan v. JP Morgan Chase Bank, NA (E.D. Cal., 29 August 2012, 1:12-CV-0327 AWI GSA) 2012 WL 3764022.) It was once said that, in general, an accusation of agency is a statement of ultimate de facto and is therefore sufficient to avoid a denies. (Skopp v. Weaver (1976) 16 Cal. 3d 432, 439.) But more recently, the Supreme Court has said that naked agency accusations, such as alleging that one defendant was another's agent and did all the alleged things as an agent, are heinous examples of generic reusables. (Moore v. Regents of University of California (1990) 51 Cal. 3d 120, 134, fn. 12; Simmons v. Ware (2013) 213 Cal. App. 4th 1035, 1049 [quoting Moore].) Moreover, Skopp's leniency for the letter of 9 final facts does not apply where the specific allegations of a complaint outweigh the general agency claim in demonstrating that there was no such relationship. (Garton v. Title Ins. & Trust Co. (1980) 106 Cal. App. 3d 365, 376; Owners of La Jolla Village. v. Superior Court (1989) 212 Cal. App. 3d 1131, 1148–1149, otherwise disapproved of as indicated in Jiménez v. High Court (2002) 29 Cal. 4th 473, 481, fn. 1 [the court of first instance may disregard agency claims when other allegations of complaint undermine them]; see generally Perez v. Golden Empire Transit Dist. (2012) 209 Cal. App. 4th 1228, 1235–1236 [specifically undermining general].) Consequently, a naked agency allegation is not sufficient if the other allegations of the complaint undermine it. Arons's accusations trumpet the agency's generic fashion words. Most describe nothing but Greenpoint by communicating loan parameters and approvals to the broker, typical activity of a business relationship between a potential lender and a broker who does not create an agency. (See Bescos, supra, 105 Cal.App.4, page 395; LaChapelle, supra, 102 Cal.App.4th in pp. 991–992.) Therefore, the allegations that Greenpoint authorized Success One to represent the plaintiffs that the loan [with Greenpoint] . . . it was approved and would be issued; directed the broker's conduct through closing conditions, financing conditions and fee blockades; and communicated with respect to fluctuating interest rates and demands for specific documentation of loans for documentation known as 'bank matrix' are well below establishing an agency. However, Arons has also argued that Greenpoint directed Success One with respect to what to tell plaintiffs and potential borrowers to induce them to participate in loans with Greenpoint and directed the broker to inform the plaintiffs that the subject loan was the 'best available loan', that the plaintiffs had the ability to repay the loan their income and that the plaintiffs could be refinanced. Just make a suggestion (Violette, 16 Cal.App.4th on p. 620) 620) prescribe alterations or deviations in [the work of another] (Stilson, above, 21 Cal.App.3d at p. 936) do not result in agency. 10 But requiring a broker to make certain statements on a loan, where those same statements are the cru sever of a fraud claim, may be a different matter. (See Bescos, supra, 105 Cal.App.4, page 396 [suggesting greater participation of the financial institution, such as directors related to unlawful conduct, could disprove a different outcome]; Montoya v. McLeod (1985) 176 Cal. App. 3d 57, 64 [McLeod negotiated the Montoyas loan and executed a promissory note in his favor. Therefore, just like a home loan broker becomes an agent of the borrower requesting . . . McLeod, invested with some discretionary authority as an agent of a real estate broker, became an agent of aspiring lenders, the Montoyas]; Pescia, supra, 68 F.Supp.2d on pages 1282-1283 [rejection of the fact-based body the financial institution did not control conduct allegedly erroneous in particular]; see also Mangindin v. Washington Mut. Bank (N.D. Cal. 2009) 637 F. Supp. 2d 700, 710 [Although a broker is habitually held by the buyer, the courts have rejected a bright line rule that a mortgage broker can never be a lender's agent.]. As the agency is typically an unsurpable issue for the summary judgment (Stilson, supra, 21 Cal.App.3d at p. 936), let alone the demurrer, we conclude that Arons' claims meet the minimum to advance an agency theory of Greenpoint. Greenpoint argues alternatively that even if Arons has a sufficiently alleged agency, he has not sufficiently alleged Success One's deception. The lender asserts that Success One's alleged misrepresentations are not actionable (or the statements were true, or are not past or existing statements of fact), Arons was not justifiably based on any misrepresentation, and Arons did not claim sufficient damage. Fuller's court of appeal, supra, 216 Cal.App.4th, pages 963–964, 967, allowed similar erroneous statements (capable of refinancing ... if they struggled to make payments in the future, the loans were only the ones they could qualify, the loans granted illegal recoil to the broker) to survive a desportation. We also conclude that some of Success One's alleged statements are actionable here. 11 First, Success One allegedly told Arons that he could refinance in the future without penalty if the payments became too burdenful. Although this statement has a contingent and future aspect (if) (see Brakke v. Economic Concepts, Inc. (2013) 213 Cal. App. 4th 769 [the general rule is the prediction of non-actionable future events], however it contains a demonstrably false promise, a categorical assertion of what Arons could do if the loan proved unaffordable. In addition, the statement was made by a broker, which is maintained to be especially qualified on home loans, so an exception to the prediction rule seems applicable. (Ibid.; Fuller, supra, 216 Cal.App.4th on p. 964, fn. 7 [the views of those with special experience may be actionable; this is usually a matter of fact]; Jolley v. Chase Home Finance, LLC (2013) 213 Cal. 4th 872, 892 (Jolley) [declaration a loan modification was highly likely and looked well shareable given the parties' relationship].) In fact, a mortgage broker has a fiduciary duty to a borrower. (Smith v. Home Loan Funding, Inc. (2011) 192 Cal. App. 4th 1331, 1332; see Wyatt v. Union Mortgage Co. (1979) 24 Cal. 3d 773, 783–784 [law imposes on mortgage loan brokers the obligation to make a complete and accurate disclosure of the terms of a loan to borrowers and to always act with the utmost faith towards their principals].) In a residential mortgage transaction, borrowers often hold a home loan broker to negotiate highly complex loan terms for them and can be assumed to have relied precisely on the latter's experience to explain those terms. (Wyatt, supra, 24 Cal.3d at p. 784.) Thus, in Wyatt, the broker's not taking note of the terms of the loan unfavourable to the borrower, even for the terms included in the loan documents, was actionable. (Ibid.) Evidence may show Greenpoint's direction with respect to The Refinancing or Success One statement in this regard were qualified, or that Arons was not reasonably or harmfully based. But, that's a factual matter. (See Paper Savers, Inc. v. Nacsa (1996) 51 Cal. App. 4th 1090, 1103–1104 (Paper Savers) [the question of reasonableness of trust in the agent is complex and except in the rare case should be determined as a matter of fact]; 12 See also Champlaie v. BAC Home Loans Servicing, LP, supra, 706 F.Supp.2d, pp. 1058-1059 [a promise[] that the applicant could refinance his loan could be actionable as fraud].) Second, for similar reasons, the assertion that Aron's loan was the only one available to it can be actionable. It is a demonstrably false statement and the reasonableness of your trust cannot be determined at the delay stage. (See Paper

Savers, supra, 51 Cal.App.4th, 1103–1104.) Once it is concluded there are some allegations in the FAC sufficient to file a complaint of deception, we do not need to even address the feasibility of other alleged false statements. Nor do we address the feasibility of a conspiracy theory of responsibility. (See Fuller, supra, 216 Cal.App.4th at p. 968, fn. 8 [a demurrer lies only as an entire complaint or count]; see also Fox v. JAMDAT Mobile, Inc. (2010) 185 Cal. App. 4th 1068, 1078 (Fox) [As long as a . . . . only cause of action contains any well-alleged cause of action, a delay must be annulled even if a alleged alleged to be lurking in that cause of action as well.) However, there is a crucial distinction between the allegations against Greenpoint and those against the other defendants. (See Fox, supra, 185 Cal.App.4th, p. 1078 [if a cause of action names two or more defendants, the adequacy of the complaint against a defendant does not immunize the plaintiff against a delay duly imposed by another defendant who may separate the misconduct].) As noted, Arons does not state an agency theory against the other defendants. In any event, as for these defendants, Arons does nothing more than the more generic agency claims, which are insufficient. Their generic accusations of conspiracy in terms of these defendants are also insufficient. (See Moore, supra, 51 Cal.3d, 134, fn. 12 [agency]; Simmons, supra, 213 Cal.App.4th on p. 1049 [quoting Moore]; State ex rel. Metz v. CCC Information Services, Inc. (2007) 149 Cal. App. 4th 402, 419 [conspiracy]; (2001) 93 Cal. App. 4th 700, 723 [simple accusation that the defendants conspired to force 13 motorists to buy more coverage than desired by refusing to sell less coverage, too conclusive to plead conspiracy]; Bartley v. California Association of Realtors (1980) 115 Cal. App. 3d 930, 935 ['General accusations of the existence and purpose of the conspiracy are insufficient.']; Davis v. Superior Court In and To Marin County (1959) 175 Cal. App. 2d 8, 23 ['Conspiracies cannot be established by suspicion' or [m]ere association.'].) As Arons never identified new accusations he could make against these other defendants, the trial court properly upstood the murder of these defendants without permission to modify. (Zelig v. County of Los Angeles (2002) 27 Cal. 4th 1112, 1126 (Zeligff) [burden on the plaintiff to show reasonable possibility of rectification]; Herrera v. Federal Nat. Mortg. Assn. (2012) 205 Cal. App. 4th 1495, 1506 [amendments not first proposed in the court of first instance should not be considered on appeal].) Consequently, as for all the other defendants they reported, the dementors regarding Arons' first and second causes of action remained adequately without permission to amend. Fifth Cause of Action: UCL Arons asserts that its UCL cause of action is entirely arising from its claim for deception. As his deception claim survives against Greenpoint, as discussed above, so does his UCL claim against Greenpoint. Although a claim for unfair practices under Article 17200 cannot be based on vicar liability, (Emery v. Visa Internat. (2002) 95 Cal. App. 4th 952, 960), the underlying deception lawsuit against Greenpoint, as we currently understand it, is not only in a theory of vicar liability, but, at least in part, in Greenpoint's personal involvement in illegality allegedly directing Success One to take particular action. (Ibid.; see Fuller, supra, 216 Cal.App.4th on pages 967–968 [allowing UCL's claim based on lender conduct].) As for all other defendants who report, the depuronteros of Arons' fifth cause of action remained duly sustained without permission to amend 14 Third Cause of Action: Negligence On Appeal, Arons has limited his alleged claim of negligence to Greenpoint's alleged acceptance of False Information (exaggerated income) about the executed loan application. It makes no arguments about Wells Fargo, MERS, NDEX, or EMC. This cause of action against Greenpoint is prohibited by applicable limitations law: two years. (Code Civ. Proc., No. 339; see also Fuller, supra, 216 Cal.App.4th, 963.) The exaggerated income in the loan application in 2005 was something Arons might have discovered, and he should have discovered at the time, and his accusations of delayed discovery cannot save this cause of action based on the loan documents he signed. (Cf. id. 964–965 [a party is presumed to be aware of the content of the contract].) Accordingly, the court of first instance duly held all the disminents of Arons' case of action for negligence without permission to amend. (Cow v. Wachovia Mortg. Corp. (2011) 198 Cal. 4th 737, 746 [where there is a reasonable possibility that the plaintiff may amend to amend periods of limitations, dismissal with appropriate prejudice].) Ninth cause of action: Aron's ninth cause of action for Aron's unfair disclosure becomes his claim that the notice of non-compliance was empty because the issuer of the notice—NDEX, as an agent of the beneficiary of the deed of trust, MERS—lacked the authority to issue it. It asserts that the issuer could only have obtained an interest in the MERS loan, that, as we can best understand its claims and arguments, either (1) it had lost its interest by somehow securitizing the refinancing loan at or near its inception, or (2) may have had an interest in deeding trust, but not an assignable interest in the loan note as a mere nominee of the lender. This cause of action is prohibited by the decision of this court in Fontenot v. Wells Fargo Bank, N.A. (2011) 198 Cal. App. 4th 256 (Fontenot) and the decision of the Fourth District in Herrera v. Federal Nat. Mortg. Assn. (2012) 205 Cal. App. 4th 1495 (Herrera). 15 In those cases, Aron's perceived deficiencies in MERS' ability to allocate its loan are rejected. (Fontenot, supra, 198 Cal.App.4th, p. 271 [an alleged assignment by MERS [was] not invalid under the common law of the guaranteed; the allegation that MERS was simply a candidate is insufficient to demonstrate that MERS lacked the authority to make a valid allocation of the note on behalf of the original lender]; Herrera, supra, 205 Cal.App.4th in p. 1506 [Because [trusted writing] declared possessed all the rights of the lender, including the right to foreclosure, that there was no abuse of discretion in the court of first instance which concluded that the plaintiffs did not prevent challenging the MERS authority to assign.]; see also Lane v. Vitek Real Estate Industries Group (E.D. Cal. 2010) 713 F. Supp. 2d 1092, 1099 [The argument that the parties lose interest in a loan when assigned to a trust pool has also been rejected by many district courts.]; Hafiz v. Greenpoint Mortg. Funding, Inc. (N.D. Cal. 2009) 652 F. Supp. 2d 1039, 1043 [observing the erroneous theory that all defendants lost their selling power in accordance with the deed of trust when the original promissory note was assigned to a group of trusts].) Both Fontenot and Herrera also rejected unfair foreclosure claims in the absence of prejudice. (Fontenot, supra, 198 Cal.App.4th at p. 272; Herrera, supra, 205 Cal.App.4th on pp. 1507–1508.) Because a promissory note is a negotiable instrument, a borrower must anticipate it can and could be transferred to another creditor. . . . [One]n assignment simply replaces one creditor with another, unchanged . . . obligations under the note. (Fontenot, supra, 272.) Arons does not claim that any transfer interfered with an attempt to pay the note or that the appropriate entity had refrained from foreclosure under the circumstances. (Ibid.) If merS really lacked the authority to make the assignment, the real victim was not a plaintiff but the original lender, who would have suffered the unauthorized loss of [his] promissory note. (Ibid.) 16 DISPOSITION Judgments of dismissal are asserted, except as regards Greenpoint and Capital One, solely as the alleged successor to Greenpoint's liabilities.3 As regards Greenpoint and Capital One, the judgment is annulled in part. Their murder of Mary Arons' first and second causes of action for deception, and the fifth case of action for UCL violation, should have been overturned.4 The parties will bear their own costs on appeal. _____ Banke, J. We agree: _____ Margulies, Acting P. J. _____ Sepulveda, J.[redacted] 3 The Successor's responsibility may occur on the express or implied assumption of responsibilities. (Beatrice Co. v. State Bo. of Equality (1993) 6 Cal. 4th 767, 778.) At this stage, Capital One has not argued against the application of successor responsibility. 4 We have only ruled that those grounds of appeal contain sufficient arguments to survive a delay, and our decision must not be interpreted in any way as a suggestion of anything about the substance of Arons' arguments. (See, for example, Fuller, supra, 216 Cal.App.4th in [redacted] retired Associate Judge of the Court of Appeals, First District of Appeal, Division Four, assigned by the President of the Court of Justice pursuant to Article VI, section 6 of the California Constitution. 17 17 17