

1 Stephen M. Rummage, *pro hac vice*
2 Martin L. Fineman (Cal. Bar No. 104413)
3 Sam N. Dawood (Cal. Bar No. 178862)
4 DAVIS WRIGHT TREMAINE LLP
5 505 Montgomery Street, Suite 800
6 San Francisco, California 94111-6533
7 Telephone: (415) 276-6500
8 Facsimile: (415) 276-6599
9 Email: martinfineman@dwt.com
10 samdawood@dwt.com

11 Attorneys for Defendants
12 Washington Mutual, Kerry K. Killinger,
13 and Joseph W. Saunders

14 IN THE UNITED STATES DISTRICT COURT
15 THE NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 MICHAEL BLOMQUIST,
18 Plaintiff,

19 v.

20 WASHINGTON MUTUAL, a Washington
21 corporation; KERRY K. KILLINGER; JOSEPH
22 W. SAUNDERS; COUNTRYWIDE HOME
23 LOANS, INC., a Delaware corporation;
24 ANGELO MOZILLO; WACHOVIA
25 CORPORATION, a North Carolina corporation;
26 KEN THOMPSON; CITIGROUP, a Delaware
27 corporation; SANFORD WEILL; CHARLES
28 PRINCE; GOLDMAN SACHS GROUP INC., a
Delaware corporation; HENRY PAULSON;
BEAR STEARNS COMPANIES, INC., a
Delaware corporation; JAMES CAYNE; THE
MCGRAW HILL COMPANY, INC., a
Delaware corporation; HAROLD MCGRAW III;
WELLS FARGO & COMPANY, a Delaware
corporation; PATRICIA R. CALLAHAN;
HERBERT M. SANDLER; ROCK HOLDINGS,
INC., a Delaware corporation; EXPERIAN
CORPORATION, a Delaware corporation;
MOODYS CORPORATION, a Delaware
corporation; JAMES E. GILLERAN; JOHN M.
REICH; JOHN D. HAWKE, JR.; JOHN C.
DUGAN; SUSAN SCHMIDT BIES; DONALD
E. POWELL; SHEILA C. BAIR

Defendants.

) Case No. 07-04108 JF/HRL
)
) **DEFENDANTS WASHINGTON**
) **MUTUAL, KERRY K. KILLINGER AND**
) **JOSEPH W. SAUNDERS'**
) **MEMORANDUM OF POINTS &**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION TO DISMISS PLAINTIFF'S**
) **FIRST AMENDED COMPLAINT**

) Date: Friday, July 11, 2008
) Time: 9:00 a.m.
) Judge: Hon. Jeremy Fogel
) Department: SJ, Courtroom 3, 5th Floor

DAVIS WRIGHT TREMAINE LLP

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DAVIS WRIGHT TREMAINE LLP

	Page
I. INTRODUCTION.....	1
II. RELEVANT FACTS.....	1
III. ARGUMENT.....	3
A. Blomquist Does Not Meet the Jurisdictional Requirement of Standing.....	4
B. Blomquist Has Not Stated a Claim Because He Has Not Alleged Damages from WAMU’s Alleged Lending Practices.	6
C. Blomquist’s Fraud Claims Lack Any Specificity and Do Not Allege Reliance.....	7
D. Blomquist Has Not Provided a Short and Plain Statement of His Claim for Relief.	8
IV. CONCLUSION	8

TABLE OF AUTHORITIES

Page(s)

CASES

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Arizonans for Official English v. Arizona,
520 U.S. 43 (1997)5

Ascon Props., Inc. v. Mobil Oil Co.,
866 F.2d 1149 (9th Cir. 1989)4

Balistreri v. Pacifica Police Dep’t,
901 F.2d 696 (9th Cir. 1990)4

Bell Atl. Corp. v. Twombly,
127 S. Ct. 1555 (2007).....4

Buckland v. Threshold Enters., Ltd.,
155 Cal.App.4th 798 (2007)7

Cattie v. Wal-Mart Stores,
504 F. Supp. 2d 939 (C.D. Cal. 2007)3, 7

Fecht v. Price Co.,
70 F.3d 1078 (9th Cir. 1995)7, 8

Gemtel Corp. v. Community Redevelopment Agency of City of Los Angeles,
23 F.3d 1542 (9th Cir. 1994)6

Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.,
397 F.3d 1217 (9th Cir. 2005)8

Henry v. Circus Circus Casinos, Inc.,
223 F.R.D. 541 (D.Nev. 2004)6

In re Napster, Inc. Copyright Litigation,
479 F.3d 1078 (9th Cir. 2007)7

Jacobson v. Schwarzenegger,
226 F.R.D. 395 (C.D. Cal. 2005).....8

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992)5

McCarthy v. United States,
850 F.2d 558 (9th Cir. 1988)4

Misc. Serv. Workers, Drivers & Helpers v. Philco-Ford Corp.,
661 F.2d 776 (9th Cir. 1981)7

DAVIS WRIGHT TREMAINE LLP

DAVIS WRIGHT TREMAINE LLP

1 *North Star Int’l v. Arizona Corp. Comm’n*,
 720 F.2d 578 (9th Cir. 1983)4

2 *O’Shea v. Littleton*,
 3 414 U.S. 488 (1974)6

4 *Peck v. Hoff*,
 5 660 F.2d 371 (8th Cir. 1981)4

6 *Robertson v. Dean Witter Reynolds, Inc.*,
 749 F.2d 530 (9th Cir. 1984)4

7 *Roe v. Unocal Corp.*,
 8 70 F. Supp. 2d 1073 (C.D. Cal. 1999)4

9 *Simon v. Eastern Kentucky Welfare Rights Org’n*,
 426 U.S. 26 (1976)6

10 *Thornhill Publ’g Co. v. Gen. Tel. & Elecs. Corp.*,
 11 594 F.2d 730 (9th Cir. 1979)3, 4

12 *Tileston v. Ullman*,
 13 318 U.S. 44 (1943)5

14 *Warth v. Seldin*,
 422 U.S. 490 (1975)3

15 *Wheeler v. Travelers Ins. Co.*,
 16 22 F.3d 534 (3rd Cir. 1994)4

17 **STATUTES**

18 15 U.S.C. §§ 77w, 78b(3), 78i, 78j, 78k-1, 78L, 78o-6, 78uuu2

19 Cal. Bus. & Prof. Code § 172047

20 **OTHER AUTHORITIES**

21 5 C. Wright & A. Miller, *Federal Practice & Procedure* § 1216 (3d ed. 2004)4

22 Fed. R. Civ. P. 8 1, 8

23 Fed. R. Civ. P. 9(b) 1, 7

24 Rule 12(b)(1)3, 4

25 Rule 12(b)(6)4, 7

26 U.S. Constitution2

27 Article III of the United States Constitution4

28

1 **I. INTRODUCTION**

2 Plaintiff Michael Blomquist's First Amended Complaint (the "Complaint") consists of
 3 nothing more than a rambling diatribe alleging that Washington Mutual,¹ Kerry K. Killinger, and
 4 Joseph W. Saunders (collectively, "WAMU"), as well as the other Defendants (and persons not
 5 named in the Complaint), engaged in lending practices that adversely affected the United States
 6 economy, including unidentified clients of his mortgage and real estate businesses. As the Court
 7 noted in denying his TRO application, Blomquist does not allege he has suffered harm, pecuniary
 8 or otherwise, from these purported practices; he merely believes that others may have. At most,
 9 he is an observer with no direct injury for this Court to remedy, and he therefore lacks standing to
 10 bring these claims. Under settled law, the fact that Blomquist styles this case a class action makes
 11 no difference: his lack of standing mandates dismissal.

12 Aside from this fundamental issue of standing, Blomquist's pleading falls short on just
 13 about every ground imaginable. Because he has not alleged that he suffered actionable damages
 14 as a result of any particular Defendant's misconduct, Blomquist has not alleged any claim on
 15 which relief may be granted. In addition, although he has alluded to supposed "fraud," he has not
 16 alleged the circumstances constituting fraud with the particularity required by Rule 9, nor has he
 17 alleged reliance on the inadequately alleged fraudulent statements or conduct. Finally, his tangled
 18 and convoluted 40-page Complaint falls far short of Rule 8's requirement of a short and plain
 19 statement of the facts giving rise to a right to relief.²

20 **II. RELEVANT FACTS**

21 On August 9, 2007, Blomquist, a licensed mortgage and real estate agent from Los Gatos,
 22 California, filed this action on behalf of himself and his business, Michael Scott Properties.
 23 Blomquist alleged that he was the sole owner of Michael Scott Properties. On September 10,
 24 2007 he amended his Complaint, removing Michael Scott Properties as a named plaintiff.

25 _____
 26 ¹ The Complaint does not specify whether "Washington Mutual" refers to Washington Mutual
 Bank, Washington Mutual, Inc., or some other entity bearing the Washington Mutual name.

27 ² As stated in WAMU's Notice of Motion to Dismiss, Blomquist's Complaint also should be
 dismissed for the reasons given by the other Defendants in their motions to dismiss, which
 28 WAMU incorporates by reference. Among other things, Blomquist has not alleged – at least in
 any understandable way – the elements of his various causes of action.

1 Blomquist's convoluted Complaint alleges six causes of action. He brings four causes of
 2 action pursuant to the California Civil Code, the California Financial Code, and the California
 3 Business and Professions Code: (1) false or deceptive statements; (2) unsafe and unsound lending
 4 practices; (3) sale of products below cost; and (4) fraud and conspiracy. According to the
 5 Complaint, the various acts in violation of California law allegedly restrain trade and create unfair
 6 competition. Blomquist's fifth and sixth causes of action rely on the United States Constitution
 7 and federal laws: (5) violation of the Administrative Procedures Act and U.S. Constitution;³ and
 8 (6) securities fraud in violation of 15 U.S.C. §§ 77w, 78b(3), 78i, 78j, 78k-1, 78L, 78o-6, 78uuu.
 9 Complaint ¶¶ 49-69.

10 In essence, Blomquist accuses defendants of fraudulent and misleading loan and securities
 11 practices. His allegations largely revolve around the use of "stated income" or "no income
 12 verification" loans ("NIV loans"), option adjustable rate mortgage loans ("option ARMs"), and
 13 loans for 100% of the value of the financed property. According to Blomquist, NIV loan practices
 14 changed in 2004. Before then, he claims, only borrowers with excellent credit standing could
 15 obtain NIV loans; in 2004, however, he alleges that Defendants (as well as other financial
 16 institutions not named in the Complaint) relaxed NIV guidelines to allow any individual with a
 17 Form W-2 to apply. As a result, Blomquist claims, borrowers systematically misrepresented their
 18 income, so that 90% of all NIV loans rest on inflated borrower incomes. Complaint, ¶ 35. As to
 19 option ARM loans, Blomquist alleges that worksheets designed to illustrate the rate adjustment
 20 process inevitably misled consumers, especially in an environment of low interest rates. *Id.* He
 21 claims that 90% of option ARM borrowers can make only the minimum payments on these loans.
 22 *Id.* at ¶¶ 36-37. Finally, as to 100% loan-to-value loans, Blomquist claims that borrowers who
 23 finance 100% of their home value typically have few assets and cannot pay real estate taxes after
 24 they buy property. *Id.* at ¶ 38. He adds that "risk layering," the combined packaging of these
 25 products, creates risks for borrowers and lenders alike. *Id.* at ¶ 39.

26
 27 _____
 28 ³ The Complaint professes to assert this fifth cause of action against the "Agencies." In fact,
 however, the Complaint does not name any "Agencies" as Defendants. In any event, Blomquist
 does not direct this cause of action against WAMU.

1 Blomquist claims the practices described in the Complaint have restrained him from
 2 mortgage and real estate commerce because they posed personal legal, fiduciary, ethical, and
 3 moral conflicts. *Id.* at ¶ 4. Further, he alleges that he willingly “purchased securities which would
 4 benefit [him] from decreases in some of the Defendants’ stocks,” but claims that “mortgage and
 5 securities fraud were the cause of his securities losses” and that “Agencies have aided and abetted
 6 said violations.” *Id.* at ¶ 6. He does not allege which Defendants’ securities he purchased,
 7 identify the “fraud” that affected those securities, or specify the losses he suffered as a result.

8 On September 10, 2007, Blomquist filed a request for a temporary restraining order
 9 (“TRO”) and a motion to seal documents. Blomquist did not provide notice to Defendants of the
 10 request. This Court denied Blomquist’s TRO on October 12, 2007, finding that he failed to
 11 demonstrate he would suffer immediate irreparable injury:

12 Plaintiff’s request for a TRO reiterates the allegations in the
 13 [Complaint] that *borrowers* are harmed by option ARMs because
 14 most option ARMs are based upon inflated incomes. Plaintiff does
 15 not explain how the continued advertising and origination of option
 ARMs would cause an immediate injury *to him*, or why notice
 should not be given to Defendants.”

16 Order Denying Plaintiff’s Motion for TRO [Dkt. No.16], 4: 19-23 (emphasis in original).⁴

17 III. ARGUMENT

18 Rule 12(b)(1) allows a party to raise by motion the defense that the court lacks subject
 19 matter jurisdiction. Standing presents an issue of subject matter jurisdiction, properly tested on a
 20 motion under Rule 12(b)(1). *See, e.g., Cattie v. Wal-Mart Stores*, 504 F. Supp. 2d 939, 942 (C.D.
 21 Cal. 2007) (citing *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). “A motion to dismiss for lack of
 22 subject matter jurisdiction may either attack the allegations of the complaint or may be made as a
 23 ‘speaking motion’ attacking the existence of subject matter jurisdiction in fact.” *Thornhill Publ’g*
 24 *Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (citations omitted). On a
 25 motion made on the latter ground, a presumption of truthfulness does not attach to plaintiff’s

26
 27 ⁴ In the same Order, the Court gave Blomquist 10 days to submit declarations to justify sealing
 28 documents, as Blomquist had requested. Order, at 5:10-14. [Dkt. No. 16]. Blomquist did not
 respond. Blomquist also failed to appear at the initial case management conference on November
 13, 2007, prompting the Court to issue an Order to Show Cause Re: Dismissal [Dkt. No. 23].

1 allegations. *Id.* “[T]he district court is not restricted to the face of the pleadings, but may review
 2 any evidence, such as affidavits and testimony, to resolve factual disputes concerning the
 3 existence of jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988) (citations
 4 omitted). The party asserting jurisdiction bears the burden on a Rule 12(b)(1) motion. *Thornhill*
 5 *Publ’g*, 594 F.2d at 733.

6 A motion to dismiss under Rule 12(b)(6) tests a complaint’s legal sufficiency. *North Star*
 7 *Int’l v. Arizona Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983) (citing *Peck v. Hoff*, 660 F.2d
 8 371, 374 (8th Cir. 1981)) (affirming dismissal); *Roe v. Unocal Corp.*, 70 F. Supp. 2d 1073, 1075
 9 (C.D. Cal. 1999) (granting motion to dismiss). The court may dismiss an action under Rule
 10 12(b)(6) based upon “the lack of a cognizable legal theory or the absence of sufficient facts
 11 alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699
 12 (9th Cir. 1990) (citing *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir.
 13 1984)). As the Supreme Court recently made clear, “a plaintiff’s obligation to provide the
 14 ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a
 15 formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*,
 16 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must “contain either direct or
 17 inferential allegations respecting all the material elements necessary to sustain recovery under
 18 some viable legal theory.” *Id.* at 1969 (quoting *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d
 19 1149, 1155 (9th Cir. 1989)). Although the court takes factual allegations in a complaint to be true,
 20 those allegations “must be enough to raise a right to relief above the speculative level.” *Id.* at 1965
 21 (citing 5 C. Wright & A. Miller, *Federal Practice & Procedure* § 1216, pp. 235-36 (3d ed. 2004)).

22 **A. Blomquist Does Not Meet the Jurisdictional Requirement of Standing.**

23 Federal law governs standing to sue in federal court, even in diversity cases based on state
 24 law claims. *Wheeler v. Travelers Ins. Co.*, 22 F.3d 534, 537 (3rd Cir. 1994). To satisfy Article III
 25 of the United States Constitution and demonstrate an “actual case or controversy” conferring
 26 standing (and, therefore, subject matter jurisdiction), Blomquist must show that (1) he has suffered
 27 an “injury in fact” that is concrete and particularized and actual or imminent, not conjectural or
 28 hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is

1 likely, as opposed to merely speculative, that a favorable decision will redress the injury. *Lujan v.*
 2 *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Blomquist cannot meet any of these
 3 prerequisites for standing.

4 **First**, Blomquist does not (and cannot) allege that he personally suffered actual concrete
 5 harm from WAMU's conduct. As to harm, he alleges only the following:

6 Against [his] advice and [his] unwillingness to commit unlawful
 7 acts, [his] clients, referrals and prospective clients were enticed to
 8 and transacted business with the Defendants. During the course of
 9 business these borrowers were coerced to participate in unlawful
 acts, omissions, and fraudulent statements to purchase over-priced,
 unaffordable homes through the sale of affordable homes or [sic]
 obtain unaffordable, misleading, cash-out loans to subsidize income.

10 Complaint, ¶ 5. As this Court concluded in denying Blomquist's TRO application, this muddled
 11 allegation does not allege that Blomquist suffered any direct injury because borrowers (including
 12 some of his clients) chose to transact business with WAMU. Instead, Blomquist focuses on
 13 alleged harm to those borrowers, who supposedly bought "over-priced homes" using
 14 "unaffordable, misleading, cash-out loans." On these allegations, Blomquist's injury (whatever it
 15 might be) plainly does not rise above the conjectural or hypothetical. At best, Blomquist's claims
 16 make him a bystander with no direct interest for this court to remedy. *See Tileston v. Ullman*, 318
 17 U.S. 44, 46 (1943) (doctor had no standing to complain that statute banning sale of contraceptives
 18 violated patients' privacy rights). And an interest shared generally with the public at large will not
 19 confer standing. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997).

20 Blomquist has not met the "injury in fact" requirement for standing

21 **Second**, Blomquist cannot show that he has suffered injury traceable to WAMU. As the
 22 breathtaking scope of Blomquist's Complaint makes clear, his attacks focus on an entire segment
 23 of the economy (a segment that is now the subject of extensive regulatory and legislative
 24 attention), not on any particular alleged wrongdoing by WAMU. Further, although Blomquist
 25 makes vague allegations of "securities losses," he does not claim that he purchased or sold
 26 WAMU securities, nor does he link those vaguely-alleged losses to any misconduct by WAMU.

27 **Third**, Blomquist has not alleged facts suggesting that a decision from the Court against
 28 WAMU would provide him with redress. The more conventional portions of Blomquist's Prayer

DAVIS WRIGHT TREMAINE LLP

1 for Relief ask the Court to restrain Defendants from making or disseminating unspecified false or
 2 misleading statements, to stop Defendants from selling loan products below cost, and to require
 3 that they disgorge profits. Complaint, Prayer. But even if the Court were to grant this relief, it has
 4 no reason to believe that Blomquist would benefit in any way distinct from the public at large.
 5 Further, Blomquist's less conventional requests for relief do not confer standing; instead, they
 6 amount to absurd requests to give Blomquist compensation for losses suffered by others. For
 7 example, his Prayer seeks \$10 million from Defendants to fund a non-profit organization, which
 8 Blomquist would establish and run. Complaint, Prayer, ¶ 4. But Blomquist has no right to relief
 9 for injuries of third parties, and his preposterous demand for that relief cannot confer standing.⁵

10 The fact that Blomquist has styled his Complaint as a putative class action does not confer
 11 standing. A class action "adds nothing to the question of standing." *Simon v. Eastern Kentucky*
 12 *Welfare Rights Org'n*, 426 U.S. 26, 40 & n.20 (1976). A party must establish standing
 13 individually and cannot acquire standing by bringing a class action. *See O'Shea v. Littleton*, 414
 14 U.S. 488, 494 (1974) ("if none of the named plaintiffs purporting to represent a class establishes
 15 the requisite of a case or controversy with the defendants, none may seek relief on behalf of
 16 himself or any other member of the class"); *see also Henry v. Circus Circus Casinos, Inc.*, 223
 17 F.R.D. 541, 544 (D.Nev. 2004) (named plaintiff must have standing in his own right before he
 18 may purport to represent a class claim against that defendant).

19 **B. Blomquist Has Not Stated a Claim Because He Has Not Alleged Damages from**
 20 **WAMU's Alleged Lending Practices.**

21 Blomquist does not allege several of the essential elements of his various claims,
 22 especially as to Messrs. Killinger and Saunders. Most notably, Blomquist has not alleged that
 23 WAMU (much less Messrs. Killinger and Saunders) did anything in particular that caused him to
 24 suffer any injury or loss. Instead, his Complaint claims only that his clients suffered injury.

25 A plaintiff cannot assert a claim in the absence of an allegation of personal harm or
 26 damage caused by the allegedly unlawful conduct. *Gemtel Corp. v. Community Redevelopment*

27 _____
 28 ⁵ His prayer for costs of suit, which includes "all costs of investigation" (Complaint, Prayer for Relief, ¶ 2) is particularly noteworthy, given Blomquist's admission that he is writing a book on the subject of the Complaint. Complaint, ¶ 2.

1 *Agency of City of Los Angeles*, 23 F.3d 1542, 1546 (9th Cir. 1994) (dismissing complaint under
 2 Rule 12(b)(6) for failure to allege a compensable injury). In particular, to assert claims under
 3 California’s Unfair Competition Laws (“UCL”), a private individual such as Blomquist must have
 4 “suffered injury in fact and [have] lost money or property as a result of the unfair competition.”
 5 Cal. Bus. & Prof. Code § 17204; *see Buckland v. Threshold Enters., Ltd.*, 155 Cal.App.4th 798,
 6 812 (2007); *Cattie*, 504 F. Supp. 2d at 947 (injury or loss of money or property is required to
 7 assert a deceptive business practices claim under the UCL).

8 As discussed above, Blomquist does not and cannot allege he suffered an injury or loss of
 9 money or property. Thus, all of his claims must be dismissed.

10 **C. Blomquist’s Fraud Claims Lack Any Specificity and Do Not Allege Reliance.**

11 Although Blomquist alludes to supposed “fraud” in connection with his claims for false
 12 and deceptive practices, fraud and conspiracy, and fraudulent transactions, he has not alleged the
 13 circumstances constituting fraud with the particularity required by Federal Rule of Civil Procedure
 14 9(b). Nor has he alleged reliance on the alleged fraudulent statements or conduct. Both flaws
 15 require dismissal.

16 To assert a claim for fraud or intentional misrepresentation, a plaintiff must allege: (1) a
 17 misrepresentation; (2) knowledge of falsity (or scienter); (3) intent to defraud, that is, to induce
 18 reliance; (4) justifiable reliance; and (5) resulting damage. *In re Napster, Inc. Copyright*
 19 *Litigation*, 479 F.3d 1078, 1096 (9th Cir. 2007). A plaintiff cannot satisfy his pleadings
 20 obligations through vague references to these elements. Instead, Federal Rule of Civil Procedure
 21 9(b) requires that “the circumstances constituting fraud or mistake shall be stated with
 22 particularity.” In practical terms, the Complaint must state “the time, place and specific content of
 23 the false representations as well as the identities of the parties to the misrepresentation”; where the
 24 “manner, content or medium of the alleged misrepresentations is not specified,” the court should
 25 dismiss. *Misc. Serv. Workers, Drivers & Helpers v. Philco-Ford Corp.*, 661 F.2d 776, 782 (9th
 26 Cir. 1981); *Fecht v. Price Co.*, 70 F.3d 1078, 1082 (9th Cir. 1995).

27 Blomquist’s Complaint does not come close to satisfying Rule 9(b). For each purportedly
 28 fraudulent statement, Blomquist must “set forth what is false and misleading about [the] statement,

1 and why it is false,” as well as why the statement was “untrue or misleading when made.” *Fecht*,
2 70 F.3d at 1082 (citation omitted). But the Complaint does not state *any* specific statements or
3 conduct by WAMU; to whom they were made; when they were made; where they were made;
4 what was false about any such statements or conduct; or why they were false. Nor does the
5 Complaint allege that Blomquist relied, justifiably or otherwise, on WAMU’s allegedly false
6 statements or conduct and suffered damage. *Hambleton Bros. Lumber Co. v. Balkin Enterprises,*
7 *Inc.*, 397 F.3d 1217, 1234 (9th Cir. 2005). For these reasons, the Court should dismiss all of
8 Blomquist’s claims sounding in fraud, including the First, Third and Sixth Causes of Action.

9 **D. Blomquist Has Not Provided a Short and Plain Statement of His Claim for**
10 **Relief.**

11 Blomquist’s convoluted 40-page Complaint violates Rule 8, which requires a “short and
12 plain” statement showing plaintiff’s entitlement to relief. Fed. R. Civ. P. 8. Blomquist’s
13 Complaint consists of rambling diatribe, narrative, legal arguments, and excerpts from immaterial
14 websites and other sources. Blomquist’s complete failure to conform to Rule 8’s “short and plain”
15 statement requires dismissal. *See Jacobson v. Schwarzenegger*, 226 F.R.D. 395 (C.D. Cal. 2005).

16 **IV. CONCLUSION**

17 WAMU therefore requests that the Court dismiss all claims set forth in Blomquist’s
18 Complaint with prejudice.

19 Respectfully submitted this 12th day of May, 2008.

20 DAVIS WRIGHT TREMAINE LLP

21 By /s/ Stephen M. Rummage

22 Stephen M. Rummage, *pro hac vice*
23 Martin Fineman (Cal. Bar No. 104413)
24 Sam N. Dawood (Cal. Bar No. 178862)

25 Attorneys for Defendants Washington Mutual,
26 Kerry K. Killinger, and Joseph W. Saunders
27
28

DAVIS WRIGHT TREMAINE LLP