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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ROBERT HUESO, an individual,
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12 Plaintiff,
13 v.
14 SELECT PORTFOLIO SERVICING,
15 INC., *et al.*,
16 Defendants.

Case No. 18-cv-01892-BAS-WVG

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

(ECF No. 39)

16 Before the Court is a Motion to Dismiss Plaintiff Robert Hueso's First Amended
17 Complaint filed by Defendants Select Portfolio Servicing, Inc., Quality Loan Service
18 Corporation, and Credit Suisse Financial Corporation ("Defendants"). (ECF No. 39.)
19 Plaintiff opposes, and Defendants reply. (ECF Nos. 40, 41.) The Court finds this Motion
20 suitable for determination on the papers submitted and without oral argument. *See* Fed.
21 R. Civ. P. 78(b); Civ. LR 7.1(d)(1). For the reasons explained below, the Court **GRANTS**
22 **IN PART and DENIES IN PART** Defendants' Motion.

23 **BACKGROUND**

24 In 2006, Plaintiff obtained a home loan from Defendant Credit Suisse Financial
25 Corporation ("Credit Suisse") to refinance his property. (First. Am. Compl. ("FAC") ¶ 2,
26 ECF No. 16.) The loan was documented in a promissory note ("Note") secured by a Deed
27 of Trust ("Deed"). (*Id.* ¶ 28.) The Deed identifies Mortgage Electronic Registration
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1 System, Inc. (“MERS”) as the beneficiary. (*Id.* ¶ 29; Deed, Ex. A to FAC.)¹ Plaintiff was
 2 informed that the servicer of the Note was Defendant Select Portfolio Servicing (“SPS”),
 3 a subsidiary of Credit Suisse. (*Id.* ¶¶ 10, 31.) Plaintiff made regular monthly payments to
 4 SPS totaling more than \$420,000. (*Id.* ¶ 31.)

5 **I. Alleged Misapplication of Mortgage Payments by SPS**

6 In 2017, Plaintiff “became concerned that [SPS] was misapplying his payments”
 7 because his statement showed that only \$20,000 had been applied to the principal on the
 8 Note. (FAC ¶¶ 2, 32.) Plaintiff contacted SPS, which informed him that it had been
 9 applying some of his payments to “force-placed insurance” and a “tax escrow” account.
 10 (*Id.* ¶ 33.) However, Plaintiff claims that he personally maintained insurance on his home
 11 and was never notified that SPS did not have proof of coverage and would therefore obtain
 12 insurance and charge Plaintiff for it. (*Id.* ¶ 33(b).) Plaintiff also had neither been informed
 13 that his insurance policy had been terminated nor reimbursed by SPS for any duplicative
 14 insurance payments. (*Id.* ¶ 33(c).) Further, Plaintiff states that he “had never required the
 15 use of a tax escrow account” and had not “received notice from any taxing authority that
 16 [SPS] had paid taxes on his behalf” or that he had overpaid his taxes. (*Id.* ¶ 33(a).)

17 Plaintiff states that he then contacted Credit Suisse to ask how much money SPS
 18 had forwarded to them on his account. (FAC ¶ 34.) Credit Suisse informed Plaintiff that
 19 his loan did not exist in their system. (*Id.* ¶ 35.)

20 On November 7, 2017, Plaintiff made several “qualified written requests”
 21 (“QWRs”) to SPS seeking information about his payments and advising SPS that that they
 22 made errors when calculating and applying his payments. (FAC ¶¶ 36–41.) Plaintiff
 23 alleges that SPS either did not respond or acknowledged his letters without explaining
 24 their actions or correcting the errors. (*Id.*) According to Plaintiff, the only information
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26 ¹ Because the exhibits attached to the FAC are alleged in the pleading and their authenticity is not
 27 in dispute, the Court considers them on the basis of the incorporation-by-reference doctrine. *See In re*
 28 *Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999); *see also Hsu v. Puma Biotechnology,*
Inc., 213 F. Supp. 3d 1275, 1281 (C.D. Cal. 2016) (holding that courts can consider “materials attached
 to the complaint that are referenced by the complaint” at the 12(b)(6) stage).

1 SPS provided “was an explanation that the owner of the Credit Suisse Note was ‘Fannie
2 Mae in its capacity as trustee.’” (*Id.* ¶ 42.) Plaintiff then contacted Fannie Mae and was
3 advised that Fannie Mae did not own any loans on residential property. (*Id.* ¶ 43.)

4 Plaintiff then retained counsel to contact SPS, which followed up on his QWRs and
5 advised SPS that its failure to respond was subject to legal action. (FAC ¶ 44.) From
6 November 2017 to February 2018, Plaintiff or his counsel sent eight letters to SPS
7 requesting 16 items of information including, among other things: copies of the original
8 Note and security instrument, all assignments of the instrument, information about the
9 custodian of the original Note and the entity that funded the transaction, a complete audit
10 history from the date of loan origination, information about the “force-placed insurance”
11 obtained by SPS, and an itemized statement of the current payoff amount. (*Id.* ¶¶ 44–46.)
12 In response, Plaintiff received only an unverified copy of the Note, an unrecorded copy of
13 the Deed, and a limited itemization of his payments to SPS. (*Id.* ¶ 47.)

14 Plaintiff then demanded that SPS “provide documentary proof” that an owner of the
15 Note existed and that SPS had been providing Plaintiff’s payments to the owner and
16 properly applying them to the balance of the loan. (FAC ¶ 48.) Plaintiff alleges that
17 because SPS has refused to comply with this request, he is holding his payments in
18 abeyance until this proof is provided. (*Id.*)

19 **II. Allegations Regarding Unlawful Assignment, Substitution, and Foreclosure**

20 On November 28, 2017, MERS, the beneficiary of the Deed, executed a “Corporate
21 Assignment of Deed of Trust” assigning its rights under the Deed to SPS. (FAC ¶ 50; Ex.
22 B to FAC.) Plaintiff states MERS’ assignment to SPS was unlawful because MERS had
23 been suspended from operating in California at the time it was designated a beneficiary in
24 2006. (*Id.* ¶¶ 17, 54.) Specifically, Plaintiff claims MERS was suspended by the
25 California Franchise Tax Board in 2004, only to be “briefly revived” in 2009 before being
26 suspended again. (FAC ¶ 17.) Further, Plaintiff alleges that although a successor entity
27 to MERS qualified to do business in California in 2010, this entity is the alter ego of the
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1 initial MERS and thus “any and all transactions perpetrated by the Successor MERS are
2 voidable at the option of” Plaintiff. (*Id.* ¶¶ 18–21.)

3 On July 7, 2018, SPS recorded a “Substitution of Trustee” substituting Defendant
4 Quality Loan Service Corporation (“Quality”) for itself as trustee under the Deed. (FAC
5 ¶ 51; Ex. C. to FAC.) Shortly thereafter, Quality sent Plaintiff a “Debt Validation Notice”
6 to collect on the Note. (FAC ¶ 57.) About a month later, Quality recorded a Notice of
7 Default and commenced foreclosure on Plaintiff’s home. (*Id.* ¶ 52; Ex. D. to FAC.)
8 Plaintiff claims that SPS and Quality were not legally authorized to file the Notice of
9 Default because neither Defendant appears on the Deed as the trustee or beneficiary. (FAC
10 ¶ 54.) Further, according to Plaintiff, the Notice of Default is deficient under California
11 law because it does not include a summary document and falsely represents that someone
12 contacted Plaintiff to explore available options to avoid foreclosure. (*Id.* ¶ 56.)

13 **III. Summary of Claims**

14 Based on these facts, Plaintiff alleges the following:

15 Count 1: Violation of RESPA: SPS and Quality violated the Real Estate Settlement
16 Procedures Act (“RESPA”), 12 U.S.C. § 2605, by failing to investigate, correct, and/or
17 explain Plaintiff’s account in response to his QWRs and by unlawfully misapplying the
18 funds to a tax escrow account and force-placed insurance. (FAC ¶¶ 62–63.)

19 Count 2: Cancellation of Instrument: Credit Suisse destroyed the Note, thus
20 extinguishing it and rendering the Deed and all subsequent “Subject Instruments”—
21 including the MERS assignment to SPS, SPS’ substitution of Quality as Trustee, and
22 Notice of Default—void. (FAC ¶¶ 49, 55, 67–76.)

23 Count 3: Receiving Stolen Property: SPS and Quality are liable for receiving stolen
24 property, on the basis that SPS was not entitled to keep his payments because the Note has
25 been destroyed, or, alternatively, because SPS misapplied his payments. (FAC ¶¶ 81–82.)
26 Plaintiff also states that Quality knew Plaintiff’s funds were stolen but nonetheless retained
27 them for its own benefit and has continued to wrongfully foreclose on Plaintiff’s property.
28 (*Id.* ¶ 83.)

1 550 U.S. 544, 570 (2007). A claim has “facial plausibility when the plaintiff pleads factual
 2 content that allows the court to draw the reasonable inference that the defendant is liable
 3 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*,
 4 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a
 5 defendant’s liability, it stops short of the line between possibility and plausibility of
 6 ‘entitlement to relief.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

7 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
 8 requires more than labels and conclusions, and a formulaic recitation of the elements of a
 9 cause of action will not do.” *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478
 10 U.S. 265, 286 (1986) (alteration in original)). A court need not accept “legal conclusions”
 11 as true. *Iqbal*, 556 U.S. at 678. Despite the deference the court must pay to the plaintiff’s
 12 allegations, it is not proper for the court to assume that “the [plaintiff] can prove facts that
 13 [he or she] has not alleged or that defendant[] ha[s] violated the . . . laws in ways that have
 14 not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of*
 15 *Carpenters*, 459 U.S. 519, 526 (1983).

16 DISCUSSION

17 **I. Count 1: Violations of RESPA**

18 Congress enacted RESPA to provide consumers “with greater and more timely
 19 information on the nature and costs” of the real estate settlement process and to protect
 20 them “from unnecessarily high settlement charges caused by certain abusive practices[.]”
 21 12 U.S.C. § 2601(a). The statute was then expanded to encompass loan servicing as well
 22 as the settlement process. *Medrano v. Flagstar Bank, FSB*, 704 F.3d 661, 665 (9th Cir.
 23 2012) (citing Pub. L. No. 101-165). To this end, RESPA imposes certain duties on loan
 24 servicers regarding borrowers’ accounts and in response to their inquiries. *See generally*,
 25 12 U.S.C. § 2605.

26 Defendants move to dismiss Plaintiff’s RESPA claim against Defendants Quality
 27 and SPS for failing to state that either Defendant violated the statute. The Court addresses
 28 below the arguments as to each Defendant.

1 **A. Defendant Quality**

2 Defendants contend that Quality, as trustee, is not subject to the statute. (Mem. of
3 P. & A. in supp. of Mot. (“Mem. of P. & A.”) at 7, ECF No. 39-1.) Plaintiff counters that
4 because the FAC alleges that SPS retained Quality to collect on the Note, the Court can
5 reasonably infer that “at least some servicing obligations” were transferred from SPS to
6 Quality. (Opp’n at 10 (citing FAC ¶ 52).)

7 RESPA defines “servicer” as “the person responsible for servicing of a loan.” 12
8 U.S.C. § 2605(i)(2). Servicing, in turn, is defined as
9 receiving any scheduled periodic payments from a borrower pursuant to the
10 terms of any loan, including amounts for escrow accounts described in section
11 2609 of this title, and making the payments of principal and interest and such
12 other payments with respect to the amounts received from the borrower as
may be required pursuant to the terms of the loan.

13 *Id.* § 2605(i)(3); *see also Medrano*, 704 F.3d at 667 (describing “servicer’s role” as
14 “receiving the borrower’s payments and making payments to the borrower’s creditors”).

15 It is unclear whether trustees are *per se* excluded from RESPA’s definition of
16 “servicer.” *Compare Jacobson v. Balboa Arms Drive Trust No. 5402 HSBC Fin. Trustee*,
17 No. 10–CV–2195–JM (RBB), 2011 WL 2784126, at *7 (S.D. Cal. Apr. 4, 2011) (holding
18 that plain language of RESPA does not bind trustees) *with Goulatte v. CitiMortgage, Inc.*,
19 No. EDCV 12-391 PSG (SPx), 2013 WL 12142947, at *3 (C.D. Cal. Sept. 24, 2013)
20 (“The Court is not persuaded that CR Title’s status as the foreclosure trustee necessarily
21 means that it could not also have been a servicer: one company could conceivably act in
22 both roles.”) (citing *Carter v. Deutsche Bank Nat’l Tr. Co.*, No. C09-3033 BZ, 2010 WL
23 1875718, at *1 (N.D. Cal. May 7, 2010)). Even where trustees have not been categorically
24 excluded, however, courts have still required plaintiffs to allege facts showing that the
25 trustee assumed some servicing duties to bring the trustee within RESPA’s definition of a
26 loan servicer. *See id.* at *3 (finding plaintiff inadequately pled a RESPA claim because
27 he did not include factual allegations showing that defendant trustee was a “servicer”);
28 *accord Izenberg v. ETS Servs., LLC*, 589 F. Supp. 2d 1193, 1199 (C.D. Cal. 2008); *Lopez*

1 v. *GMAC Mortg. Corp.*, No. C 07-3911 CW, 2007 WL 3232448, at *3 (N.D. Cal. Nov. 1,
2 2007).

3 In the FAC, Plaintiff alleges that Defendant Quality substituted in as trustee,
4 commenced foreclosure, and sent him a “Debt Validation Notice” on August 2, 2018 that
5 stated Quality had been retained by SPS to collect on the Note. (FAC ¶¶ 52, 57.) The
6 Court cannot reasonably infer that, as part of Quality’s purported duty to collect past due
7 payments, it was receiving scheduled periodic payments and applying them to the
8 principal and interest on the loan such that it was “servicing” the loan. *See Lopez*, 2007
9 WL 3232448, *3 (dismissing claim where plaintiff alleged only that defendant was the
10 trustee of the disputed loan but not that it “ever received or was responsible for receiving
11 periodic payments on the loan”); *see also Bryant v. Wells Fargo Bank, Nat. Ass’n*, 861 F.
12 Supp. 2d 646, 660 (E.D.N.C. 2012) (declining to extend *Carter* to foreclosure trustee who
13 “merely collected allegedly past due payments and attorney’s fees from [p]laintiffs and
14 forwarded the past due payments to Wells Fargo for application to [p]laintiffs’ loan”);
15 *Castrillo v. Am. Home Mortg. Servicing, Inc.*, No. CIV.A. 09-4369 R, 2010 WL 1424398,
16 at *7 (E.D. La. Apr. 5, 2010) (finding trustee that did not receive periodic payments and
17 make payments pursuant to loan terms before default was not a servicer). Because
18 Plaintiff has not sufficiently stated that Quality assumed duties that constitute “servicing”
19 his loan under RESPA, Plaintiff cannot allege that any RESPA obligations attached to
20 Quality as a “loan servicer” such that it can be held liable for violations of § 2605. *See*
21 *Castaneda v. Saxon Mortg. Servs., Inc.*, 687 F. Supp. 2d 1191, 1199 (E.D. Cal. 2009).

22 Even if the Court assumes *arguendo* that Quality is a loan servicer under RESPA,
23 Plaintiff’s allegations against Quality are still deficient because the FAC is devoid of any
24 facts specifying what actions Quality took to violate RESPA. Rather, it alleges only that
25 SPS failed to respond to his QWRs and misapplied his payments to insurance and a tax
26 escrow account in violation of § 2605(e). (FAC ¶¶ 36–41, 44–48.) Plaintiff states no
27 such claims against Quality. Thus, even assuming Quality was a loan servicer under the
28 statute, the FAC contains no facts to raise a colorable RESPA claim against it. *See*

1 *Associated General Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S.
2 519, 526 (1983) (in deciding a motion to dismiss, the court must not “assume that the
3 [plaintiff] can prove facts that it has not alleged or that the defendants have violated . . .
4 laws in ways that have not been alleged”); *see also Izenberg*, 589 F. Supp. 2d at 1199
5 (“Neither [defendant] nor the court is required to guess as to the manner in which
6 [defendant’s] conduct allegedly violated RESPA.”).

7 The Court therefore **GRANTS** Defendants’ Motion and dismisses Plaintiff’s
8 RESPA claim as to Quality, with leave to amend.

9 **B. Defendant SPS**

10 Plaintiff’s RESPA claim against SPS concerns QWRs he sent to SPS seeking
11 information about his loan account. Plaintiff claims that in response, SPS “failed to
12 undertake” actions required by § 2605 of RESPA, including investigating Plaintiff’s
13 account, making corrections as needed, and providing Plaintiff with a written explanation
14 of its actions. (FAC ¶¶ 61, 62.) Plaintiff further claims that SPS “demonstrated a pattern
15 or practice of noncompliance” with this RESPA provision and wrongfully applied his
16 payments to force-placed insurance and a tax escrow account without authorization. (*Id.*
17 ¶¶ 63–65.)

18 Defendant SPS’ response is limited to Plaintiff’s QWR claim. SPS argues that: (1)
19 Plaintiff’s letters to SPS are not QWRs covered by RESPA; (2) Plaintiff has not
20 sufficiently alleged how SPS’ responses were inadequate under the statute; and (3)
21 Plaintiff has failed to allege that he suffered any damages as a result of the deficient
22 responses. (*Id.* at 8.)

23 1. Qualified written requests

24 RESPA requires the servicer of a federally related mortgage loan to provide a timely
25 written response to inquiries, or “qualified written requests,” from borrowers regarding
26 the servicing of their loans. 12 U.S.C. § 2605(e)(1)(A), (e)(2). A QWR is defined as
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1 a written correspondence, other than notice on a payment coupon or other
2 payment medium supplied by the servicer, that—(i) includes, or otherwise
3 enables the servicer to identify, the name and account of the borrower; and
4 (ii) includes a statement of the reasons for the belief of the borrower, to the
5 extent applicable, that the account is in error or provides sufficient detail to
the servicer regarding other information sought by the borrower.

6 *Id.* § 2605(e)(1)(B). If the servicer fails to respond properly to such a request, the statute
7 entitles the borrower to recover actual damages and, if there is a “pattern or practice of
8 noncompliance,” statutory damages of up to \$1,000. *Id.* § 2605(f).

9 a. *Plaintiff’s letters were, in part, QWRs under RESPA*

10 Plaintiff alleges he sent eight letters to SPS informing it that it made errors in
11 calculating and applying his payments and asking for 16 categories of information related
12 to his account. (FAC ¶¶ 41, 45–46.) Defendants challenge whether these letters, as
13 alleged, constitute QWRs because several categories of requested information related to
14 the origination of the loan and not its servicing. (Mem. of P. & A. at 8–9.)

15 The Ninth Circuit has held that “any request for information made with sufficient
16 detail,” including “[a]ny reasonably stated written request for account information[,]”
17 constitutes a QWR. *Medrano*, 704 F.3d at 666 (quoting *Catalan v. GMAC Mortg. Corp.*,
18 629 F.3d 676, 687 (7th Cir. 2011)). More specifically, a communication from a borrower
19 fits the parameters of a QWR

20 as long as it (1) reasonably identifies the borrower’s name and account, (2)
21 either states the borrower’s “reasons for the belief . . . that the account is in
22 error” or “provides sufficient detail to the servicer regarding other information
23 sought by the borrower,” and (3) seeks “information relating to the servicing
of [the] loan.”

24 *Id.* (citing 12 U.S.C. § 2605(e)(1)(A)–(B)). Regarding the third prong, the court clarified
25 that inquiries about loan origination that seek to challenge a loan’s validity or its terms do
26 not seek “information relating to servicing,” since loan origination precedes the servicer’s
27 role and, consequently, servicers are unlikely to have such information. *Id.* at 666–67.

1 The Court agrees that some of the categories of requests allegedly made by Plaintiff
2 in his communications with SPS relate to loan origination, not servicing. Categories
3 requesting the original security instruments and Note,² MERS information, and inspection
4 and appraisal reports for the property that is subject to the Note appear to be part of
5 Plaintiff's effort to ascertain whether the Deed still exists or, as alleged by this lawsuit,
6 has been destroyed. This forms the basis for Plaintiff's claim that his obligations under
7 these instruments should be cancelled, which challenges the loan's validity. SPS had no
8 duty under RESPA to respond to these requests. *See Junod v. Dream House Mortg. Co.*,
9 No. CV 11-7035-ODW, 2012 WL 94355, at *3-4 (C.D. Cal. Jan. 5, 2012) (holding that
10 copies of the promissory note and deed of trust and "a complete life of loan transactional
11 history" are "not the type of information RESPA contemplates"). Thus, to the extent
12 Plaintiff seeks to hold SPS liable under RESPA for failing to respond to these categories
13 of information, Plaintiff's claim fails.

14 However, the remaining categories that request specific information about how
15 payments were applied (audit history, payoff statement), charges to the account (itemized
16 statement of advances and charges, authorization for fee charges), and the identity of the
17 owner and servicer of Plaintiff's loan³ fall squarely within the category of "information
18 relating to loan servicing" and provided sufficient detail as to what information Plaintiff
19 was seeking. *See* 12 U.S.C. § 2605(e)(1)(A); *see also id.* § 2605(k)(1)(C)-(D).
20 Defendants appear to concede as much. (*See* Mem. of P. & A. at 9.) Thus, these
21 allegations are sufficient to show that some of Plaintiff's correspondence with SPS
22 triggered the servicer's duty to respond under RESPA.

23 b. *SPS' responses were inadequate*

24 SPS next challenges whether Plaintiff has sufficiently alleged that its responses to
25 the QWRs were inadequate. (Mem. of P. & A. at 9.)

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27 ² This includes Plaintiff's requests for information about who funded the underlying transaction,
28 where the Note is trading, the custodian of the original Note, its proof of sale from lender to investors,
and its current location. (FAC ¶ 46(a)-(h), (n).)

³ *See* FAC ¶ 46(i)-(m), (o)-(p).

1 RESPA requires servicers to take specific actions in response to QWRs within 30
2 days of receiving them. 12 U.S.C. § 2605(e)(2). If necessary, the servicer is required to
3 “make appropriate corrections” to a borrower’s account and provide a written notification
4 to the borrower that these corrections have been made. *Id.* § 2605(e)(2)(A). In addition,
5 servicers are required, in response to all QWRs, to conduct investigations and provide
6 borrowers with written explanations that either: (1) state why the servicer believes the
7 borrower’s account is accurate and therefore in no need of correction; or (2) provide
8 information requested by the borrower or explain why the servicer cannot provide such
9 information. *Id.* § 2605(e)(2)(B)(i), (C)(i). All written notifications under this provision
10 are also required to provide the name and telephone number of a servicer’s representative
11 or employee who can provide further assistance. *Id.* § 2605(e)(2)(A), (B)(ii), (C)(ii).⁴

12 As stated previously, Plaintiff has alleged that he provided SPS with detailed
13 requests about the servicing of his loan. (FAC ¶ 46.) Plaintiff alleges that SPS provided
14 an incomplete response by producing only copies of the Note and Deed and “a limited
15 breakdown of payments he made to [SPS],” while failing to provide an itemized statement,
16 audit history, or any other proof that it was properly making payments to Plaintiff’s
17 creditors. (*Id.* ¶¶ 47–48; *see also* Opp’n at 9.) Further, Plaintiff states that he specifically
18 told SPS that he believed it made errors in calculating and applying his payments, but that
19 SPS took no corrective action and offered no explanation except to say that the owner of
20 his Note was “Fannie Mae in its capacity as trustee”—a claim, Plaintiff alleges, not
21 verified by Fannie Mae. (FAC ¶¶ 41–43.)

22 Plaintiff has adequately stated that SPS’ response did not comport with RESPA’s
23 requirements. SPS was either required to provide all responsive information in its
24 possession or explain to Plaintiff, in writing, why certain information was unavailable or
25 could not be obtained by SPS. Plaintiff’s allegation that SPS provided only some

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27 ⁴ Servicers are also expressly prohibited from “fail[ing] to take timely action to respond to a
28 borrower’s requests to correct errors relating to allocation of payments, final balances for purposes of
paying off the loan, or avoiding foreclosure, or other standard servicer’s duties.” 12 U.S.C.
§ 2605(k)(1)(C).

1 documents with no explanation as to why other requested records were omitted is
2 sufficient to state that SPS did not comply with RESPA. *See Stephenson v. Chase Home*
3 *Fin. LLC*, No. 10-CV-2639-L WMC, 2011 WL 2006117, at *2–3 (S.D. Cal. May 23, 2011)
4 (finding plaintiff’s interpretation of servicer’s response as incomplete was “reasonable”
5 and sufficient to state that servicer did not comply with § 2605(e)(2)(C)). Similarly,
6 regarding the alleged error on Plaintiff’s account, SPS was either required to correct it
7 (and inform Plaintiff of the correction) or explain why no correction was needed.
8 Plaintiff’s claim that SPS provided no explanation whatsoever is also sufficient, therefore,
9 to state a claim for a RESPA violation under this provision.

10 The Court finds that Plaintiff sufficiently alleges that SPS did not take the actions
11 required of it under § 2605(e) in response to Plaintiff’s QWRs.

12 c. *Plaintiff has not alleged damages*

13 Defendants also move to dismiss on the ground that Plaintiff has not alleged that he
14 suffered any actual damages as a result of SPS’ alleged failure to respond to his requests
15 for information. (Mem. of P. & A. at 9–10.) In his Opposition, Plaintiff relies on his
16 request for attorneys’ fees to satisfy the damages allegation for his RESPA claim. (Opp’n
17 at 9–10.)

18 “RESPA . . . authorizes ‘actual damages to the borrower *as a result of* the failure
19 [to comply with RESPA requirements].” *Lal v. American Home Servicing, Inc.*, 680 F.
20 Supp. 2d 1218, 1223 (E.D. Cal. 2010) (citing 12 U.S.C. § 2605(f)(1)(A)). Accordingly,
21 “a number of courts have read the statute as requiring a showing of pecuniary damages in
22 order to state a claim.” *Allen v. United Fin. Mortg. Corp.*, 660 F. Supp. 2d 1089, 1097
23 (N.D. Cal. 2009) (citing cases). A plaintiff’s failure to allege a pecuniary loss attributable
24 to a servicer’s failure to respond to QWRs has therefore been found to be fatal to the claim.
25 *See, Ghuman v. Wells Fargo Bank, N.A.*, 989 F. Supp. 2d 994, 1007 (E.D. Cal. 2013);
26 *Mekani v. Homecomings Fin., LLC*, 752 F. Supp. 2d 785, 795 (E.D. Cal. 2010).

27 Plaintiff states that SPS “wrongfully declared [him] to be in default, damaging his
28 credit score and charging unearned interest and penalties on the balance it claims he owes.”

1 (FAC ¶ 65.) However, these alleged harms do not flow from SPS' purported failure to
2 respond to the QWRs. Plaintiff's default was caused by his decision to hold his payments
3 "in abeyance." (FAC ¶ 48.) Further, to the extent Plaintiff alleges that SPS' mishandling
4 of his payments led to unlawful charges to his accounts, these damages stem from the SPS'
5 improper servicing of his loan, not from its failure to respond to Plaintiff's QWRs. *See*
6 *Collier v. Wells Fargo Home Mortg.*, No. 04-086, 2006 WL 1464170 at * 3 (N.D. Tex.
7 May 26, 2006) (granting summary judgment on § 2605(e) claim where plaintiffs alleged
8 damages caused by the improper servicing of the mortgage, not by defendant's failure to
9 respond to QWRs).

10 Plaintiff instead contends that his request for attorneys' fees adequately alleges
11 damages. (Opp'n at 9-10.) This argument fails as a matter of law. Courts have not
12 typically considered attorneys' fees to be "actual damages" in this context. *See, e.g.*,
13 *Saulsbury v. Bank of Am.*, No. CV 11-00138 JMS/KSC, 2011 WL 13228201, at *4 (D.
14 Haw. Sept. 28, 2011); *Luciw v. Bank of Am., N.A.*, No. 5:10-CV-02779-JF/HRL, 2010 WL
15 3958715, at *3 (N.D. Cal. Oct. 7, 2010) (citing cases); *see also Lal v. Am. Home Servicing,*
16 *Inc.*, 680 F. Supp. 2d 1218, 1223 (E.D. Cal. 2010) (finding the costs of filing suit were not
17 actual damages for purposes of RESPA because "the loss alleged must be related to the
18 RESPA violation itself"). Consistent with this understanding, RESPA separately includes
19 attorneys' fees as a recoverable cost. *See* 12 U.S.C. § 2605(f)(3). As such, in the RESPA
20 context, a request for attorneys' fees for the lawsuit raising the RESPA claim does not
21 suffice to state damages.

22 Plaintiffs can also recover statutory damages under RESPA if they plead some
23 pattern or practice of noncompliance with the statute. 12 U.S.C. § 2605(f)(1)(B). The
24 FAC states that SPS has engaged in a pattern or practice of violating RESPA but provides
25 no factual support for this claim. This is also insufficient to plead damages. *See Lal*, 680
26 F. Supp. 2d at 1223 (dismissing conclusory pattern or practice claim because it was "a
27 legal conclusion couched as a factual allegation").
28

1 Finding no facts in the FAC supporting that Plaintiff incurred damages flowing from
2 SPS' alleged failure to respond to Plaintiff's QWRs, the Court **GRANTS** Defendants'
3 Motion to Dismiss Plaintiff's RESPA claim under 12 U.S.C. § 2605(e) as to SPS, with
4 leave to amend.

5 2. Plaintiff's Other RESPA claims

6 As Plaintiff points out, Defendants' arguments in favor of dismissing Plaintiff's
7 RESPA claim address only his claim based on the QWRs, and not Defendants' alleged
8 misapplication of his payments to a tax escrow account and to force-placed insurance.
9 (Opp'n at 6–7.) The Court finds it necessary to evaluate the sufficiency of these claims to
10 determine whether a federal question claim under RESPA survives dismissal such that the
11 Court should exercise supplemental jurisdiction over Plaintiff's remaining state law
12 claims. *See Bloom v. Martin*, 865 F. Supp. 1377, 1387 (N.D. Cal. 1994) (citing 28 U.S.C.
13 § 1367(c)(3)) (declining to assert supplemental jurisdiction over remaining state law
14 claims where court dismissed plaintiffs' RESPA claims, which were “the sole ostensible
15 basis for jurisdiction in this Court”), *aff'd*, 77 F.3d 318 (9th Cir. 1996).

16 i. *Tax Escrow Account*

17 Plaintiff alleges that SPS misapplied funds that it claimed were being paid toward
18 Plaintiff's taxes on the property. (FAC ¶ 33(a).) Plaintiff states that because he “had
19 personally paid his taxes” and did not receive notice from a taxing authority that SPS paid
20 his taxes or that Plaintiff had overpaid them, the Court can infer that SPS was in fact not
21 using these funds to pay taxes on the property. (*Id.*)

22 RESPA states that if the terms of a mortgage require borrowers to make payments
23 to the servicer for deposit into an escrow account for the payment of taxes, insurance
24 premiums, and other charges, servicers shall make such payments for this purpose. 12
25 U.S.C. § 2605(g). The terms of the Deed provide that Plaintiff must pay funds for escrow
26 items—taxes and assessments, leasehold payments, and insurance premiums—to be
27 deposited in an insured account and applied to the aforementioned escrow items by the
28 servicer. (Deed at 5.)

1 Plaintiff claims SPS violated this provision by falsely claiming that his payments
2 were applied to property taxes. (FAC ¶ 65.) Plaintiff does not base this claim on the fact
3 that he did not receive escrow account statements or that such statements revealed that his
4 funds were not being properly applied to his property taxes. *See* 12 U.S.C. §§ 2605(g),
5 2605(i)(3), 2609(c)–(d) (requiring a servicer to make payments to an escrow account as
6 required by the terms of a mortgage, detailing what information a servicer must furnish
7 relating in escrow account statements, and establishing the corresponding penalties for
8 failing to do so). Rather, he relies on the vague and conclusory assertion that he would
9 have received some other, unidentified notice “from a taxing authority” if SPS was, in
10 fact, paying taxes on the property. The Court finds this allegation too speculative to permit
11 a plausible inference that SPS was misapplying these funds by failing to pay Plaintiff’s
12 property taxes. *See Twombly*, 550 U.S. at 555 (quoting 5 C. Wright & A. Miller, *Federal*
13 *Practice and Procedure* § 1216, pp. 235–236 (3d ed. 2004)) (“[T]he pleading must contain
14 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a
15 legally cognizable right of action”). Without additional factual matter to support this
16 allegation, Plaintiff cannot make out a colorable claim that SPS violated any provisions of
17 RESPA relating to tax escrow accounts.

18 ii. Force-placed insurance

19 Plaintiff also alleges that SPS unlawfully imposed force-placed insurance on the
20 property and wrongfully charged him for it in violation of RESPA. (FAC ¶ 63.) Plaintiff
21 specifically states that SPS informed him that his loan payments were being applied to
22 “force-placed insurance” even though he maintained insurance on the property himself
23 and had never received notice that SPS did not have proof of this coverage and would
24 therefore retain its own policy. (*Id.* ¶¶ 33, 33(b).) Plaintiff also alleges that SPS did not
25 notify him that his insurance had terminated and did not reimburse him for the duplicate
26 payments. (*Id.* ¶ 33(c).)

27 Force-placed insurance is the hazard insurance coverage obtained by the servicer
28 when the borrower fails to maintain or renew such insurance on a property as required by

1 the terms of the loan. 12 U.S.C. § 2605(k)(2). Under RESPA, servicers are prohibited
2 from obtaining such insurance “unless there is a reasonable basis to believe the borrower
3 has failed to comply with the loan contract’s requirements to maintain property insurance.”
4 *Id.* § 2605(k)(1). The statute further establishes that “a reasonable basis” for force-placed
5 insurance exists only if:

6 (A) the servicer has sent, by first-class mail, a written notice to the borrower
7 containing--

8 (i) a reminder of the borrower’s obligation to maintain hazard
9 insurance on the property securing the federally related mortgage;

10 (ii) a statement that the servicer does not have evidence of insurance
11 coverage of such property;

12 (iii) a clear and conspicuous statement of the procedures by which the
13 borrower may demonstrate that the borrower already has insurance
14 coverage; and

15 (iv) a statement that the servicer may obtain such coverage at the
16 borrower’s expense if the borrower does not provide such
17 demonstration of the borrower’s existing coverage in a timely
18 manner;

19 (B) the servicer has sent, by first-class mail, a second written notice, at least
20 30 days after the mailing of the notice under subparagraph (A) that
21 contains all the information described in each clause of such
22 subparagraph; and

23 (C) the servicer has not received from the borrower any demonstration of
24 hazard insurance coverage for the property securing the mortgage by the
25 end of the 15-day period beginning on the date the notice under
26 subparagraph (B) was sent by the servicer.

27 *Id.* § 2605(l)(1). Further, servicers are required to terminate a force-placed insurance
28 policy within 15 days of receipt of proof of a borrower’s existing coverage and refund to
the borrower all force-placed insurance premiums paid and related fees charged during the
period of overlapping coverage. *Id.* § 2605(l)(3)(B).

1 Defendants have not moved to dismiss this RESPA claim and thus provide no
2 explanation as to how Plaintiff's allegations under this RESPA provision are deficient. In
3 any event, the Court finds Plaintiff has adequately stated violations of § 2605(k) and (l).
4 Plaintiff claims he did not receive either notice required by subsections (A) and (B). The
5 Court can reasonably infer from this alleged omission that SPS acquired force-placed
6 insurance without first complying with RESPA's notification requirements, and thus had
7 no reasonable basis for believing that Plaintiff had not maintained this insurance himself.
8 *See* 12 U.S.C. § 2605(k)(1). Further, Plaintiff's allegations that SPS failed to reimburse
9 him for the force-placed insurance premium payments and that he is being charged
10 "unearned interest and penalties on the balance" of his loan (FAC ¶¶ 33(c), 65) adequately
11 plead a pecuniary loss flowing from this violation that suffices to state damages. *See Craig*
12 *v. Cap. One, N.A.*, No. CV 17-3788 DMG (AJWx), 2018 WL 5857987, at *5 (C.D. Cal.
13 Apr. 10, 2018) (finding plaintiff's allegation that servicer "failed to refund all force-placed
14 insurance premium charges and related fees" sufficed to state damages resulting from the
15 alleged violation of RESPA's force-placed insurance provision).

16 Therefore, this RESPA claim regarding force-placed insurance remains actionable.
17 The Court has original jurisdiction over this claim and will thus evaluate whether
18 Plaintiff's remaining pendent state law claims have been sufficiently pled. *See* 28 U.S.C.
19 § 1367(a), (c)(3).

20 **II. Count 2: Cancellation of Instrument**

21 Plaintiff seeks cancellation of the Note and Deed of Trust, as well as the
22 Assignment, Substitution of Trustee, and Notice of Default (the "Subject
23 Instruments"). (FAC ¶ 67.) He bases this claim on several grounds: (1) the Note was
24 destroyed by Defendant Credit Suisse and therefore extinguished (*id.* ¶¶ 49, 69–72); (2)
25 MERS' execution of the assignment to SPS was invalid because it was not qualified to do
26 business in California at the time (*id.* ¶¶ 17–21, 55, 73); (3) the substitution of Quality as
27 trustee is voidable because SPS has no estate in Plaintiff's property to transfer to Quality
28

1 (*id.* ¶ 74); and (4) based on the foregoing, neither SPS nor Quality had legal authorization
2 to file the Notice of Default (*id.* ¶ 75).

3 Defendants raise several counterarguments, but neither they nor Plaintiff address
4 the Court’s previous conclusions on this very issue in its Order Denying Plaintiff’s Motion
5 for Preliminary Injunction and Motion for Temporary Restraining Order. *See Hueso v.*
6 *Select Portfolio Servicing, Inc.*, No. 18-CV-1892-BAS-WVG, 2019 WL 3459013 (S.D.
7 Cal. July 31, 2019).⁵ The Court, however, finds that its legal conclusions in that order
8 applicable to the determination of Plaintiff’s claim at the 12(b)(6) stage and will abide by
9 them here. *See Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v.*
10 *U.S. Dep’t of Agr.*, 499 F.3d 1108, 1114 (9th Cir. 2007) (holding that while “the general
11 rule” is that “decisions at the preliminary injunction phase do not constitute the law of the
12 case,” “conclusions on pure issues of law . . . are binding.”); *see also Torres v. Milusnic*,
13 No. CV 20-4450-CBM-PVC(x), 2020 WL 8611035, at *2 (C.D. Cal. Sept. 18, 2020).

14 Preliminarily, as stated in the Court’s previous order, Plaintiff is time-barred from
15 proceeding with this claim. *See id.* at *4 (noting that actions for cancellation of an
16 instrument are subject to a four-year limitations period under Cal. Code Civ. P. § 343)
17 (citing cases). The Credit Suisse Note and the Deed of Trust naming MERS as a
18 beneficiary were entered into in 2006; Plaintiff did not file the instant lawsuit until over
19 ten years later in 2018. (*See Compl.*, ECF No. 1; *see also Exs. A, B to FAC.*) Plaintiff
20 cannot seek cancellation of these documents at this late stage. *See Dela Cruz v. Select*
21 *Portfolio Servicing, Inc.*, No. 19-CV-00283-LHK, 2019 WL 2299857, at *9 (N.D. Cal.
22 May 30, 2019).

23 In any case, regarding Plaintiff’s first contention, even a timely allegation that the
24 Note was “destroyed” because Defendants have not been able to produce it fails as a matter
25 of law, since they do not require physical possession of the Note to foreclose on Plaintiff’s
26 property. *See Debrunner v. Deutsche Bank Nat’l Tr. Co.*, 204 Cal. App. 4th 433, 440
27

28 ⁵ The Order can be found on the docket as ECF No. 24.

1 (2012); *Christopher v. First Franklin Fin. Corp.*, No. 10CV17 DMS (CAB), 2010 WL
2 1780077, at *2 (S.D. Cal. Apr. 30, 2010) (dismissing claims to set aside non-judicial
3 foreclosure sale and cancel trustee’s deed upon sale where claims were predicated on
4 alleged failure to possess promissory note).

5 Second, Plaintiff’s challenge to MERS’ assignment to SPS also lacks merit. First,
6 as pointed out in the Court’s previous order, Plaintiff concedes that MERS’ ability to
7 engage in business in California was restored when it qualified as a successor entity in
8 2010. (FAC ¶ 18.) MERS’ assignment of rights to SPS occurred seven years later. (*Id.* ¶
9 50.) Thus, this claim is deficient on its face, as MERS did not lack authority to assign
10 rights to SPS when it was no longer suspended. *See Perlas v. Mortgage Elec. Registration*
11 *Systems, Inc.*, No. CV 09–4500 CRB, 2010 WL 3079262, at *7 (N.D. Cal. Aug. 6, 2010)
12 (citing *United Medical Mgmt. Ltd. v. Gatto*, 49 Cal. App. 4th 1732, 1741 (1996))
13 (“California courts have held that an unregistered corporation, upon registering, is
14 ‘restored to full legal competency and has its prior transactions given full effect.’”); *see*
15 *also Adam v. Mortg. Elec. Registration Sys., Inc.*, CV 10-7886 PSG (PLAx), 2011 WL
16 63651, *3 (C.D. Cal. Jan. 4, 2011) (rejecting challenge to 2006 loan listing MERS as a
17 beneficiary where MERS successfully registered with the California Secretary of State in
18 2010).

19 Third, and as previously noted by the Court, the language in the Deed defeats the
20 claim that MERS lacked the authority to act as a nominal beneficiary. The Deed states
21 that the

22 [b]orrower understands and agrees that MERS holds only legal title to the
23 interests granted by Borrower in this Security Instrument but, if necessary to
24 comply with law or custom, MERS (as nominee for Lender and Lender’s
25 successors and assigns) has the right: to exercise any or all of those interests,
26 including, but not limited to, the right to foreclose and sell the Property; and
27 to take any action required of Lender including, but not limited to, releasing
28 and canceling this Security Instrument.

1 (Deed at 3.) California courts have held that this same language confers MERS with the
2 right to exercise all interests of the beneficiary, such as the right to foreclose and assign
3 both the Deed and Note. *See Enos v. U.S. Bank, N.A.*, No. 18-cv-06101-MMC, 2019 WL
4 1411221, at *3 (N.D. Cal. Mar. 28, 2019) (quoting *Herrera v. Fed. Nat'l Mortg. Ass'n*,
5 205 Cal. App. 4th 1495, 1505 (2012)).⁶

6 Plaintiff's claims about the invalidity of SPS' substitution of Quality and the
7 subsequent Notice of Default follow from the alleged unlawfulness of the MERS
8 assignment. Therefore, because the Court finds the MERS' claim is not tenable, Plaintiff
9 also cannot maintain these derivative claims. *See Koenig v. Bank of Am., N.A.*, No. 1:13-
10 CV-0693 AWI BAM, 2016 WL 8731110, at *3 (E.D. Cal. Mar. 18, 2016) (“[A] trustor
11 who agreed under the terms of the deed of trust that MERS, as the lender's nominee, has
12 the authority to exercise all of the rights and interests of the lender, including the right to
13 foreclose, is precluded from maintaining a cause of action based on the allegation that
14 MERS has no authority to exercise those rights.” (quoting *Siliga v. Mortg. Elec.*
15 *Registration Sys., Inc.*, 219 Cal. App. 4th 75, 89 (2013), *overruled on other grounds by*
16 *Yvanova v. New Century Mortg. Corp.*, 62 Ca. 4th 919, 939 n.13 (2016))).

17 No arguments have been raised in the renewed dismissal briefings that alters the
18 Court's previous conclusions of law regarding Plaintiff's cancellation of instrument claim.
19 Thus, the Court **GRANTS** Defendants' Motion as to this claim and, finding further
20 amendment would be futile, dismisses it with prejudice and without leave to amend. *See*
21 *Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1530 (9th Cir. 1995) (“Denial of leave to amend is
22 not an abuse of discretion where the district court could reasonably conclude that further
23 amendment would be futile.”).

24
25
26 ⁶ Moreover, Plaintiff concedes that Quality was the entity to which he made payments and that
27 commenced foreclosure—not MERS—and that he has stopped making payments on the loan. (*See* FAC
28 ¶¶ 2, 10, 28, 31–31, 48, 52.) Thus, even if MERS was a “sham beneficiary,” “the lenders would still be
entitled to repayment of the loans and would be the proper parties to initiate foreclosure after” default.
See Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1038 (9th Cir. 2011).

1 III. Count 3: Receiving Stolen Property

2 Defendants argue that the claim for receipt of stolen property must fail because
3 Plaintiff alleged that he voluntarily tendered payments due under the Note, and as such
4 they cannot constitute “stolen” property. (Mem. of P. & A. at 13.) Plaintiff counters that
5 his allegation that SPS fraudulently misappropriated his payments is sufficient to satisfy
6 the element of theft for purposes of the statute. (Opp’n at 15.)

7 California Penal Code § 496(c) authorizes persons injured by the receipt of stolen
8 property to bring a civil action for three times the amount of actual damages, as well as
9 attorneys’ fees and costs. “A criminal conviction is not a prerequisite to recovery of treble
10 damages.” *Switzer v. Wood*, 35 Cal. App. 5th 116, 126 (2019), *as modified* (May 10,
11 2019), *review denied* (Aug. 14, 2019). Rather, “[a] violation may be found to have
12 occurred if the person engaged in the conduct described in the statute.” *Id.* To state a
13 violation of the statute, a plaintiff must plead three elements: “(a) the property was stolen,
14 and (b) the defendant was in possession of it, (c) knowing it was stolen.” *Verdugo-*
15 *Gonzalez v. Holder*, 581 F.3d 1059, 1061 (9th Cir. 2009) (citing *People v. Anderson*, 210
16 Cal. App. 3d 414, 420 (1989)). Defendants challenge whether Plaintiff has sufficiently
17 stated the first element of the offense.

18 Neither state nor federal courts agree on what conduct is captured by this element.
19 Some courts have understood § 496(a)’s “plain meaning” to extend its reach to include
20 property obtained through false pretense, misrepresentation, or misappropriation. *See Bell*
21 *v. Feibush*, 212 Cal. App. 4th 1041, 1048 (2013) (finding that § 496(a) applies to anything
22 subject to theft as defined by Cal. Penal Code § 484(a))⁷; *see also Allure Labs, Inc. v.*

23
24 ⁷ The California legislature has “consolidated the crimes of larceny, embezzlement, and theft by
25 false pretense in Penal Code section 484, subdivision (a), under the single term ‘theft.’” *Switzer*, 35 Cal.
26 App. 5th at 126. This provision states:

26 Every person who shall feloniously steal, take, carry, lead, or drive away the personal
27 property of another, or who shall fraudulently appropriate property which has been
28 entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent
representation or pretense, defraud any other person of money, labor or real or personal
property, or who causes or procures others to report falsely of his or her wealth or
mercantile character and by thus imposing upon any person, obtains credit and thereby

1 *Markushevska*, 606 B.R. 51, 59 (N.D. Cal. 2019) (finding defendant’s embezzlement of
 2 money satisfied § 496’s requirement that the property was stolen); *Worldwide Travel*,
 3 2016 WL 1241026, at *8 (holding that plaintiff sufficiently alleged a claim under § 496
 4 by alleging facts establishing fraud, false pretense, and fraudulent misrepresentation).
 5 Because an element of theft by false pretense involves the owner of the property
 6 voluntarily parting with it due to the influence of a defendant’s misrepresentations, it
 7 follows that “theft by false pretenses may be accomplished with the owners’ consent.”
 8 *Worldwide Travel*, 2016 WL 1241026, at *8 (quoting *Carrillo-Jaime v. Holder*, 572 F.3d
 9 747, 752 (9th Cir. 2009), *abrogated on other grounds by Descamps v. United States*, 570
 10 U.S. 254 (2013)).

11 However, other federal and state decisions have held that for property to be “stolen”
 12 under § 496(a), the property “must already have the character of having been stolen” when
 13 it comes into a defendant’s possession. *See Grouse River Outfitters Ltd. v. NetSuite, Inc.*,
 14 2016 WL 5930273, at *14 (N.D. Cal. Oct. 12, 2016) (finding plaintiff’s money “was not
 15 ‘stolen’ when [defendant] allegedly defrauded [plaintiff] of it”); *cf. Lacagnina v.*
 16 *Comprehend Sys., Inc.*, 25 Cal. App. 5th 955, 971 (2018), *as modified* (Aug. 14, 2018).
 17 The Northern District in *Grouse*, also using a plain meaning approach, found that the tense
 18 of the statutory language supported this view. *Grouse*, 2016 WL 5930273, at *14 (noting
 19 that the first sentence of § 496(a) refers to “property that *has been stolen* or that *has been*
 20 *obtained* in any manner constituting theft”). Further, it found that without this
 21 requirement, the plaintiff would be able to “leverag[e] [the] alleged fraud into a damage-
 22 trebling § 496(a) violation[,]” which would run afoul of the “dual civil liability bar” by
 23 holding a defendant liable for two civil infractions based on the same conduct.⁸ *See id.* at

24
 25 fraudulently gets or obtains possession of money, or property or obtains the labor or service
 of another, is guilty of theft.

26 Cal. Penal Code § 484(a).

27 ⁸ This concept is adapted from a similar prohibition on dual criminal liability under this statute,
 28 which permits individuals responsible for the actual theft of a subject property to be subject to criminal
 liability under the statute only if they are not also convicted for theft of the same property. Cal. Penal
 Code § 496(a); *see also Worldwide Travel, Inc. v. Travelmate US, Inc.*, No. 14-CV-00155-BAS (DHB),

1 *15 (citing *Bell*, 12 Cal. App. 4th at 1049 (applying dual-liability bar in criminal context
2 to civil liability under § 496(c)); *but see Switzer*, 35 Cal. App. 5th at 125–132 (finding the
3 plain meaning of § 496 “makes no exception for cases involving preexisting business
4 relationships” and therefore treble damages could be applied even where traditional,
5 limited remedies for breach of contract, fraud, and conversion were available); *Worldwide*
6 *Travel*, 2016 WL 1241026, at *8 (finding claim of civil fraud alone sufficiently stated
7 claim for liability under § 496(c)).

8 To avoid dual liability, some courts have required “small additional conduct” such
9 as concealment or withholding—rather than just receipt of stolen goods—to establish a
10 violation of the statute. *See Grouse*, 2016 WL 5930273, at *14 (citing *Bell*, 12 Cal. App.
11 4th at 1049) (dismissing § 496(c) claim where no additional withholding or concealment
12 was alleged); *Agape Family Worship Center, Inc. v. Gridiron*, 2018 WL 2540274 (C.D.
13 Cal. May 30, 2018) (dismissing § 496 claim on summary judgment where plaintiff
14 presented no evidence of withholding to avoid dual liability bar); *but see Allure Labs*, 606
15 B.R. at 62–63 (stating that a violation of § 496(a) requires only that a defendant receive
16 stolen property and “not have also concealed, sold, or withheld the stolen property”)
17 (citing *People v. Brown*, 32 Cal. App. 5th 736, 732 (2019)).

18 Last year, the California Second District Court of Appeal further limited the scope
19 of § 496 to exclude its application to any traditional tort claims, based on a different set of
20 rationales. *See Siry Inv., L.P. v. Farkhondehpour*, 45 Cal. App. 5th 1098, 1133–37 (2020),
21 *as modified on denial of reh’g* (Mar. 23, 2020). The court held that applying § 496 to
22 cases involving any type of theft—including the traditional contract and fraud at issue—
23 would, in direct contravention of California Supreme Court precedent, presume that the
24 legislature instituted “significant change through silence.” *Id.* at 1135 (citations omitted).
25 These significant changes include dramatically expanding the traditional tort remedy from
26 actual damages to treble damages and “effectively repeal[ing]” the punitive damages

27
28 2016 WL 1241026, at *7 (S.D. Cal. Mar. 30, 2016) (citing *People v. Allen*, 21 Cal. 4th 846, 854–58
(1999) (citation omitted)).

1 statute by allowing plaintiffs to recover treble damages by a preponderance of the
2 evidence. *Id.* at 1135–36 (citing Cal. Civ. Code § 3294(a) (requiring plaintiffs to show
3 “by clear and convincing evidence that the defendant has been guilty of oppression, fraud,
4 or malice” to obtain punitive damages)). Further, the court found that this expansive
5 interpretation of § 496 did not align with the legislative purpose of “drying up the market
6 for stolen goods” and was inconsistent with the legislature’s express creation of the
7 “extraordinary remedy” of treble damages in other contexts. *Id.* at 1136–37.⁹

8 Since *Siry*, federal district courts have taken different approaches to § 496’s
9 applications depending on the context. *Compare Instant Brands, Inc. v. DSV Sols., Inc.*,
10 No. EDCV 20-399 JGB (KKx), 2020 WL 5947914 (C.D. Cal. Aug. 20, 2020) (relying on
11 citing *Grouse*, *Lacagnina*, *Siry* to dismiss a § 496 claim where the plaintiff raised
12 traditional tort claims (negligence, breach of contract, conversion)) *with Otte v. Naviscent,*
13 *LLC*, No. 19-CV-07898-CRB, 2021 WL 66306 (N.D. Cal. Jan. 7, 2021) (upholding
14 attorney’s fees award under § 496 where claim was brought pursuant to the crime of
15 embezzlement, not a tort, and therefore *Siry*’s concerns about “upending California tort
16 law” were not applicable).

17 The Court has not found any decisions addressing the application of § 496 in the
18 RESPA context and the parties offer no argument regarding the appropriate interpretation
19 of the conflicting case law. It is true, like in *Otte*, that Plaintiff here does not allege any
20 traditional tort claims in this case that invoked the concerns about dual civil liability that
21 has animated other courts. *Cf. Grouse*, 2016 WL 5930273, at *1 (claims for fraudulent
22 misrepresentation and fraud in the inducement); *Agape*, 2018 WL 2540274, at *1 (fraud
23
24

25 ⁹ The California Supreme Court granted a petition for review in *Siry* on July 8, 2020. *See Siry*
26 *Investment v. Farkhondehpour*, 468 P.3d 701, 265 Cal. Rptr. 3d 414 (2020). An issue presented on
27 review is whether a trial court may award treble damages and attorney fees under § 496(c) in a case
28 involving fraud. *See* Appellate Courts Case Information, Case Summary for Case No. S262081, accessed
at <https://appellatecases.courtinfo.ca.gov/search.cfm?dist=0> (March 17, 2021). The appeal is pending.
If the California Supreme Court’s ultimate decision is inconsistent with this Court’s understanding of
§ 496 as adopted in this Order, the Court will entertain a motion for reconsideration.

1 claim). Nonetheless, the Court finds the more limited view of § 496’s scope more
2 persuasive in the context of this case for the following reasons.

3 First, the Court finds the plain meaning argument has force. Plaintiff here claims
4 that through an act of fraud alone, Defendants are now in receipt of stolen property.
5 However, the statute clearly requires that property received by a person or entity subject
6 to the statute either “has been stolen” or “has been obtained in any manner constituting
7 theft” Cal. Pen. Code § 496(a). It follows from this language that “when the property
8 in question comes into the defendant’s hands, it must already have the character of having
9 been stolen.” *Grouse*, 2016 WL 5930273, at *14. The allegation that SPS misapplied
10 Plaintiff’s payments certainly raises concerns about wrongful conduct, but the payments
11 were not “stolen” when SPS misapplied them. *See Lacagnina*, 25 Cal. App. 5th at 971
12 (“Lacagnina’s labor was not ‘stolen’ *at the time* Comprehend allegedly defrauded him out
13 of the disputed compensation.”) (emphasis in original). Up to the point of the alleged
14 misapplication, they were merely part of a lawful transaction carried out according to the
15 terms of the Deed and subsequent Assignment.¹⁰ The Court therefore does not find that
16 the unambiguous language of § 496 captures this conduct. *See Wells v. One2One Learning*
17 *Found.*, 39 Cal. 4th 1164, 1190 (2006) (“If the words themselves are not ambiguous, we
18
19

20 ¹⁰ Further, even the cases that support the more expansive view of § 496 still found, under the
21 facts of those cases, that the plaintiffs had alleged additional conduct beyond receipt to support their
22 § 496 claim. *See Allure Labs*, 606 B.R. at 60 (finding concealment where defendant took several
23 additional steps, independent of the initial theft, to avoid disclosing property’s whereabouts to plaintiff);
24 *Worldwide Travel*, 2016 WL 1241026, at *8 (finding allegations of a § 496 claim sufficient where
25 plaintiffs alleged that “[d]efendants knowingly received, *concealed, and withheld* their property, which
26 had been obtained by means of false or fraudulent representations or pretense”) (emphasis added); *Bell*,
27 212 Cal. App. 4th at 1049 (“The evidence established that [defendant] violated section 496(a) not only
28 by receiving property from [plaintiff] by false pretense, but also by withholding that property when she
asked for it back.”).

Here, Plaintiff does not allege that Defendants took independent steps to conceal his money or
that Defendants refused to return it after he asked for it back; in fact, he states that the instant action
serves as his demand for the return of his property. (*See* FAC ¶ 89 (“Defendants have refunded no portion
of the money to Mr. Hueso. *By this Complaint*, Mr. Hueso demands the return of his money and
property.”) (emphasis added)).

1 presume the Legislature meant what it said, and the statute’s plain meaning governs.”), *as*
2 *modified* (Oct. 25, 2006).

3 And even if the Court found that the language allowed for “more than one
4 reasonable construction,” the Court finds that broadly interpreting § 496 would lead to
5 incongruous consequences in this case. *See id.* (“[I]n cases of uncertain meaning, we may
6 also consider the consequences of a particular interpretation, including its impact on public
7 policy.”). Although Plaintiff characterizes SPS’ underlying actions as “fraudulent
8 misappropriation,” he does not include a claim for any type of fraud. (Opp’n at 15.) This
9 simultaneously circumvents the dual civil liability bar intended to prevent excess damages
10 while putting Plaintiff in the position of seeking treble damages rather than the ordinary
11 tort damages that would be available for a standard fraud claim. *See Siry*, 45 Cal. App.
12 5th at 1135 (“the damages remedy for these torts has been limited to the amount of
13 damages actually caused by the fraud, misrepresentation, conversion or breach of fiduciary
14 duty”).

15 Lastly, in the context of this case, Plaintiff couches this fraudulent misappropriation
16 claim as a violation of RESPA, which itself limits relief to actual damages—similar to
17 traditional tort remedies—plus statutory damages of \$1,000 in certain contexts. 12 U.S.C.
18 § 2605(f). Moreover, the Court has similar concerns about imposing treble damages via
19 § 496 on what essentially amounts to a fraud claim considering Plaintiff has also requested
20 punitive damages and restitution (FAC ¶¶ 77, 104). *See Siry*, 45 Cal. App. 5th at 1136;
21 *see also Agape*, 2018 WL 2540274, at *1, *5 (finding dual liability bar “particularly
22 applicable” where the defendant had been criminally convicted of a § 496(a) violation and
23 was ordered to pay restitution for amount stolen).

24 Based on the foregoing, the Court finds that Plaintiff cannot allege a claim under
25 § 496 because his loan payments were not “stolen” at the time of the alleged
26 misappropriation. Because Plaintiff’s claim fails as a matter of law, the Court **GRANTS**
27
28

1 Defendants' Motion as to this claim and **DISMISSES** it with prejudice and without leave
2 to amend. *See Allwaste*, 65 F.3d at 1530.¹¹

3 **IV. Count 4: Common Count**

4 As to Plaintiff's "common count" claim, Defendants argue that it is not actionable
5 because Plaintiff has not pled the necessary legal foundation to create an obligation from
6 Defendants to Plaintiff. Defendants again rely on the argument that Plaintiff's voluntary
7 payments do not constitute stolen property, and as such, there is no legal basis for this
8 claim as to SPS. (Mot. at 13–14.) Further, regarding Quality, Defendants claim Plaintiff
9 has alleged no facts to show that Quality, as trustee, was in possession of money to be
10 returned to Plaintiff. (*Id.* at 14.) Plaintiff opposes, claiming that the allegations that
11 Defendants have his money in their possession and did not use it for his benefit, as
12 required, adequately pleads a claim under common count. (Opp'n at 16.)

13 A common count "lies wherever one person has received money which belongs to
14 another, and which in equity and good conscience should be paid over to the latter."
15 *Gutierrez v. Girardi*, 194 Cal. App. 4th 925, 937 (2011); *McBride v. Boughton*, 123 Cal.
16 App. 4th 379, 394 (2004) (common count "is a simplified form of pleading normally used
17 to aver the existence of various forms of monetary indebtedness, including that arising
18 from an alleged duty to make restitution"). To state a claim for common count for money
19 had and received, a plaintiff must allege only that a defendant received money intended
20 for the benefit of the plaintiff, that the money was not used for the plaintiff's benefit, and
21 that the defendant has not given the money to the plaintiff. *Avidor v. Sutter's Place, Inc.*,
22 212 Cal. App. 4th 1439, 1454 (2013).

23 Even without a viable claim for receipt of stolen goods, Plaintiff has sufficiently
24 pled a claim for common count because he stated a colorable claim under RESPA that SPS
25 misapplied his money to a force-placed insurance policy. *See McBride*, 123 Cal. App. 4th
26 at 394–95 (holding that common count will "stand or fall" with cause of action seeking
27

28 ¹¹ *But see supra*, footnote 12.

1 the same recovery). This claim states that Plaintiff made payments to SPS, as the servicer
2 of his loan for the purpose of paying the balance of the loan for his benefit. (*See* FAC ¶
3 31.) He has also stated that SPS misapplied this money to force-placed insurance instead
4 of to the loan’s balance. (*See id.* ¶ 33; *see also supra*, Section I.B.3.) And lastly, he alleges
5 that SPS has not returned this money to Plaintiff. (*See id.* ¶¶ 89–90.) This is sufficient to
6 state a claim against SPS for common count.

7 However, as to Quality, Plaintiff alleges it was retained to collect past due payments
8 on the loan in 2018 but also alleges he has been holding his loan payments in abeyance
9 from an unspecified date. (FAC ¶¶ 48, 57.) There are no facts plausibly stating that
10 Quality actually collected Plaintiff’s past due payments—which would have included
11 Plaintiff’s duplicative premium payments—such that it now possesses Plaintiff’s money.

12 Thus, the Court finds Plaintiff’s common count against SPS withstands a 12(b)(6)
13 challenge “as an alternative way of seeking the same recovery demanded” in his RESPA
14 cause of action. *See McBride*, 123 Cal. App. 4th at 394–95. However, Plaintiff’s common
15 count against Quality fails. Therefore, the Court **DENIES** Defendants’ Motion to Dismiss
16 this claim as to SPS, **GRANTS** it as to Quality, and **DISMISSES** it as to Quality with
17 leave to amend. *See Allwaste*, 65 F.3d at 1530.

18 **V. Count 5: Declaratory Judgment**

19 “Declaratory relief is an equitable remedy distinctive in that it allows adjudication
20 of rights and obligations on disputes regardless of whether claims for damages or
21 injunction have arisen.” *In re Singh*, 457 B.R. 790, 798 (Bankr. E.D. Cal. 2011). The
22 Declaratory Judgment Act, which permits federal courts to declare parties’ “rights and
23 legal relations,” 28 U.S.C. § 2201, “brings to the present a litigable controversy, which
24 otherwise might only b[e] tried in the future.” *Societe de Conditionnement en Aluminium*
25 *v. Hunter Eng’g Co.*, 655 F.2d 938, 943 (9th Cir. 1981). However, under the Act, a court
26 may only grant declaratory relief when there is an actual controversy within its
27 jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994); *see Hunter*,
28 655 F.2d at 943 (quoting *Japan Gas Lighter Assoc. v. Ronson Corp.*, 257 F. Supp. 219,

1 237 (D.N.J. 1966)) (declaratory judgment is permitted “once the adverse positions have
2 crystallized and the conflict of interests is real and immediate”). The controversy must be
3 definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–41 (1937).

4 Plaintiff requests a declaratory judgment asserting his rights to his property. He
5 claims an “actual controversy” exists for purposes of this relief because the parties dispute
6 whether: (1) Defendants “possess a right, title, interest, or estate” in his home “by virtue
7 of the Subject Instruments”; (2) Plaintiff defaulted on the property, entitling Defendants
8 to foreclose; and (3) “they are owed payments under the terms of the Credit Suisse Note[.]”
9 (FAC ¶ 92(a)–(c).) Defendants argue Plaintiff has alleged no facts demonstrating an
10 “actual controversy” exists to justify declaratory relief because he has admitted that he
11 executed the Note, made payments to the servicer (SPS), and then stopped making
12 payments. (Mem. of P. & A. at 14–15.)

13 Plaintiff has failed to state a claim for declaratory relief. Plaintiff’s first proffered
14 rationale for declaratory relief appears to rely wholly on the merits of his claim for
15 cancellation of the “Subject Instruments.”¹² For the reasons explained in Section II, *supra*,
16 the Court finds the cancellation of instrument claim fatally deficient. Thus, Plaintiff’s first
17 basis for declaratory relief is insufficient to state a claim because it is premised on his
18 inadequately pled claim for cancellation of instrument. *See Shaterian v. Wells Fargo*
19 *Bank, N.A.*, 829 F. Supp. 2d 873, 888 (N.D. Cal. 2011) (finding a request for declaratory
20 relief unavailable “absent a viable underlying claim”).

21 Further, as far as the other two assertions rely on the invalidity of the Subject
22 Instruments, they also cannot maintain a claim for declaratory relief. Without plausible
23

24 ¹² The Court understands Plaintiff’s request for declaratory judgment to be premised only on the
25 cancellation of instrument claim and his right to avoid foreclosure, not on the alleged RESPA claim or
26 any other claim stated in the FAC. Therefore, the fact that Plaintiff’s RESPA claim has survived
27 dismissal does not save his claim for declaratory relief. *See Whiddon v. Specialized Loan Servicing LLC*,
28 No. 2:16-CV-00283-RWS-JCF, 2017 WL 11151672, at *14 (N.D. Ga. June 23, 2017) (“[B]ecause
RESPA provides no relief from foreclosure, [the plaintiff’s] meritorious claim under that statute still does
not entitle her to declaratory relief.”), *report and recommendation adopted as modified*, No. 2:16-CV-
0283-RWS, 2017 WL 11151671 (N.D. Ga. Sept. 26, 2017).

1 facts supporting the allegation that the Subject Instruments were legally infirm, the
2 remaining facts alleged in the FAC do not raise any viable theory as to the unlawfulness
3 of the subsequent default, foreclosure, or payments owed. In fact, Plaintiff's allegations
4 substantiate that he is in default on a financial obligation by alleging that after he obtained
5 the loan for refinancing and initially made payments to SPS, he has been holding these
6 payments "in abeyance" for SPS' failure to turn over certain documents in response to his
7 RESPA request. (*See* FAC ¶¶ 28, 31, 48.)

8 Thus, the Court finds no actual controversy exists underlying Plaintiff's declaratory
9 relief claim and **GRANTS** Defendants' Motion to Dismiss this claim and dismisses it with
10 prejudice and without leave to amend. *See Allwaste*, 65 F.3d at 1530.

11 **VI. Count 6: Accounting**

12 Due to the alleged failure of SPS to respond to Plaintiff's request for documents,
13 Plaintiff seeks to ascertain, in the alternative, how much remains due and payable by him
14 under the Note through an accounting. (FAC ¶¶ 96–98.) Defendants seek to dismiss
15 Plaintiff's request for accounting on the ground that he has not alleged any unknown
16 balance due to Plaintiff by Defendants. (Mem. of P. & A. at 15.) Rather, Defendants
17 contend, there is an ascertainable sum due to Defendants by Plaintiff. (*See id.* ("Plaintiff
18 owes for all unpaid sums due under the Note and Deed of Trust."))

19 "The necessary prerequisite to the right to maintain a suit for an equitable
20 accounting, like all other equitable remedies, is . . . the absence of an adequate remedy at
21 law." *Dairy Queen v. Wood*, 369 U.S. 469, 478 (citing *Beacon Theatres, Inc. v. Westover*,
22 359 U.S. 500 (1959)). A plaintiff must meet the considerable burden of showing "that the
23 accounts between the parties are of such a complicated nature that only a court of equity
24 can satisfactorily unravel them." *Id.*; *see also Teselle v. McLoughlin*, 173 Cal. App. 4th
25 156, 179 (2009) ("An action for accounting is not available where the plaintiff alleges the
26 right to recover a sum certain or a sum that can be made certain by calculation.").

27 Plaintiff requests this calculation of the remaining balance not to ascertain damages
28 due to him by Defendants, but because he and Defendants "alleged different figures for

1 the payoff” that Plaintiff owes Defendants. (FAC ¶¶ 97–98.) Plaintiff does not underpin
2 this claim with allegations of fraud or breach of fiduciary duty or, indeed, any claim that
3 Defendants owe him money. As such, Plaintiff’s accounting claim does not appear to be
4 anchored to another claim against Defendants in this case. *See Kimball v. Flagstar Bank*
5 *F.S.B.*, 881 F. Supp. 2d 1209, 1225 (S.D. Cal. 2012) (citing *Union Bank v. Super. Ct.*, 31
6 Cal. App. 4th 573, 594 (1995)) (dismissing accounting claim where plaintiffs failed to
7 sufficiently state a claim for breach of fiduciary duty or fraud); *see also Janis v. Cal. State*
8 *Lottery Com.*, 68 Cal. App. 4th 824, 833 (1998) (“A right to an accounting is derivative;
9 it must be based on other claims.”). Rather, Plaintiff appears to seek an accounting to
10 determine how much money he owes Defendants. *See Alfino v. Litton Loan Servicing,*
11 *LP*, No. EDCV 11-01034-VAP-DTBx, 2011 WL 13225023, at *11 (C.D. Cal. Aug. 24,
12 2011) (dismissing accounting claim because plaintiffs sought relief to determine amount
13 of money owed by plaintiffs to defendants and not “to ascertain an amount owed to them.”)
14 (emphasis in original); *see also Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal.
15 App. 4th 1105, 1137 (2014) (“Some underlying misconduct on the part of the defendant
16 must be shown to invoke the right to this equitable remedy.”).

17 Even if an accounting were properly alleged, Plaintiff has not claimed that the
18 accounts here are so complicated as to require an accounting. He seeks a sum that could
19 be deduced from Defendants’ records, which could be produced in discovery if Plaintiff
20 sufficiently states claims for relief and would not require an equitable action for an
21 accounting. *See Dairy Queen*, 369 U.S. at 478 (“The legal remedy cannot be characterized
22 as inadequate merely because the measure of damages may necessitate a look into
23 petitioner’s business records.”).

24 Finding that Plaintiff cannot maintain an accounting on the facts alleged, the Court
25 **GRANTS** Defendants’ Motion on this issue and dismisses the claim with prejudice and
26 without leave to amend. *See Allwaste*, 65 F.3d at 1530.

VII. Count 7: Unfair Competition

Under California law, unfair competition is defined as “unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200. “Because section 17200 is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair or fraudulent. A practice is prohibited as unfair or deceptive even if not unlawful or vice versa.” *Lippitt v. Raymond James Fin. Servs. Inc.*, 340 F.3d 1033, 1043 (9th Cir. 2003); *see also Lee v. Pep Boys-Manny Moe & Jack of Cal.*, 186 F. Supp. 3d 1014, 1034 (N.D. Cal. 2016) (“Under the unfairness prong of the UCL, a practice may be deemed unfair even if not specifically proscribed by some other law.”).

Defendants argue that because Plaintiff’s other claims fail, his UCL claim must as well. (Mem. of P. & A. at 15–16.) “[O]nly claims under the ‘unlawful’ prong require a predicate statutory violation and rise and fall with that underlying claim.” *Hahn v. Select Portfolio Servicing, Inc.*, 424 F. Supp. 3d 614, 634–35 (N.D. Cal. 2020). The Court determined above that Plaintiff has sufficiently stated a RESPA claim against SPS. Thus, Plaintiff can maintain a UCL claim for unlawful practices against SPS. *See Gardner v. Am. Home Mortg. Servicing, Inc.*, 691 F. Supp. 2d 1192, 1201 (E.D. Cal. 2010). However, Plaintiff does not state a UCL claim premised on statutory violations for any other Defendant.

Similarly, Plaintiff has established the requisite standing to bring a UCL claim against SPS under the “unfair” or “fraudulent” prongs. *See Hahn*, 424 F. Supp. 3d at 635. To establish standing under the UCL, a plaintiff must have suffered an injury-in-fact. *Rojas-Lozano v. Google, Inc.*, 159 F. Supp. 3d 1101, 1119 (N.D. Cal. 2016). A plaintiff suffers an injury-in-fact sufficient to confer standing under the UCL when the plaintiff: (1) expended money due to a defendant’s unfair acts; (2) lost money or property; or (3) has been denied money to which they have a cognizable claim. *Id.* Where a plaintiff alleges a UCL claim against multiple defendants, the plaintiff must allege that it “suffered injury in fact or lost money or property as a result of alleged unfair competition” of each

1 defendant. *Schulz v. Neovi Data Corp.*, 152 Cal. App. 4th 86, 92 (2007) (brackets
2 omitted).

3 Plaintiff has pled facts stating that SPS' practices caused him such an injury. The
4 surviving RESPA claim alleges that SPS took out a redundant forced-placed insurance
5 policy without following the necessary procedures and thus charged Plaintiff "unearned
6 interest and penalties on the balance" of his loan and failed to reimburse him. (FAC ¶¶
7 33(c), 65.) Taking the allegation that Plaintiff suffered these economic losses as true, the
8 Court finds this is sufficient to state standing, and therefore a claim, under the UCL against
9 SPS. *See Gomez v. Nationstar Mortg., LLC*, No. 1:14-CV-1499-BAM, 2015 WL 966224,
10 at *12 (E.D. Cal. Mar. 4, 2015) (finding sufficient plaintiff's allegation that defendants
11 engaged in "unfair" practices under Section 17200 by force-placing unnecessary insurance
12 in violation of § 2605(k)(1) (A)). However, again, Plaintiff has not alleged facts to support
13 that Defendants Quality or Credit Suisse engaged in unfair competition resulting in injury
14 to him. *See Schulz*, 152 Cal. App. 4th at 92.

15 Accordingly, the Court **DENIES** Defendants' Motion to Dismiss the UCL claim
16 against SPS. However, it **GRANTS** the Motion as to Quality and Credit Suisse as to this
17 count. Because Plaintiff is granted leave to amend his RESPA violation against Quality,
18 he is similarly granted leave to amend his pleading as to the UCL claim against Quality.
19 However, Plaintiff's claims against Credit Suisse are all dismissed with prejudice (Count
20 2, 5, and 6) and therefore cannot be amended to form the basis of a UCL claim against this
21 Defendant. Accordingly, Plaintiff's UCL claim as to Credit Suisse is also dismissed with
22 prejudice and without leave to amend because amendment would be futile. *See Allwaste*,
23 65 F.3d at 1530.

24 **CONCLUSION AND ORDER**

25 Based on the foregoing analysis, the Court **ORDERS** as follows:

26 (1) Defendants' Motion is **GRANTED** as to Plaintiff's claim for cancellation of
27 instrument (Count 2), receipt of stolen goods (Count 3), declaratory judgment (Count 5),
28 and an accounting (Count 6). These claims are **DISMISSED WITH PREJUDICE**.

1 (2) Defendants’ Motion is **GRANTED IN PART** and **DENIED IN PART** as to
2 Plaintiff’s RESPA claim (Count 1). All RESPA claims against Defendant Quality and the
3 RESPA claim premised on the QWRs and tax escrow account against Defendant SPS are
4 **DISMISSED WITHOUT PREJUDICE**. However, Plaintiff’s RESPA claim regarding
5 force-placed insurance against Defendant SPS survives dismissal.

6 (3) Defendants’ Motion is **GRANTED IN PART** and **DENIED IN PART** as to
7 Plaintiff’s claim for Common Count (Court 4). The Common Count against Defendant
8 Quality is **DISMISSED WITHOUT PREJUDICE**. However, Plaintiff’s Common
9 Count against Defendant SPS survives dismissal.

10 (4) Defendants’ Motion is **GRANTED IN PART** and **DENIED IN PART** as
11 to Plaintiff’s claim under California’s Unfair Competition Law (Count 7). The UCL claim
12 against Defendant Quality is **DISMISSED WITHOUT PREJUDICE**. The UCL claim
13 against Defendant Credit Suisse is **DISMISSED WITH PREJUDICE**. However,
14 Plaintiff’s UCL claim against Defendant SPS survives dismissal.

15 ***

16 Plaintiff has not been granted leave to amend any of the claims against Defendant
17 Credit Suisse. Therefore, Defendant Credit Suisse is **DISMISSED**. Plaintiff shall have
18 until **April 6, 2021** to file an amended complaint fixing the deficiencies in his RESPA,
19 Common Count, and UCL claims against Defendant Quality. If Plaintiff elects not to file
20 an amended complaint, Defendant Quality shall be deemed dismissed from the action and
21 Defendant SPS shall file its Answer to the FAC by **April 13, 2021**.

22 **IT IS SO ORDERED.**

23
24 **DATED: March 23, 2021**


Hon. Cynthia Bashant
United States District Judge