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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Holly Martenson,  
Plaintiff,  
vs.  
RG Financing, et al.,  
Defendants.

No. CV-09-01314-PHX-NVW  
**ORDER**  
[NOT FOR PUBLICATION]

Before the Court is JL Financing and RG Financing’s Motion for Partial Summary Judgment on Counts 1, 2, 4, 6, 8 and 10 of Plaintiff’s Second Amended Complaint and Plaintiff’s Motion for Leave to File Third Amended Complaint and Supplemental Complaint (Docs. 73, 90). Plaintiff’s motion to amend is unopposed and therefore will be granted.

**I. Legal Standard for Summary Judgment**

Summary judgment is proper if the evidence shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). On summary judgment, the nonmoving party’s evidence is presumed true, and all inferences from the evidence are drawn in the light most favorable to the nonmoving party. *Eisenberg v. Ins. Co. of North America*, 815 F.2d 1285, 1289 (9<sup>th</sup> Cir. 1987).

1 **II. Background**

2 On November 29, 2006, Martenson refinanced her home loan through a mortgage  
3 broker, Buy American Real Estate, by executing a Deed of Trust and Note for which JL  
4 Financing is the beneficiary and lender. RG Financing is the loan servicer for  
5 Martenson's loan. In May 2007, Martenson fell behind on her loan payments, and on  
6 June 8, 2009, the property subject to the Deed of Trust was sold at a trustee's sale to JL  
7 Financing. The factual and procedural history of this case is described in previous Orders  
8 (Docs. 56, 97).

9 **III. Analysis**

10 JL Financing and RG Financing move for partial summary judgment on Counts 1,  
11 2, 4, 6, 8, and 10 of the Second Amended Complaint. Martenson has withdrawn Count 1  
12 (Truth in Lending Act) and Count 10 (Quiet Title) of the Second Amended Complaint in  
13 her proposed Third Amended Complaint.

14 Count 2 of the Second Amended Complaint (Count 1 of the Third Amended  
15 Complaint) alleges that JL Financing violated the Real Estate Settlement Procedures Act  
16 ("RESPA") by making or authorizing payment of "loan discount fees" to third parties that  
17 were actually referral fees or kickbacks unrelated to services actually performed. *See* 12  
18 U.S.C. § 2607(a), (b). The one-year limitations period for RESPA claims for illegal  
19 kickbacks and unearned fees expired November 29, 2007, and Martenson's response to  
20 the motion for partial summary judgment does not provide any evidence to support  
21 equitable tolling of the limitations period. *See* 12 U.S.C. §§ 2607, 2614.

22 Count 4 of the Second Amended Complaint (Count 3 of the Third Amended  
23 Complaint) is titled "Unconscionability" against Buy American, JL Financing, and RG  
24 Financing. It alleges that "Defendants" made this loan to Martenson without regard to  
25 her ability to repay, took advantage of her by processing a loan knowing it could not get  
26 the terms she expected, and did not explain the closing documents to her. It does not  
27 allege any wrongdoing by JL Financing or RG Financing specifically. Count 6 of the  
28 Second Amended Complaint (Count 5 of the Third Amended Complaint), titled

1 “Predatory Lending,” alleges that “RG Financing and JL Financing engaged in a course  
2 of conduct which included breach of contractual duties owed plaintiff under the Deed of  
3 Trust and dishonoring of loan modification/payment agreements.” Count 8 of the Second  
4 Amended Complaint (Count 7 of the Third Amended Complaint) alleges breach of the  
5 covenant of good faith and fair dealing against JL Financing and RG Financing. In  
6 defense of these counts against summary judgment, Martenson contends that she “was a  
7 terribly unsophisticated borrower,” she relied extensively on Buy American in the loan  
8 transaction, the loan terms were one-sided, she was unaware of the volatile nature of the  
9 loan payments that would be due as her interest rate adjusted, “Defendants hardly  
10 facilitated plaintiff’s payments on the loan,” and Defendants accepted payments from  
11 Martenson (after she was in default) without informing her they would postpone the sale  
12 of her home only a few days. Martenson does not dispute, however, that during the loan  
13 transaction she did not deal with JL Financing or RG Financing, only Buy American. She  
14 does not dispute that she made several loan payments to RG Financing. She does not  
15 dispute that she defaulted on her loan before the interest rate adjusted. Martenson has  
16 provided no evidence that supports finding JL Financing or RG Financing liable for  
17 unconscionability, predatory lending, or breach of the covenant of good faith and fair  
18 dealing.

19 Therefore, presuming Martenson’s evidence is true and drawing all inferences in  
20 her favor, the evidence shows there is no genuine issue as to any material fact, and JL  
21 Financing and RG Financing are entitled to judgment as a matter of law on Counts 1, 2, 4,  
22 6, 8, and 10 of the Second Amended Complaint.

23 IT IS ORDERED that Plaintiff’s Motion for Leave to File Third Amended  
24 Complaint and Supplemental Complaint (Doc. 90) is granted.


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1 IT IS FURTHER ORDERED that JL Financing and RG Financing's Motion for  
2 Partial Summary Judgment on Counts 1, 2, 4, 6, 8 and 10 of Plaintiff's Second Amended  
3 Complaint (Doc. 73) is granted.

4 DATED this 21<sup>st</sup> day of September, 2010.

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Neil V. Wake  
United States District Judge