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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHERRI KOZY,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> COUNTRYWIDE HOME LOANS, INC.; and DOES 1 to 10, inclusive,  <p style="text-align: center;">Defendants.</p>	09-CV-00621-OWW-GSA  MEMORANDUM DECISION RE: DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR A MORE DEFINITE STATEMENT
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I. INTRODUCTION

Before the court is a motion to dismiss or, in the alternative, a motion for a more definite statement filed by Defendant Countywide Home Loans, Inc. ("Defendant" or "Countrywide"). Defendant's motion is directed at the three claims asserted by Plaintiff Sherri Kozy ("Plaintiff" or Kozy") in her First Amended Complaint ("FAC"). The following background facts are taken from the FAC (Doc. 15) and other documents on file in this case.

II. BACKGROUND

A. General Allegations

1. Plaintiff And Her Two Loans

Plaintiff is a licensed general contractor and a land developer. On or about May 2005, Plaintiff decided to refinance her loan on her personal residence. (Doc. 15 at 2.)

The loan transaction was originated by American First Real Estate Services ("American First"). The loan from American First was supposed to be for "\$415,000." When Plaintiff received the loan documents from American First, however, the loan was for only

1 "\$309,000." American First informed Plaintiff that a second loan  
2 would issue for an additional "\$100,000." American First assured  
3 Plaintiff that it would cover the costs for both loans, and  
4 Plaintiff was provided with a good faith cost estimate which  
5 reflected this. (*Id.* at 2-3.)

6 American First went out of business. "Some time after May  
7 2005," Countrywide began "servicing" both of these loans. As to  
8 the first loan (for \$309,000), upon making her first payment,  
9 Plaintiff received a statement from Countrywide which showed that  
10 over \$700 was applied directly to principle. Accordingly,  
11 Plaintiff "did in fact believe she got a great loan as promised, so  
12 she set her payments up on automatic payment." (*Id.* at 3.)

13 As to the second loan, "[a]fter one year," Plaintiff received  
14 the second loan from Countrywide for "\$115,000." This second loan  
15 was sold to HSBC. (*Id.*)

16 2. Plaintiff Discovers Undisclosed Addendums To Both Loans  
17 And A Different Truth In Lending Statement For The First  
18 Loan

19 On or about July 2006, HSBC sent Plaintiff documents that  
20 referred to the loan which HSBC had purchased (the second loan for  
21 \$115,000) as well as the \$309,000 loan serviced by Countrywide.  
22 These documents from HSBC included "addendums" to both loans that  
23 Plaintiff had never seen or signed, including a prepayment penalty,  
24 an adjustable rate note, and an adjustable rate rider. (*Id.*) As a  
25 result of the addenda, Plaintiff "returned the \$115,000 second  
26 mortgage." (*Id.* at 4.)

27 On or about November 2007, HSBC advised Plaintiff in writing  
28 that she had been "a victim of fraud by CHL [Countrywide], and HSBC  
notified the credit reporting agencies to remove any blemishes to

1 plaintiff's credit." Countrywide did nothing to solve Plaintiff's  
2 loan problems, her principal balance on her first loan increased  
3 approximately \$1,000 per month, and Plaintiff took her payments off  
4 automatic payment. (*Id.* at 4.)

5 When Plaintiff investigated her first loan, Countrywide faxed  
6 Plaintiff a different truth in lending statement than she  
7 originally received. The original truth in lending statement (from  
8 American First) for the first loan reflected an interest rate of  
9 3.94% and the total money to be paid, if she kept the loan for 30  
10 years, was \$544,000. The truth in lending statement that  
11 Countrywide faxed Plaintiff, however, had a higher interest rate  
12 and a total pay back of over \$670,000. Plaintiff had never seen or  
13 signed this truth in lending statement. (*Id.*)

14 In April 2007, Countrywide filed a notice of default. On or  
15 about May 2007, an attorney for Countrywide spoke with Plaintiff  
16 and purportedly "agreed that the loan was not right and  
17 unenforceable due to numerous violations of State and Federal  
18 laws." Countrywide removed the notice of default from public  
19 record but has since demanded a \$360,000 payoff from Plaintiff and  
20 also threatened Plaintiff with trustee sale notices, which  
21 Countrywide keeps cancelling. (*Id.* at 4-5.)

22 **B. Plaintiff's Claims**

23 Plaintiff filed a complaint and commenced this lawsuit against  
24 Defendant in Kern County Superior Court. (Doc. 2-2, Ex. A.) The  
25 state-court complaint contained two claims against Defendant: one  
26 claim for fraud under California law and one claim for a violation  
27 of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq.  
28 (*Id.*) Defendant removed the state action to federal court,

1 asserting federal question jurisdiction over the TILA claim and  
2 supplemental jurisdiction over the state law fraud claim. (Doc. 2-  
3 1.) After removal, Plaintiff filed an amended complaint (the FAC)  
4 which contains three claims. Plaintiff reasserted her fraud and  
5 TILA claims and added one claim under California Business and  
6 Professions Code § 17200 et seq. In the FAC, Plaintiff asserts  
7 that federal question jurisdiction exists over the TILA claim.  
8 (Doc. 15 at 2.) Diversity jurisdiction is not pleaded.

9 1. Fraud Claim

10 The fraud claim is based on alleged concealment and forgery by  
11 Defendant which Plaintiff purportedly discovered in July 2006.  
12 Plaintiff alleges:

13 22. . . . Plaintiff discovered in July of 2006,  
14 Defendants, and each of them, concealed or suppressed  
15 material facts from Plaintiff that include, but are not  
16 limited to:

17 A. CHL [Countrywide] had forged and added false  
18 loan addendums relating to prepayment penalties, an  
19 adjustable rate note and an adjustable rate rider;  
20 and,

21 B. The note plaintiff signed referenced an  
22 adjustable 1% initial interest rate, with a 2.94%  
23 cap, which was conducive to the truth in lending  
24 statement left with her at signing, stating the  
25 interest rate was 3.94% and the total money paid,  
26 if she kept that loan for 30 years would be  
27 principal and interest \$544K. When plaintiff was  
28 investigating this loan, Plaintiff learned that CHL  
added a different truth in lending statement to her  
file that plaintiff never saw or signed, which  
plaintiff alleges was forged by CHL. Said truth in  
lending statement showed a higher interest rate and  
a total pay back of over \$670,000.00.

23. Defendant CHL concealed or suppressed said material  
facts that they were bound to disclose.

24. Defendant CHL concealed or suppressed these facts  
with the intent to defraud and induce plaintiff to act as  
alleged herein. At the time plaintiff acted, plaintiff  
was unaware of the concealed or suppressed facts alleged

1 herein and would not have taken the action if plaintiff  
2 had known the facts by continuing to perform under the  
3 terms of the loan contracts and would have taken steps to  
4 protect herself from the fraudulent and unlawful conduct  
5 of Defendant[] CHL as alleged herein.

6 25. In justifiable reliance upon Defendant CHL['s]  
7 conduct, Plaintiff continued to perform under said loan  
8 contracts and refrain from taking steps to protect  
9 herself from the fraudulent and unlawful conduct of  
10 Defendant[] CHL as alleged herein.

11 (*Id.* at 5-6.) Plaintiff asserts that, as a result of this fraud,  
12 Plaintiff suffered past and future consequential and special  
13 damages. (*Id.* at 6.)

14 2. TILA Claim

15 Plaintiff's TILA claim against Countrywide is based on the  
16 alleged addenda to her loans and the different truth in lending  
17 statement. Plaintiff asserts:

18 32. Here, as set forth in addendum one, Plaintiff  
19 discovered in July, 2006, defendant CHL [Countrywide]  
20 unlawfully and fraudulently added and forged plaintiff's  
21 signature to the following documents labelled as  
22 'Addendums': prepayment penalty, adjustable rate note and  
23 adjustable rate rider.

24 3[3]. As a result of these forged and fraudulent  
25 documents being added to plaintiff's loan, her principle  
26 balance increased by over \$1,000.00 per month, which  
27 which [sic] is in conflict with the note and truth in  
28 lending statement that was left for her to sign.<sup>[1]</sup>

3[4]. The note plaintiff signed referenced an adjustable  
1% initial interest rate, with a 2.94% cap, which was  
conducive to the truth in lending statement left with her  
at signing, stating the interest rate was 3.94% and the  
total money paid, if she kept that loan for 30 years  
would be principal and interest \$544,000.00. When  
plaintiff was investigating this loan, Plaintiff learned  
that CHL added a different truth in lending statement to  
her file that plaintiff never saw or signed, which

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<sup>1</sup> This paragraph is misnumbered in the FAC as paragraph "30."  
The subsequent paragraphs in the FAC are also misnumbered. In this  
Memorandum Decision, the misnumbering is corrected by using  
brackets and inserting the appropriate number.

1 plaintiff alleges was forged by CHL. Said truth in  
2 lending statement showed a higher interest rate and a  
total pay back of over \$670,000.00.

3 (*Id.* at 7-8.) Plaintiff asserts that, as a result of Defendant's  
4 unlawful conduct, Plaintiff has suffered consequential and special  
5 damages, and "severe" damage to her credit rating. (*Id.*) Plaintiff  
6 does not request rescission as a remedy.

7 3. Section 17200 Claim

8 Plaintiff's § 17200 claim is based on the alleged fraud  
9 committed by Defendant. Plaintiff asserts:

10 [40]. As set forth in paragraphs 22 A & B [of the state  
11 law fraud claim], the following acts alleged therein  
12 constitute unfair business practices by defendants  
against plaintiff in violation of California Business &  
Professions Code § 17200, et seq.[]

13 [41]. Any person acting for him or herself has standing  
14 to file suit under Business & Professions Code section  
17200. Any person whether or not injured by the  
15 practice, may sue under the statute for injunctive  
relief, equitable relief, or remedial practices,  
16 restitution, and punitive damages.

17 [42]. The conduct of Defendants [Countrywide] and DOES  
18 1 through 10, inclusive, and each of them constitute  
fraudulent, deceptive, unfair, and other wrongful conduct  
19 as herein alleged, and said defendants have violated  
California Business and Professions Code §17200, et seq.,  
20 by consummating an unlawful, unfair, and fraudulent  
business practices, designed to deprive plaintiff of her  
21 residence and collect unfair and improper loan principle  
and interest payments from her relating to the subject  
loans.

22 (*Id.* at 9.) Plaintiff asserts that, as a result of the unfair  
23 business practices, Countrywide was unjustly enriched. (*Id.*)

24 C. Summary Of Countrywide's Motion

25 Defendant's motion attacks all three claims in Plaintiff's  
26 FAC. As to Plaintiff's TILA claim for damages, Defendant argues  
27 that it is barred by the statute of limitations. Alternatively,  
28 Defendant argues that it is an assignee of the loans and, as such,

1 Defendant cannot be liable for TILA violations unless they are  
2 apparent on the face of the assigned loan documents. See 15 U.S.C.  
3 § 1641(e). According to Defendant, there are no TILA violations  
4 apparent on the face of the assigned loan documents.

5 As to the fraud claim, Defendant argues it is barred by the  
6 statute of limitations, is not pleaded with the requisite  
7 specificity under Rule 9, and it is "unclear" from the pleadings  
8 "what fraud Countrywide allegedly committed." (Doc. 21 at 2.) As  
9 to the § 17200 claim, Defendant argues that it is time-barred and  
10 also insufficiently pleaded.

11 Defendant requests dismissal of all three claims, the entire  
12 FAC, with prejudice. Alternatively, with respect to all three  
13 claims, Defendant requests a more definite statement under Rule  
14 12(e).

15 Plaintiff filed an opposition to Defendant's motion in which  
16 Plaintiff objects to the dismissal of her two state law claims,  
17 i.e., the fraud claim and the § 17200 claim. Plaintiff's  
18 opposition does not address the federal TILA claim. With respect  
19 to the state law claims, Plaintiff argues they are timely and  
20 sufficiently pleaded. Alternatively, Plaintiff requests leave to  
21 amend the FAC to correct any pleading deficiencies with respect to  
22 the state law claims.

### 23 III. STANDARD OF DECISION

#### 24 A. Rule 12(b)(6)

25 Dismissal under Rule 12(b)(6) is appropriate where the  
26 complaint lacks a cognizable legal theory or sufficient facts to  
27 support a cognizable legal theory. *Balistreri v. Pacifica Police*  
28 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint is also

1 "subject to dismissal for failure to state a claim if the  
2 allegations" on their face "show that relief is barred" for some  
3 legal reason. *Jones v. Bock*, 549 U.S. 199, 215 (2007); see also  
4 *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001).

5 To sufficiently state a claim to relief and survive a 12(b)(6)  
6 motion, a complaint "does not need detailed factual allegations"  
7 but the "[f]actual allegations must be enough to raise a right to  
8 relief above the speculative level." *Bell Atl. Corp. v. Twombly*,  
9 550 U.S. 544, 555 (2007). Mere "labels and conclusions" or a  
10 "formulaic recitation of the elements of a cause of action will not  
11 do." *Id.* Rather, there must be "enough facts to state a claim to  
12 relief that is plausible on its face." *Id.* at 570. In other words,  
13 "[t]o survive a motion to dismiss, a complaint must contain  
14 sufficient factual matter, accepted as true, to state a claim to  
15 relief that is plausible on its face." *Ashcroft v. Iqbal*, \_\_\_ U.S.  
16 \_\_\_, 129 S. Ct. 1937, 1949 (2009) (internal quotation marks  
17 omitted). "The plausibility standard is not akin to a probability  
18 requirement, but it asks for more than a sheer possibility that a  
19 defendant has acted unlawfully. Where a complaint pleads facts  
20 that are merely consistent with a defendant's liability, it stops  
21 short of the line between possibility and plausibility of  
22 entitlement to relief." *Id.* (internal citation and quotation marks  
23 omitted).

24 In deciding whether to grant a motion to dismiss, the court  
25 must accept as true all "well-pleaded factual allegations." *Iqbal*,  
26 129 S. Ct. at 1950. A court is not, however, required to "required  
27 to accept as true allegations that are merely conclusory,  
28 unwarranted deductions of fact, or unreasonable inferences."



1 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.  
2 2001); see, e.g., *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 683  
3 (9th Cir. 2009). Nor is a court required to "accept as true  
4 allegations that contradict matters properly subject to judicial  
5 notice or by exhibit." *Sprewell*, 266 F.3d at 988.

6 The Ninth Circuit has summarized the governing standard, in  
7 light of *Twombly* and *Iqbal*, as follows: "In sum, for a complaint to  
8 survive a motion to dismiss, the non-conclusory factual content,  
9 and reasonable inferences from that content, must be plausibly  
10 suggestive of a claim entitling the plaintiff to relief." *Moss v.*  
11 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal  
12 quotation marks omitted).

13 B. Rule 9(b)

14 Under Rule 9(b), a fraud claim "must state with particularity  
15 the circumstances constituting fraud." To comply with Rule 9, the  
16 complaint must give the defendant the particulars of the  
17 misconduct:

18 Rule 9(b) demands that the circumstances constituting the  
19 alleged fraud be specific enough to give defendants  
20 notice of the particular misconduct ... so that they can  
21 defend against the charge and not just deny that they  
22 have done anything wrong. Averments of fraud must be  
23 accompanied by the who, what, when, where, and how of the  
24 misconduct charged. A party alleging fraud must set forth  
25 more than the neutral facts necessary to identify the  
26 transaction.

23 *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009)  
24 (internal citations and quotation marks omitted).

25 C. Rule 12(e)

26 Under Rule 12(e), "[a] party may move for a more definite  
27 statement of a pleading" when it is "so vague or ambiguous that the  
28 party cannot reasonably prepare a response." A Rule 12(e) motion

1 is proper only if the complaint is so indefinite that the defendant  
2 cannot ascertain the nature of the claim being asserted, i.e., so  
3 vague that the defendant cannot begin to frame a response. See  
4 *Famolare, Inc. v. Edison Bros. Stores, Inc.*, 525 F. Supp. 940, 949  
5 (E.D. Cal. 1981). The motion must be denied if the complaint is  
6 specific enough to notify defendant of the substance of the claim  
7 being asserted. See *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1461  
8 (C.D. Cal. 1996); see also *San Bernardino Pub. Employees Ass'n v.*  
9 *Stout*, 946 F. Supp. 790, 804 (C.D. Cal. 1996) ("A motion for a more  
10 definite statement is used to attack unintelligibility, not mere  
11 lack of detail, and a complaint is sufficient if it is specific  
12 enough to apprise the defendant of the substance of the claim  
13 asserted against him or her.").

#### 14 IV. DISCUSSION AND ANALYSIS

##### 15 A. TILA Claim

16 TILA "requires creditors to provide borrowers with clear and  
17 accurate disclosures of terms dealing with things like finance  
18 charges, annual percentage rates of interest, and the borrower's  
19 rights." *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998).  
20 Failure to satisfy TILA's requirements exposes a lender to  
21 "statutory and actual damages [that are] traceable to a lender's  
22 failure to make the requisite disclosures." *Id.*

23 Plaintiff asserts a TILA claim for damages, not rescission.  
24 A TILA claim for damages must be brought "within one year from the  
25 date of the occurrence of the violation." 15 U.S.C. § 1640(e); see  
26 also *Beach*, 523 U.S. at 412. As explained in *King v. California*,  
27 784 F.2d 910, 915 (9th Cir. 1986), for statute of limitations  
28 purposes, the "occurrence of the violation" takes place on the

1 "consummation of the transaction," but the limitations period may  
2 be extended through equitable tolling:

3 [T]he limitations period in Section 1640(e) runs from the  
4 date of consummation of the transaction but . . . the  
5 doctrine of equitable tolling may, in the appropriate  
6 circumstances, suspend the limitations period until the  
7 borrower discovers or had reasonable opportunity to  
8 discover the fraud or nondisclosures that form the basis  
9 of the TILA action. Therefore, as a general rule the  
10 limitations period starts at the consummation of the  
11 transaction. The district courts, however, can evaluate  
12 specific claims of fraudulent concealment and equitable  
13 tolling to determine if the general rule would be unjust  
14 or frustrate the purpose of the Act and adjust the  
15 limitations period accordingly.

16 Defendant argues that the transaction at issue here was consummated  
17 in May 2005. In support of this argument, Defendant filed a  
18 request for judicial notice of, among other documents, the recorded  
19 Deed of Trust associated with the \$309,000 loan. (See Doc. 18, Ex.  
20 A.)<sup>2</sup> The Deed of Trust reflects that the \$309,000 loan was  
21 executed on May 5, 2005. Plaintiff does not dispute this fact.  
22 Plaintiff's state-court complaint, which alleged a TILA claim for  
23 damages against Countrywide, was filed in December 2008, well after  
24 the one-year statutory period. Accordingly, if May 5, 2005, is  
25 considered the start of the limitations period, Plaintiff's TILA  
26 claim for damages is time-barred.<sup>3</sup>

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27 <sup>2</sup> Under Federal Rule of Evidence 201, "a court may take  
28 judicial notice of matters of public record." *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (internal quotation marks omitted). As a publically recorded document, judicial notice of the May 2005 Deed of Trust can be taken. See *Champlaine v. BAC Home Loans Servicing, LP*, Civ. No. S-09-1316 LKK/DAD, 2009 WL 3429622, at \*4 (E.D. Oct. 22, 2009) (taking judicial notice, in a TILA case, of a recorded deed of trust).

<sup>3</sup> Defendant's argument assumes that Plaintiff's TILA claim is only with respect to the first loan and not the second loan for

1 It need not be decided, however, whether May 5, 2005, is, in  
2 fact, the commencement date for running of the limitations period.  
3 Under the best case scenario for Plaintiff, her TILA claim for  
4 damages is time-barred.

5 The face of Plaintiff's complaint reveals that Countrywide  
6 began servicing both loans "after May 2005" and Plaintiff received  
7 documentation about both loans in "July 2006." (Doc. 15 at 3.)  
8 Plaintiff actually "discovered" the alleged TILA violations that  
9 Countrywide committed, and the associated fraud, "in July 2006."  
10 (*Id.* at 7; *see also id.* at 5.) Accordingly, even assuming that  
11 equitable tolling applies and the statute of limitations did not  
12 begin to run until Plaintiff actually discovered the TILA  
13 violations "in July 2006," this gave Plaintiff until July 2007 (one  
14 year later) to file a TILA claim for damages against Countrywide.  
15 Plaintiff did not file a TILA claim for damages against Countrywide  
16 until December 2008.<sup>4</sup> Accordingly, Plaintiff's TILA claim for  
17 damages is time-barred as to both loans.

18 Plaintiff has not submitted any opposition to Defendant's

19  
20 \$115,000. Plaintiff has not challenged this assumption, as  
21 Plaintiff's opposition ignores her TILA claim altogether.

22 <sup>4</sup> In footnote one of its motion to dismiss, Countrywide  
23 requests judicial notice of the December 2008 filing date of the  
24 state-court complaint. Plaintiff's state-court complaint is a  
25 matter of public record and, because it was submitted in connection  
26 with Countrywide's removal, it is on file in this case. (*See Doc.*  
27 *2-2, Ex. A.*). Judicial notice of the December 2008 filing date, as  
28 appears on the state-court complaint, and as reflected on the  
electronic state-court docket (available at  
[www.kern.courts.ca.gov/home.aspx](http://www.kern.courts.ca.gov/home.aspx)), is taken. *See Headwaters Inc.*  
*v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 n.3 (9th Cir. 2005)  
(taking judicial notice of the docket in another case and a filing  
date of a motion as reflected on that docket).

1 motion with respect to her TILA claim. Defendant's motion to  
2 dismiss the TILA claim on statute of limitations grounds is  
3 GRANTED.

4 Alternatively, Countrywide requests dismissal of the TILA  
5 claim on the grounds that Countrywide cannot be liable for TILA  
6 violations unless they were apparent on the face of the loan  
7 documents. Plaintiff's FAC acknowledges that American First  
8 originated the two loans and, after May 2005, Countrywide began  
9 "servicing" the loans. (Doc. 15 at 3.) Under TILA, "[a] servicer  
10 of a consumer obligation arising from a consumer credit transaction  
11 shall not be treated as an assignee of such obligation . . . unless  
12 the servicer is or was the owner of the obligation." 15 U.S.C. §  
13 1641(f) (1).

14 If a loan "servicer" is an assignee of the loan it then  
15 becomes "subject to all claims and defenses with respect to that  
16 mortgage that the consumer could assert against the creditor of the  
17 mortgage." 15 U.S.C. § 1641(d) (1). A TILA claim against an  
18 assignee of a loan secured by real property is, however, limited by  
19 a statutory "prerequisite" which states that a TILA claim may be  
20 brought against the assignee only if "the violation for which such  
21 action or proceeding is brought is apparent on the face of the  
22 disclosure statement." § 1641(e) (1) (A). As stated in § 1641(e) (2):

23 [A] violation is apparent on the face of the disclosure  
24 statement if--

25 (A) the disclosure can be determined to be  
26 incomplete or inaccurate by a comparison among the  
27 disclosure statement, any itemization of the amount  
28 financed, the note, or any other disclosure of  
disbursement; or

(B) the disclosure statement does not use the terms

1 or format required to be used by this subchapter.

2 In other words, a TILA claim may be asserted against the assignee  
3 of the loan for "violations that a reasonable person can spot on  
4 the face of the disclosure statement or other assigned documents."  
5 *White v. Homefield Fin., Inc.*, 545 F. Supp. 2d 1159, 1168 (W.D.  
6 Wash. 2008) (quoting *Taylor v. Quality Hyundai, Inc.*, 150 F.3d 689,  
7 694 (7th Cir. 1998)); see also *Kane v. Equity One, Inc.*, No. Civ.A.  
8 03-3931, 2003 WL 22939377, at \*4 (E.D. Pa. Nov. 21, 2003).

9 Defendant argues that, given its status as an assignee,  
10 Plaintiff's TILA claim fails. According to Defendant, Plaintiff  
11 has not and cannot allege that a TILA violation was apparent on the  
12 face of the assigned loan documents. Plaintiff's alleged TILA  
13 violation is not based on the face of the assigned documents, but  
14 rather is based on a comparison between the face of those documents  
15 and the "addendums" and the additional truth in lending statement  
16 which Countrywide added to the loans. It need not be decided,  
17 however, whether Plaintiff has sufficiently alleged, or could  
18 allege, assignee liability as to Countrywide because Plaintiff's  
19 TILA claim against Countrywide is barred by the statute of  
20 limitations.

21 Defendant's motion to dismiss the TILA claim on statute of  
22 limitations grounds is GRANTED, and this claim is DISMISSED WITH  
23 PREJUDICE.

24 B. State Law Claims

25 The two remaining claims in the FAC are supplemental state law  
26 claims for fraud and a violation of California Business &  
27 Professions Code § 17200. The § 17200 claim is based on, and tied  
28 to, the state law fraud claim, as Plaintiff is alleging that the

1 unfair business practice at issue concerns the common law fraud  
2 which Countrywide committed.

3 Under 28 U.S.C. § 1367(c) (3), a district court may decline to  
4 exercise supplemental jurisdiction over state law claims if "the  
5 district court has dismissed all claims over which it has original  
6 jurisdiction." "When federal claims are dismissed before trial ...  
7 pendant state claims also should be dismissed." *Religious Tech.*  
8 *Ctr. v. Wollersheim*, 971 F.2d 364, 367-68 (9th Cir. 1992) (internal  
9 quotation marks omitted); see also *Brown v. Lucky Stores, Inc.*, 246  
10 F.3d 1182, 1189 (9th Cir. 2001) (recognizing the propriety of  
11 dismissing supplemental state law claims without prejudice when the  
12 district court has dismissed the federal claims over which it had  
13 original jurisdiction); *Cook, Perkiss & Liehe, Inc. v. N. Cal.*  
14 *Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990) ("[T]he  
15 proper exercise of discretion is to dismiss the pendent state law  
16 claims as well.").

17 Here, dismissal is warranted and ordered as to the time-barred  
18 TILA claim - the only federal claim - in Plaintiff's FAC. Once the  
19 federal claim is dismissed, the court has no interest in the  
20 supplemental state law claims. No judicial resources have been  
21 spent on analyzing the merits of such claims, and the claims raise  
22 issues of state law which California state courts can readily  
23 address. The docket of this court includes over 1,100 pending  
24 cases. The state court has a genuine interest in affording a forum  
25 to state residents whose rights are allegedly violated.

26 Supplemental jurisdiction over the state law claims is  
27 declined.

28 V. CONCLUSION

1 For the reasons stated:

2 1. The TILA claim, the only federal claim, of which  
3 Plaintiff has not opposed dismissal, is DISMISSED WITH PREJUDICE.

4 2. Supplemental jurisdiction over the state law claims is  
5 declined. Defendant's motion to dismiss the state law claims is  
6 DENIED as moot. Because the fraud claim was alleged in the removed  
7 state-court complaint, this part of the case is remanded to the  
8 Kern County Superior Court for further proceedings. The § 17200  
9 claim was not alleged in the original state-court complaint and was  
10 first asserted in the FAC in federal court. This claim is  
11 dismissed without prejudice to re-filing in state court.

12 3. Defendant's motion for a more definite statement is  
13 DENIED as moot.

14 4. Defendant's request for judicial notice of the May 2005  
15 Deed of Trust is GRANTED. (Doc 18, Ex. A.) Defendant's requests  
16 for judicial notice of the Notice of Default (Doc. 18, Ex. B) and  
17 the Notice of Trustee's Sale (Doc 18, Ex. C.) are DENIED as MOOT.

18 Defendant shall submit a form of order consistent with this  
19 Memorandum Decision within five (5) days following electronic  
20 service of this decision.

21 IT IS SO ORDERED.

22 Dated: November 9, 2009

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE