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6 **IN THE UNITED STATES DISTRICT COURT FOR THE**
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8 **EASTERN DISTRICT OF CALIFORNIA**
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10 GURVINDER GHUMAN and
11 PARMINDER K. GHUMAN,

1:12-cv-00902-AWI-BAM

12 Plaintiffs,

**ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS SECOND AMENDED
COMPLAINT**

13 v.

14 WELLS FARGO BANK, N.A., d/b/a
15 AMERICA’S SERVICING COMPANY;
16 NEX WEST, LLC; and DOES 1 through
100, inclusive,

(Doc. 39)

17 Defendants.
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20 **I. INTRODUCTION**

21 Defendant, Wells Fargo Bank, N.A. (“Defendant”), has filed a motion to dismiss the
22 Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and a motion
23 to strike pursuant to Federal Rule of Civil Procedure 12(f). The motion is unopposed. For the
24 following reasons this Court grants in part and denies in part Defendant’s motion to dismiss. This
25 Court denies Defendant’s motion to strike.

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1 **II. FACTUAL BACKGROUND¹**

2 On August 29, 2005, Plaintiffs signed a negotiable promissory note (“Note”) in the
3 amount of \$407,600.00 in favor of Secured Bankers Mortgage Co. (“Lender”). To secure the
4 Note, Plaintiffs also executed a Deed of Trust (“Deed of Trust”), which conveyed a security
5 interest in the real property located at 1644 East El Paso, Fresno, CA 93720, (“Subject
6 Property”) to Lender. The Deed of Trust named T.D. Service Co. as trustee and Mortgage
7 Electronic Registration Systems, Inc. (“MERS”) as the original beneficiary. The Deed of Trust
8 states:

9 MERS, (as nominee for Lender and Lender’s successors and assigns) has
10 the right: to exercise any or all of those interests, including, but not limited
11 to, the right to foreclose and sell the Property, and to take any action
12 required of Lender including, but not limited to, releasing and canceling
this Security Instrument.

13 The Deed of Trust was recorded on September 2, 2005 in the Official Records of the Recorder of
14 Fresno County, California.

15 On or about November 30, 2005 (“Closing Date”), Lender sold and transferred its interest
16 in Plaintiffs’ Note to the Morgan Stanley Mortgage Loan Trust, a New York mortgage-backed
17 securities trust (“Morgan Stanley Trust”), which was registered with the Securities Exchange
18 Commission (“SEC”). Defendant was named the Master Servicer for the Morgan Stanley Trust,
19 and Deutsche Bank National Trust Company (“Deutsche Bank”) was named the trustee.
20 Plaintiffs allege that the Deed of Trust was not transferred to the Morgan Stanley Trust.

21 On or about December 7, 2007, Lender ceased conducting business. At the time Lender
22 ceased operations, the Note had been transferred to Morgan Stanley Trust, but the Deed of Trust
23 was not transferred. Plaintiffs defaulted on the subject loan in or around December 2008.

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27 ¹ All facts are taken from the pleadings of Plaintiffs and Defendant. The factual background is given to provide a
28 backdrop; the assertions contained therein are not necessarily taken as true. The legally relevant facts relied upon by
the court are discussed within the analysis.

1 On April 29, 2009, NDeX, as “trustee or agent for the beneficiary,” recorded a Notice of
2 Default and Election to Sell against the Subject Property. The Notice of Default was signed by
3 Ric Juarez, purportedly an employee of NDeX. MERS recorded an Assignment of the Deed of
4 Trust on May 27, 2009, which conveyed a beneficial interest in the Deed of Trust to Deutsche
5 Bank, the trustee of the Morgan Stanley Trust. Defendant, acting for Deutsche Bank, named
6 NDeX as the new trustee in a substitution recorded on June 29, 2009. NDeX executed an
7 affidavit dated June 15, 2009, stating that a copy of the Substitution of Trustee document was
8 mailed prior to recording in accordance with the California Civil Code Section 2924(b).
9 Plaintiffs allege that such document and affidavit had never been recorded and did not meet the
10 requirements of California Civil Code Section 2924(b).

11 On September 18, 2009, NDeX recorded a Notice of Trustee’s Sale (“NOS”) scheduled
12 for October 6, 2009. The sale was later postponed. A copy of the NOS was not signed by any
13 employee of NDeX; subsequent copies were signed by a purported employee of NDeX. A
14 declaration was attached to the Notice of Sale, and Plaintiffs allege that the declaration did not
15 meet the requirements of California Civil Code Section 2923.5. Another Notice of Sale was
16 dated October 28, 2009, setting a new sale date of November 23, 2009. No employee of NDeX
17 signed this Notice of Sale.

18 On or about December 3, 2010, Defendant sent a letter to Plaintiffs that offered Plaintiffs
19 the opportunity to enter into a Trial Practice Plan (“TPP”). Plaintiffs allege they had to make
20 three trial payments on their mortgage on January 1, February 1, and March 1, 2011. Plaintiffs
21 allege they made the trial payments on time, but their payments were never properly credited to
22 their mortgage loan. Plaintiffs allege that late fees and other charges were also improperly added
23 to the balance of their mortgage loan.

24 In a letter dated February 9, 2012, Plaintiffs sent Defendants a letter advising them that
25 “litigation of this matter is imminent” and requested several categories of documents from
26 Defendants. Plaintiffs allege such letter was a “qualified written request” pursuant to Section 6
27 of the Real Estate Settlement Procedures Act (“RESPA”). Defendant responded to the letter,
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1 enclosed copies of Plaintiffs' Note and Deed of Trust, and advised Plaintiffs that their "loan is
2 currently under review by our Home Preservation Department for a loan modification."

3 Defendants allege that on or about March 18, 2012, they sent a letter to Plaintiffs
4 informing them that their loan modification was not approved until a title issue was resolved.
5 Defendant also sent Plaintiffs a letter informing Plaintiffs that they did not qualify for a loan
6 modification because of a junior lien on the property by Bank of America. A subordination
7 agreement could not be reached with Bank of America.

8 NDeX commenced foreclosure proceedings against Plaintiffs on or about May 31, 2012.
9 The notice was posted on Plaintiffs' property. NDeX identified itself in the NOS as the trustee;
10 however, the NOS signature page was unsigned. On June 1, 2013, a new NOS with a sale date
11 of June 25, 2012 was recorded. The sale was postponed from June 25 to July 25, 2013, due to
12 Plaintiffs' filing of the present action.

13 Mr. Ghuman filed for bankruptcy on July 25, 2012. The bankruptcy court dismissed
14 Mr. Ghuman's petition in August 2012 due to his failure to submit the required documents.

15 During the pendency of this litigation, the Ghumans claim to have continued to seek a
16 loan modification. Plaintiffs claim that "[d]uring November to December, 2012, the parties
17 began a new loan modification process." Plaintiffs do not allege that they submitted to
18 Defendants any notice of change in financial circumstances or that any such change took place.
19 On January 28, 2013, NDeX, as trustee for Wells Fargo, served a Notice of Sale on Plaintiffs,
20 setting a foreclosure sale date of February 25, 2013. On February 2, 2013, Plaintiffs claim to
21 have "provided a completely updated loan modification package to Defendant" Wells Fargo.

22 On or about February 24, 2013, Wells Fargo informed Plaintiffs that the loan
23 modification package submitted on February 2, 2013, was incomplete. Plaintiffs, through their
24 counsel, submitted documents on Saturday, March 16, 2013, that Wells Fargo, through its
25 counsel, claims to have requested on February 21, 2013.

26 The trustee's sale has not yet taken place.

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1 **III. PROCEDURAL BACKGROUND**

2 On June 1, 2012, plaintiffs, Gurvinder Ghuman and Parminder Ghuman (“Plaintiffs”)
3 filed, with this Court, their Complaint against Defendants. Plaintiffs alleged causes of action for
4 (1) declaratory relief, (2) contractual breach of the implied covenant of good faith and fair
5 dealing, (3) violation of the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., (4) violation of the
6 Real Estate Settlement Procedures Act, 1 U.S.C. §§ 2601 et seq., (5) rescission, (6) fraud, (7)
7 “Unfair and Deceptive Business Act Practices,” (8) breach of fiduciary duty and (9)
8 “unconscionability – UCC-2-3202.” Plaintiffs alleged that subject matter jurisdiction existed
9 pursuant to 28 U.S.C. Sections 1331 (federal question) and 1332 (diversity of citizenship).

10 On July 4, 2012, defendant Wells Fargo Bank, N.A. (“Defendant”) filed a motion to
11 dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiffs did not
12 file a written opposition to Defendant’s motion to dismiss. This Court granted Defendant’s
13 motion to dismiss, giving Plaintiffs leave to amend.

14 On August 28, 2012, Plaintiffs filed their First Amended Complaint (“FAC”) asserting
15 causes of action for (1) slander of title (against all Defendants), (2) wrongful foreclosure (against
16 all Defendants), (3) violation of California Civil Code Section 2923.5 (against Defendant Wells
17 Fargo), (4) violation of the Real Estate Settlement Procedures Act (against Defendant Wells
18 Fargo), and (5) violation of the Unfair Business Practices Act Section 17200 (against all
19 Defendants).

20 On October 18, 2012, Defendant filed its motion to dismiss the FAC pursuant to Rule
21 12(b)(6) or for a more definite statement pursuant to Rule 12(e). Plaintiffs did not file a written
22 opposition to Defendant’s motion. This Court granted Defendant’s motion to dismiss, giving
23 Plaintiffs one final opportunity to amend.

24 On April 14, 2013, Plaintiffs filed their Second Amended Complaint (“SAC”) asserting
25 causes of action for (1) violation of RESPA (against Defendant Wells Fargo), and (2) violation
26 of California Civil Code Sections prohibiting Dual Tracking (against all defendants).

1 On June 7, 2013, Defendant filed its motion to dismiss the SAC pursuant to Rule 12(b)(6)
2 or to strike the second cause of action pursuant to Rule 12(f). Plaintiffs did not file a written
3 opposition to Defendant’s motion.

4 IV. LEGAL STANDARD

5 A complaint must contain a short and plain statement showing that the pleader is entitled
6 to relief. Fed. R. Civ. P. 8(a)(2). A court must take all allegations of material fact as true and
7 construe them in the light most favorable to the nonmoving party. *Id.* A party may move to
8 dismiss based on the failure to state a claim upon which relief may be granted. *See* Fed. R. Civ.
9 P. 12(b)(6). A motion to dismiss based on Rule 12(b)(6) challenges the legal sufficiency of the
10 claims alleged. *Parks School Of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

11 In making a 12(b)(6) determination, district courts have followed a two-step approach.
12 *Bell Atlantic v. Twombly*, 550 U.S. 544, 564-570 (2009). First, district courts should carefully
13 examine the complaint to smoke out any “merely legal conclusions resting on the prior
14 allegations.” *Id.* at 564. If an allegation is deemed “conclusory,” it is entitled to no weight in the
15 12(b)(6) calculus. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Second, district courts should
16 weigh the remaining facts and determine if they are sufficient to “nudge the claims across the
17 line from conceivable to plausible.” *Bell Atlantic*, 550 U.S. at 570. While a complaint “need not
18 contain detailed factual allegations, it must plead enough facts to state a claim of relief that is
19 plausible on its face.” *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009).

20 Plausibility can be met even if a judge disbelieves a complaint’s factual allegations.
21 *Ashcroft*, 556 U.S. at p. 696. (stating that “no matter how skeptical the court may be... ‘Rule
22 12(b)(6) does not countenance ... dismissals based on a judge’s disbelief of a complaint’s factual
23 allegations.’”). “A claim has facial plausibility,” and thus survives a motion to dismiss, “when
24 the pleaded factual content allows the court to draw a reasonable inference that the defendant is
25 liable for the misconduct alleged.” *Id.* at pp. 663, 678. “The plausibility standard is not akin to a
26 ‘probability requirement,’ but it asks for more than sheer possibility that a defendant acted
27 unlawfully.” *Id.* at p. 678. A 12(b)(6) analysis is “not whether a plaintiff will ultimately
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1 prevail, but whether the claimant is entitled to offer evidence to support the claims” advanced in
2 his or her complaint. *Scheuer v. Rhodes*, 414 U.S. 544, 555 (2007).

3 In deciding whether to dismiss a claim under Rule 12(b)(6), the Court is generally limited
4 to reviewing only the complaint. “There are, however, two exceptions: ... First, a court may
5 consider material which is properly submitted as part of the complaint on a motion to dismiss
6 [i]f the documents are not physically attached to the complaint, they may be considered if the
7 documents’ authenticity is not contested and the plaintiff’s complaint necessarily relies on them.
8 Second, under Fed. R. Evid. 201, a court may take judicial notice of matters of public record.”
9 *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001); *See also In re Stac Electronics*,
10 89 F.3d. 1399, 1405, fn. 4 (9th Cir. 1996). The Ninth Circuit later gave a separate definition of
11 “the ‘incorporation by reference’ doctrine, which permits us to take into account documents
12 whose contents are alleged in a complaint and whose authenticity no party questions, but which
13 are not physically attached to the plaintiff’s pleading.” *Knievel v. ESPN*, 393 F.3d 1068, 1076
14 (9th Cir. 2005). Moreover, “judicial notice may be taken of a fact to show that a complaint does
15 not state a cause of action.” *Sears, Roebuck & Co. v. Metropolitan Engravers, Ltd.*, 245 F.2d 67,
16 70 (9th Cir. 1956); see *Estate of Blue v. County of Los Angeles*, 120 F.3d 982, 984 (9th Cir.
17 1997).¹

18 If a Rule 12(b)(6) motion to dismiss is granted, claims may be dismissed with or without
19 prejudice, and with or without leave to amend. “[A] district court should grant leave to amend
20 even if no request to amend the pleading was made, unless it determines that the pleading could
21 not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th
22 Cir. 2000) (en banc) (quoting *Doe. v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). In other
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25 ¹ Defendant’s request that the Court take judicial notice of the Note, Deed of Trust, Notice of Default and Election
26 to Sell Under Deed of Trust, Assignment of Deed of Trust, Substitution of Trustee, Notices of Trustee’s Sale,
27 letter from America’s Servicing Company dated December 3, 2010, letter from Plaintiffs dated February 9, 2012,
28 Corporate Assignment of Deed of Trust, and Chapter 13 bankruptcy petition, is granted. *See Sears*, 245 F.2d at
70; *Lee*, 250 F.3d at 688-89. Here, Plaintiffs’ complaint refers all of the aforementioned documents in the SAC
with the exception of the Corporate Assignment of Deed of Trust and the Chapter 13 bankruptcy petition. SAC at
¶¶ 1, 15-17, 19-22, 25, 27. The documents not mentioned by the SAC are matters of public record and not
generally subject to dispute. As such, this court may consider all of the aforementioned documents for purposes
of Defendant’s motion to dismiss pursuant to Rule 12(b)(6).

1 words, leave to amend need not be granted when amendment would be futile. *Gompper v. VISX,*
2 *Inc.*, 298 F.3d 893, 898 (9th Cir. 2002).

3 4 V. DISCUSSION

5 *A. Plaintiffs' First Cause of Action - RESPA*

6 Plaintiffs assert a cause of action for violation of RESPA, 12 U.S.C. § 2601, et seq.,
7 against defendant Wells Fargo. A plaintiff alleging a violation of RESPA's loan servicing
8 provisions must show that (1) the servicer failed to adhere to the rules governing a qualified
9 written request and (2) the plaintiff incurred actual damages as a consequence of the servicer's
10 failure. See 12 U.S.C. § 2605; see also *Anokhin v. BAC HomeLoan Servicing, L.P.*, 2010 WL
11 3294367, at *3 (E.D. Cal. 2010).

12 *1. Plaintiffs' Letter Is Neither a Qualified Written Request Nor Does it Relate to the Servicing of* 13 *the Loan*

14 Section 2605 of RESPA provides that loan servicers have a duty to respond to qualified
15 written requests ("QWR") relating to the servicing of such loan within a certain time frame,² and
16 RESPA provides an avenue for borrowers to seek damages if the servicer fails to meet its duty to
17 respond. 12 U.S.C. § 2605(f).

18 The Ninth Circuit, following in the footsteps of the Seventh Circuit, does not require any
19 "magic" words in order for a document from a borrower to qualify as a qualified written request.
20 *Medrano v. Flagstar Bank, FSB*, 704 F.3d 661, 666 (9th Cir. 2012) *cert. denied*, 133 S. Ct. 2800
21 (2013); *Catalan v. GMAC Corp.*, 629 F.3d 676, 687 (7th Cir. 2011). A borrower's written inquiry
22 requires a response as long as it (1) reasonably identifies the borrower's name and account, (2)
23 either states the borrower's "reasons for the belief ... that the account is in error" or "provides
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25 ² If subject to Section 2605's duty to respond, Wells Fargo would have been required to acknowledge receipt of the
26 correspondence within up to 20 days and, within up to 60 days, (1) to make appropriate corrections to the account,
27 (2) to explain why it believed the account to be correct, or (3) to explain why the information requested was
28 unavailable or could not be obtained and the name and telephone number of an individual employed by the
services who can provide assistance. 12 U.S.C. § 2605(e)(1)(A), (e)(2), (e)(4). All three of the options triggered
by Section 2605(e)(2) require the servicer to provide the borrower the name and telephone number of an
individual employed by the servicer who can provide assistance.

1 sufficient detail to the servicer regarding other information sought by the borrower,” and (3)
2 seeks “information relating to the servicing of [the] loan.” *Medrano*, 704 F.3d at p. 666 (quoting
3 12 U.S.C. § 2605(e)(1)(A)-(B) (brackets original)).

4 The Ninth Circuit clarified what types of inquiries qualify as seeking “information
5 relating to the servicing of the loan” as follows:

6 [T]he statutory duty to respond does not arise with respect to *all* inquiries
7 or complaints from borrowers to servicers, [only as to those requests
8 related to servicing]. RESPA defines the term “servicing” to encompass
9 only “receiving any scheduled periodic payments from a borrower
10 pursuant to the terms of any loan, including amounts for escrow accounts
11 ..., and making the payments of principal and interest and such other
12 payments.” *Id.* § 2605(i)(3). “Servicing,” so defined, does not include the
13 transactions and circumstances surrounding a loan's origination—facts that
14 would be relevant to a challenge to the validity of an underlying debt or
15 the terms of a loan agreement ... In summary, we hold that letters
16 challenging only a loan's validity or its terms are not qualified written
17 requests that give rise to a duty to respond under § 2605(e).

14 *Medrano*, 704 F.3d at pp. 666-667. Accordingly, in order to have triggered a duty to respond
15 pursuant to Section 2605, Plaintiffs must have identified themselves and their account number,
16 explained their belief that the account was in error or explained the information sought, and
17 sought information relating to the servicing of the loan. RESPA defines “servicing” to mean
18 “receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan
19 ... and making the payments of principal and interest and such other payments with respect to
20 the amounts received from the borrower as may be required pursuant to the terms of the loan.”
21 12 U.S.C. § 2605(i)(3).

22 In their February 9, 2012 letter, Plaintiffs identify themselves, the property address, and
23 their account number, thereby satisfying the first requirement. Further, Plaintiffs’ letter
24 articulates five complaints³: (1) improper assignment of promissory note and deed of trust, (2)
25 chain of title, (3) REMIC Violations, (4) unlawful transfer of note and deed of trust, and (5)
26 robo-signing. None of the five complaints articulated in Plaintiffs’ letter allege errors with the
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28 ³ The holding that these complaints do not qualify as “reasons for the belief ... that the account is in error” which
would satisfy Section 2605(e)(1)(B)(ii) is not essential to the outcome of this dismissal.

1 loan account. Further, the letter contains no indication that Plaintiffs sought information relating
2 to the servicing of the loan. *Ghuman v. Wells Fargo Bank, N.A.*, 2012 WL 552097 at * 11 (E.D.
3 Cal. 2012); *see Consumer Solutions REO, LLC. V. Hillery*, 658 F.Supp.2d 1002, 1014 (N.D. Cal.
4 2009). Rather, the Plaintiffs advised Defendant of “the various [alleged] illegalities on the part of
5 the securitization of [their] loan,” proposed a settlement, and indicated that litigation would
6 result if a settlement was not reached. Request for Judicial Notice (“RJN”), Exhibit 9 at p. 1-2.
7 Accordingly, Wells Fargo had no duty to respond since Plaintiffs’ letter is neither a QWR,
8 because it does not allege errors with the loan account or seek production of information, nor
9 does it meet the Section 2605(e)(1)(A) requirement that the borrower, in their QWR, seek
10 information relating to the servicing of the loan. Each failure is independently fatal to Plaintiffs’
11 RESPA claim.

12 2. Plaintiffs Fail to Adequately Allege Facts Establishing Damages

13 Assuming, arguendo, as the Court did when Plaintiffs’ failed to state a claim in the FAC,
14 that the February 9, 2012 letter constituted a QWR giving rise to a duty to respond, Plaintiffs’
15 fail to make a showing that they incurred actual damages attributable to Defendant’s failure to
16 respond.

17 Plaintiffs’ RESPA claim as alleged in their FAC alleged damages as follows: “Plaintiffs
18 have been damaged in an amount not yet ascertained, to be proven at trial.” FAC at ¶ 20.
19 Plaintiffs alleged that these damages arose as a result of Defendant’s “fail[ure] to properly credit
20 trial payments, failure to negotiate a loan modification . . . , and charging improper late fees. . . .”
21 FAC at ¶ 19. This Court held that Plaintiffs failed to adequately pled damages attributable to
22 Defendant’s failure to respond. *Ghuman*, 2012 WL 552097 at * 11 (citing *Mekani v.*
23 *Homecomings Financial, LLC*, 752 F.Supp.2d 785, 795 (E.D. Cal. 2010).

24 Plaintiffs’ FAC modifies their RESPA claim by removing the language relating to
25 Defendant’s alleged failure to properly credit trial payments and charging of late fees from a
26 parenthetical clause and rewriting it into its own paragraph. Plaintiffs’ allegations as to damages
27 remain unchanged from the FAC. In this Court’s order dismissing the FAC it noted that
28 “Plaintiffs’ RESPA allegations in its FAC [are] nearly identical to their previously dismissed

1 RESPA claim.” *Ghuman*, 2012 WL 552097 at * 12 Why Plaintiffs believe that this non-
2 substantive amendment would be sufficient to adequately plead damages is unclear. It isn’t.
3 Plaintiffs’ conclusory allegations and damages pled as “unascertainable” are again inadequate.

4 *3. Conclusion*

5 Plaintiffs have failed to plead a plausible RESPA claim for the third time; each attempt
6 essentially mirroring the last. Accordingly, Defendant’s motion to dismiss this claim is granted
7 without leave to amend.

8 ***B. Plaintiffs’ Second Cause of Action – Homeowners Bill of Rights***

9 Plaintiffs, for the first time in the SAC, plead a cause of action alleging violation of
10 California Civil Code Sections 2923.55, 2923.6, 2924.10-12, 2924.17, and 2924.18, commonly
11 known as the Homeowners Bill of Rights (“HOB”)), which prohibits, among other things, “dual
12 tracking” of the foreclosure and loan modification processes. FAC at ¶ 7. HOB became
13 effective on January 1, 2013. It provides a private right of action for homeowners to litigate
14 violations of loan modification application procedures. Plaintiffs allege that Defendants have
15 attempted to foreclose on the Subject Property during active loan modification negotiations. FAC
16 at ¶ 7. Further, Plaintiffs seek injunctive relief pursuant to Section 2924.12 based on Defendant’s
17 alleged failure to give notice of receipt of loan modification application documents in violation
18 of Section 2924.10. FAC at ¶¶ 1, 11.

19 *1. The Court Declines to Exercise Supplemental Jurisdiction Over Plaintiff’s State Law Claims*

20 “[I]n any civil action of which the district courts have original jurisdiction, the district
21 courts shall have supplemental jurisdiction over all other claims that are so related to claims in
22 the action within such original jurisdiction that they form part of the same case or controversy
23 under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). However, the power to
24 exercise supplemental jurisdiction is within the court's discretion. *United Mine Workers of*
25 *America v. Gibbs*, 383 U.S. 715, 726 (1966) (“It has consistently been recognized that pendent
26 jurisdiction is a doctrine of discretion, not of plaintiff's right.”). The court “may decline to
27 exercise supplemental jurisdiction over a claim under subsection (a) if the claim raises a novel or
28 complex issue of state law, the claim substantially predominates over the claim or claims over

1 which the district court has original jurisdiction, [or] the district court has dismissed all claims
2 over which it has original jurisdiction[.]” 28 U.S.C. § 1367(c)(1-3); see *Gibbs*, 383 U.S. at p. 726
3 (“Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a
4 jurisdictional sense, the state claims should be dismissed as well.”); *Acri v. Varian Assocs., Inc.*,
5 114 F.3d 999, 1001 (9th Cir. 1997) (en banc) (“The Supreme Court has stated, and we have often
6 repeated, that ‘in the usual case in which all federal-law claims are eliminated before trial, the
7 balance of factors ... will point toward declining to exercise jurisdiction over the remaining state-
8 law claims.’ ”) (quoting *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7 (1988)). Unless
9 the court is persuaded by “considerations of judicial economy, convenience and fairness to
10 litigants” it must “hesitate to exercise jurisdiction over state claims [.]” *Gibbs*, 383 U.S. at p. 726.

11 Here, Plaintiffs alleged violations of TILA and RESPA in their original complaint.
12 Plaintiffs have been given three opportunities to state a claim for violation of federal law.
13 Plaintiffs, as discussed above, have three times failed to do so. Plaintiffs’ new cause of action
14 does not arise from the same transaction or occurrence but is rather an alleged violation arising
15 from Plaintiffs’ continued attempts to seek a loan modification.

16 Under the circumstances, the court declines to exercise supplemental jurisdiction over
17 plaintiff’s remaining state law claims since this Court has dismissed all claims over which it has
18 original jurisdiction and Plaintiffs raise at least one novel or complex of state law. *See, e.g.*,
19 *Downs v. Monetary Mgmt. of Cal. Inc.*, 2000 WL 335949, at *2 (N.D. Cal. 2000) (noting that
20 where federal claims have been disposed of, “the court has discretion whether to continue to
21 exercise its jurisdiction [and] [i]t may choose either to dismiss the state law claims or remand the
22 action to state court”).

23 VI. ORDER

24 Based on the foregoing, Defendant’s motion to dismiss is GRANTED in part and
25 DENIED in part. Plaintiffs’ RESPA Cause of Action is DISMISSED with prejudice.

26 This Court declines to exercise supplemental jurisdiction over Plaintiffs’ HOBR Cause of
27 Action. Plaintiffs’ HOBR Cause of Action is therefore DISMISSED without prejudice for lack of
28 subject matter jurisdiction.

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Defendant's motion to strike is DENIED.

The Clerk of the Court is DIRECTED to close this case.

IT IS SO ORDERED.

Dated: January 3, 2014



SENIOR DISTRICT JUDGE