

SCREENING REQUIREMENT

The Court must dismiss a complaint or portion thereof if the plaintiff has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. *Id.* If the Court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc).

In determining whether a complaint states a claim, the Court looks to the pleading standard under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

To survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss v. United States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss*, 572 F.3d at 969.

DISCUSSION

In the amended complaint, Plaintiff alleges that on three separate occasions, Defendant violated the Truth in Lending Act section 1642(f)(2) and the Real Estate Settlement Procedures Act (“RESPA”) when Defendant failed to respond to his Qualified Written Request’s (“QWR”) seeking information about his mortgage. Plaintiff alleges that on August 7, 2012, October 19,

1 2012, and January 8, 2013, he requested information about title assignments and the name of the
2 entity that currently owns the note.

3 Plaintiff seeks damages of \$2,000 for each of the RESPA time violations and \$4,000 for
4 each of the TILA time violations for a total of \$18,000 in monetary damages.

5 A servicer's failure to respond to a QWR as required entitles a borrower to recover actual
6 damages, as well as statutory damages in cases showing a "pattern or practice of
7 noncompliance." 12 U.S.C. § 2605(f). The Dodd-Frank Act of 2010, *supra*, changed the
8 maximum award of statutory damages for a "pattern or practice" of violation from \$1,000 to
9 \$2,000. *See* Pub. L. 111-203, § 1463(b)(1), 124 Stat. 1376, 2184.

10 In order to state a claim for a violation of RESPA QWR provisions, the borrower must
11 demonstrate (1) a written request that meets RESPA's definition of a QWR, (2) the servicer
12 failed to perform its duties, and (3) actual damages. *See Medrano v. Flagstar Bank*, 704 F.3d
13 661, 666 (9th Cir. 2012).

14 Similarly, §1641(f)(2) of TILA provides, in part, that "[u]pon written request by the
15 obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the
16 name, address, and telephone number of the owner of the obligation or the master servicer of the
17 obligation." 15 U.S.C. § 1641(f)(2). TILA establishes a private right of action against creditors
18 and assignees for violations of 15 U.S.C. § 1641(f)(2). *See Consumer Solutions REO, LLC v.*
19 *Hillery*, 2010 U.S. Dist. LEXIS 1437, 2010 WL 14988, at *3 (N.D. Cal. 2010) (finding "TILA
20 allows for a suit against a creditor or an assignee but not a servicer except under narrow
21 circumstances"); *Fullmer v. JPMorgan Chase Bank, NA*, 2010 U.S. Dist. LEXIS 3551, 2010 WL
22 95206, at *9 (E.D. Cal. 2010) (holding that TILA "establishes a private of action and provides
23 for statutory damages for violations of TILA only against the creditor (the owner of the
24 obligation) and assignees").

25 Plaintiff alleges that Defendant Chase Bank is liable under RESPA and TILA for failing
26 to respond to his requests for information. Liberally construed, this Court finds that, for
27 purposes of *pro se* screening, Plaintiff has sufficiently stated a cause of action for violations of
28 the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 ("RESPA"), and the Truth in

1 Lending Act, 12 C.F.R. Part 226 ("TILA"). More specifically, Plaintiff contends he submitted
2 written requests following the guidelines set forth under section 6 of RESPA and 1641(f)(2) of
3 TILA and Defendant failed to perform its duties, which caused Plaintiff actual damages.
4 Accordingly, Plaintiff's First Amended Complaint states a cognizable claim for violations of
5 RESPA and TILA.

6 **CONCLUSION**

7 Based upon the foregoing, IT IS HEREBY ORDERED:

- 8 1. The Clerk of Court is DIRECTED to issue summons as to the defendant, Chase
9 Bank;
- 10 2. The Clerk of Court is DIRECTED to issue and serve Plaintiff with New Case
11 Documents, including setting an Initial Scheduling Conference;
- 12 3. **Plaintiff is cautioned that he must achieve service of process within the time**
13 **period set forth in Fed. R. Civ. P. 4 or the matter may be dismissed.**

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15 IT IS SO ORDERED.

16 Dated: June 18, 2015

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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