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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELENA YULAEVA,

NO. CIV. S-09-1504 LKK/KJM

Plaintiff,

v.

O R D E R

GREENPOINT MORTGAGE FUNDING,
INC.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
EMC MORTGAGE CORPORATION; and
DOES 1 through 10, inclusive,

Defendants.

_____ /

This cases arises out of a loan used for the purchase of plaintiff's home and the related mortgage. Defendant Greenpoint Mortgage Funding, Inc. ("Greenpoint"), who allegedly provided the initial loan, moves to dismiss all five claims against it. The remaining defendants, Mortgage Electronic Registration Systems, Inc. and EMC Mortgage Corporation, initially filed a motion to dismiss to be heard in parallel, but these defendants have withdrawn their motion.

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1 For the reasons stated below, the court grants Greenpoint's
2 motion in part.

3 **I. Background**

4 In two prior orders, the court extensively discussed the
5 factual allegations in this case as alleged in the initial and
6 first amended complaints. See Orders filed Sept. 3, 2009 and May
7 7, 2010 (ECF. Nos. 12 and 38). The allegations in the operative
8 Second Amended Complaint ("SAC") are largely unchanged.
9 Accordingly, the court does not repeat this factual background
10 here.

11 **II. Standard**

12 The court has also previously articulated the standard for a
13 Fed. R. Civ. P. 12(b)(6) motion to dismiss, although the parties
14 appear not to have read this articulation. For example, plaintiff
15 continues to invoke the "no set of facts" standard despite the
16 court's explanation that this standard has been explicitly
17 repudiated. See Order filed Sept. 3, 2009 at 10 n.7. In light of
18 this apparent confusion and the fact that the present motion turns
19 on arguable nuances of this standard, the court repeats this
20 standard here.

21 A Fed. R. Civ. P. 12(b)(6) motion challenges a complaint's
22 compliance with the pleading requirements provided by the Federal
23 Rules. In general, these requirements are provided by Fed. R. Civ.
24 P. 8, although claims that "sound[] in" fraud or mistake must meet
25 the requirements provided by Fed. R. Civ. P. 9(b). Vess v.
26 Ciba-Geigy Corp., 317 F.3d 1097, 1103-04 (9th Cir. 2003).

1 **1. Dismissal of Claims Governed by Fed. R. Civ. P. 8**

2 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must
3 contain a "short and plain statement of the claim showing that the
4 pleader is entitled to relief." The complaint must give defendant
5 "fair notice of what the claim is and the grounds upon which it
6 rests." Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007)
7 (internal quotation and modification omitted).

8 To meet this requirement, the complaint must be supported by
9 factual allegations. Ashcroft v. Iqbal, ___ U.S. ___, 129 S. Ct.
10 1937, 1950 (2009). "While legal conclusions can provide the
11 framework of a complaint," neither legal conclusions nor conclusory
12 statements are themselves sufficient, and such statements are not
13 entitled to a presumption of truth. Id. at 1949-50. Iqbal and
14 Twombly therefore prescribe a two step process for evaluation of
15 motions to dismiss. The court first identifies the non-conclusory
16 factual allegations, and the court then determines whether these
17 allegations, taken as true and construed in the light most
18 favorable to the plaintiff, "plausibly give rise to an entitlement
19 to relief." Id.; Erickson v. Pardus, 551 U.S. 89 (2007).

20 "Plausibility," as it is used in Twombly and Iqbal, does not
21 refer to the likelihood that a pleader will succeed in proving the
22 allegations. Instead, it refers to whether the non-conclusory
23 factual allegations, when assumed to be true, "allow[] the court
24 to draw the reasonable inference that the defendant is liable for
25 the misconduct alleged." Iqbal, 129 S.Ct. at 1949. "The
26 plausibility standard is not akin to a 'probability requirement,'

1 but it asks for more than a sheer possibility that a defendant has
2 acted unlawfully." Id. (quoting Twombly, 550 U.S. at 557). A
3 complaint may fail to show a right to relief either by lacking a
4 cognizable legal theory or by lacking sufficient facts alleged
5 under a cognizable legal theory. Balistreri v. Pacifica Police
6 Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

7 The line between non-conclusory and conclusory allegations is
8 not always clear. Rule 8 "does not require 'detailed factual
9 allegations,' but it demands more than an unadorned,
10 the-defendant-unlawfully-harmed-me accusation." Iqbal, 129 S. Ct.
11 at 1949 (quoting Twombly, 550 U.S. at 555). While Twombly was not
12 the first case that directed the district courts to disregard
13 "conclusory" allegations, the court turns to Iqbal and Twombly for
14 indications of the Supreme Court's current understanding of the
15 term. In Twombly, the Court found the naked allegation that
16 "defendants 'ha[d] entered into a contract, combination or
17 conspiracy to prevent competitive entry . . . and ha[d] agreed not
18 to compete with one another,'" absent any supporting allegation of
19 underlying details, to be a conclusory statement of the elements
20 of an anti-trust claim. Id. at 1950 (quoting Twombly, 550 U.S. at
21 551). In contrast, the Twombly plaintiffs' allegations of
22 "parallel conduct" were not conclusory, because plaintiffs had
23 alleged specific acts argued to constitute parallel conduct.
24 Twombly, 550 U.S. at 550-51, 556.

25 Twombly also illustrated the second, "plausibility" step of
26 the analysis by providing an example of a complaint that failed and

1 a complaint that satisfied this step. The complaint at issue in
2 Twombly failed. While the Twombly plaintiffs' allegations
3 regarding parallel conduct were non-conclusory, they failed to
4 support a plausible claim. Id. at 566. Because parallel conduct
5 would ordinarily be expected to arise without a prohibited
6 agreement, an allegation of parallel conduct was insufficient
7 support the inference that a prohibited agreement existed. Id.
8 Absent such an agreement, plaintiffs were not entitled to relief.
9 Id.

10 In contrast, Twombly held that model form 9 for negligence,
11 demonstrated the type of pleading that satisfies Rule 8. Id. at
12 565 n.10. This form provides "On June 1, 1936, in a public highway
13 called Boylston Street in Boston, Massachusetts, defendant
14 negligently drove a motor vehicle against plaintiff who was then
15 crossing said highway." Form 9, Complaint for Negligence, Forms
16 App., Fed. Rules Civ. Proc., 28 U.S.C. App., p 829. These
17 allegations adequately "'state[] . . . circumstances, occurrences,
18 and events in support of the claim presented.'" Twombly, 550 U.S.
19 at 556 n.3 (quoting 5 C. Wright & A. Miller, Federal Practice and
20 Procedure § 1216, at 94, 95 (3d ed. 2004)). The factual
21 allegations that defendant drove at a certain time and hit
22 plaintiff render plausible the conclusion that defendant drove
23 negligently.

24 **2. Dismissal of Claims Governed by Fed. R. Civ. P. 9(b)**

25 A Rule 12(b)(6) motion to dismiss may also challenge a
26 complaint's compliance with Fed. R. Civ. P. 9(b). See Vess, 317

1 F.3d at 1107. This rule provides that "In alleging fraud or
2 mistake, a party must state with particularity the circumstances
3 constituting fraud or mistake. Malice, intent, knowledge, and
4 other conditions of a person's mind may be alleged generally."
5 These circumstances include the "time, place, and specific content
6 of the false representations as well as the identities of the
7 parties to the misrepresentations." Swartz v. KPMG LLP, 476 F.3d
8 756, 764 (9th Cir. 2007) (quoting Edwards v. Marin Park, Inc., 356
9 F.3d 1058, 1066 (9th Cir. 2004)). "In the context of a fraud suit
10 involving multiple defendants, a plaintiff must, at a minimum,
11 'identif[y] the role of [each] defendant[] in the alleged
12 fraudulent scheme.'" Id. at 765 (quoting Moore v. Kayport Package
13 Express, 885 F.2d 531, 541 (9th Cir. 1989)). Claims subject to
14 Rule 9(b) must also satisfy the ordinary requirements of Rule 8.

15 **III. Analysis**

16 Greenpoint moves for dismissal of plaintiff's claims under the
17 Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA"), the Real
18 Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq.
19 ("RESPA"), for fraud and negligent misrepresentation, and for
20 breach of California's Unfair Competition Law, Cal. Bus. and Prof.
21 Code § 17200.

22 **A. Truth In Lending Act**

23 This is the third time the court has evaluated plaintiff's
24 TILA allegations. Throughout this case, plaintiff's imprecise
25 pleading and inadequate briefing by all parties have interfered
26 with clear adjudication of the claims.

1 The SAC's third claim is for violation of TILA. The
2 allegations contained in this section of the SAC allege that
3 defendants failed to timely disclose "the calculation of interest
4 prior and after its adjustment" and other unspecified information.
5 SAC 46. Elsewhere in the complaint, plaintiff alleges that
6 defendants failed to disclose that her payments were not fixed, and
7 more generally that she did not receive any of the disclosures
8 required by TILA prior to closing. SAC ¶¶ 13, 19.

9 Greenpoint's present challenge to the TILA claim turns on the
10 fact that TILA imposes differing requirements on different types
11 of loans, a distinction the court has not previously addressed in
12 this case. Notably, the court previously observed that the
13 allegation regarding disclosure of the calculation of interest
14 prior and after its adjustment implicates 15 U.S.C. § 1639(a) (2) (B)
15 and that the allegation regarding lending without regard to
16 plaintiff's ability to repay implicates § 1639(h). Plaintiff
17 explicitly cites § 1639 in the SAC, without citing any other TILA
18 obligation. Section 1639 codifies the Home Ownership and Equity
19 Protection Act ("HOEPA"), which amended TILA in 1994 to "combat
20 predatory lending." In re First Alliance Mortg. Co., 471 F.3d 977,
21 984 n.1 (9th Cir. 2006). Greenpoint's motion and plaintiff's
22 opposition thereto raise two issues: whether plaintiff has
23 adequately alleged that the loan is subject to HOEPA, and whether
24 TILA imposes any non-HOEPA disclosure requirements applicable to
25 this loan.

26 ////

1 **1. HOEPA**

2 15 U.S.C. § 1639 only applies to loans that meet the
3 requirements of 15 U.S.C. § 1602(aa). The latter subsection
4 encompasses the following:

5 (1) A mortgage referred to in this subsection
6 means a consumer credit transaction that is
7 secured by the consumer's principal dwelling,
8 other than a residential mortgage transaction,
9 a reverse mortgage transaction, or a
10 transaction under an open end credit plan, if-

11 (A) the annual percentage rate at
12 consummation of the transaction will
13 exceed by more than 10 percentage points
14 the yield on Treasury securities having
15 comparable periods of maturity on the
16 fifteenth day of the month immediately
17 preceding the month in which the
18 application for the extension of credit
19 is received by the creditor; or

20 (B) the total points and fees payable by
21 the consumer at or before closing will
22 exceed the greater of (i) 8 percent of
23 the total loan amount; or (ii) \$400.

24 15 U.S.C. § 1602(aa).¹ Greenpoint argues that the SAC does not
25 allege that the loan at issue satisfies either of (aa)(1)(A) or
26 (B), thereby failing to state a claim for violation of § 1639.
Numerous other district courts have held that a complaint must at
least allege facts suggesting that the loan falls into one of these
categories. See, e.g., Biggins v. Wells Fargo & Co., 266 F.R.D.

24 ¹ 15 U.S.C. § 1602(aa)(2) grants the Board of Governors of the
25 Federal Reserve System the authority to modify the percentage
26 values listed in (aa)(1)(A) and (B), and the Board has used this
authority to reduce the value for (aa)(1)(A) to 8 percentage points
for "first-lien" loans.

1 399, 411 (N.D. Cal. 2009),² Palmer v. GMAC Commer. Mortg., 628 F.
2 Supp. 2d 186, 190 (D.D.C. 2009), Lynch v. RKS Mortg., Inc., 588 F.
3 Supp. 2d 1254, 1260 (E.D. Cal. 2008) (England, J.), Brown v. GMAC
4 Mortg., LLC, 2010 U.S. Dist. LEXIS 50955 (E.D. Cal. May 21, 2010)
5 (Burrell, J.). Plaintiff does not dispute that the complaint lacks
6 such allegations. Instead, plaintiff argues that she is unable to
7 determine the specifics of the loan absent discovery, and that she
8 therefore cannot be required to allege these details in the
9 complaint.

10 A more fundamental problem is that the subsection excludes
11 "residential mortgage transactions." 15 U.S.C. § 1602(aa)(1).
12 This term includes "a transaction in which a . . . deed of trust
13 . . . is created or retained against the consumer's dwelling to
14 finance the acquisition . . . of such dwelling." 15 U.S.C. §
15 1602(w). Plaintiff explicitly alleges that the loan at issue in
16 this suit was taken to finance her purchase of her home. SAC
17 11-12. Accordingly, the SAC does not support the inference that
18 § 1639 imposed obligations applicable to this loan.

19 **2. Other TILA Obligations**

20 In opposing Greenpoint's motion, plaintiff argues that even
21 if § 1639 does not apply, the SAC implicitly states a claim for
22 violation of TILA's other disclosure obligations. Although
23 plaintiff does not cite any particular statutory or regulatory
24

25 ² The court observes that Biggins was included in the Federal
26 Rules Decisions despite the fact that the opinion was marked "not
for citation" by its author.

1 provision, the court assumes that plaintiff refers to the
2 obligations imposed by those portions of "Regulation Z" codified
3 at 12 C.F.R. § 226.18.

4 This regulation requires a number of disclosures, including
5 (for loans such as this one) the amount financed, the finance
6 charge, the annual percentage rate, whether the loan includes a
7 variable annual percentage rate, "the number, amounts, and timing
8 of payments scheduled to repay the obligation," and the total of
9 payments.

10 Because these disclosure obligations exist regardless of
11 whether the loan falls within the scope of 15 U.S.C. § 1602(aa),
12 see 12 C.F.R. § 226.17-18, Greenpoint's argument that the loan
13 falls outside that subsection's scope does not warrant dismissal
14 of the claim for failure to make these disclosures.

15 Admittedly, plaintiff and the court have clouded the issue by
16 previously describing the disclosure requirements as rooted in 15
17 U.S.C. § 1639(a) and (b). Nonetheless, plaintiff has consistently,
18 albeit generally, cited Regulation Z, and the federal pleading
19 requirements do not generally require a complaint to articulate the
20 precise legal theory upon which it rests, so long as some viable
21 legal theory is apparent. McCalden v. California Library Ass'n,
22 955 F.2d 1214, 1223 (9th Cir. 1990), Balistreri, 901 F.2d at 699.

23 The court's prior discussion of equitable tolling as to claims
24 of inadequate disclosures remains applicable regardless of whether
25 the disclosure obligation arises under 15 U.S.C. § 1639 or 12
26 C.F.R. § 226.18. See Order filed May 7, 2010, at 14:5-16.

1 Although Regulation Z provides an alternate source of the
2 obligation to make certain disclosures, plaintiff has identified
3 no provision outside of HOEPA analogous to HOEPA's prohibition on
4 "extending credit to consumers under mortgages . . . based on the
5 consumers' collateral without regard to the consumers' repayment
6 ability," 15 U.S.C. § 1639(h). Because plaintiff's loan falls
7 outside the scope of 15 U.S.C. § 1602(aa), § 1639(h) does not
8 apply, and the court dismisses plaintiff's TILA claim insofar as
9 the claim is predicated on such a prohibition.

10 **B. RESPA**

11 The SAC's fourth claim is for violation of RESPA. Insofar as
12 this claim is alleged against Greenpoint, it alleges that
13 Greenpoint

14 violated the RESPA by . . . accepting fees,
15 kickbacks or other things of value from the
16 other Defendants pursuant to an agreement or
17 understanding that business incident to or a
18 part of a real estate settlement service
19 involving federally related mortgage loans
20 would be referred to other Defendants, in
21 violation of 12 U.S.C. § 2607(a) and 24 C.F.R.
22 § 3500.14(b) [and by] [g]iving or accepting a
 portion, split, or percentage of charges made
 or received for the rendering of real estate
 settlement services in connection with a
 transaction involving a federally related
 mortgage loan other than for services actually
 performed, in violation of 12 U.S.C. § 2607(b)
 and 24 C.F.R. § 3500.14(c).

23 SAC ¶ 53. The court previously rejected defendants' (including
24 Greenpoint's) contention that this claim was untimely and that it
25 failed for failure to allege actual damages. Order filed May 7,
26 2010 at 19-21.

1 Greenpoint now argues that this claim fails to satisfy Fed.
2 R. Civ. P. 8 because it is a "threadbare recital[] of [the] cause
3 of action's elements, supported by mere conclusory statements."
4 Iqbal, 129 S.Ct. at 1940 (citing Twombly, 550 U.S. at 555). The SAC
5 admittedly essentially parrots the language of 12 U.S.C. § 2607(a)
6 and (b). Greenpoint argues that plaintiff must go beyond the
7 statutory language, and that in this context, plaintiff must allege
8 "what 'fees, kickbacks, or things of value' defendants allegedly
9 provided to one another." Greenpoint's Mem. at 4-5.
10 Mere use of the statute's language does not render a complaint
11 inadequate. In Twombly and Iqbal, the statutes at issue were cast
12 in legal terms, prohibiting "conspiracies" and "discrimination."
13 Here, plaintiff has used the statutory language to allege that in
14 one form or another, something of value changed hands in connection
15 with, and implicitly at the time of, the initial loan transaction.
16 This is a factual, rather than a legal, allegation, thereby falling
17 outside the scope of the Court's recent reiteration of the
18 inadequacy of conclusory legal allegations. The alleged facts
19 provide sufficient detail to enable Greenpoint to answer. It
20 appears that if these allegations are proven, plaintiff will have
21 demonstrated a right to relief. Fed. R. Civ. P. 8, as interpreted
22 by Twombly and Iqbal, requires no more.

23 **C. Misrepresentation**

24 The SAC's sixth claim alleges that Greenpoint fraudulently
25 failed to verify plaintiff's income, caused the appraisal of the
26 home to be inflated, misrepresented that the loan was the most

1 advantageous loan for which plaintiff qualified, misrepresented the
2 interest rate of the loan, misrepresented plaintiff's ability to
3 afford the loan, and various other terms of the loan. SAC ¶ 60.

4 The SAC's allegations are substantially similar to those
5 presented in the FAC. In evaluating whether the prior allegations
6 satisfied Fed. R. Civ. P. 9(b), the court explained:

7 Plaintiff has largely specified the content of
8 the alleged misrepresentations, and has
9 identified these representations as having
10 been made at the time and place the loan was
11 negotiated (although this place is not further
12 specified). Nonetheless, plaintiff brings
13 these claims against three defendants, yet
14 plaintiff fails to specify "the role of each
15 defendant in each scheme." Lancaster Cmty.
16 Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d
17 397, 405 (9th Cir. 1991); see also Swartz v.
18 KPMG LLP, 476 F.3d 756, 765 (9th Cir. 2007).

19 Order filed May 7, 2010 at 28. Although the court dismissed the
20 claim because of the failure to specify the defendants' roles, the
21 court did not hold that the allegations otherwise satisfied Fed.
22 R. Civ. P. 9(b).

23 The only difference between the SAC's allegations and those
24 found inadequate in the FAC is that the SAC alleges that Greenpoint
25 made each misrepresentation. Greenpoint argues that this addition
26 is insufficient to rectify the previously-identified defect, and
relatedly that the allegations fail to provide the other details
required by Rule 9.

On the first issue, Greenpoint argues that a plaintiff
asserting a fraud claim against a corporation "must 'allege the
names of the persons who made the allegedly fraudulent

1 representations, their authority to speak, to whom they spoke, what
2 they said or wrote, and when it was said or written.'" Lazar v.
3 Superior Court, 12 Cal. 4th 631, 645 (1996) (quoting Tarmann v.
4 State Farm Mut. Auto. Ins. Co., 2 Cal. App. 4th 153, 157 (1991)).
5 This is a rule of California pleading, which is not directly
6 applicable in federal courts. Nonetheless, numerous district
7 courts have followed this rule, at least insofar as to require
8 identification of a particular speaker. See, e.g., Saldate v.
9 Wilshire Credit Corp., 686 F. Supp. 2d 1051, 1065 (E.D. Cal. 2010)
10 (O'Neill, J.), Keen v. Am. Home Mortg. Servicing, Inc., 664 F.
11 Supp. 2d 1086, 1099 (E.D. Cal. 2009) (Damrell, J.), Edejer v. DHI
12 Mortg. Co., No. C 09-1302, 2009 U.S. Dist. LEXIS 52900, *36 (N.D.
13 Cal. June 12, 2009). Here, although plaintiff has alleged that
14 "Greenpoint" made various misrepresentations, plaintiff has not
15 identified any particular speaker or particular communication.

16 The SAC's allegations fail to provide the specificity required
17 by Rule 9. The purpose of this rule is "to give defendants notice
18 of the particular misconduct which is alleged to constitute the
19 fraud charged so that they can defend against the charge and not
20 just deny that they have done anything wrong." Semegen v. Weidner,
21 780 F.2d 727, 731 (9th Cir. 1985). "A pleading is sufficient under
22 Rule 9(b) if it identifies the circumstances constituting fraud so
23 that the defendant can prepare an adequate answer from the
24 allegations." Neubronner v. Milken, 6 F.3d 666, 671-72 (9th Cir.
25 1993). For many of the alleged misrepresentations, the SAC falls
26 short of this mark. For example, plaintiff alleges that Greenpoint

1 misrepresented that the plaintiff's loan "was the most advantageous
2 loan for which Plaintiff qualified." SAC ¶ 60(a). This allegation
3 fails to allege "the who, what, when, where, and how" of the fraud,
4 elements that the Ninth Circuit has held are required. Vess, 317
5 F.3d at 1107. Merely alleging that these representations were made
6 in connection with negotiation of the loan--a process alleged to
7 have taken months--is insufficient. Rule 9(b) requires that the
8 complaint include specificity to enable Greenpoint to prepare a
9 response more detailed than to merely assert that no-one at
10 Greenpoint ever made such a false representation.

11 More generally, plaintiff attempts to allege fraud by
12 identifying mistaken beliefs that Greenpoint caused or permitted
13 plaintiff to hold. SAC ¶ 60. To allege fraud, plaintiff must
14 allege specific communications, rather than mistaken beliefs
15 resulting from unspecified communications.

16 For only one alleged representation does plaintiff approach
17 an allegation of the specific when, where, and how of the
18 misrepresentation. Plaintiff alleges that her "mortgage application"
19 represented that she would receive a 2 percent interest rate for
20 360 months. Plaintiff does not allege who developed this mortgage
21 application, and thus, to whom this representation may be
22 attributed. Accordingly, even as to this allegation, plaintiff
23 must specify the "who" of this communication, at least by
24 identifying where plaintiff received the application from and where
25 she submitted it to.

26 ////

1 Accordingly, the court again dismisses plaintiff's fraud
2 allegations as to defendant Greenpoint. Although these allegations
3 were previously dismissed, dismissal was on slightly different
4 grounds, and as such, plaintiff has not conclusively demonstrated
5 an inability to cure these defects. The court therefore dismisses
6 the fraud and negligent misrepresentations claims against
7 Greenpoint without prejudice.

8 **D. Unlawful Competition**

9 The SAC's ninth cause of action is for unfair competition.
10 In the order filed May 7, 2007, the court held that this claim
11 could proceed insofar as it was predicated on allegations of
12 unlawful conduct, to wit, the allegations found to state claims
13 under TILA and RESPA. In arguing that this claim should be
14 dismissed, Greenpoint cites cases which held that when a complaint
15 failed to state a claim under TILA or RESPA directly, the complaint
16 could not use a violation of those statutes as a predicate for a
17 UCL claim. Because plaintiff here has stated TILA and RESPA
18 claims, the cited cases are inapplicable.

19 **IV. Conclusion**

20 For the reasons stated above, Greenpoint's motion to dismiss
21 (ECF. No. 40) is GRANTED IN PART.

- 22 1. Plaintiff's claim under TILA is DISMISSED WITH PREJUDICE
23 insofar as this claim seeks to enforce 15 U.S.C. § 1639.
24 The TILA claim may proceed insofar as it is predicated
25 on failure to make disclosures required by Regulation Z
26 and to the extent consistent with the court's prior

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orders.

2. Plaintiff's claims for fraud and negligent misrepresentation by Greenpoint are DISMISSED WITHOUT PREJUDICE.

3. The court DENIES Greenpoint's motion as to plaintiff's claims under RESPA and Cal. Bus. & Prof. Code § 17200.

IT IS SO ORDERED.

DATED: December 20, 2010.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT