



1 Systems, Inc. (“MERS”) (collectively, “Defendants”) allegedly violated the Truth in Lending Act  
2 (“TILA”), 15 U.S.C. § 1601 *et seq.*, and the Real Estate and Settlement Procedures Act  
3 (“RESPA”), 12 U.S.C. § 2601 *et seq.* Plaintiff Srinivasan Ramanujam (“Plaintiff”) resides in  
4 Santa Cruz, California. Complaint ¶ 2. On July 3, 2007, Plaintiff refinanced the subject property  
5 with a loan from Reunion. Complaint ¶ 8. Plaintiff alleges that the documentation of the  
6 refinance transaction failed to disclose accurately the annual percentage rate, amount financed,  
7 and finance charge within the ranges of deviation permitted by TILA. Complaint ¶ 20. Plaintiff  
8 also alleges that he was not provided two completed copies of the Notice of Right to Cancel  
9 required by TILA. Complaint ¶ 10.

10 Plaintiff alleges that he has provided a Notice of Rescission to both Reunion and Citi and  
11 that he is ready, willing, and able to tender back to the Defendants the amount due to them.  
12 Complaint ¶¶ 11, 14. Plaintiff also alleges that Citi failed to respond to a qualified written  
13 request (“QWR”) as required by RESPA. Complaint ¶ 35.

14 Plaintiff filed this action on July 6, 2009, seeking (1) cancellation of the written  
15 instruments arising from the transaction; (2) declaratory relief; (3) rescission; (4) quiet title; and  
16 (5) remedies for a violation of RESPA.

17 Defendants collectively move to dismiss.

## 18 II. MOTION TO DISMISS

### 19 A. Legal Standard

20 “Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a  
21 cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendondo v.*  
22 *Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). For purposes of a motion to  
23 dismiss, the plaintiff’s allegations are taken as true, and the court must construe the complaint in  
24 the light most favorable to the plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). “To  
25 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true,  
26 to ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the  
27 plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
28 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)

1 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). Thus, a court need not  
2 accept as true conclusory allegations, unreasonable inferences, legal characterizations, or  
3 unwarranted deductions of fact contained in the complaint. *Clegg v. Cult Awareness Network*,  
4 18 F.3d 752, 754-755 (9th Cir. 1994).

5 Leave to amend must be granted unless it is clear that the complaint's deficiencies cannot  
6 be cured by amendment. *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). When  
7 amendment would be futile, however, dismissal may be ordered with prejudice. *Dumas v. Kipp*,  
8 90 F.3d 386, 393 (9th Cir. 1996).

### 9 **B. Documents Considered By The Court**

10 According to the complaint, Plaintiff executed a Deed of Trust on or about July 3, 2007.  
11 Complaint ¶¶ 8, 16. The Deed of Trust is not attached to the complaint, but Defendants have  
12 provided a copy. Def.'s Mot. Ex. A. The Court properly may consider this document. *See*  
13 *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v.*  
14 *County of Santa Clara*, 307 F.3d 1119, 1127 (9th Cir. 2002) (holding that "documents whose  
15 contents are alleged in a complaint and whose authenticity no party questions, but which are not  
16 physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to  
17 dismiss"); and *In re Stac Elcs. Sec. Litig.*, 89 F. 3d 1399, 1405 n.4 (9th Cir. 1996) (noting that  
18 complete copies of documents whose contents are alleged in the complaint may be considered in  
19 connection with a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6)).

20 Defendants also provide a copy of the Adjustable Rate Rider ("Rider") executed by the  
21 Plaintiff in connection with the refinancing transaction. Def.'s Mot. Ex. A. This document is not  
22 referred to by name in the complaint, but Plaintiff does refer to "loan documentation" that  
23 contains "inaccurate disclosures of a material nature." Complaint ¶ 9. Because the Rider clearly  
24 is such "loan documentation", the Court also may consider the Rider. *See In re Stac*, 89 F. 3d at  
25 1405.

26 Defendants provide a copy of a Notice of Right to Cancel executed by Plaintiff. Def.'s  
27 Mot. Ex. B. Plaintiff attaches to his opposition papers a copy of an unexecuted Notice of Right  
28 to Cancel. Opposition Ex. 1. However, the complaint does not allege the contents of either

1 document, but states merely that two completed copies of the Notice of Right to Cancel were not  
2 provided at a particular time. Complaint ¶ 10. Because the complaint does not allege the  
3 contents of any Notice of Right to Cancel, the Court may not consider either document on this  
4 motion to dismiss.

5 Defendants provide a copy of a letter from Plaintiff's counsel to Citi, dated April 15,  
6 2009. Def.'s Mot. Ex. C. The complaint characterizes the contents of this letter as a QWR.  
7 Complaint ¶¶ 12, 34. Accordingly, the Court may consider the complete document. *Id.*

8 Finally, Defendants provide a copy of a letter from Citi to Plaintiff, dated April 29, 2009.  
9 Def.'s Mot. Ex. D. The complaint alleges in relevant part that: "Citi failed to respond to the  
10 qualified written request in compliance with 12 U.S.C. § 2605(e) . . .". Complaint ¶ 35.

11 Defendants argue that this paragraph alleges the contents of their Exhibit D, interpreting it as a  
12 claim that Citi's response did not comply with statutory requirements. However, Exhibit D is not  
13 a complete copy of a document whose contents were alleged in the complaint: while the exhibit  
14 refers to an enclosure containing "a copy of the loan history as requested", the enclosure is not  
15 provided. The Court declines to consider only part of a referenced document.

### 16 **C. Cancellation of written documents and rescission**

17 Plaintiff's first and third claims of relief will be discussed together. Plaintiff's third claim  
18 seeks TILA-based rescission of the subject loan. The first claim seeks cancellation of the written  
19 instruments related to the loan.

20 TILA is a consumer protection statute that seeks to "avoid the uninformed use of credit."  
21 15 U.S.C. § 1601(a). The statute is designed "to protect consumers' choice through full  
22 disclosure and to guard against the divergent and at times fraudulent practices stemming from  
23 uninformed use of credit." *King v. California*, 784 F.2d 910, 915 (9th Cir. 1986); *see also Semar*  
24 *v. Platte Valley Fed. Sav. & Loan Ass'n*, 791 F.2d 699, 705 (9th Cir. 1986) ("Congress designed  
25 [TILA] to apply to all consumers, who are inherently at a disadvantage in loan and credit  
26 transactions."). Because the statute is remedial in nature, it is to be applied broadly in  
27 favor of the consumer. *Jackson v. Grant*, 890 F.2d 118, 120 (9th Cir. 1989); *see also Plascencia*  
28 *v. Lending 1st Mortgage*, No. C 07-4485 CW, 2008 WL 1902698, \*3 (N.D. Cal. Apr. 28, 2008)

1 ("TILA has been liberally construed in the Ninth Circuit.") (internal quotations and citation  
2 omitted). Thus, even "[t]echnical or minor violations" of TILA or its implementing regulations  
3 may impose liability on the creditor. *Semar*, 791 F.2d at 704 (noting also that "[t]o insure that  
4 the consumer is protected . . . [TILA and its implementing regulations must] be absolutely  
5 complied with and strictly enforced").

6 Defendants contend that Plaintiff's TILA rescission claim must be dismissed because the  
7 request for rescission was made outside the three-day period permitted by the statute. The right  
8 of a borrower to rescind the loan transaction expires three business days after the date of the  
9 transaction. 15 U.S.C § 1635(a). Defendants contend that because the loan transaction closed in  
10 July 2007, Plaintiff's right to rescind has expired.

11 Plaintiff contends that he is entitled to an extension because Defendants failed to deliver  
12 material disclosures and two completed copies of the Notice of Right to Cancel. Complaint ¶¶  
13 20-21. It is undisputed that the right to rescind may be extended, "[i]f the required notice or  
14 material disclosures are not delivered." 12 C.F.R. § 226.23(a)(3). However, Plaintiff provides  
15 only conclusory statements that Defendants' material disclosures were inaccurate or not  
16 delivered. Legal conclusions without sufficient supporting factual allegations are insufficient to  
17 state a claim. *Clegg*, 18 F.3d at 754-755. To the extent that the extension of the right to rescind  
18 is premised on inaccurate or undelivered material disclosures, the complaint presently lacks a  
19 sufficient factual basis to support the claim.

20 Plaintiff also alleges that he did not receive two completed copies of the Notice of Right  
21 to Cancel. Complaint ¶¶ 10, 20, 26. This allegation, if proved true, would extend the three-day  
22 period to three years. *Garcia v. Wachovia Mortg. Corp.*, \_\_ F. Supp. 2d \_\_, 2009 WL 3837621,  
23 \*3 (C.D. Cal. 2009), citing *Semar v. Platte Valley Federal Sav. & Loan Ass'n*, 791 F.2d 699, 701  
24 (9th Cir. 1986); 15 U.S.C. § 1635(a); 12 C.F.R. § 226.23(b)(1)(v) (mandating a creditor to  
25 "deliver two copies of the notice of the right to rescind to each consumer entitled to rescind...the  
26 notice shall clearly disclose...the date the rescission period expires."). Defendants claim that in  
27 fact Plaintiff did receive two completed copies of the Notice of Right to Cancel. As discussed  
28 above, Defendants' evidence may not be considered on this 12(b)(6) motion because the contents

1 were not alleged in the complaint. Defendants may raise the issue on a subsequent dispositive  
2 motion.

3 **D. Declaratory relief**

4 Plaintiff requests a declaration of the rights and obligations of the parties with respect to  
5 the subject loan. Specifically, Plaintiff seeks a declaration that the loan was rescinded and a  
6 determination of the amount of money he owes to Defendants. Complaint ¶ 23. Defendants  
7 argue that this claim is duplicative of the relief sought for rescission of the loan.

8 In deciding whether declaratory relief is appropriate, the court first determines whether  
9 there is an actual case or controversy within its jurisdiction. *Principal Life Ins. Co. v. Robinson*,  
10 394 F.3d 665, 669 (9th Cir. 2005). If an actual case or controversy does exist, the court must  
11 decide whether to exercise its jurisdiction over the controversy by examining the factors  
12 announced in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942). *Id.* The factors state that “1) the  
13 district court should avoid needless determination of state law issues; 2) it should discourage  
14 litigants from filing declaratory actions as a means of forum shopping; and 3) it should avoid  
15 duplicative litigation.” *Principal Life*, 394 F.3d at 672. If the court does not exercise  
16 jurisdiction, it must explain the basis of its decision on the record. *Id.*

17 Here, there is a controversy surrounding the validity of Plaintiff’s rescission of the loan.  
18 There are no issues of state law: the rescission claim is based on TILA. Relatedly, the danger of  
19 forum-shopping is low, as federal courts are appropriate for determining issues of federal law.  
20 Defendants are correct that the declaratory relief sought effectively will be identical to the relief  
21 sought with respect to Plaintiff’s other claims. However, the claim for declaratory relief  
22 essentially seeks a particular remedy for the alleged defects in the subject transaction.

23 **E. Quiet Title**

24 Defendants argue that Plaintiff’s claim for quiet title is defective because Plaintiff has not  
25 pled ability to tender and has failed to plead adequately regarding the various Defendants’ rights  
26 or interests in the property. Plaintiff has alleged that he “is ready, willing and able to tender back  
27 to defendants whatever amount due them under the Truth in Lending Act, once such amount is  
28 determined. Presently, that amount is not known.” Complaint ¶ 14. Defendants contend that

1 this is insufficient to meet the requirements of “a meaningful tender for quiet title”. Def.’s Reply  
2 at 5.

3 The purpose of a quiet title action is to establish one’s title against adverse claims to real  
4 property. A basic requirement of an action to quiet title is an allegation that plaintiffs ‘are the  
5 rightful owners of the property, i.e., that they have satisfied their obligations under the Deed of  
6 Trust.’” *Santos v. Countrywide Home Loans*, No. Civ. 2:09-02642 WBS DAD, 2009 WL  
7 3756337, at \*4 (E.D. Cal. Nov. 6, 2009), quoting *Kelley v. Mortgage Elec. Reg. Sys., Inc.*, 642  
8 F.Supp.2d 1048, 1057 (N.D. Cal. 2009). “[A] mortgagor cannot quiet his title against the  
9 mortgagee without paying the debt secured.” *Watson v. MTC Financial, Inc.*, No.  
10 2:09-CV-01012 JAM-KJM, 2009 WL 2151782, at \*4 (E.D. Cal. Jul. 17, 2009) (quoting  
11 *Shimpones v. Stickney*, 219 Cal. 637, 649 (1934)).

12 Here, Plaintiff claims that he can satisfy his obligation under the Truth in Lending Act.  
13 This is sufficient for pleading purposes. However, Plaintiff has failed to sufficiently allege the  
14 nature of the various Defendants’ rights or interests in the property. Absent such allegations, the  
15 complaint fails to state a claim for quiet title. *See* Cal. Code Civ. Proc. § 761.020(c).

#### 16 **F. RESPA violations**

17 Citi argues that Plaintiff’s RESPA claim fails because Plaintiff never sent a qualified  
18 written request (“QWR”) to Citi and, even if he did, Citi responded adequately to the request.

19 12 U.S.C. § 2605(e) governs QWR’s. A request must meet certain criteria in order to be  
20 considered as a QWR. A QWR requests information relating to the servicing of a loan. 12  
21 U.S.C. § 2605(e)(1)(A). A QWR is a written request other than notice on a payment coupon or  
22 other payment medium supplied by the servicer. 12 U.S.C. § 2605(e)(1)(B). The request must  
23 provide sufficient information for the servicer to identify the name and account of the borrower.  
24 12 U.S.C. § 2605(e)(1)(B)(i). Finally, the request must either include a statement of the reasons  
25 for the belief of the borrower, to the extent applicable, that the account is in error or provide  
26 sufficient detail to the servicer regarding other information sought by the borrower. 12 U.S.C. §  
27 2605(e)(1)(B)(ii).

28 As discussed above, the Court may consider Def.’s Mot. Ex. C because the contents of

1 the letter are alleged in the complaint. Exhibit C does request information relating to the  
2 servicing of the loan, namely payment histories and how statement amounts were calculated.  
3 The request is made in letter rather than on a payment medium supplied by the servicer. The  
4 request includes the Plaintiff's account number, and it indicates that Plaintiff believes there was  
5 an error in the March 11, 2009 statement. While it does not include a statement of the reasons,  
6 the request does provide sufficient detail regarding "other information sought". Specifically, the  
7 letter requests information regarding the current mortgage holder, the complete payment history,  
8 an explanation of how the March 11, 2009 statement was calculated, and specific information  
9 about the escrow account. Accordingly, for purposes of the instant motion, the Court concludes  
10 that Exhibit C is a QWR.

11 Citi contends that it responded appropriately. After receipt of a QWR, the servicer must  
12 acknowledge receipt within 20 days. 12 U.S.C. § 2605(e)(1)(A). The servicer must conduct the  
13 appropriate investigations, make any appropriate corrections, and provide written explanations  
14 regarding the QWR within 60 days. 12 U.S.C. § 2605(e)(2)(B) and (C). The complaint alleges  
15 that Citi failed to conduct an investigation and failed to provide the requested information. Even  
16 if the Court were to consider Defendants' Exhibit D, that document does not show that Citi  
17 provided the requested information or conducted the appropriate investigation.

18 **G. Dismissal as to MERS**

19 Finally, Defendants argue that Claims One through Four should be dismissed entirely  
20 with respect to MERS because Plaintiff has not alleged that MERS has committed any wrong  
21 doing or that MERS has any beneficial interest in the loan. The complaint mentions MERS only  
22 in one paragraph, indicating that MERS is the beneficiary under the Deed of Trust. Complaint ¶  
23 5.

24 Plaintiff's allegation with respect to MERS's interest in the loan or property is too  
25 conclusory to support the claims as to MERS.



1 **III. ORDER**

- 2 (1) The motion to dismiss is GRANTED IN PART AND DENIED IN PART, with  
3 leave to amend consistent with the foregoing discussion;  
4 (2) Any amended pleading shall be filed and served within thirty (30) days of the date  
5 this order is filed.  
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11 DATED: 2/19/10

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13 JEREMY FOGEL  
14 United States District Judge  
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