

1 conference is not needed at this time in light of the likely remand of this case to state court. Civ. L.
2 R. 7-1(b). Therefore, the hearing and case management conference set for November 23, 2010 are
3 hereby VACATED.

4 Because Plaintiff has failed to state a claim under either HOEPA or TILA, the Court hereby
5 DISMISSES those claims WITH LEAVE TO AMEND, for the reasons set forth below. If Plaintiff
6 cannot remedy the deficiencies in these federal claims, the Court will decline to assert jurisdiction
7 over the remainder of the state-law claims, and will remand this case to state court.

8 I. BACKGROUND

9 Plaintiff alleges that in May, 2006, he obtained a mortgage loan¹ to refinance a previous
10 loan on his residence at 681 Alexandra Court, San Jose, California, 95125 (“the Property”). *See*
11 *Compl.* at ¶ 11; Defendants’ Request for Judicial Notice (RJN) (Dkt. No. 8) at Ex. A (“Loan”).²
12 The Loan was secured by a Deed of Trust on the Property. RJN, Ex. B. The Loan provided
13 \$529,000.00 in financing to refinance Plaintiff’s home. RJN, Ex. A at 1. In his Complaint,
14 Plaintiff alleges that Defendants rushed and pressured him into signing the loan documentation
15 quickly, without any explanation of the terms of the loan and without providing him with a copy of
16 the loan to read or to obtain legal advice about. *Compl.* ¶ 12. Plaintiff alleges that Defendant
17 Countrywide employed a “Real Estate Sales broker” who was paid a yield spread premium fee to
18 “encourage and steer Plaintiff into a higher rate loan.” *Compl.* ¶ 11, 14. However, the broker is
19 not otherwise identified in the Complaint and is not named as a defendant. Plaintiff also contends

20 ¹ Defendants argue that because Plaintiff did not sign the Loan, he has no standing to bring any
21 related claims. However, Plaintiff is listed as “Borrower” in the Deed of Trust, and signed the
22 Deed of Trust as “Borrower.” Thus, it is not clear that Plaintiff lacks standing to bring claims
23 relating to the refinance and foreclosure on the Property. Given that the Court may be remanding
24 this action to state court, the Court declines to determine this issue now. The Court notes that the
25 Plaintiff may amend the complaint to join Marbiel Castillo (signatory to the Loan) as a plaintiff.

26 ² Defendants request that the Court take judicial notice of five documents: the Loan, Ex. A; the
27 Deed of Trust on the loan, Ex. B; the TILA Disclosure Statement, Ex. C; the Uniform Residential
28 Loan Application, Ex. D; and the Notice of Default and Election to Sell regarding the Loan, Ex. E.
The Deed of Trust and the Notice of Default were recorded as official records by the Santa Clara
County Recorder’s Office. Accordingly, the Court will take judicial notice of these documents
pursuant to Fed. R. Evid. 201(b). The Loan is referenced in and forms the basis of Plaintiff’s
complaint, and Plaintiff does not oppose Defendants’ request. Accordingly, the Court will take
judicial notice of it. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (overruled in part on other
grounds, *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002)). The other documents,
however, were not recorded, and are not referenced in the Complaint; therefore, the Court declines
to judicially notice these documents.

1 that “at no time prior to and at time of executing the Subject Loan documentation did defendant
2 provide Plaintiff with any explanation or clarification of the Security Documents and/or other
3 required disclosures for him to read and review, despite Plaintiff’s lack of English proficiency.”
4 Compl. ¶ 13.

5 Shortly after removing, Defendants filed a Motion to Dismiss all of Plaintiff’s claims on
6 August 18, 2010. *See* Motion (Dkt. No. 7). The matter was set for hearing on November 23, 2010.
7 Accordingly, Plaintiff’s opposition to the Motion (or a statement of nonopposition) was due on or
8 before November 2, 2010, 21 days before the hearing date. Civ. L.R. 7-3(a), (b). Plaintiff filed
9 neither an opposition to the Motion, nor a statement of nonopposition. On November 9, 2010,
10 Defendants filed a notice citing Plaintiff’s failure, but Plaintiff has still not responded to the
11 Motion. Dkt. No. 16.

12 II. LEGAL STANDARD

13 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if
14 it fails to state a claim upon which relief can be granted. To survive a motion to dismiss, the
15 plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
16 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “facial plausibility” standard requires the
17 plaintiff to allege facts that add up to “more than a sheer possibility that a defendant has acted
18 unlawfully.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). In deciding whether the plaintiff has
19 stated a claim, the Court must assume the plaintiff’s allegations are true and draw all reasonable
20 inferences in the plaintiff’s favor. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).
21 However, the court is not required to accept as true “allegations that are merely conclusory,
22 unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536
23 F.3d 1049, 1055 (9th Cir. 2008). Leave to amend must be granted unless it is clear that the
24 complaint’s deficiencies cannot be cured by amendment. *Lucas v. Dep’t. of Corrections*, 66 F.3d
25 245, 248 (9th Cir.1995).

26 III. ANALYSIS

27 Under his first cause of action, titled “Predatory Lending Practices,” Plaintiff attempts to
28 allege violations of HOEPA, TILA, and TILA’s implementing statute Regulation Z, in addition to

1 violation of several California Code sections. Compl. ¶ 26. In support of these claims, Plaintiff
2 alleges that “defendant COUNTRYWIDE failed to verify Plaintiff’s ability to repay the Subject
3 Loan . . . and said Defendants manufactured facts and figures that would show the Plaintiff had the
4 ability to repay the Subject Loan. Further said Defendant misled and deceived Plaintiff as to the
5 terms and conditions of the said Loan, by failing to fully disclose the terms and conditions of said
6 Loan which Plaintiff should have known in order to make an informed decision about his ability to
7 make the payment required . . . Plaintiff alleges on information and belief that said defendants
8 violated 15 U.S.C. § 1639(h) in making loans by lowering their underwriting standards in order to
9 write loans to minority borrowers that were otherwise either financially unacceptable or unduly
10 burdensome and would clearly subject Plaintiff . . . to a high risk of losing their Property . . . by
11 reason of Foreclosure.” Compl. ¶¶ 27-28. On the basis of these allegations, Plaintiff claims both a
12 right to rescind the Loan and a right to money damages.

13 **i. Plaintiff’s TILA and HOEPA Damages Claims**

14 First, Plaintiff’s attempt to state a violation of TILA and HOEPA is simply too vague to
15 successfully state a claim. Plaintiff fails to identify any specific disclosure requirement of either
16 statute that was allegedly violated by Defendants, other than 15 U.S.C. 1639(h). In addition,
17 Plaintiff’s conclusory allegations that Defendant failed to “fully disclose the terms and conditions
18 of said Loan which Plaintiff should have known in order to make an informed decision,” that
19 Defendants “failed to verify Plaintiff’s ability to repay the Subject Loan” or “manufactured facts
20 and figures” are not sufficiently precise to put Defendants on notice as to how Plaintiff claims
21 TILA or HOEPA were violated, or which Defendant was responsible for the violation. *Twombly*,
22 550 U.S. at 535-55; *Ashcroft*, 129 S.Ct. 1937, 1949 (2009).

23 Moreover, Plaintiff’s claims appear to be time-barred. Money damages claims under both
24 TILA and HOEPA are limited by a one-year statute of limitations. “A claim under HOEPA is
25 subject to TILA’s one year statute of limitations.” *Periguerra v. Meridas Capital, Inc.*, 2010 WL
26 395932, at *6 (N.D. Cal. Feb. 1, 2010), citing *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 304-305
27 (3rd Cir.2005) (“An affirmative action under HOEPA must be brought within one year of the
28 violation”). When the alleged violations are based on a failure to disclose information during the

1 loan origination, the limitations period begins running the date the loan issues. *See* 15 U.S.C. §
2 1640(e). Plaintiff alleges that the loan transaction closed in May, 2006, and the Loan itself is dated
3 May 24, 2006. RJN, Ex. A. Thus, the limitations period expired a year later, on May 24, 2007.
4 Plaintiff did not file his Complaint until July 9, 2010, over three years after the limitations period
5 expired.

6 Equitable tolling of TILA and HOEPA claims can extend the one-year limitations period,
7 but such tolling is only available if “despite all due diligence, a plaintiff is unable to obtain vital
8 information bearing on the existence of his claim.” *Santa Maria v. Pacific Bell*, 202 F.3d 1170,
9 1178 (9th Cir. 2000). Because Plaintiff’s TILA and HOEPA claims are based on allegations that
10 Defendants failed to make required disclosures, the information underlying Plaintiff’s claims was
11 likely in his possession when the documents were signed. *See Meyer v. Ameriquest Mortg. Co.*,
12 342 F.3d 899, 902 (9th Cir. 2003) (affirming summary judgment finding no equitable tolling of
13 TILA claims, when claims were based on a failure to disclose information, and when the failure
14 was apparent from the face of the loan papers, because plaintiffs failed to allege any reason the
15 claims were not discoverable). Plaintiff has not alleged any reason to extend the limitations period
16 for his claim, and has not opposed Defendants’ Motion. Accordingly, the Court finds that
17 Plaintiff’s Complaint is impermissibly vague in asserting TILA and HOEPA damages claims, and
18 that Plaintiff has pled no facts to establish that the statute of limitations on these claims should be
19 tolled. Despite the fact that Plaintiff did not oppose this Motion, Plaintiff is representing himself,
20 and the Court cannot dismiss his claims with prejudice unless it is clear that leave to amend would
21 be futile. *King v. California*, 784 F.2d 910, 912, 915 (9th Cir. 1986) (granting leave to amend to
22 allege grounds for equitable tolling of TILA damages claim asserted by pro se plaintiff who failed
23 to oppose motion to dismiss). Plaintiff’s TILA and HOEPA damages claims are therefore
24 DISMISSED with LEAVE TO AMEND. Plaintiff shall file an amended complaint addressing
25 these issues within **30 days of the date of this Order.**

26 **ii. TILA Rescission Claim**

27 Claims for rescission under TILA are limited by a one-year statute of limitations, and a
28 three-year statute of repose. 15 U.S.C. § 1635(f); *See King*, 784 F.2d at 913. The statute of repose

1 runs from the earlier of the date the loan is financed or the date the property is sold, and cannot be
2 tolled. *Id.* Plaintiff's claim for rescission under TILA was brought more than four years after the
3 loan was signed. His claim is therefore barred. Because this claim is time-barred, leave to amend
4 it would be futile. Accordingly, the Court DISMISSES Plaintiff's claim for TILA rescission
5 WITH PREJUDICE.

6 **IV. CONCLUSION**

7 The Court DISMISSES Plaintiff's TILA and HOEPA damages claims with LEAVE TO
8 AMEND, and DISMISSES Plaintiff's claim for TILA rescission WITH PREJUDICE. Plaintiff
9 shall file an amended complaint addressing these issues within **30 days of the date of this Order.**
10 The hearing and case management conference previously set for November 23, 2010 are hereby
11 VACATED.

12 The vast majority of Plaintiff's claims assert violations of state law, rather than federal law.
13 The Court finds that unless Plaintiff can amend his complaint to state a viable claim for violation of
14 federal law, the Court is not inclined to exercise supplemental jurisdiction over the remaining state
15 law claims. *See Carlsbad Tech., Inc. v. HIF BIO, Inc.*, 129 S. Ct. 1862, 1866-67 (2009); 28 U.S.C.
16 § 1367(c) ("The district courts may decline to exercise supplemental jurisdiction over a claim
17 under subsection (a) if . . . the district court has dismissed all claims over which it has original
18 jurisdiction") Accordingly, if the Plaintiff fails to amend his complaint to state a federal
19 claim, the Court will REMAND this matter to the Superior Court for Santa Clara County.

20 **IT IS SO ORDERED.**

21 Dated: November 12, 2010

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23 LUCY H. KOH
24 United States District Judge
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