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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES WALKER,  
  
vs.  
EQUITY 1 LENDERS, et al.,  
  
Plaintiff,  
  
Defendants.

CASE NO. 09cv325 WQH (AJB)

**ORDER**

HAYES, Judge:

The matters before the Court are Defendant Pacific Mortgage Consultants’ Motion to Dismiss First Amended Complaint (Doc. # 25), Defendant Aurora Loan Services’ Motion to Dismiss First Amended Complaint (Doc. # 26), and Aurora Loan Services’ Motion to Strike (Doc. # 27).

**BACKGROUND**

This action relates to Plaintiff’s mortgage and the subsequent foreclosure sale of his home. Plaintiff initiated this action by filing his complaint in the Superior Court of the County of San Diego on January 15, 2009. (Doc. # 1, Ex. 1). On February 19, 2009, Defendant Aurora Loan Services (“Aurora”) filed a Notice of Removal removing the action to this Court. (Doc. # 1). On May 14, 2009, the Court granted Aurora’s Motion to Dismiss. (Doc. # 10). On August 13, 2009, Plaintiff filed his First Amended Complaint (“FAC”). (Doc. # 21). On September 3, 2009, Defendant Pacific Mortgage Company (“Pacific”) filed its Motion to

1 Dismiss. (Doc. # 25). On September 15, 2009, Aurora filed its Motion to Dismiss and its  
2 Motion to Strike. (Docs. # 26, 27). Plaintiff filed an opposition to Pacific’s Motion to Dismiss  
3 (Doc. # 31), but did not file an opposition to either of Aurora’s motions.

4 The FAC alleges nine causes of action: (1) Violation of the Real Estate Settlement  
5 Procedures Act (“RESPA”); (2) Violation of the Truth in Lending Act (“TILA”); (3) Violation  
6 of the Fair Debt Collection Practice Act (“FDCPA”); (4) Violation of the Rosenthal Fair Debt  
7 Collection Practices Act (“Rosenthal Act”); (5) Negligent Misrepresentation; (6) Fraud; (7)  
8 Rescission; (8) Quasi Contract; (9) Determination of Validity of Lien. (Doc. # 21 at 1).

9 The FAC alleges Plaintiff is the owner of property located at 568 Glenheather Drive,  
10 San Marcos, CA 91069. *Id.* at 2. The FAC alleges Plaintiff obtained a loan on the property  
11 from Defendant Equity 1 Lenders Group (“Equity”). *Id.* The FAC alleges “Plaintiff intends  
12 this action and this document to represent a formal complaint and also act as a ‘qualified  
13 written request’” that Defendants provide Plaintiff with an opportunity to inspect all documents  
14 related to the loan. *Id.*

15 The FAC alleges Pacific and Equity “represented to Plaintiff that very favorable loans,  
16 loan terms, and interest rates were available to him” and encouraged him to refinance his  
17 mortgage. *Id.* at 9. The FAC alleges that Pacific and Equity “knew or intended that Plaintiff  
18 receive a worse loan” which “produced a higher commission for them because it was at a  
19 higher interest rate and subject to higher fees.” *Id.* at 9-10. The FAC alleges the loan was less  
20 favorable to Plaintiff than Defendants had stated it would be. *Id.* The FAC alleges Defendants  
21 violated state and federal law by failing to disclose and misrepresenting terms of the loan and  
22 by failing to inform defendant of his right to cancel the transaction. *Id.* The FAC alleges  
23 Aurora purchased the loan from Equity. *Id.* The FAC alleges that these actions “breached  
24 [Defendants’] fiduciary obligations owed to Plaintiff, . . . breached their contract with  
25 Plaintiff, were professionally negligent, and caused Plaintiff damages.” *Id.* at 11. The FAC  
26 alleges these damages include “monetary loss, medical expenses, emotional distress, [and] loss  
27 of employment.”

28 The FAC alleges Aurora “enticed [Plaintiff] to make payments on the loan in a

1 purported . . . loan modification based on promises that if he made payments, he would be able  
2 to obtain a more favorable loan.” *Id.* at 12. The FAC alleges Plaintiff made additional  
3 payments based on this promise, but Aurora refused to modify the loan. *Id.* The FAC alleges  
4 Defendants’ conduct was “despicable” and “subjected Plaintiff to a cruel and unjust hardship  
5 in conscious disregard of Plaintiff’s rights,” justifying exemplary and punitive damages. *Id.*  
6 at 13.

### 7 STANDARD OF REVIEW

8 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a claim  
9 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of Civil Procedure  
10 8(a) provides: “A pleading that states a claim for relief must contain . . . a short and plain  
11 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).  
12 Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal  
13 theory or sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police*  
14 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

15 To sufficiently state a claim to relief and survive a Rule 12(b)(6) motion, a complaint  
16 “does not need detailed factual allegations” but the “[f]actual allegations must be enough to  
17 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
18 555 (2007). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
19 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause  
20 of action will not do.” *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to  
21 dismiss, a court must accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*,  
22 --- U.S. ----, 129 S. Ct. 1937, 1950 (2009). However, a court is not “required to accept as true  
23 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
24 inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see, e.g.,*  
25 *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 683 (9th Cir. 2009) (“Plaintiffs’ general  
26 statement that Wal-Mart exercised control over their day-to-day employment is a conclusion,  
27 not a factual allegation stated with any specificity. We need not accept Plaintiffs’ unwarranted  
28 conclusion in reviewing a motion to dismiss.”). “In sum, for a complaint to survive a motion

1 to dismiss, the non-conclusory factual content, and reasonable inferences from that content,  
2 must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret*  
3 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted).

## 4 ANALYSIS

### 5 I. Pacific’s Motion to Dismiss FAC

#### 6 A. RESPA Violations

7 In support of the first cause of action for RESPA violations, Plaintiff alleges Pacific  
8 failed to “adequately respond to Plaintiff’s request for information” which was sent to Aurora  
9 “via certified mail and by facsimile” on December 23, 2008. (Doc. # 21 at 13-14).

10 Pacific contends Plaintiff’s RESPA claim fails to state a claim because Plaintiff does  
11 not allege that he ever sent a qualified written request to Pacific and because RESPA’s  
12 qualified written request procedure does not apply to Pacific because Pacific is a mortgage  
13 broker, not a “loan servicer” of Plaintiff’s mortgage as required by statute. (Doc. # 25-1 at 4-  
14 5). Further, Pacific contends Plaintiff has not alleged that the alleged failure to respond to the  
15 qualified written request resulted in any damages. *Id.* at 6. Pacific contends the allegation that  
16 Plaintiff suffered medical expenses, emotional distress, loss of employment, and mental and  
17 physical pain bear no relationship to the alleged violation of RESPA and could not be the basis  
18 of recovery. *Id.*

19 Plaintiff contends that the FAC itself qualifies as a qualified written request because it  
20 “is a written correspondence which is not a notice on a payment coupon, and does identify the  
21 name of the Plaintiff, the property address, the LOAN number, and requests information with  
22 sufficient detail for the information sought.” (Doc. # 31 at 7).

23 12 U.S.C. section 2605(e) provides:

24 If any servicer of a federally related mortgage loan receives a qualified written  
25 request from the borrower . . . for information relating to the servicing of such  
26 loan, the servicer shall provide a written response acknowledging receipt of the  
correspondence within 20 days . . . unless the action requested is taken within  
such period.

27 12 U.S.C. § 2605(e)(1)(A). A qualified written request must enable the servicer to identify the  
28 name and account of the borrower, and include a statement of the reasons for the belief of the

1 borrower that the account is in error. 12 U.S.C. § 2605(e)(1)(B).

2 The FAC does not allege that Plaintiff sent Pacific a qualified written request prior to  
3 the filing of the FAC. Even if the FAC does constitute a qualified written request within the  
4 meaning of RESPA, Plaintiff cannot plausibly allege that Pacific failed to timely respond to  
5 Plaintiff's qualified written request in the same document that contains Plaintiff's qualified  
6 written request. The Court concludes that the Complaint fails to allege sufficient facts to  
7 support a claim against Pacific for violation of RESPA.

8 **B. TILA Violations**

9 In support of the second cause of action for TILA violations, Plaintiff alleges all  
10 defendants violated 15 U.S.C. § 1635(a) by failing to correctly identify the transaction, failing  
11 to properly disclose Plaintiff's right to rescind the transaction within three days of the delivery  
12 of the disclosures, and failing to explain how to rescind the transaction. (Doc. # 21 at 14-15).  
13 Plaintiff alleges the disclosures that Pacific provided were inconsistent, that fraudulent  
14 representations were made about the terms of the loan, and that Plaintiff did not give informed  
15 consent to his mortgage. *Id.* at 15. Plaintiff contends he is entitled to equitable tolling because  
16 he was unaware of the alleged fraud. *Id.*

17 Pacific contends Plaintiff's TILA claim fails to state a claim because TILA does not  
18 apply to mortgage brokers. (Doc. # 25 at 3-4). Pacific contends Plaintiff fails to identify any  
19 required disclosures which were not provided. *Id.* at 4. Pacific further contends that the claim  
20 is time-barred because TILA contains a one-year statute of limitations for damages and a three  
21 -year statute of limitations for rescission. *Id.* Pacific contends equitable tolling does not apply  
22 to TILA rescission claims. *Id.*

23 Plaintiff contends that he stated a claim for TILA violations because he alleged "he  
24 relied on the representations of Defendants" but that the loan he received was "at a higher  
25 interest rate than was represented; the payments were higher than . . . represented . . . and the  
26 loan subsequently became unaffordable." (Doc. # 31 at 10-11). Plaintiff contends the one year  
27 statute of limitations may be tolled where "borrowers did not have a reasonable opportunity  
28 to discovery the TILA violations." *Id.*

1 Damages claims under TILA must be brought “within one year from the date of the  
2 occurrence of the violation.” 15 U.S.C. § 1640(e). “[A]s a general rule the limitations period  
3 starts at the consummation of the transaction.” *King v. California*, 784 F.2d 910, 915 (9th Cir.  
4 1986). “The district courts, however, can evaluate specific claims of fraudulent concealment  
5 and equitable tolling to determine if the general rule would be unjust or frustrate the purpose  
6 of the [TILA] and adjust the limitations period accordingly.” *Id.* Generally, a litigant seeking  
7 equitable tolling of a limitations period bears the burden of establishing entitlement to  
8 equitable tolling. *Pace v. DiGuglielmo*, 544 U.S. 408 (2005). Rescission claims under TILA  
9 “shall expire three years after the date of consummation of the transaction or upon the sale of  
10 the property, whichever occurs first.” 15 U.S.C. § 1635(f). “Equitable tolling does not apply  
11 to rescission under this provision of TILA, because ‘§ 1635(f) completely extinguishes the  
12 right of rescission at the end of the 3-year period,’ even if the lender has never made the  
13 required disclosures.” *Taylor v. Money Store*, 42 Fed. Appx. 932 (9th Cir. 2002) (quoting  
14 *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998)).

15 The Complaint alleges that Plaintiff obtained the Loan on or about June 17, 2005. (Doc.  
16 # 21 at 9). Plaintiff did not file this lawsuit until January 15, 2009, more than three years after  
17 the transaction was consummated. Plaintiff has failed to satisfy his burden of establishing  
18 entitlement to equitable tolling. The Complaint does not provide any facts to justify why  
19 Plaintiff filed this lawsuit more than three years after the transaction was consummated. The  
20 Complaint does not allege facts to support that Pacific fraudulently concealed material  
21 information or otherwise engaged in conduct that would warrant equitable tolling. The  
22 Complaint alleges that Plaintiff found the terms of the Loan confusing and misleading at the  
23 time of consummation, yet he waited more than three years to voice his complaints. *See, e.g.,*  
24 *id.* at 11 (the “Loan and related contracts contain conflicting terms that are not reasonably  
25 amendable to understanding by a consumer”). Plaintiff alleges he was misled about the  
26 interest rate and that his payments were therefore higher than he was led to believe, which he  
27 would have discovered the *first* time he made a payment on the loan. *See id.* at 14-15, Doc.  
28 # 31 at 10-11. The Court concludes that the second cause of action for damages and rescission

1 for TILA violations as alleged is time-barred.

2 **C. FDCPA Violations**

3 In support of the third cause of action for FDCPA violations, Plaintiff alleges Pacific  
4 violated the FDCPA by “obtaining payments from Plaintiff based on promises of reasonable  
5 and beneficial loan modification, without actually providing such modifications.”

6 Pacific contends that the FDCPA only applies to “debt collectors,” that Plaintiff does  
7 not allege Pacific is a debt collector, and that Plaintiff cannot make that allegation because  
8 Pacific, a mortgage broker, is not a debt collector under the FDCPA. (Doc. # 33 at 5-6).  
9 Pacific contends it was not involved in the subsequent loan modification, did not collect on the  
10 loans, and that claims about the origin of the loan are not FDCPA claims because they are not  
11 claims about *collection* practices. *Id.*

12 Plaintiff contends he has stated a claim because the California Civil Code renders the  
13 loan contract unenforceable because Pacific committed fraud by inducing him to enter into the  
14 loan contract. (Doc. # 31 at 7).

15 “The [FDCPA] prohibits debt collectors from making false or misleading  
16 representations and from engaging in various abusive and unfair practices.” *Heintz v. Jenkins*,  
17 514 U.S. 291, 292 (1995). To be liable for a violation of the FDCPA, the defendant must, as  
18 a threshold requirement, be a “debt collector” within the meaning of the Acts. *Heintz v.*  
19 *Jenkins*, 514 U.S. 291, 294 (1995). A mortgage broker is not a debt collector within the  
20 meaning of the FDCPA. *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985); *see*  
21 *also Maguire v. Citicorp. Retail Svcs.*, 147 F.3d 232, 236 (2d Cir. 1998) (generally, the  
22 FDCPA does not apply to creditors).

23 The FAC does not allege that Pacific is a “debt collector” within the meaning of  
24 FDCPA. The Court concludes that Plaintiff has failed to state a claim against Pacific for  
25 FDCPA violations.

26 **D. Rosenthal Act Violations**

27 In support of the fourth cause of action for Rosenthal Act violations, Plaintiff alleges  
28 Aurora is a loan servicer within the meaning of the Rosenthal Act, that Aurora “falsely enticed

1 Plaintiff” into making payments by promising to modify the loan, and then sold the property  
2 in a foreclosure sale despite the promises. (Doc. # 21 at 16-17).

3 Pacific contends the Rosenthal Act claim contains no allegations against Pacific, only  
4 allegations against Aurora. (Doc. # 25-1 at 9). Furthermore, Pacific contends it is not a “debt  
5 collector under the meaning of the term in the Rosenthal Act. *Id.*

6 Plaintiff contends the term “debt collector” has a broader meaning under the Rosenthal  
7 Act than the under the FDCPA and that it has therefore stated a claim against Pacific. (Doc.  
8 # 31 at 14-15.)

9 The Rosenthal Act claim does not make any allegations against Pacific. The Court  
10 concludes Plaintiff has failed to state a claim against Pacific for Rosenthal Act violations.

#### 11 **E. Negligent Misrepresentation**

12 In support of the fifth cause of action for Negligent Misrepresentation, Plaintiff alleges  
13 Pacific “represented to Plaintiff that very favorable loans, loan terms, and interest rates were  
14 available to him” and that as a result of this misrepresentation Plaintiff was induced to accept  
15 the loan terms. (Doc. # 21 at 18).

16 Pacific contends that any alleged misrepresentation was made prior to the funding of  
17 the loan, and the claim is therefore barred by the two-year statute of limitations. (Doc. # 25 at  
18 8). Pacific contends Plaintiff cannot rely on tolling of this statute because he has failed to state  
19 sufficient facts to show that he is entitled to tolling. (Doc. # 33 at 7). Plaintiff contends he has  
20 stated all of the elements of negligent misrepresentation and that the cause of action does not  
21 accrue until the discovery of the misrepresentation. (Doc. # 31 at 14-16).

22 Under California law, the rule that certain claims do not accrue until discovery only  
23 applies if the Plaintiff meets a heightened pleading standard. “A plaintiff whose complaint  
24 shows on its face that his claim would be barred without the benefit of the discovery rule must  
25 specifically plead facts to show (1) the time and manner of discovery and (2) the inability to  
26 have made earlier discovery despite reasonable diligence. The burden is on the plaintiff to  
27 show diligence, and conclusory allegations will not withstand” a motion to dismiss. *E-Fab,*  
28 *Inc. v. Accountants, Inc. Serv.*, 153 Cal. App. 4th 1308, 1309 (2007).



1 Plaintiff does not state when he discovered the alleged misrepresentations, how he  
2 discovered them, or that he could not have made the discovery earlier despite reasonable  
3 diligence. The Court concludes Plaintiff's claim is time-barred.

4 **F. Fraud**

5 In support of the sixth cause of action for Fraud, Plaintiff alleges Pacific misrepresented  
6 the terms of the loan, which induced Plaintiff to take out the loan. (Doc. # 21 at 20). Plaintiff  
7 alleges Pacific knew that the actual terms of the loan were not as stated and that Pacific  
8 intended that Plaintiff rely on Pacific's misstatements. *Id.*

9 Pacific contends the statute of limitations for fraud is three years under California law  
10 and that Plaintiff's claim for fraud is therefore time barred. (Doc. # 25-1). Pacific further  
11 contends Plaintiff has failed to allege fraud with sufficient specificity under Federal Rule of  
12 Civil Procedure Rule 9(b). (Doc. # 33 at 8).

13 Plaintiff contends he has pleaded fraud with sufficient specificity because he stated the  
14 fraud occurred in California before the loan was initiated and that "Defendants misrepresented  
15 facts to Plaintiff and that other Defendants aided or abetted or acted in concert in promulgating  
16 their false representations to Plaintiff." (Doc. # 31 at 19-20).

17 To state a claim for fraud, the plaintiff must allege "a representation, usually of fact,  
18 which is false, knowledge of its falsity, intent to defraud, justifiable reliance on the  
19 misrepresentation, and damage resulting from that justifiable reliance." *Stansfield v. Starkey*,  
20 220 Cal. App. 3d 59, 72-23 (1990). Pursuant to Rule 9(b) of the Federal Rules of Civil  
21 Procedure, "in alleging fraud or mistake, a party must state with particularity the circumstances  
22 constituting fraud or mistake." Fed. R. Civ. P. 9(b). Rule 9(b) requires that the pleader state  
23 the time, place and specific content of the false representations as well as the identities of the  
24 parties to the misrepresentation. *Id.*; *Sebastian International, Inc. v. Russolillo*, 128 F. Supp.  
25 2d 630, 634-35 (C.D. Cal. 2001). Rule 9(b) does not allow a complaint to merely lump  
26 multiple defendants together but "require[s] plaintiffs to differentiate their allegations when  
27 suing more than one defendant . . . and inform each defendant separately of the allegations  
28 surrounding his alleged participation in the fraud." *Swartz v. KPMG LLP*, 476 F.3d 756, 764-

1 65 (9th Cir. 2007). “[T]he plaintiffs must, at a minimum, ‘identify the role of each defendant  
2 in the alleged fraudulent scheme.’” *Id.* (quoting *Moore v. Kayport Package Express, Inc.*, 885  
3 F.2d 531, 541 (9th Cir. 1989)).

4 The Complaint alleges that “Defendants” made misrepresentations of material fact, or  
5 that “Pacific, Equity, [Aurora] variously misinformed Plaintiff.” (Doc. # 21 at 20). The  
6 Complaint does not allege with specificity which Defendant made which misrepresentation,  
7 the specific contents of each alleged misrepresentation, or the precise location and time of the  
8 misrepresentations. Instead, the Complaint lumps multiple Defendants together, and vaguely  
9 refers to various misrepresentations about the loan made at some point before the initiation of  
10 the loan. *See id.* The Court concludes that the Complaint fails to state a claim against Pacific  
11 for fraud.

#### 12 **G. Rescission**

13 In support of the seventh cause of action for Rescission, Plaintiff alleges Defendants  
14 cannot produce an original deed relating to the loan. (Doc. # 21 at 23). Plaintiff alleges when  
15 he agreed to the loan, “he was ignorant of Defendants’ secret intentions not to perform,  
16 ignorant of Defendants’ false representations” and is therefore entitled to rescission. *Id.*

17 Pacific contends that as the mortgage broker, it was never the owner of the note, so it  
18 cannot be subject to an action for rescission. (Doc. # 25 at 14). Pacific further contends that  
19 although Plaintiff labels his claim a claim for rescission, he actually seeks *damages*, not  
20 rescission. *Id.* Finally, Pacific contends that a lender’s inability to produce a note is not  
21 grounds for rescission under California or federal law. *Id.*

22 Plaintiff contends that the contract was fraudulently induced, and is therefore  
23 rescindable under California law. (Doc. # 31 at 19). Plaintiff contends that he has stated a  
24 claim for fraud, therefore, he has also stated a claim for rescission. *Id.*

25 Plaintiff failed to state a claim for fraud. Plaintiff conceded that his rescission claim is  
26 dependant on his fraud claim, therefore the Court concludes that Plaintiff’s claim for rescission  
27 fails to state a claim for relief.

#### 28 **H. Quasi Contract**

1 In support of the eighth cause of action for quasi contract, Plaintiff alleges Pacific has  
2 “unjustly retained” money paid as “fees, costs, [and] commissions” acquired via “defective  
3 loan documents.” (Doc. # 21 at 25). Plaintiff alleges Pacific was unjustly enriched at his  
4 expense. *Id.*

5 Pacific contends that Plaintiff has failed to identify what alleged mistaken payments he  
6 made with sufficient specificity to allow Pacific to defend against Plaintiff’s allegations. (Doc.  
7 # 25-1 at 14).

8 Plaintiff has failed to allege sufficient facts to support his contention that retention of  
9 any payments was unjust, to identify the mistaken payments to Pacific, or to identify the  
10 defects in the loan documents. The Court concludes Plaintiff’s allegations do not state a claim  
11 for relief under a quasi contract theory.

12 **I. Determination of the Validity of the Lien**

13 In support of the Ninth Cause of Action for determination of the validity of the lien,  
14 Plaintiff alleges “the defective documentation, false representations and/or fraud that induced  
15 Plaintiff to enter into the loan render the security interest invalid and unenforceable.” (Doc.  
16 # 21 at 26). Plaintiff alleges that the “wrongful acts” of Defendants have forfeited Defendants’  
17 interest in the property. *Id.*

18 Pacific contends that this cause of action is simply a quiet title claim. (Doc. # 25-1 at  
19 14). Pacific contends Plaintiff has not labeled his claim a quiet title claim to avoid the  
20 requirement that Plaintiff verify a quiet title claim. *Id.* Pacific further contends it does not  
21 claim an interest in the property, and cannot be subjected to a quiet title claim. *Id.* Finally,  
22 Pacific contends Plaintiff cannot seek to quiet title without paying the outstanding balance of  
23 his mortgage, which Plaintiff has not alleged he can or will do. *Id.*

24 Pacific has asserted that it has no interest in the property in question. Therefore,  
25 Plaintiff’s claim for a determination of the validity of the lein against Pacific is dismissed.

26 **J. Leave to Amend**

27 If Plaintiff wishes to file an amended complaint, Plaintiff may file a motion for leave  
28 to file a second amended complaint which attaches a copy of the proposed second amended

1 complaint within 30 days of the date of this order.

2 **II. Aurora’s Motion to Dismiss and Motion to Strike**


3 Plaintiff failed to file an opposition to Aurora’s Motion to Dismiss (Doc. # 26) or to  
4 Aurora’s Motion to Strike (Doc. # 27). Pursuant to Civil Local Rule 7.1.f.3.c, “If an opposing  
5 party fails to file” an opposition “in the manner required by Civil Local Rule 7.1.e.2, that  
6 failure may constitute consent to the granting of a motion or other request for ruling by the  
7 court.”

8 The Court therefore grants Aurora’s Motion to Dismiss (Doc. # 26) as unopposed and  
9 denies Aurora’s Motion to Strike (Doc. # 27) as moot.

10 **CONCLUSION**

11 IT IS HEREBY ORDERED THAT the Motion to Dismiss (Doc. # 25) filed by  
12 Defendant Pacific Mortgage Consultants is **GRANTED**. IT IS FURTHER ORDERED  
13 THAT the Motion to Dismiss (Doc. # 26) filed by Defendant Aurora Loan Services is  
14 **GRANTED** and that the Motion to Strike (Doc. # 27) filed by Defendant Aurora Loan  
15 Services is **DENIED AS MOOT**. The above captioned action is **DISMISSED** as to  
16 Defendants Pacific Mortgage Consultants and Aurora Loan Services.

17 DATED: January 12, 2010

18   
19 **WILLIAM Q. HAYES**  
20 United States District Judge

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