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

SCOTT COPELAND,  
  
Plaintiff,  
  
vs.  
LEHMAN BROTHERS BANK, FSB;  
MONEYWORLD SALES/  
MORTGAGES, INC.; AURORA LOAN  
SERVICES, INC.; and all other claimants  
of whatsoever kind and character against  
real property commonly known as 7066  
Keighley Street, San Diego, CA 92120;  
APN 672-390-01-00; and DOES 1  
through 100, inclusive,  
  
Defendants.

CASE NO. 09cv1774-WQH-RBB  
ORDER

HAYES, Judge:

The matters before the Court are the Motion to Dismiss the Second Amended Complaint, filed by Defendants Lehman Brothers Bank, FSB (“Lehman”) and Aurora Loan Services, Inc. (“Aurora”) (collectively, “moving Defendants”) (ECF No. 42), and the Ex Parte Motion for Leave to File an Opposition to Motion to Dismiss in Excess of 25 Pages (ECF No. 43).

**I. Background**

On August 14, 2009, Plaintiff Scott Copeland initiated this action by filing a Complaint in this Court. (ECF No. 1).

On December 23, 2009, the Court granted Lehman and Aurora’s motion to dismiss, and

1 dismissed the Complaint without prejudice. (ECF No. 11).

2 On April 20, 2010, Plaintiff filed the First Amended Complaint. (ECF No. 26).

3 On July 15, 2010, the Court granted Lehman and Aurora's subsequent motion to  
4 dismiss, and dismissed the First Amended Complaint without prejudice. (ECF No. 35).

5 On October 4, 2010, Plaintiff filed the Second Amended Complaint. (ECF No. 41).

6 **A. Allegations of the Second Amended Complaint**

7 Plaintiff is the owner of real property commonly known as 7066 Keighley Street, San  
8 Diego, CA 92120. On June 14, 2007, "[a]t the request of" Defendant Moneyworld  
9 Sales/Mortgages, Inc. ("Moneyworld") and Lehman, Plaintiff obtained a loan from Lehman.  
10 *Id.* ¶ 14. "The loan was initially funded by Lehman ..., serviced by [Aurora] (Lehman[']s) ...  
11 subsidiary), brokered by Moneyworld (Lehman[']s) ... agent/correspondent/wholesaler), and  
12 promptly sold at a profit to other investors currently unknown to Plaintiff." *Id.* Prior to the  
13 funding of the loan, Moneyworld and/or Lehman misrepresented the terms of the loan.  
14 "Defendants failed to provide Plaintiff with the proper disclosures required under state and  
15 federal law." *Id.* ¶ 17. At the time the loan was executed, "Defendants" engaged in "predatory  
16 lending behavior," including "[c]reating the loan with a high APR," "[c]harging improper  
17 broker fees," "[c]harging excessive prepayment penalties," and "[r]ushing the loan closing."  
18 *Id.* ¶ 21. The loan contract "was incomprehensible to a standard consumer." *Id.* ¶ 22.  
19 "Defendants Lehman ..., [Aurora] and other Defendants received a Qualified Written Request  
20 regarding the loan from Plaintiff and failed to adequately respond to Plaintiff's requests for  
21 information, which would have enabled Plaintiff an opportunity to work out the loan." *Id.* ¶  
22 18.

23 The Second Amended Complaint alleges eight claims: (1) violation of the Real Estate  
24 Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605 *et seq.*; (2) violation of the Truth in  
25 Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*; (3) violation of California's Unfair  
26 Competition Law, Cal. Bus. & Prof. Code § 17200; (4) negligent misrepresentation; (5) fraud;  
27 (6) rescission; (7) quasi-contract; and (8) "determination of validity of lien" (ECF No. 41 at  
28 28).

1           **B.     Motion to Dismiss**

2           On October 13, 2010, the moving Defendants filed the Motion to Dismiss, seeking the  
3 dismissal of all claims against the moving Defendants in the Second Amended Complaint  
4 pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 42). The moving Defendants  
5 contend that the Second Amended Complaint “continues to assert time-barred TILA claims  
6 and non-actionable [Qualified Written Request] violations under RESPA.” (ECF No. 42-1 at  
7 24). The moving Defendants contend that the Second Amended Complaint should be  
8 dismissed with prejudice as to the moving Defendants.

9           On November 8, 2010, Plaintiff filed a response in opposition to the Motion to Dismiss  
10 and the Ex Parte Motion for Leave to File an Opposition to Motion to Dismiss in Excess of 25  
11 Pages. (ECF Nos. 43-44). Plaintiff contends that the Motion to Dismiss should be denied in  
12 its entirety, or, alternatively, Plaintiff should be granted leave to amend the Second Amended  
13 Complaint.

14           On November 8, 2010, the moving Defendants filed a reply brief in support of the  
15 Motion to Dismiss. (ECF No. 45). The moving Defendants did not file an opposition to  
16 Plaintiff’s Ex Parte Motion for Leave to File an Opposition to Motion to Dismiss in Excess of  
17 25 Pages.

18           **II.     Discussion**

19           **A.     Standard of Review**

20           Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a claim  
21 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Dismissal under Rule 12(b)(6)  
22 is appropriate where the complaint lacks a cognizable legal theory or sufficient facts to support  
23 a cognizable legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.  
24 1990). To sufficiently state a claim to relief and survive a Rule 12(b)(6) motion, a complaint  
25 “does not need detailed factual allegations” but the “[f]actual allegations must be enough to  
26 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
27 555 (2007). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
28 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause

1 of action will not do.” *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to  
2 dismiss, a court must accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*,  
3 --- U.S. ----, 129 S. Ct. 1937, 1950 (2009). However, a court is not “required to accept as true  
4 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
5 inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “In sum,  
6 for a complaint to survive a motion to dismiss, the non-conclusory factual content, and  
7 reasonable inferences from that content, must be plausibly suggestive of a claim entitling the  
8 plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations  
9 omitted).

## 10 **B. Request for Judicial Notice**

11 “A district court ruling on a motion to dismiss may consider documents whose contents  
12 are alleged in a complaint and whose authenticity no party questions, but which are not  
13 physically attached to the plaintiff’s pleading.” *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06  
14 (9th Cir. 1998) (quotation omitted). Also, “a district court ruling on a motion to dismiss may  
15 consider a document the authenticity of which is not contested, and upon which the plaintiff’s  
16 complaint necessarily relies.” *Id.* at 706.

17 The moving Defendants request that the Court take judicial notice of the documents  
18 executed by Plaintiff and relating to the property at issue, including the Deed of Trust and the  
19 Adjustable Rate Note, and the correspondence related to Plaintiff’s Qualified Written Request  
20 to Aurora made pursuant to RESPA. (ECF No. 42-2). Plaintiff does not oppose the request  
21 for judicial notice.

22 The Second Amended Complaint either references or necessarily relies upon each of  
23 the documents which are attached to the request for judicial notice. The authenticity of the  
24 documents has not been challenged. Accordingly, the request for judicial notice is granted.

## 25 **C. RESPA Claim**

### 26 **1. Allegations of the Second Amended Complaint**

27 The Second Amended Complaint alleges that Aurora “failed to adequately respond” to  
28 Plaintiff’s December 12, 2008 Qualified Written Request (“QWR”) in violation of 12 U.S.C.

1 § 2605(e)(2). (ECF No. 41 ¶ 36). The Second Amended Complaint alleges that Aurora “failed  
2 to provide the requested information including but not limited to”:

3 (1) documentation and proof of ownership for all parties currently holding any  
4 ownership rights under the note relating to the loan; (2) yield spread premiums  
5 or other payments made to any broker, lender or servicer in the course of  
6 servicing the loan, or transferring servicing or ownership of the loan; (3)  
documents evidencing the servicer’s acquisition of the loan; (4) pooling and  
servicing agreements related to the loan; (5) all documents evidencing  
[Aurora]’s acquisition of the loan.

7 *Id.* ¶ 39. The Second Amended Complaint alleges that as a result of Aurora’s failure to  
8 adequately respond to the QWR, Plaintiff sustained damages, and as a result, is entitled to  
9 recover both statutory and punitive damages under RESPA.

## 10 2. Analysis

11 Section 2605 of RESPA requires that “[i]f any servicer of a federally related mortgage  
12 loan receives a qualified written request from the borrower (or an agent of the borrower) for  
13 information relating to the servicing of such loan, the servicer shall provide a written response  
14 acknowledging receipt of the correspondence within 20 days ... unless the action requested is  
15 taken within such period.” 12 U.S.C. § 2605(e)(1)(A); *see also* 12 U.S.C. § 2605(e)(2)  
16 (describing the action required to be taken in response to a qualified written request). If a loan  
17 servicer fails to comply with the provisions of § 2605, a borrower shall be entitled to “any  
18 actual damages to the borrower as a result of the failure” and “any additional damages, as the  
19 court may allow, in the case of a pattern or practice of noncompliance with the requirements  
20 of [§ 2605].” 12 U.S.C. § 2605(f)(1).

### 21 a. Actual Damages

22 “Numerous courts have read Section 2605 as requiring a showing of pecuniary damages  
23 to state a claim.” *Molina v. Wash. Mut. Bank*, No. 09cv894, 2010 WL 431439, at \*7 (S.D. Cal.  
24 Jan. 29, 2010) (collecting cases); *see also Eronini v. JP Morgan Chase Bank NA*, No. 08-  
25 55929, 2010 WL 737841, at \*1 (9th Cir. Mar. 3, 2010) (“The district court properly dismissed  
26 the action because Eronini suffered no damages as a result of the alleged RESPA violation.”).  
27 “This pleading requirement has the effect of limiting the cause of action to circumstances in  
28 which plaintiff can show that a failure to respond or give notice has caused them actual harm.”

1 *Shepherd v. Am. Home Mortg. Servs., Inc.*, No. 09-1916, 2009 WL 4505925, at \*3 (E.D. Cal.  
2 Nov. 20, 2009) (citation omitted). Courts “have interpreted this requirement liberally.”  
3 *Yulaeva v. Greenpoint Mortg. Funding, Inc.*, No. 09-1504, 2009 WL 2880393, at \*15 (E.D.  
4 Cal. Sept. 9, 2009) (plaintiff sufficiently pled actual damages where plaintiff alleged she was  
5 required to pay a referral fee prohibited under RESPA).

6 The Second Amended Complaint alleges that Plaintiff suffered the following damages  
7 as a result of Aurora’s failure to adequately respond to the QWR:

- 8 a. Fees and charges assessed on the loan by [Aurora];
- 9 b. Reduction in credit rating due to improper credit reporting;
- 10 c. Legal fees associated with requests for response to QWRs to which Plaintiff  
11 is entitled from [Aurora];
- 12 d. Attorney’s fees and costs associated with this litigation;
- 13 e. Emotional distress due to inability to obtain vital information requested from  
14 [Aurora], improper credit reporting, and threat of foreclosure, in an amount to  
15 be established at trial; and
- f. Missed work both due to time required for dealing with servicer and due to  
stress.

16 (ECF No. 41 ¶ 42; *see also id.* ¶ 44 (“As a proximate result of the negligent conduct of  
17 [Aurora] as herein alleged, Plaintiff sustained damages, including monetary loss, medical  
18 expenses, emotional distress, loss of employment, loss of credit, loss of opportunities, and  
19 other damages to be determined at trial.”)).

20 Even reading the Second Amended Complaint liberally, Plaintiff fails to plead non-  
21 conclusory factual allegations indicating how he was damaged by the alleged failure to fully  
22 respond to the QWR. *Cf. Allen v. United Fin. Mortg. Corp.*, 660 F. Supp. 2d 1089, 1097 (N.D.  
23 Cal. 2009) (“Allen only offers the conclusory statement that ‘damages consist of the loss of  
24 plaintiff’s home together with his attorney fees.’ He has not actually attempted to show that  
25 the alleged RESPA violations caused any kind of pecuniary loss (indeed, his loss of property  
26 appears to have been caused by his default).”). Plaintiff fails to identify the “[f]ees and charges  
27 assessed on the loan” (ECF No. 41 ¶ 42(a)), and Plaintiff fails to indicate how the fees and  
28 charges relate to the response to the QWR. Plaintiff fails to indicate how the response to the

1 QWR caused the reduction in his credit rating, and Plaintiff fails to allege damage caused by  
2 the reduction in his credit rating. *See Anokhin v. BAC Home Loan Servicing, LP*, No.  
3 2:10cv395, 2010 WL 3294367, at \*3 (E.D. Cal. Aug. 20, 2010) (“To constitute actual damages  
4 [under RESPA for failure to adequately respond to a QWR], the negative credit rating must  
5 itself cause damage to the plaintiff as evidenced by, for example, failing to qualify for a home  
6 mortgage. Plaintiff’s conclusory statement that she suffered negative credit ratings does not  
7 itself establish actual damages.”) (citation omitted); *Kariguddaiah v. Wells Fargo Bank, N.A.*,  
8 No. C-09-5716, 2010 WL 2650492, at \*7 (N.D. Cal. July 1, 2010) (same). Plaintiff’s  
9 allegations of legal fees and the costs related to this suit are insufficient to constitute actual  
10 damages under RESPA. *See Lal v. Am. Home Servicing, Inc.*, 680 F. Supp. 2d 1218, 1223  
11 (E.D. Cal. 2010) (“[S]imply having to file suit [does not] suffice as a harm warranting actual  
12 damages. If such were the case, every RESPA suit would inherently have a claim for damages  
13 built in.”). Plaintiff’s allegations of emotional distress fail to indicate how the alleged failure  
14 to adequately respond to the QWR caused the distress. *See Lawther v. OneWest Bank*, No. C-  
15 10-54, 2010 WL 4936797, at \*7 (N.D. Cal. Nov. 30, 2010) (granting motion to dismiss RESPA  
16 claim for failure to adequately allege actual damages because “[w]hat remains unexplained ...  
17 is how the QWR failure itself is causally connected to the claimed distress of Lawther or his  
18 family”). The Court concludes that Plaintiff’s RESPA claim for actual damages for failure to  
19 respond to the QWR is insufficiently pled.

20 **b. Statutory Damages**

21 To recover statutory damages, a Plaintiff must plead a pattern or practice of  
22 noncompliance with RESPA. *See* 12 U.S.C. § 2605(f)(1)(b).

23 The Second Amended Complaint alleges that Plaintiff is entitled to “statutory and  
24 punitive damages if possible.” (ECF No. 41 ¶ 44). The Second Amended Complaint alleges:

25 Plaintiff is informed and believes that [Aurora] established business procedures  
26 that are not designed to be responsive to specific QWRs, but only to earn profits  
27 for itself and its parent Lehman Brothers from borrowers such as Plaintiff who  
28 had entered unwittingly into unaffordable loans. Plaintiff is informed and  
believes that the business procedures concealed the true relationships between  
[Aurora], Lehman Brothers, Moneyworld, and the owners of the loan and  
interfered with Plaintiff’s efforts to obtain information about the loan.

1 *Id.* ¶ 43.

2 Plaintiff fails to identify the “business procedures that are not designed to be responsive  
3 to specific QWRs.” *Id.* The Court finds that these allegations are conclusory, and do not  
4 plausibly show a pattern and practice of RESPA violations by Defendants. *See Twombly*, 550  
5 U.S. at 555; *cf. Lal*, 680 F. Supp. 2d at 1223 (RESPA claim deficient because “Plaintiffs flatly  
6 claim a pattern of noncompliance but state no facts other than the assurance that at trial they  
7 will present other customers who also did not receive QWR responses from Defendant.”);  
8 *Garvey v. Am. Home Mortg. Servicing, Inc.*, No. CV-09-973, 2009 WL 2782128, at \*2 (D.  
9 Ariz. Aug. 31, 2009) (same). The Court concludes that Plaintiff’s RESPA claim for statutory  
10 damages for failure to respond to the QWR is insufficiently pled.

11 The Motion to Dismiss the RESPA claim is granted.

12 **D. TILA Claim**

13 **1. Allegations of the Second Amended Complaint**

14 The Second Amended Complaint alleges that all Defendants violated TILA and related  
15 regulations “at the time of origination because, among other things: (a) The interest rate on the  
16 note and the Truth-in-Lending disclosure were deceptively presented and not consistent. (b)  
17 The APR was not correctly calculated.... (c) The required payments to the lender and broker  
18 were not fully disclosed.” (ECF No. 41 ¶ 48). The Second Amended Complaint alleges that  
19 “[a]ll Defendants have fraudulently concealed facts upon which the existence of Plaintiff’s  
20 claim for Negligent Misrepresentation is based, and as such, the statute of limitations is tolled  
21 as to this Cause of Action.” *Id.* ¶ 46.

22 **2. Analysis**

23 The moving Defendants contend that Plaintiff’s TILA claims are barred by the statute  
24 of limitations.

25 TILA is intended to protect consumers in credit transactions by requiring “meaningful  
26 disclosure of credit terms.” 15 U.S.C. § 1601(a). A lender’s violation of TILA allows the  
27 borrower to seek damages or to rescind a consumer loan secured by the borrower’s primary  
28 dwelling. A plaintiff’s damage claims relating to improper disclosures under TILA are subject



1 to a one-year statute of limitations, 15 U.S.C. § 1640(e), which runs from the time the loan  
2 transaction is consummated. *See King v. State of Cal.*, 784 F.2d 910, 915 (1986); *see also*  
3 *Meyer v. Ameriquest Mortg. Co.*, 342 F.3d 899, 902 (9th Cir. 2003) (failure to make the  
4 required disclosures under TILA occurs at the time the loan documents were signed). The  
5 right to rescission under TILA expires three days after the necessary disclosures are provided  
6 to the borrower. *See* 15 U.S.C. § 1635(a).

7 Plaintiff consummated his loan transaction on June 14, 2007. (RJN, Ex. 1, ECF No. 42-  
8 2). On the same day, Plaintiff received, and signed, the “Notice of Right to Cancel” and  
9 “Truth-in-Lending Statement” disclosures. (RJN, Exs. 8-9, ECF No. 44-2). These constituted  
10 the necessary disclosures to trigger the three-day rescission limitations period. *See* 12 C.F.R.  
11 § 226.23(a)(3) & n.48; *see also Mandrigues v. World Savings, Inc.*, No. C-07-4497, 2009 WL  
12 160213, at \*5 (N.D. Cal. Jan. 20, 2009). This lawsuit was initiated on August 14, 2009. (ECF  
13 No. 1). Accordingly, Plaintiff’s TILA claims are time-barred, unless the doctrine of equitable  
14 tolling applies. *See King*, 784 F.2d at 915.

15 Equitable tolling of TILA claims may be appropriate “in certain circumstances,” and  
16 can operate to “suspend the limitations period until the borrower discovers or had reasonable  
17 opportunity to discover the fraud or non-disclosures that form the basis of the TILA action.”  
18 *Id.* at 914-15. District courts have discretion to evaluate specific claims of fraudulent  
19 concealment and equitable tolling and “to adjust the limitations period accordingly.” *Id.* at  
20 915. In order to be entitled to equitable tolling, a plaintiff must establish that “despite all due  
21 diligence, a plaintiff is unable to obtain vital information bearing on the existence of his  
22 claim.” *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1178 (9th Cir. 2000).

23 Equitable tolling will not apply when a plaintiff fails to allege facts demonstrating that  
24 he could have not discovered the alleged violations by exercising reasonable diligence. *Cf.*  
25 *Meyer*, 342 F.3d at 902-03. In *Meyer*, the Court of Appeals for the Ninth Circuit held that  
26 equitable tolling did not apply to the plaintiff’s TILA claim:

27 The failure to make the required disclosures occurred, if at all, at the time the  
28 loan documents were signed. The Meyers were in full possession of all  
information relevant to the discovery of a TILA violation and a § 1640(a)  
damages claim on the day the loan papers were signed. The Meyers have

1 produced no evidence of undisclosed credit terms, or of fraudulent concealment  
2 or other action on the part of Ameriquest that prevented the Meyers from  
discovering their claim.

3 In the exercise of reasonable diligence the Meyers should have discovered by  
4 [the date the loan documents were signed], the acts constituting the alleged  
violation. The limitation period has run on their claim.

5 *Meyer*, 342 F.3d at 902; *see also Hubbard v. Fid. Fed. Bank*, 91 F.3d 75, 79 (9th Cir. 1996)  
6 (finding that plaintiff was not entitled to equitable tolling of her TILA claim related to the  
7 initial loan disclosures because “nothing prevented [plaintiff] from comparing the loan  
8 contract, [the lender’s] initial disclosures, and TILA’s statutory and regulatory requirements”).

9 The Second Amended Complaint alleges that “the wrongful acts by Moneyworld,  
10 Lehman Brothers, and [Aurora] which warrant equitable tolling of the statute of limitations  
11 include” the following:

- 12 a. Plaintiff was rushed through signing of the loan documents and was not  
13 provided sufficient time to read and review both loan packets prior to signing;
- 14 b. Plaintiff was not provided with all required disclosures at origination;
- 15 c. Taken as a whole, the loan documents are complicated and misleading to the  
16 average consumer, Plaintiff was provided with a large stack of documents to  
sign, and Moneyworld and/or Lehman Brothers did not highlight terms which  
could or would drastically change the monthly payment amount;
- 17 d. The interest rate and APR calculations do not reflect the true cost of the loan  
18 in violation of [TILA regulations]...

19 (ECF No. 41 ¶ 47; *see also id.* ¶¶ 14, 17, 72). The Second Amended Complaint alleges that  
20 “Plaintiff acted diligently in discovering the claims alleged herein in various ways including”  
21 the following:

- 22 a. At the time of origination of the loan, Plaintiff’s wife of many years was  
23 recently deceased from Cancer, and Plaintiff was recovering from surgery, thus  
Plaintiff was emotionally unable to comprehend the loan documents during his  
period of mourning;
- 24 b. Plaintiff later retained counsel who sent a QWR to [Aurora] requesting  
25 documentation on Plaintiff’s behalf; however, ALS failed to adequately reply  
to Plaintiff’s QWR;
- 26 c. In a good faith effort to lessen the extent of his damage, Plaintiff sought  
27 information to negotiate a resolution.

28 *Id.* ¶ 48.

Although Plaintiff alleges that he “acted diligently,” the Second Amended Complaint

1 fails to allege adequate information regarding the alleged diligence. The Second Amended  
2 Complaint alleges that Plaintiff's diligence included the sending of the QWR, but the QWR  
3 was mailed on December 12, 2008, *see id.* ¶ 37, almost six months after the limitations period  
4 had expired. Plaintiff alleges that he was rushed during closing, the loan documents were  
5 confusing, and certain terms were not highlighted to him, but these allegations do not address  
6 the issue of why Plaintiff failed to file suit until over two years after the loan transaction and  
7 over one year after the statute of limitations expired. Plaintiff's allegation that he was  
8 "emotionally unable to comprehend the loan documents," *id.* ¶ 48, is not sufficient to constitute  
9 a factual allegation showing that "despite all due diligence, [plaintiff was] unable to obtain  
10 vital information bearing on the existence of his claim" within one year of the loan transaction.  
11 *Santa Maria*, 202 F.3d at 1178. Plaintiff has failed to allege sufficient facts to show that  
12 equitable tolling may be warranted. *See Twombly*, 550 U.S. at 555. The Motion to Dismiss  
13 the TILA claims against the moving Defendants is granted.

#### 14 **E. State Law Claims**

15 The Second Amended Complaint alleges that federal question jurisdiction exists  
16 pursuant to 28 U.S.C. § 1331, by virtue of the TILA and RESPA claims. (ECF No. 41 ¶ 11).  
17 The Second Amended Complaint alleges that the Court has supplemental jurisdiction over the  
18 state law claims pursuant to 28 U.S.C. § 1367. *Id.* ¶ 12. The Second Amended Complaint  
19 does not allege that diversity jurisdiction exists.

20 The federal supplemental jurisdiction statute provides: "[I]n any civil action of which  
21 the district courts have original jurisdiction, the district courts shall have supplemental  
22 jurisdiction over all other claims that are so related to claims in the action within such original  
23 jurisdiction that they form part of the same case or controversy under Article III of the United  
24 States Constitution." 28 U.S.C. § 1367(a). A district court may decline to exercise  
25 supplemental jurisdiction over a state law claim if:

- 26 (1) the claim raises a novel or complex issue of State law,
- 27 (2) the claim substantially predominates over the claim or claims over which the  
28 district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original

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jurisdiction, or


(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. §1367(c). Because the Court has dismissed all of the federal law claims against the moving Defendants, the Court declines to exercise supplemental jurisdiction over the state law claims against the moving Defendants pursuant to 28 U.S.C. §1367(c). *See Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001) (“A court may decline to exercise supplemental jurisdiction over related state-law claims once it has dismissed all claims over which it has original jurisdiction.”).

**III. Conclusion**

The Motion to Dismiss is GRANTED. (ECF No. 42). The Ex Parte Motion for Leave to File an Opposition to Motion to Dismiss in Excess of 25 Pages is GRANTED. (ECF No. 43). The Second Amended Complaint is DISMISSED without prejudice as to Defendants Lehman Brothers Bank, FSB and Aurora Loan Services, Inc.

DATED: January 3, 2011

  
**WILLIAM Q. HAYES**  
United States District Judge