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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JUANA MONREAL, an Individual,  
  
Plaintiff,  
  
v.  
  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY; GMAC  
MORTGAGE, LLC; EXECUTIVE  
TRUSTEE SERVICES LLC D/B/A  
ETS SERVICES, LLC; ALL  
PERSONS UNKNOWN CLAIMING  
ANY LEGAL OR EQUITABLE  
RIGHT, TITLE, ESTATE, LIEN OR  
INTEREST IN THE PROPERTY  
DESCRIBED IN THE COMPLAINT  
ADVERSE TO PLAINTIFF’S TITLE  
OR ANY CLOUD ON PLAINTIFF’S  
TITLE THERETO; AND DOES 1-50,  
INCLUSIVE,  
  
Defendants.

Civil Case No. 13cv00743 AJB (NLS)  
  
ORDER GRANTING DEFENDANTS’  
MOTION TO DISMISS PLAINTIFF’S  
FIRST AMENDED COMPLAINT  
AND CLOSING CASE  
  
(Doc. No. 20)

Presently before the Court is Defendants GMAC Mortgage, LLC (“GMAC”),  
Executive Trustee Services, LLC, d/b/a ETS Services, LLC (“ETS”), and Mortgage  
Electronic Registration Systems, Inc. (“MERS”) (collectively, “Defendants”) motion to  
dismiss Plaintiff Juana Montreal’s (“Plaintiff”) First Amended Complaint (“FAC”).<sup>1</sup>

<sup>1</sup> Defendants also requested judicial notice of seven documents: (1) Grant Deed,  
(Ex. 1); (2) Deed of Trust , (Ex. 2); (3) Assignment of the Deed of Trust, (Ex. 3); (4)  
Substitution of Trustee, (Ex. 4); (5) Notice of Default, (Ex. 5); (6) Notice of Trustee’s

1 (Doc. No. 20.) Defendant Deutsche Bank National Trust Company (“Deutsche Bank”)
2 filed a notice of joinder in Defendants’ motion to dismiss on October 1, 2013.<sup>2</sup> (Doc. No.
3 26.) In accordance with Civil Local Rule 7.1.d.1, the Court finds the motion suitable for
4 determination on the papers and without oral argument. (Doc. No. 25.) For the reasons
5 set forth below, the Court GRANTS Defendants’ motion to dismiss Plaintiff’s claims
6 arising under federal law with prejudice, and declines to exercise supplemental jurisdic-
7 tion over the remaining state-law claims. Therefore, the remaining state-law claims are
8 dismissed without prejudice. Accordingly, the Clerk of Court is instructed to enter
9 judgment and close the case.

10 **BACKGROUND**

11 **I. Factual Background**

12 On August 17, 2006, Plaintiff borrowed \$301,600.00 (“the Loan”) from Suntrust
13 Mortgage, Inc. (“Suntrust”) to purchase the property located at 4414 Newton Ave., San
14 Diego, California 92113 (“the Property”).<sup>3</sup> (FAC ¶¶ 9, 42.) The Loan was memorialized
15 by a Promissory Note (the “Note”) and secured by a Deed of Trust (“Deed of Trust”) on
16 the Property. (*Id.* at ¶ 42, Ex. B; Doc. No. 21, Ex. 2.) The Deed of Trust named MERS
17 as the beneficiary and Jackie Miller as the trustee.<sup>4</sup> (Doc. No. 21, Ex. 2 at 1.) On August
18 24, 2012, MERS assigned the beneficial interest in the Deed of Trust (“Assignment of the

19 \_\_\_\_\_
20 Sale, (Ex. 6); and (7) Trustee’s Deed upon Sale, (Ex. 7). (Doc. No. 21.) The Court
21 GRANTS the request because the documents are “not subject to reasonable dispute” and
22 are matters of public record. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d
23 741, 746 n.6 (9th Cir. 2006).

24 <sup>2</sup> On October 9, 2013, Plaintiff filed an opposition to Deutsche Bank’s notice of
25 joinder. (Doc. No. 27.) Plaintiff argues Deutsche Bank should not be allowed to join in
26 Defendants’ pending motion to dismiss because Deutsche Bank did not file the notice of
27 joinder within the twenty-one day time limit provided for in Federal Rule of Civil
28 Procedure 12(a)(1)(A)(i). The Court does not agree and finds Deutsche Bank properly
29 joined Defendants’ pending motion to dismiss.

30 <sup>3</sup> The factual allegations in the FAC remain largely unchanged from the allegations
31 in the original Complaint.

32 <sup>4</sup> Plaintiff attached a copy of the Deed of Trust to the FAC. (Doc. No. 18, Ex. B.)
33 However, because Plaintiff’s attachment omitted the first page of the Deed of Trust, the
34 Court references the Deed of Trust included in Defendants’ request for judicial notice.
35 (Doc. No. 21, Ex. 2 at 1.)

1 Deed of Trust”) to Deutsche Bank, as trustee for HarborView Mortgage Loan Trust  
2 Mortgage Loan Pass-Through Certificates, Series 2006-14. (FAC, Ex. C; Doc. No. 21,  
3 Ex. 3.) The Assignment of the Deed of Trust was recorded in the official records of the  
4 San Diego County Recorder’s Office on August 31, 2012, as Document No.: 2012-  
5 0527658. (*Id.*)

6 On October 4, 2012, Deutsche Bank substituted ETS as trustee under the Deed of  
7 Trust (“Substitution of Trustee”). (FAC, Ex. D; Doc. No. 21, Ex. 4.) The Substitution of  
8 Trustee was recorded in the official records of the San Diego County Recorder’s Office  
9 on November 9, 2012, as Document No.: 2012-0701420. (*Id.*) The Substitution of  
10 Trustee was signed by Jeannette Piccone as “Authorized Officer.” (*Id.*) The Substitution  
11 of Trustee was then notarized by John Nitkiewicz, declaring under penalty of perjury that  
12 Jeannette Piccone had personally appeared and proven that she had executed the Substitu-  
13 tion of Trustee in her authorized capacity. (*Id.*)

14 On November 7, 2012, ETS, as trustee under the Deed of Trust, issued a notice of  
15 default and election to sell under the Deed of Trust (“Notice of Default”). (FAC, Ex. E;  
16 Doc. No. 21, Ex. 5.) The Notice of Default was signed by Maricela Miseroy as “Trustee  
17 Sale Officer.” (*Id.*) The Notice of Default stated that as of November 7, 2012, Plaintiff  
18 was in default in the amount of \$29,987.00. (*Id.*) The Notice of Default also informed  
19 Plaintiff that she must contact Deutsche Bank to arrange for payment in order to stop  
20 foreclosure of the Property. (*Id.*) The Notice of Default was recorded in the official  
21 records of the San Diego County Recorder’s Office on November 9, 2012, as Document  
22 No.: 2012-0701421. (*Id.*)

23 On February 12, 2013, Omar Solorzano, as authorized agent for ETS, recorded a  
24 Notice of Trustee’s Sale (“Notice of Trustee’s Sale”). (FAC, Ex. F; Doc. No. 21, Ex. 6.)  
25 The Notice of Trustee’s Sale was recorded in the official records of the San Diego  
26 County Recorder’s Office on February 15, 2013, as Document No.: 2013-0103723. (*Id.*)  
27 The Notice of Trustee’s Sale set a foreclosure sale date of March 12, 2013, and informed  
28 Plaintiff that the total amount of the unpaid balance on the underlying obligation, plus

1 reasonable estimated costs, expenses, and advances, was currently \$360,222.88. (*Id.*) On  
2 March 14, 2013, after the Property was sold at auction, ETS executed a trustee’s deed  
3 (“Trustee Deed”) indicating that the Property had been sold to Aslan Residential I, LLC  
4 (“Aslan Residential”). (Doc. No. 21, Ex. 7.) The Trustee Deed was recorded in the  
5 official records of the San Diego County Recorder’s Office on March 29, 2013, as  
6 Document No.: 2013-0200241. (*Id.*)

## 7 **II. Procedural History**

8 Plaintiff filed the original Complaint on March 28, 2013, fifteen days after the  
9 Property was sold to Aslan Residential. (Doc. No. 1.) The original Complaint contained  
10 ten causes of action, including: (1) violation of California’s Unfair Competition Law  
11 (“UCL”), Bus. & Prof. Code § 17200; (2) intentional misrepresentation; (3) negligent  
12 misrepresentation; (4) fraudulent concealment; (5) quiet title; (6) declaratory relief; (7)  
13 violation of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601; (8) violation of the  
14 Home Ownership and Equity Protection Act (“HOEPA”), 15 U.S.C. § 1639; (9) violation  
15 of the Real Estate Settlement Procedures Act (“RESPA”) 12 U.S.C. §§ 2601; and (10)  
16 violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692. (*Id.*)

17 On June 4, 2013, the Court granted Defendants’ motion to dismiss the original  
18 Complaint. (Doc. No. 16.) The Court dismissed the first cause of action (UCL), second  
19 cause of action (intentional misrepresentation), third cause of action (negligent misrepre-  
20 sentation), fourth cause of action (fraudulent concealment), part of the seventh cause of  
21 action (TILA damages claim), eighth cause of action (RESPA), and the ninth cause of  
22 action (HOEPA damages claim) with leave to amend. (Doc. No. 16 at 23.) The Court  
23 dismissed the fifth cause of action (quiet title), sixth cause of action (declaratory relief),  
24 part of the seventh cause of action (TILA rescission claim), and tenth cause of action  
25 (FDCPA) without leave to amend. (Doc. No. 16 at 24.) Plaintiff was further instructed  
26 that any new claims or parties may not be added without leave of court. (*Id.*) Plaintiff  
27 filed the FAC on July 8, 2013. (Doc. No. 18.) The FAC alleges four causes of action  
28 against Deutsche Bank, GMAC, ETS, and MERS, including: (1) violation of the UCL;

1 (2) negligent misrepresentation; (3) violation of RESPA; and (4) violation of HOEPA.  
2 (*Id.*)

### 3 LEGAL STANDARD

#### 4 **I. Motion to Dismiss**

5 Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(6) when a  
6 plaintiff's allegations fail "to state a claim upon which relief can be granted." Fed. R.  
7 Civ. P. 12(b)(6). In ruling on a motion to dismiss, the court must "accept all material  
8 allegations of fact as true and construe the complaint in a light most favorable to the  
9 non-moving party." *Vasquez v. L.A. Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007).  
10 However, courts are not "bound to accept as true a legal conclusion couched as a factual  
11 allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009).

12 A Rule 12(b)(6) dismissal "can be based on the lack of a cognizable legal theory or  
13 the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v.*  
14 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To survive a motion to  
15 dismiss, a plaintiff must plead "enough facts to state a claim to relief that is plausible on  
16 its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility does  
17 not equate to probability, but it requires "more than a sheer possibility that a defendant  
18 has acted unlawfully." *Iqbal*, 556 U.S. at 664. "A claim has facial plausibility when the  
19 plaintiff pleads factual content that allows the court to draw the reasonable inference that  
20 the defendant is liable for the misconduct alleged." *Id.* Dismissal of claims that fail to  
21 meet this standard should be with leave to amend unless it is clear that amendment could  
22 not possibly cure the complaint's deficiencies. *See Steckman v. Hart Brewing, Inc.*, 143  
23 F.3d 1293, 1296 (9th Cir. 1998).

### 24 DISCUSSION

25 The FAC alleges two claims arising under federal law, RESPA and HOEPA, and  
26 two claims arising under state law, negligent misrepresentation and violation of the UCL.  
27 The Court's subject matter jurisdiction is premised on federal question jurisdiction over  
28 the claims arising under federal law, and supplemental jurisdiction over the pendent state-

1 law claims.<sup>5</sup> Accordingly, because the Court finds Plaintiff has failed to state a viable  
2 cause of action under either RESPA or HOEPA, even after being given an opportunity to  
3 amend her pleadings, the Court dismisses the federal causes of action with prejudice, and  
4 declines to exercise supplemental jurisdiction over the remaining state-law claims. As a  
5 result, the Court does not address the merits of Plaintiffs' state-law causes of action.

6 **I. Claims Arising Under Federal Law**

7 **A. Violation of RESPA**

8 Plaintiff's third cause of action alleges that defendants Deutsche Bank, GMAC,  
9 ETS, and MERS violated RESPA by placing loans with consumers for the purpose of  
10 unlawfully increasing, or otherwise obtaining, yield spread fees and sums in excess of  
11 what would have been lawfully earned. (Doc. No. 18 ¶ 126.) Defendants move to  
12 dismiss this claim on the basis that Plaintiff has not made any material alterations to the  
13 factual allegations in the original Complaint, which was dismissed by the Court for  
14 failing to allege how the statute was allegedly violated, or why the claim is not barred by  
15 the applicable one-year statute of limitations.

16 The Court is inclined to agree. Despite clear admonishments by the Court in its  
17 prior order, the allegations in the FAC do nothing to remedy the prior identified  
18 deficiencies. Once again, Plaintiff's allegations simply parrot the language of the statute,  
19 fail to identify when any alleged violation of RESPA occurred, and fail to sufficiently  
20 plead how each individual defendant allegedly violated RESPA. (Doc. No. 16 at 19-20.)  
21 Therefore, the Court finds dismissal of the RESPA claim warranted because the FAC: (1)  
22 simply re-incorporates the same deficient factual allegations from the original Complaint;  
23 (2) fails to identify the proper defendants; and (3) fails to allege why the claim is not  
24 barred by the applicable one-year statute of limitations.

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27 <sup>5</sup> Plaintiff also alleges that the Court has subject matter jurisdiction over the action  
28 based on diversity of citizenship. (FAC ¶ 7.) This is incorrect. As stated in the FAC,  
ETS is a California corporation that shares the same domicile as Plaintiff, a California  
resident. (*Id.* at ¶ 12.) Therefore, complete diversity is lacking and the Court's subject  
matter jurisdiction cannot be premised on diversity of citizenship.

1 First, a quick comparison of the original Complaint and the FAC evidences  
2 Plaintiff's clear disregard of prior Court admonishments and guidance regarding  
3 necessary amendments to the original Complaint. For example, the original Complaint  
4 included the following factual allegations:

- 5 134. Plaintiff re-alleges and incorporates by reference the allegations set  
6 forth in each of the preceding paragraphs of this complaint.
- 7 135. Based upon information and belief, and on that basis Plaintiff alleges  
8 that Defendants and each of them are such that they fall within the  
9 requirements of the Real Estate Settlement Procedures Act (RESPA).
- 10 136. Based upon information and belief, and on that basis Plaintiff allege  
11 that Defendants and each of them, placed loans for the purpose of  
12 unlawfully increasing or otherwise obtaining yield spread fees and  
13 sums in excess of what would have been lawfully earned.
- 14 137. Based upon information and belief, and on that basis Plaintiff allege  
15 that Defendants Guild Mortgage, BAC Home Loans and DOE 1 either  
16 individually or jointly as "Servicers" as that term is used within the  
17 RESPA act and either individually or jointly violated the requirements  
18 of 26 U.S.C. § 2605(B) in that the servicing contract or duties there  
19 under were transferred or hypothecated without the required notice.
- 20 138. Plaintiff alleges that these violations require rescission or cancellation  
21 of the loan and a return of all funds received by Defendants from  
22 Plaintiff.
- 23 139. Plaintiff further alleges that he is entitled to compensatory damages in  
24 an amount to be determined at trial.
- 25 140. Plaintiff further alleges that he is entitled to attorneys fees according  
26 to statute in the event that they retain counsel.

27 (Doc. No. 1 at ¶¶ 134-140.)

28 The FAC is nearly identical:

- 124. Plaintiff re-alleges and incorporates by reference the allegations set  
forth in each of the preceding paragraphs of this complaint.
- 125. Based upon information and belief, and on that basis Plaintiff allege  
that Defendants and each of them are such that they fall within the  
requirements of the Real Estate Settlement Procedures Act (RESPA).
- 126. Based upon information and belief, and on that basis Plaintiff allege that  
Defendants and each of them, placed loans for the purpose of unlawfully  
increasing or otherwise obtaining yield spread fees and sums in excess of  
what would have been lawfully earned.
- 127. Based upon information and belief, and on that basis Plaintiff allege  
that Defendants Guild Mortgage, BAC Home Loans and DOE 1 either  
individually or jointly violated the requirements of 26 U.S.C. §  
2605(B) in that the servicing contract or duties there under were  
transferred or hypothecated without the required notice.
- 128. Plaintiff alleges that these violations require rescission or cancellation  
of the loan and a return of all funds received by Defendants from  
Plaintiff.
- 129. Plaintiff further alleges that she is entitled to compensatory damages  
in an amount to be determined at trial.
- 130. Plaintiff further alleges that she is entitled to attorney's fees according  
to statute in the event that they retain counsel.

1 131. Plaintiff is ultimately seeking cancellation of instruments, specifically  
2 the Assignment and the SoT.  
(FAC ¶¶ 124-131.)

3 Second, as noted in the Court’s prior order, the FAC includes allegations against  
4 defendants that are not even parties to the instant action. For example, Plaintiff alleges  
5 that Defendants Guild Mortgage and BAC Home Loans either individually, or jointly,  
6 violated the requirements of 26 U.S.C. § 2605(B).<sup>6</sup> However, neither Guild Mortgage nor  
7 BAC Home Loans are defendants in the instant action. Plaintiff was previously informed  
8 of this exact error in the Court’s prior order dismissing the original Complaint, but  
9 nonetheless failed to make the necessary amendments before filing the FAC. Therefore,  
10 the Court finds the FAC still fails to identify how any of the named  
11 defendants—Deutsche Bank, GMAC, ETS, and MERS—violated RESPA. Finally, as  
12 also noted by the Court in its prior order, RESPA is subject to a one-year statute of  
13 limitations. 12 U.S.C. § 2614. Thus, because the Loan was consummated in 2006, and  
14 Plaintiff did not file the instant action until 2013, which is well outside the one year  
15 limitations period, the Court is still at a loss as to how the claim should be allowed to  
16 proceed. Neither the FAC nor Plaintiff’s opposition addressed the Court’s statute of  
17 limitations concerns.

18 Therefore, the Court finds Plaintiff has failed to make any substantive amendments  
19 to the FAC regarding the RESPA claim, and further amendment would be futile.  
20 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiff’s third cause of  
21 action for violation of RESPA with prejudice. *See Das v. WMC Mortg. Corp.*, No. 10-cv-  
22 00650-LHK, 2012 WL 1657111, at \*9 (N.D. Cal. May 10, 2012) (dismissing RESPA  
23 claim where plaintiffs failed to cure deficiencies in an amended complaint and failed to  
24 address deficiencies in their opposition briefs).

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28 <sup>6</sup> Additionally, Plaintiff alleges Defendants violated “26 U.S.C. § 2605 *et. seq.*”  
(FAC ¶¶ IX, 127.) This statute does not even exist.



1           **B.     Violation of HOEPA**

2           Plaintiff’s fourth cause of action alleges that defendants Deutsche Bank, GMAC,  
3 ETS, and MERS violated HOEPA by placing and administering Plaintiff’s Loan without  
4 regard for Plaintiff’s income or cash flow, and with the intention of inducing Plaintiff’s  
5 default. (FAC ¶ 134.) Plaintiff further alleges that she became aware of this violation  
6 “upon the discovery of Defendants’ intent to wrongfully foreclose and sell his property.”<sup>7</sup>  
7 (*Id.* at ¶ 135.) Defendants move to dismiss this claim on the basis that the claim is time-  
8 barred, and Plaintiff fails to allege how the Loan at issue is covered by HOEPA.

9           The Court is once again inclined to agree. Similar to the RESPA claim, the Court’s  
10 prior order provided Plaintiff clear guidance as to the necessary deficiencies that had to  
11 be corrected prior to the filing of an amended complaint. Plaintiff however, failed to  
12 heed the Court’s guidance, and instead elected to file an amended complaint that was  
13 substantially similar to the original Complaint. Therefore, the Court finds dismissal of  
14 the HOEPA claim warranted because the FAC: (1) re-incorporates the same deficient  
15 factual allegations from the original Complaint; (2) fails to allege how the Loan at issue is  
16 covered by HOEPA; and (3) fails to allege any facts to support equitable tolling.

17           First, as stated above, a comparison between the original Complaint and the FAC  
18 exhibits Plaintiff’s almost complete disregard of the Court’s prior order. In the original  
19 Complaint, Plaintiff alleged:

- 20           141. Plaintiff re-alleges and incorporates by reference the allegations set  
21           forth in each of the preceding paragraphs of this complaint.  
22           142. Based upon information and belief, and on that basis Plaintiff alleges  
23           that the mortgage obtained by her through Defendants, by means  
24           unknown obtained and enforced by other Defendants herein falls  
25           within the purview of 15 U.S.C. § 1602 *et seq.*, commonly known as  
26           the “Home Ownership and Equity Protection Act of 1994 (HOEPA).  
27           143. Based upon information and belief, and on that basis Plaintiff alleges  
28           that the loan was placed in violation of the HOEPA act as it was  
              placed and administered and otherwise utilized without regard to  
              Plaintiff’s income or cash flow and with the intention of inducing a  
              default.  
              144. Plaintiff became aware of this upon the discovery of Defendants’ intent to  
              wrongfully foreclose and sell his property.

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<sup>7</sup> The Court notes that the FAC erroneously labels Plaintiff as a male, when judicially noticeable documents indicate Plaintiff is a female. (Doc. No. 21, Ex. 1.)

1 145. As a direct and a legal consequence of the above actions, Plaintiff has  
2 been damaged in a sum to be proven at trial.

3 (Doc. No. 1 at ¶¶ 141-145.)

4 The FAC is nearly identical:

5 132. Plaintiff re-alleges and incorporates by reference the allegations set  
6 forth in each of the preceding paragraphs of this complaint.

7 133. Based upon information and belief, and on that basis Plaintiff alleges  
8 that the mortgage obtained by her through Defendants, by means  
9 unknown obtained and enforced by other Defendants herein falls  
10 within the purview of 15 U.S.C. § 1602 *et seq.*, commonly known as  
11 the “Home Ownership and Equity Protection Act of 1994 (HOEPA).

12 134. Based upon information and belief, and on that basis Plaintiff alleges  
13 that the loan was placed in violation of the HOEPA act as it was  
14 placed and administered and otherwise utilized without regard to  
15 Plaintiff’s income or cash flow and with the intention of inducing a  
16 default.

17 135. Plaintiff became aware of this upon the discovery of Defendants’  
18 intent to wrongfully foreclose and sell his property.

19 136. As a direct and a legal consequence of the above actions, Plaintiff has  
20 been damaged in a sum to be proven at trial.

21 137. Plaintiff is ultimately seeking cancellation of instruments, specifically  
22 the Assignment and the SoT.

23 (FAC ¶¶ 132-137.) Thus, paragraph 137 is the only new allegation, which does not  
24 address any of the Court’s identified concerns.

25 Second, the FAC once again fails to allege the necessary facts to show HOEPA  
26 covers the Loan at issue. In order to be subject to the protections afforded by HOEPA,  
27 one of two factors must be established: (1) the annual percentage rate of the loan at  
28 consummation must exceed by more than ten percent the applicable yield on treasury  
securities; or (2) the total points and fees payable by the consumer at or before closing  
has to be greater than eight percent of the total amount. *See* 15 U.S.C. § 1602(aa)(1) &  
(3); *Lynch v. RKS Mortg., Inc.*, 588 F. Supp. 2d 1254, 1260 (E.D. Cal. 2008). In addition,  
HOEPA expressly excludes “residential mortgage transactions.” 15 U.S.C. § 1602(aa).  
Among other things, a residential mortgage transaction is for the purpose of “financ[ing]  
the acquisition or initial construction of such dwelling.” *Id.* at § 1602(w). The FAC fails  
to satisfy any of these requirements, or allege why the exception in § 1602(aa) does not  
apply. Plaintiff merely states that the Loan falls within the purview of HOEPA. (FAC ¶  
133.) Such conclusory allegations are not sufficient. *See Marks v. Chicoine*, No. C06-

1 06806SI, 2007 WL 160992, at \*8 (N.D. Cal. Jan. 18, 2007) (dismissing HOEPA claim  
2 that failed to include facts sufficient to establish the subject loan was a high-risk loan).

3 Third, even if the Court found HOEPA covered the Loan at issue, Plaintiff still  
4 fails to allege any facts to support equitable tolling. “HOEPA is an amendment of TILA,  
5 and therefore is governed by the same remedial scheme and statutes of limitations as  
6 TILA.” *Hamilton v. Bank of Blue Valley*, 746 F. Supp. 2d 1160, 1179 (E.D. Cal. 2010)  
7 (citation and internal quotation marks omitted). Therefore, claims for rescission under  
8 TILA are subject to a three-year statute of limitations, and claims for damages under  
9 TILA are subject to a one-year statute of limitations. *See also Kemezis v. Matthew*, No.:  
10 075086, 2008 WL 2468377, at \*3 (E.D. Pa. June 16, 2008) (“HOEPA is an amendment  
11 of TILA, and therefore is governed by the same remedial scheme and statutes of  
12 limitations as TILA.”).

13 Here, the Loan was executed on August 17, 2006. (FAC, Ex. B; Doc. No. 21, Ex.  
14 2.) However, Plaintiff did not file the instant action until March 28, 2013, approximately  
15 six years, seven months, and eleven days after the Loan closed. This is well beyond both  
16 the one-year and three-year limitation periods applicable to HOEPA damages and  
17 HOEPA recession claims, respectively. Moreover, although Plaintiff once again alleges  
18 that she did not become aware of the facts that form the basis of her claim until after  
19 Defendants initiated foreclosure proceedings against the Property, such conclusory  
20 allegations do not suffice. Plaintiff fails to provide the Court with any reason to believe  
21 that she could not have discovered this alleged wrongdoing earlier. *See Cervantes v.*  
22 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1045 (9th Cir. 2011) (stating that the  
23 limitations period commenced at the time the loan documents were executed “because  
24 [plaintiff] could have discovered the alleged disclosure violations and discrepancies at  
25 that time”); *Rocha v. Bank of Am., NA*, No. CV 12-1215- GW(JCx), 2012 WL 1267883,  
26 at \*3 (C.D. Cal. Apr. 12, 2012) (stating that allegations that the plaintiff did not become  
27 aware of wrongdoing until foreclosure proceedings commenced is not enough to state a  
28 claim for equitable tolling). Therefore, the Court finds Plaintiff could have discovered

1 any alleged wrongdoing within the applicable statute of limitations, either one-year or  
2 three-years, and equitable tolling does not apply.

3 Therefore, the Court finds Plaintiff failed to rectify the specific deficiencies noted  
4 by the Court in its prior order, and further amendment of the HOEPA claim would be  
5 futile. Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiff’s  
6 fourth cause of action for violation of HOEPA with prejudice. *See, e.g., Cervantes*, 656  
7 F.3d at 1045 (dismissal with prejudice was appropriate when the claim was not filed until  
8 three years after the statute of limitations ran).

## 9 **II. Supplemental Jurisdiction**

10 Plaintiff’s only remaining claims are state-law claims—negligent  
11 misrepresentation and violation of the UCL.<sup>8</sup> In the absence of a claim arising under  
12 federal law, for which the Court’s subject matter jurisdiction is premised, the Court may  
13 decline to exercise supplemental jurisdiction over remaining pendant state-law claims.  
14 28 U.S.C. § 1367(c)(3); *Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001) (“A court may  
15 decline to exercise supplemental jurisdiction over state-law claims once it has dismissed  
16 all claims over which it has original jurisdiction.”) When the court dismisses all federal-  
17 law claims before trial, “the balance of factors to be considered under the pendent  
18 jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point  
19 toward declining to exercise jurisdiction over the remaining state-law claims.” *Sanford v.*  
20 *MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (quoting *Carnegie-Mellon Univ.*  
21 *v. Cohill*, 484 U.S. 343, 350 n.7 (1988)). Retaining supplemental jurisdiction is within  
22 the sound discretion of the court, and will not be disturbed on appeal absent an abuse of  
23 discretion. *See Bryant v. Adventist Health Sys./W.*, 280 F.3d 1162, 1165 (9th Cir. 2002).

24 Here, the Court finds declining to exercise supplemental jurisdiction over the  
25 pendant state-law claims appropriate. The parties have not progressed to trial, and neither  
26 party has begun discovery. Moreover, the pleadings are still in an early stage, as Plaintiff  
27

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28 <sup>8</sup> Plaintiff does not allege any claims arising under federal law as predicate acts  
under the UCL’s “unlawful” prong.


1 did not file the original Complaint until March 28, 2013. Accordingly, the Court declines  
2 to exercise supplemental jurisdiction over the remaining state-law claims that concern  
3 predominately state-law issues. *See, e.g., Do v. Bank of Am. Corp.*, No. C 11-01467  
4 SBA, 2012 WL 1094451, at \*4 (N.D. Cal. Mar. 29, 2012) (declining to exercise  
5 supplemental jurisdiction after dismissing federal claims when action was before court  
6 for one year and four days); *Cruz v. Mortg. Lenders Network*, No. 09-cv-1679 BEN  
7 (AJB), 2010 WL 3745932, at \*4-5 (S.D. Cal. Sept. 20, 2010) (declining to exercise  
8 supplemental jurisdiction after dismissing federal claims when action was before court  
9 for one year, one month, and sixteen days); *Perez v. Wells Fargo Bank, N.A.*, No. C-11-  
10 02279 JCS, 2013 WL 892746, at \*14 (N.D. Cal. Mar. 8, 2013) (declining to exercise  
11 supplemental jurisdiction after dismissing federal claims when action was before court  
12 for over one and one half years).

13 **CONCLUSION**

14 For the reasons set forth above, the Court GRANTS Defendants' motion to  
15 dismiss. (Doc. No. 20.) The Court dismisses Plaintiff's RESPA and HOEPA claims with  
16 prejudice and declines to exercise supplemental jurisdiction over the remaining state-law  
17 claims. The state-law claims are therefore dismissed without prejudice for want of  
18 jurisdiction. The Clerk of Court is instructed to enter judgement and close the case.

19  
20 IT IS SO ORDERED.

21 DATED: October 22, 2013

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Hon. Anthony J. Battaglia  
U.S. District Judge