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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 NINA OSHANA SEPARATE
12 PROPERTY TRUST, dated
13 September 16, 2015,

Plaintiff,

14 v.

15 BANK OF AMERICA, N.A.;
16 BAYVIEW LOAN SERVICING,
17 LLC; SELECT PORTFOLIO
18 SERVICING, INC.; and DOES 1-
100, inclusive,

Defendants.
19

Case No.: 17cv2408-WQH-RBB

ORDER

20 HAYES, Judge:

21 The matters before the Court are the motions to dismiss filed by Defendant Select
22 Portfolio Servicing, Inc., (ECF No. 28), Defendant Bayview Loan Servicing, LLC, (ECF
23 No. 30), and Defendant Bank of America, N.A., (ECF No. 31).

24 **I. PROCEDURAL BACKGROUND**

25 On November 30, 2017, Plaintiff Nina Oshana Separate Property Trust initiated this
26 action by filing a complaint with Jury Demand against Defendants Bank of America, N.A.
27 (Bank of America), Bayview Loan Servicing LLC (Bayview), Select Portfolio Servicing,
28 Inc. (Select Portfolio), and doe defendants. (ECF No. 4).

1 On December 18, 2017, Plaintiff filed an amended complaint. (ECF No. 3). On
2 July 9, 2018, Plaintiff filed a second amended complaint, the operative Complaint in this
3 matter. (ECF No. 26). Plaintiff alleges the following causes of action: (1) breach of written
4 contract, (2) negligence, (3) negligent misrepresentation, (4) accounting, (5) violations of
5 Regulation X of California’s Rosenthal Fair Debt Collection Practices Act (RFDCPA) and
6 Regulation Z of the federal Truth In Lending Act (TILA), (6) declaratory relief, and (7)
7 violation of the federal Real Estate Settlement Procedures Act (RESPA).

8 On July 19, 2018, Select Portfolio filed a motion to dismiss pursuant to Fed. R. Civ.
9 P. 12(b)(6) (ECF No. 28), accompanied by a request for judicial notice (ECF No. 29). On
10 July 23, 2018, Bayview filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (ECF
11 No. 30), accompanied by a request for judicial notice (ECF No. 30-2).¹ On July 23, 2018,
12 Bank of America filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (ECF No.
13 31), accompanied by a request for judicial notice (ECF No. 31-2).² Defendants contend
14 that Plaintiff lacks standing to bring the claims and fails to allege sufficient facts to state
15 the claims under the applicable pleading standards.

16 On August 9, 2018, Plaintiff filed a Response to the motions to dismiss. (ECF No.
17 32). Plaintiff contends that the Complaint adequately alleges facts to state plausible claims
18 of relief as to all causes of action.

19 On August 17, 2018, Bank of America filed a Reply. (ECF No. 33). On August 23,
20 2018, Select Portfolio filed a Reply. (ECF No. 34). On August 24, 2018, Bayview filed a
21 Reply. (ECF No. 35).

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25 ¹ The caption on Bayview’s Motion seeks dismissal pursuant to “Fed. R. Civ. P. 12(b)(6)(7).” (ECF No.
26 30 at 1). To the extent Bayview seeks dismissal on grounds other than Fed. R. Civ. P. 12(b)(6), such
27 grounds are unsupported by Bayview’s Motion.

28 ² Judicial notice of the requested documents is unnecessary for this Order. Defendants’ requests for
judicial notice are denied. *See Asvesta v. Petroutsas*, 580 F.3d 1000, 1010 n.12 (9th Cir. 2009) (denying
request for judicial notice where judicial notice would be “unnecessary”).

1 **II. ALLEGATIONS OF THE COMPLAINT**

2 This action arises out of “a construction loan in the amount of One Million Five
3 Hundred Thousand Dollars (\$1,500,000.00),” or “the COUNTRY WIDE DOT,” recorded
4 against real property located at 4209 Desoto Court, La Mesa, California. (ECF No. 26 ¶¶
5 18, 21). Plaintiff alleges that “[s]hortly thereafter, BANK OF AMERICA represented that
6 it had acquired the COUNTRY WIDE DOT and was the servicer of PLAINTIFF’[s] Loan.”
7 *Id.* ¶ 22. Plaintiff alleges,

8 Beginning on or about March 2011, and throughout calendar years 2015 and
9 2016, PLAINTIFF is informed, and believe[s], and thereon allege[s], that
10 the[] mortgage payments, at all times relevant herein, were timely made and
11 they are presently current on their mortgage without a single breach or
violation of the loan agreement.

12 *Id.* ¶ 25.³ Plaintiff alleges that “Defendants implemented [a] fraudulent income strategy
13 when PLAINTIFF defaulted on his loan.” *Id.* ¶ 26.

14 Defendants’ alleged strategy is to “order default-related services from their
15 subsidiaries and affiliated companies, who, in turn, obtain the services from third-party
16 vendors” who “charge Defendants for the services.” *Id.* ¶ 27. Plaintiff alleges that
17 “Defendants mark-up the fees significantly, charge the new, marked-up amount on the
18 borrower’s account and retain the fraudulently generated profit.” *Id.* Plaintiff alleges that
19 “Defendants continue fraudulently generating substantial profits by concealing
20 unnecessary, undisclosed and unlawful marked-up fees to borrowers’ accounts under the
21 guise of lawfully charged default-related fees.” *Id.*

22 Plaintiff alleges that the loan documents permit loan servicers to pay fees necessary
23 to protect the beneficiary’s interest in the loan, including default-related services. *Id.* ¶ 29.
24 Plaintiff alleges that the loan documents allow the loan servicer “to be reimbursed by the
25 borrowers, but . . . do[] not authorize the servicer to mark-up the actual cost of those
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28 ³ The Complaint excerpts in this Order reflect the original grammar unless otherwise noted.

1 services to make a profit.” *Id.* Plaintiffs allege that “Defendants conceal these marked-up
2 fees,” and charge borrowers for “unnecessary and unreasonable” property inspections. *Id.*
3 ¶¶ 31–34.

4 Plaintiff alleges that “[w]hen borrowers, like PLAINTIFF, get behind on their
5 mortgages and fees for these default-related services are added on to the past-due principal
6 and interest payments, Defendants’ practices make it increasingly difficult for borrowers
7 to bring their loan current.” *Id.* ¶ 36. Plaintiff alleges that “Defendants provide information
8 about borrowers’ payment history to credit reporting companies,” which “causes severe
9 damage to their credit scores.” *Id.* ¶ 37. Plaintiff alleges that “Defendants’ practices”
10 “keep[] borrowers in default” and cause “borrowers, including PLAINTIFF” to be
11 “wrongfully driven into foreclosure.” *Id.* ¶¶ 37–38. Plaintiff alleges that Defendants
12 caused incorrect entries on Plaintiff’s credit report history regarding monthly mortgage
13 payments for May 2015 through August 2015, November 2015 through October 2016, and
14 February 2017 through September of 2017. *Id.* ¶¶ 39–41.

15 Plaintiff alleges that Plaintiff “contacted Defendants . . . to seek the immediate
16 correction of her credit reports” and “an accounting of all her mortgage payments for[]
17 more than three years with no avail.” *Id.* ¶¶ 42–43. Plaintiff alleges,

18 At some point, the PLAINTIFF reached the point of utter frustration. This is
19 documented in a diary that PLAINTIFF maintained. Without being able to
20 obtain answers and information from Defendants BANK OF AMERICA,
21 SELECT, BAYVIEW, and DOES 1 – 20, inclusive, the PLAINTIFF sought
22 legal services. PLAINTIFF’s former Counsel was one such lawyer who
23 contacted and submitted various letters to the servicer (Select Portfolio
24 Services) for information in the form of a Qualified Written Request
25 [permitted under Section 6 of the Real Estate Settlement Procedures Act
26 (“RESPA”)] notice of dispute and demand on or about March 14, 2017. These
27 submittals requested the same kind of information requested by the
28 PLAINTIFF pro se, but were more formal. Defendants BANK OF
AMERICA, SELECT, BAYVIEW, and DOES 1 – 20, inclusive, did not
properly respond to these requests.

1 *Id.* ¶ 44. Plaintiff alleges that Plaintiff “sent letters” to Defendants “under RESPA,
2 demanding that they halt their adverse credit reporting relating to the issues presented in
3 the letter until matters were clarified.” *Id.* ¶ 47. Plaintiff alleges that Defendants “would
4 not cease their wrongful activities, and Plaintiffs’ credit has been significantly tarnished by
5 this, which is an inappropriate and wrongful action.” *Id.* ¶ 48. Plaintiff alleges that Bank
6 of America previously serviced the loan, and that Bayview acquired the servicing and
7 continues to service the loan. *Id.* ¶¶ 48–49, 52.

8 Plaintiff alleges that Defendants breached the loan agreement; breached duties of
9 reasonable care for loan record maintenance and disclosure, and employee supervision and
10 training; and made false representation to Plaintiffs and third parties, causing reasonable
11 reliance. *Id.* ¶¶ 56, 59–62, 64–69. Plaintiff alleges that Defendants “wrongfully demanded
12 and received inaccurate and excessive payments” and “refused to listen to reason and
13 correct their inaccurate and deficient records.” *Id.* ¶ 73. Plaintiff alleges that Defendants
14 knowingly and falsely “represented that PLAINTIFF was behind on their mortgage by
15 more than of \$25,824.68, yet, DEFENDANTS never foreclosed on the Subject Property.”
16 *Id.* ¶ 78.

17 Plaintiff alleges that “after PLAINTIFF’s debt under the COUNTRYWIDE DOT
18 was negligently and inaccurately accounted[], by the foreclosure on the Subject Property,”
19 Defendants “deducted several monthly payments between January 1, 2015 and the present
20 date, totaling more than \$70,000.00 from PLAINTIFF’s bank account, for payments that
21 had not yet become due, that were far in excess of the Mortgage Payment due under the
22 COUNTRYWIDE DOT, and which are yet to be properly accounted for on Plaintiff’s
23 mortgage statements,” or refunded to Plaintiff. *Id.* ¶ 79. Plaintiff alleges that “Defendants’
24 unfair, unlawful, and fraudulent business practices and false and misleading advertising”
25 do not comply with Cal. Bus. & Prof. Code §17200 and “present a continuing threat to
26 members of public in that other consumers will be defrauded into having their property
27 improperly sold at foreclosure.” *Id.* ¶ 82.

1 Plaintiff alleges that “Defendants refused to take appropriate action in responding to
2 inquiries made and account for the PLAINTIFF[’s] concerns” in violation of RESPA. *Id.*
3 ¶ 88. Plaintiff alleges that Defendants “claim the PLAINTIFF is making insufficient
4 payments but they have not provided it with information on what the payments should be
5 and the proper background information as above described; and in the alternative, they
6 have failed to prove that they are the parties entitled to the payments.” *Id.* ¶ 90. Plaintiff
7 alleges that Plaintiff has “made continual requests for basic information right up through
8 and including just before filing this suit to no avail,” and that “[t]his is information that the
9 law requires be given them.” *Id.*

10 Plaintiff alleges that “[n]onetheless without providing this information,” Defendants
11 “submitted negative information to credit agencies and bureaus about the PLAINTIFF,”
12 which “has prevented Plaintiffs from getting a loan, which is necessary for them to continue
13 their business or operate them at maximum capacity.” *Id.* Plaintiff alleges that “they are
14 the assignees of a franchise known as 7 Star Auto Glass, and they are owners of several
15 locations in Fresno, California and elsewhere throughout the United States.” *Id.* Plaintiff
16 alleges that “plans to expand elsewhere in the Country” were “put on hold as a result of
17 bad credit created by the above described actions.” *Id.* Plaintiff alleges that “[e]ven worse,
18 PLAINTIFF cannot refinance their mortgage for the Subject Property with the poor credit
19 caused by the above.” *Id.*

20 Plaintiff seeks “consequential damages in an amount according to proof at trial, but
21 not less than \$100,000” for breach of written contract; “general and special damages in an
22 amount to be determined at trial, but not less than \$1,000,000” for negligence; and “general
23 and special damages in an amount according to proof at trial, but not less than \$100,000”
24 for negligent misrepresentation. *Id.* ¶¶ 57, 63, 70. Plaintiff seeks “an accounting for all
25 payments made thereto, including any impound account, and for and correction thereof,
26 and reimbursement of the excess amount to PLAINTIFF with interest and attorneys’ fees.”
27 *Id.* ¶ 74.
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1 Plaintiff seeks disgorgement, restitution, injunctive relief, “actual and statutory
2 damages, attorney’s fees and costs, and such other relief as the court determines is due”
3 pursuant to RFDCPA. *Id.* ¶¶ 80–81, 83. Plaintiff “requests that the Court declare the rights
4 of the parties in this matter” and “enforce these rights with the issuance of injunctions or
5 restraining orders as may be necessary to place the parties in their proper position with
6 respect to their interests.” *Id.* ¶ 86. Plaintiff alleges that “Plaintiffs have suffered financial
7 and emotionally through this entire ordeal as a direct result of Defendants actions” under
8 RESPA. *Id.* ¶ 88. Plaintiff alleges that Plaintiff “is hindered in its ability to conduct its
9 business and has been hindered in its ability to refinance the Subject Property,” and is
10 “losing its right to future income as a result and seek damages of all this.” *Id.* ¶ 91. Plaintiff
11 seeks “all damages and equitable relief allowed by law, attorney fees and costs occasioned
12 by the above stated conduct” pursuant to RESPA. *Id.* ¶ 92.

13 III. LEGAL STANDARD

14 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a
15 claim upon which relief can be granted.” In order to state a claim for relief, a pleading
16 “must contain . . . a short and plain statement of the claim showing that the pleader is
17 entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) “is proper only
18 where there is no cognizable legal theory or an absence of sufficient facts alleged to support
19 a cognizable legal theory.” *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035,
20 1041 (9th Cir. 2010) (quotation omitted).

21 Stating a claim for relief “requires more than labels and conclusions, and a formulaic
22 recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*,
23 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to
24 dismiss, a court must accept as true all “well-pleaded factual allegations.” *Ashcroft v.*
25 *Iqbal*, 556 U.S. 662, 679 (2009). “Determining whether a complaint states plausible claim
26 for relief is ‘a context-specific task that requires the reviewing court to draw on its judicial
27 experience and common sense.’” *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016)
28 (quoting *Iqbal*, 556 U.S. at 679).

1 “In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual
2 content, and reasonable inferences from that content, must be plausibly suggestive of a
3 claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th
4 Cir. 2009) (quotations omitted). If both parties advance plausible alternative explanations,
5 then the “plaintiff’s complaint survives a motion to dismiss under Rule 12(b)(6),” because
6 “[t]he standard at this stage of the litigation is not that plaintiff’s explanation must be true
7 or even probable.” *Starr v. Baca*, 652 F.3d 1202, 1216–17 (9th Cir. 2011) (“Plaintiff’s
8 complaint may be dismissed only when defendant’s plausible alternative explanation is so
9 convincing that plaintiff’s explanation is *im* plausible.”).

10 **IV. DISCUSSION**

11 In the seventh cause of action for violation of RESPA, Plaintiff alleges Defendants
12 failed to appropriately respond to Plaintiffs’ qualified written request. (ECF No. 26 at 20–
13 21).

14 Select Portfolio asserts that Plaintiff fails to explain why Select Portfolio had a duty
15 under RESPA to respond to Plaintiff’s alleged qualified written request. (ECF No. 28-2 at
16 13). Select Portfolio asserts that Plaintiff fails to allege facts showing that the qualified
17 written request contained the necessary statement of reasons for the borrower’s belief the
18 account was in error. Select Portfolio asserts that Plaintiff fails to allege facts showing
19 how a failure to respond to the qualified written requested caused Plaintiff actual pecuniary
20 damages.

21 Bayview asserts that Plaintiff fails to identify the specific provisions of RESPA
22 allegedly violated by Bayview. (ECF No. 30-1 at 16). Bayview asserts that Plaintiff’s
23 allegations are conclusory. Bayview asserts that Plaintiff fails to allege specific facts in
24 support of the RESPA claim. Bayview asserts that Plaintiff fails to allege facts that identify
25 which of the Defendants violated RESPA. Bayview asserts that Plaintiff fails to allege
26 facts showing that a qualified written request was sent to Bayview.

27 Bank of America asserts that Plaintiff’s allegations regarding RESPA violation are
28 vague and do not provide fair notice of Plaintiff’s claim. (ECF No. 31-1 at 18). Bank of

1 America asserts that Plaintiff fails to allege that a qualified written request was sent to Bank
2 of America. Bank of America contends that even if such a request was sent, Bank of
3 America had no duty to respond under RESPA. Bank of America contends that RESPA
4 imposes the duty to respond only on loan servicers, and that Bank of America's purported
5 role in this action is merely a beneficiary of the loan. Bank of America asserts that any
6 RESPA violation allegedly committed by Bank of America is time barred. Bank of
7 America asserts that Plaintiff admits Bank of America had not serviced the loan for a long
8 period of time, and that the servicing was previously transferred to Select Portfolio and
9 Bayview.

10 Plaintiff does not reference RESPA in the Response filed in opposition to the
11 Motions to Dismiss. (ECF No. 32).

12 "If any servicer of a federally related mortgage loan receives a qualified written
13 request from the borrower (or an agent of the borrower) for information relating to the
14 servicing of such loan, the servicer shall provide a written response acknowledging receipt
15 of the correspondence within 20 days . . . unless the action requested is taken within such
16 period." 12 U.S.C. § 2605(e)(1)(A). A qualified written request is "a written
17 correspondence . . . that (i) includes, or otherwise enables the servicer to identify, the name
18 and account of the borrower; and (ii) includes a statement of the reasons for the belief of
19 the borrower, to the extent applicable, that the account is in error or provides sufficient
20 detail to the servicer regarding other information sought by the borrower." §
21 2605(e)(1)(B). When a loan servicer receives a qualified written request, it must either
22 correct the borrower's account or, after conducting an investigation, provide the borrower
23 with a written explanation of the reason the servicer believes the account is correct, or the
24 reason the requested information is unavailable. *See* § 2605(e)(2). If a loan servicer fails
25 to comply with the provisions of § 2605, a borrower is entitled to "any actual damages to
26 the borrower as a result of the failure" and "any additional damages, as the court may allow,
27 in the case of a pattern or practice of noncompliance with the requirements of [12 U.S.C.
28 § 2605]." § 2605(f)(1).

1 A showing of pecuniary damages is required to state a § 2605 claim. *See Molina v.*
2 *Wash. Mut. Bank*, No. 09-CV-894, 2010 WL 431439 at *7 (S.D. Cal. Jan. 29, 2010). The
3 requirement to show pecuniary damages limits the cause of action to plaintiffs who can
4 show that the failure to respond or give notice caused actual harm. *See Shepherd v. Am.*
5 *Home Mortg. Servs., Inc.*, No. 2:09-1916, 2009 WL 4505925, at *3 (E.D. Cal. Nov. 20,
6 2009) (citation omitted). A plaintiff is entitled to recover for the loss that relates to the
7 RESPA violation, not for all losses related to foreclosure activity. *See Lal v. Am. Home*
8 *Servicing, Inc.*, 680 F. Supp. 2d 1218, 1223 (E.D. Cal. 2010) (“[T]he loss alleged must be
9 related to the RESPA violation itself.”); *Torres v. Wells Fargo Home Mortg., Inc.*, No. 10-
10 4761, 2011 WL 11506, at *8 (N.D. Cal. Jan. 4, 2011) (“The plaintiff must . . . allege a
11 causal relationship between the alleged damages and the RESPA violation.”).

12 In this case, Plaintiff makes conclusory allegations that Plaintiff “contacted”
13 Defendants Bank of America, Select Portfolio, and Bayview, “to seek immediate
14 correction of her credit reports” and “to seek an immediate accounting of all her mortgage
15 payments.” (ECF No. 26 ¶ 42). Plaintiff makes conclusory allegations that Plaintiff’s
16 lawyer sent a qualified written request to Select Portfolio on March 14, 2017. Plaintiff
17 alleges that the lawyer “contacted and submitted various letters to the servicer (Select
18 Portfolio Services) for information in the form of a Qualified Written Request [permitted
19 under Section 6 of the Real Estate Settlement Procedures Act (“RESPA”)] notice of dispute
20 and demand on or about March 14, 2017.” *Id.* ¶ 44. Plaintiff alleges that “[t]hese
21 submittals requested the same kind of information requested by the PLAINTIFF pro se,
22 but were more formal.” *Id.*

23 Plaintiff fails to allege specific facts regarding the content of contacts made by
24 Plaintiff or Plaintiff’s counsel, and fails to allege facts showing that such contacts were
25 qualified written requests pursuant to RESPA. The alleged qualified written request is not
26 attached to the Complaint. Plaintiff alleges no facts establishing that Select Portfolio,
27 Bayview, or Bank of America should reasonably have received the request.
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1 Plaintiff fails to allege sufficient facts demonstrating a causal connection between
2 the alleged RESPA violation and the alleged pecuniary damages. Plaintiff alleges that
3 “Plaintiffs have suffered financial and emotionally through this entire ordeal as a direct
4 result of Defendants actions or their predecessors’ actions,” but does not allege facts in
5 support of this conclusion. Plaintiff alleges that Plaintiff “made continual requests for basic
6 information . . . to no avail,” and that “without providing this information,” Defendants
7 “submitted negative information to credit agencies and bureaus about the PLAINTIFF.”
8 *Id.* ¶ 90. Plaintiff alleges that poor credit “has prevented Plaintiffs from getting a loan,”
9 has put business expansion plans on hold, and has hindered the ability to conduct business
10 and refinance the property. *Id.* ¶¶ 90–91.

11 Even assuming the truth of the allegations that Defendants damaged Plaintiff’s credit
12 score, Plaintiff alleges no facts showing a colorable relationship between Defendants’
13 injury-causing conduct and Defendants’ RESPA-violating conduct. *See Allen v. United*
14 *Fin. Mortg. Corp.*, No. 09-2507, 2010 WL 1135787, at *5 (N.D. Cal. March 22, 2010)
15 (“Even if Plaintiff is correct in claiming that Defendants’ other conduct resulted in his
16 inability to pay his mortgage, this does not constitute a RESPA claim unless Plaintiff can
17 point to some colorable relationship between his injury and the actions or omissions that
18 allegedly violated RESPA.”). The Court concludes that Plaintiffs have not alleged
19 sufficient facts to support a cause of action for violation of RESPA. *See Twombly*, 550
20 U.S. at 555; *Allen*, 2010 WL 1135787, at *5 (dismissing RESPA claim where plaintiff
21 alleged “actual damages” including falling behind on mortgage payments, negative credit
22 impact, and emotional distress, but failed to allege any causal relationship between the
23 damages and the RESPA violations). The Motions to Dismiss are granted as to Plaintiff’s
24 seventh cause of action for violation of RESPA.

25 V. SUPPLEMENTAL JURISDICTION OVER STATE LAW CLAIMS

26 Defendants move the Court to dismiss Plaintiff’s state law causes of action. (ECF
27 No. 28-2 at 5–12; ECF No. 30-1 at 9–15; ECF No. 31 at 6–18). Plaintiffs assert that this
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1 Court properly has jurisdiction based on federal question jurisdiction over RESPA. (ECF
2 No. 26 at 2).⁴

3 The federal supplemental jurisdiction statute provides:

4 [I]n any civil action of which the district courts have original jurisdiction, the
5 district courts shall have supplemental jurisdiction over all other claims that
6 are so related to claims in the action within such original jurisdiction that they
7 form part of the same case or controversy under Article III of the United States
8 Constitution.

8 28 U.S.C. § 1367(a). “The district courts may decline to exercise supplemental jurisdiction
9 over a claim under subsection (a) if . . . the district court has dismissed all claims over
10 which it has original jurisdiction[.]” 28 U.S.C. § 1367(c).

11 Having dismissed the only federal claim asserted by Plaintiff against Defendants,
12 the Court declines to exercise supplemental jurisdiction over the remaining state law claims
13 pursuant to 28 U.S.C. § 1367(c). *See San Pedro Hotel Co., Inc. v. City of L.A.*, 159 F.3d
14 470, 478 & n.12 (9th Cir. 1998) (upholding district court declining to exercise
15 supplemental jurisdiction and requiring no further explanation by district courts acting in
16 accordance with 28 U.S.C. § 1367(c)(3)); *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087,
17 1091 (9th Cir. 2008) (“The decision whether to continue to exercise supplemental
18 jurisdiction over state law claims after all federal claims have been dismissed lies within
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21 ⁴ The caption and the statement of jurisdiction in the second amended complaint reference TILA; however,
22 the causes of action alleged in the body of the second amended complaint do not include violations of
23 TILA. (ECF No. 26 at 1–2).

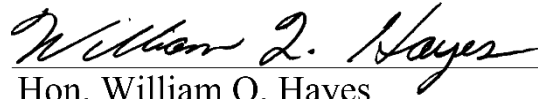
23 The statement of jurisdiction also references diversity jurisdiction. Under the federal diversity statute,
24 district courts are authorized to exercise original jurisdiction in cases in which the amount in controversy
25 exceeds the sum or value of \$75,000.00 and the parties are citizens of different states. 28 U.S.C. § 1332.
26 Diversity jurisdiction requires complete diversity, meaning every plaintiff must be diverse from every
27 defendant. *Id.*; *see also Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Pursuant to the statute, “a
28 corporation shall be deemed to be a citizen of every State and foreign state by which it has been
incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. §
1332(c). The allegations of the Complaint show that Plaintiff and Defendant Select Portfolio are both
citizens of California. *Id.* at 2–3. Complete diversity does not exist and this Court lacks diversity
jurisdiction.

1 the district court's discretion.") (quoting *Foster v. Wilson*, 504 F.3d 1046, 1051 (9th Cir.
2 2007)).

3 **VI. CONCLUSION**

4 IT IS HEREBY ORDERED that the motions to dismiss (ECF Nos. 28, 30, 31) are
5 GRANTED. Any motions to file an amended complaint must be filed within thirty (30)
6 days of the date of this order in accordance with Local Rule 7.1.

7 Dated: November 29, 2018

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9 Hon. William Q. Hayes
United States District Court

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