APPENDIX

APPENDIX A: Ninth Circuit's Decision

NOT FOR PUBLICATION
[Filed October 30, 2017]
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Joel Beck, Plaintiff/Appellee, v. NATIONSTAR MORTGAGE, LLC; et al., Defendants/Appellees.	No: 16-15122 D.C. No. 3:15-cv-00166-MMD-VPC MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding
Submitted October 23, 2017**
San Francisco, California

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges

Joel Beck appeals from the district court's judgment in his action alleging federal and state claims relating to his mortgage. We have jurisdiction under 28 U.S.C. § 1291.

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*The disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The panel unanimously concludes this case is suitable for decision without oral argument.

We review de novo the district court's dismissal under Fed. R. Civ. P. 12(b)(6). *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011). We affirm.

The district court properly dismissed Beck's state law claims because Beck failed to allege facts sufficient to state a plausible claim for relief. See *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are liberally construed, a plaintiff must still present factual allegations sufficient to state a plausible claim for relief); *Edelstein v. Bank of N.Y. Mellon*, 286 P.3d 249, 259-60, 262 (Nev. 2012) (en banc) (explaining that under Nevada law, Mortgage Electronic Registration System, Inc., may properly act as beneficiary of a trust deed, separating the instruments does not permanently bar foreclosure, and an entity has authority to pursue foreclosure when it is entitled to enforce both the deed of trust and the note).

The district court properly denied Beck's motion to remand to state court because, although there was a lack of defendant unanimity for removal, Beck failed to file a motion for remand within 30 days of the filing of the notice of removal. *See Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (standard of review); *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1037-38 (9th Cir. 1995) ("28 U.S.C. § 1447(c) prohibits a defect in removal procedure from being raised later than 30 days after the filing of the notice of removal" and "remand motion based on a defect in removal procedure must be filed within 30 days after notice of removal is filed."); *see also Atl. Nat'l Tr. LLC v. Mt. Hawley*

Ins. Co., 621 F.3d 931, 940 (9th Cir. 2010) (lack of defendant unanimity is a defect for purposes of § 1447(c). The district court did not abuse its discretion by denying Beck leave to file an amended complaint because amendment would be futile. *See Cervantes*, 656 F.3d at 1041 (setting forth standard of review and stating that dismissal without leave to amend is appropriate where amendment would be futile).

Beck forfeited his opportunity to appeal the orders relating to settlement because he did not file any objections to the magistrate judges orders. *See Bastidas v. Chappell*, 791 F. 3d 1155, 1159 (9th Cir. 2015) ("[A] party who fails to file timely objections to a magistrate judge's *non-dispositive* order with the district judge to whom the case is assigned forfeits its right to appellate review of that order." (citation and internal question marks omitted)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time one appeal. *See Padgett v. Wright*, 587 F. 3d 983, 985, n. 2 (9th Cir. 2009).

Beck's requests for judicial notice, set forth in his opening brief, are denied.

AFFIRMED.

APPENDIX B: District Court's Dismissal Order

[Filed 11/4/2015]

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Joel Beck, Plaintiff, v. NATIONSTAR MORTGAGE, LLC; et al., Defendants.	Case No. 3:15-cv-00166-MMD-VPC ORDER

I. SUMMARY

This removed action involves a dispute over title and ownership to real property subject to a promissory note and deed of trust securing a residential mortgage loan. Before removal, Plaintiff Joel Beck filed an application for temporary restraining order. (Dkt. no. 101 at 42-50.) After removal, Defendants Nationstar Mortgage ("Nationstar"), Bank of America, N.A. ("BANA"), Wells Fargo Bank, N.A., as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Series 2007-3 ("Wells Fargo"), and Mortgage Electronic Registration Systems, Inc. (collectively "Moving Defendants") filed a motion to dismiss. (Dkt. no. 7.) Plaintiff then moved to remand. (Dkt. no. 22.) For the reasons discussed herein, the Court denies Plaintiff's motion to remand and grants

Moving Defendants' motion to dismiss. Plaintiff's application for temporary restraining order is also denied.

II. BACKGROUND

The following facts are taken from Plaintiff's pro se Complaint. Plaintiff is the owner of property located at 225 Sherwood Court in Stateline, Nevada("the Property). (Dkt no. 1-1 at 7.) On or about March 26, 2007, Plaintiff signed a promissory note in a favor of Countrywide in the amount of $620,000.00 ("the Note"); the Note was secured by a First Mortgage/Trust Deed ("the Deed") on the Property. (*Id.* at 10.)

Plaintiff's loan was securitized and the Note was not properly transferred to Wells Fargo, acting as the Trustee for the Series 2007-3 Trust in holding the Note. (*Id.*)

Plaintiff alleges that Defendants have initiated judicial foreclosure.[Fn. 1] (*Id.* at 17.)

In addition to Moving Defendants, the Complaint names Defendants First American Trustee Servicing Solutions, LLC ("First American") and Aurora Loan Services LLC ("Aurora"). (*Id.* at 6.) The gist of Plaintiff's claims is that Defendants

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[Fn. 1] The Complaint alleges a wrongful foreclosure claim, and Plaintiff filed an application for a temporary restraining order ("Application for TRO") (dkt. no. 1-1 at 42-50). In the Application for TRO, Plaintiff asks the Court to enjoin Defendants from selling the Property, but even the Application contains form allegations similar to the Complaint and lacks details about the actual foreclosure proceedings.

have unlawfully sold, assigned, and/or transferred their ownership and security interest in the Note and Deed such that they no longer have an ownership or interest in the Property.[Fn.2] (*Id.* at 7.)

Plaintiff asserts claims for wrongful foreclosure, fraud in concealment, fraud in inducement, intentional infliction of emotional distress, slander of title, quiet title, declaratory relief, violations of the Truth in Lending Act ("TILA"), the Home Ownership and Equity Protection Act ("HOEPA"), and the Real Estate Settlement Procedures Act ("RESPA"), rescission, civil conspiracy, adverse possession, and attorneys' fees and costs. (*Id.* at 15-25.)

Plaintiff filed his Complaint in the Ninth Judicial District Court of Douglas County, Nevada. (Dkt. no. 1-1.) On March 19, 2015, Moving Defendants removed the action by filing the petition for removal. (Dkt. no. 1.) In their petition for removal, Moving Defendants allege that Plaintiff filed his Complaint on February 23, 2015, and served them on February 24, 2015.[Fn. 3] (*Id.*) On March 26, 2015, Moving Defendants filed their motion to dismiss. (Dkt. no. 7.)

On April 27, 2015, at the case management conference, the Magistrate Judge explained the

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[Fn. 2] Moving Defendants point out that the Complaint appears to be a form complaint. (Dkt no. 7 at 1 n.1.) The Complaint contains general allegations about securitization and mortgage loans that are commonly alleged in foreclosure actions filed before the Court.

[Fn. 3] The exhibit that Moving Defendants offer to show service identifies service on Nationstar, not the other Moving Defendants. (Dkt. no. 1-1 at 2.)

litigation process to Plaintiff and set a settlement conference for May 15, 2015. (Dkt. no. 15.) The Magistrate Judge imposed a stay, except for the briefing schedule on Moving Defendants' motion to dismiss, for which the court suggested the parties file a stipulation. (*Id.*) On May13, 2015, the Magistrate Judge vacated the settlement conference and lifted the stay, after hearing from the parties relating to financial information. (Dkt. no. 19.)

On June 16, 2015, Plaintiff filed his motion to remand. (Dkt. no. 22.)

III. MOTION TO REMAND

Plaintiff raises three arguments in support of remand: (1) removal was defective because not all defendants properly joined in the petition for removal, (2) the Court lacks diversity jurisdiction, and (3) the Court should abstain because this case presents important issues of state law. The Court will address the jurisdictional argument first.

A. Jurisdiction

Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction only over matters authorized by the Constitution and Congress. U.S. Canst. art. Ill, § 2, cl. 1; e.g., *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit filed in state court may be removed to federal court if the federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a). However, courts strictly construe the removal statute against removal jurisdiction, and "[f]ederal jurisdiction must be rejected if there is any doubt as to the right of

removal in the first instance."*Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam) (emphasis added). The party seeking removal bears the burden of establishing federal jurisdiction. *Id.*

As an initial matter, the Court agrees with Moving Defendants that the Court has federal question jurisdiction because the complaint raises federal law claims under TILA, HOEPA, and RESPA (eighth, ninth, and tenth claims). (Dkt. no. 1-1 at 23-26.) The Court has original jurisdiction over these claims. Because the state law claims are all based on the same set of facts, the Court may adjudicate those claims pursuant to the doctrine of of supplemental jurisdiction. 28 U.S.C. §§ 1367, 1441(c).

Because Plaintiff contends that the Court lacks diversity jurisdiction, the Court will briefly address his argument. To establish subject matter jurisdiction pursuant to diversity of citizenship, the party asserting jurisdiction must show: (1) complete diversity of citizenship among opposing parties and (2) an amount in controversy exceeding $75,000. 28 U.S.C. § 1332(a). Moving Defendants have satisfied both requirements.

Plaintiff alleges that he is resident of Douglas County, Nevada. (Dkt. no. 1-1 at 6.) Plaintiff cannot dispute that Defendants are not citizens of Nevada.[Fn. 4] Instead, he argues that because

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[Fn. 4] The petition for removal alleges that BANA is a citizen of North Carolina, Wells Fargo is a citizen of South Dakota, MERS is a citizen of the States of Delaware and Virginia, Aurora is a citizen of Delaware, Nationstar is a citizen of the States of Delaware and Texas, and First American is a citizen of California. (Dkt. no. 1 at 4-5.)

Defendants BANA and Wells Fargo are national banking associations, they should be deemed a citizen of every state in which they "have branch offices" for purposes of determining diversity jurisdiction. (Dkt. no. 22 at 7.) However, a national bank's location is not determined by the state where it has branch operations, but is instead determined by "the State designated in its articles of association as its main office." *Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006). Plaintiff does not dispute BANA's contention that its main office is in North Carolina, nor does he dispute Wells Fargo's contention that its main office is in South Dakota. (Dkt. no. 1 at 4.) Moving Defendants have thus demonstrated diversity of citizenship.

To satisfy the amount in controversy requirement, the defendant must either: (1) demonstrate that it is facially evident from the plaintiff's complaint that the plaintiff seeks damages in excess of $75,000, or (2) prove, by a preponderance of the evidence, that the amount in controversy meets the jurisdictional limit. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116-17 (9th Cir. 2004). In determining what evidence may be considered under the latter option, the Ninth Circuit has adopted the "practice of considering facts presented in the removal petition as well as any 'summary-judgement-type [sic] evidence relevant to the amount in controversy at the time of removal."*Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam) (quoting *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)). "In actions seeking declaratory or injunctive relief, it is well

established that the amount in controversy is measured by the value of the object of the litigation." *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (per curiam) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 347 (1977)). Plaintiff asserts claims to ownership of the Property and seeks to avoid obligations under the Note in the amount of $620,000.00. (Dkt. no. 1-1 at 44-46.) The amount in controversy is satisfied.

In sum, the Court has federal question jurisdiction and diversity jurisdiction. Plaintiff's motion to remand for lack of jurisdiction is denied.

B. Procedural Defect

Plaintiff argues that removal is defective because not all defendants have properly joined in the removal, creating a lack of unity. [Fn. 5] (Dkt. no. 22 at 3-6.) Moving Defendants counter that this argument asserts a procedural defect and is untimely raised. The Court agrees with Defendants.

"A motion to remand the case on the basis of any defect other than lack of subject matter

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[Fn. 5] To the extent Plaintiff's argument is based on his contention that counsel cannot represent Defendants BANA, Nationstar, MERS, and Wells Fargo in filing one petition for removal on behalf of these Defendants, the Court notes that this argument is without merit. Counsel filed the petition for removal on behalf of his clients, the Moving Defendants. The Court is not aware of any rule that would require counsel in this instance to file a separate petition for each Moving Defendant, or file one petition on behalf of one Moving Defendant and then file separate notices of consent to removal by the remaining Moving Defendants when counsel represents all Moving Defendants.

jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)." 28 U.S.C. § 1447(c). "[A] lack of defendant unanimity ... [has been] held to be a defect for purposes of§ 1447(c)." *Atl. Nat'l Trust LLC v. Mt. Hawley Ins. Co.*, 621 F.3d 931, 940 (9th Cir. 2010)

Here, Plaintiff filed his motion to remand on June 16, 2015, which is 89 days after Defendants removed this case (on March 19, 2015). (Dkt. nos. 1, 22.) Plaintiff is correct that the Magistrate Judge stayed the action, but the stay was imposed on April 27, 2015, and lifted on May 13, 2015, a period of 16 days. (Dkt. nos. 15, 19.) In fact, the 30-day time period for challenging Defendants' removal expired before the stay was imposed on April 27, 2015. Plaintiff's challenge regarding the lack of defendant unity is therefore untimely.

C. Abstention

Plaintiff next asks the Court to abstain from exercising jurisdiction, citing to both the *Younger* abstention doctrine and the *Burford* abstention doctrine. Neither of these doctrines applies here.

In determining whether to abstain, "discretion must be exercised within the narrow and specific limits prescribed by the particular abstention doctrine involved." *C-Y Dev. Co. v. City of Redlands*, 703 F.2d 375, 377 (9th Cir. 1983). "[U]nless certain exceptional circumstances are present, a district court has little or no discretion to abstain." *Privitera v. Cal. Board of Med. Quality Assurance*, 926 F.2d 890, 895 (9th Cir. 1991) (alteration in original) (quoting *Almodovar v. Reiner*, 832 F.2d 1138, 1140 (9th Cir. 1987)).

Under *Younger* abstention principles, a federal court may not exercise jurisdiction when doing so would interfere with ongoing state judicial proceedings. *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). Pursuant to *Younger*, a federal court must abstain where: (1) ongoing state proceedings began before the federal court conducts proceedings of substance on the merits; (2) important state interests are involved; and (3) the plaintiff has an adequate opportunity to litigate federal claims in the state proceedings. *See Middlesex*, 457 U.S. at 432, 437; *M & A Gabaee v. Cmty. Redev. Agency of L.A.*, 419 F.3d 1036, 1041 (9th Cir. 2005). The Ninth Circuit has also "identified a fourth requirement: The requested relief must seek to enjoin - or have the practical effect of enjoining - ongoing state proceedings." *ReadyLink Healthcare, Inc. v. State Camp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)(citing *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir. 2007)). Under *Burford*, a federal court may abstain to avoid federal intrusion into matters which are largely of local concern and which are within the special competence of local courts." *Tucker v. First Maryland Sav. & Loan, Inc.*, 942 F.2d 1401, 1404 (9th Cir. 1991) (quoting *Int'l Bhd. of Elec. Workers, Local Union No. 1245 v. Pub. Serv. Comm'n of Nev.*, 614 F.2d 206, 212 n.1 (9th Cir. 1980)). The Ninth Circuit "generally requires certain factors to be present for abstention to apply: (1) that the state has concentrated suits involving the local issue in a particular court; (2) the federal issues are not easily separable from complicated state law issues with

which the state courts may have special competence; and (3) that federal review might disrupt state efforts to establish a coherent policy." *Id.* at 1405.

Plaintiff alleges that "[t]here are on-going State proceedings for the foreclosure of Plaintiff's real property." (Dkt. no. 22 at 6.) He further argues that Nevada has an important interest in resolving real property issues. (*Id.*) It is not clear from the record what "on-going [s]tate [foreclosure] proceedings" are occurring. Moreover, any foreclosure proceedings relating to the Property would not qualify as "concentrated suits" to satisfy the *Burford* principal's requirements. More importantly, the Court does not find that Nevada's interest in resolving real property disputes warrants abstention. The Complaint asserts garden-variety claims involving the Property, Note, and Deed. It would be inappropriate for the Court to abstain in this case.

IV. MOTION TO DISMISS

A. Legal Standard

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action."*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at

555). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Thus, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pleaded factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 678-79. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint fails to "permit the court to infer more than the mere possibility of misconduct, the complaint has alleged -but it has not shown' –'that the pleader is entitled to relief.'" *Id.* at 679 (alteration omitted) (quoting Fed. R. Civ. P. 8(a)(2)). When the claims in a complaint have not crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570. A complaint must contain either direct or inferential allegations concerning "all the material elements necessary to sustain recovery under some viable legal theory." *Id.* at 562 (quoting *Car*

Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir.1984)).

Mindful of the fact that "[t]he Supreme Court has instructed the federal courts to liberally construe the 'inartful pleading' of pro se litigants," the Court will view Plaintiff's pleadings with the appropriate degree of leniency. *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) (quoting *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)).

B. Claims Based on "Securitization" Allegations

Defendants argue that because Plaintiff's claims are based on a "securitization" argument that has been found to be legally tenuous, dismissal of the claims premised on this argument is proper.

Plaintiff does not dispute and indeed concedes that all of his claims are premised on the improper securitization of the Note, but he asserts, without providing any explanation, that Defendants rely on "implacable case law" and cases with distinguishable facts. (Dkt. no. 20 at 3-4.)

The main factual allegations supporting Plaintiff's claims are that the Note was securitized and subsequently sold and transferred, and that Defendants cannot show ownership because the Note and the Deed were split in the securitization process. (Dkt. no. 1-1 at 9, 10-14.) Plaintiff's securitization argument, premised upon an improper splitting of the Note from the Deed, has been considered and rejected. *See Cervantes v. Countrywide Home Loans*, Inc., 656 F.3d 1034, 1044 (9th Cir. 2011); *Eruchalu v. U.S. Bank., National*

Ass'n, No. 2:12-cv-01264-MMD-VCF, 2013 WL 6667702, at *4 (D. Nev. Dec. 17, 2013); *Khankhodjaeva v. Saxon Mortg. Servs.*, No. 2:10-cv-1577-JCM-GWF, 2012 WL 214302, at *4 (D. Nev. Jan. 24, 2012); *Vega v. CTX Mortg. Co.*, LLC, 761 F.Supp.2d 1095, 1097-98 (D. Nev. 2011); *Wittrig v. First Nat'l Bank of Nev.*, No. 3:11-cv 00131-ECR-VPC, 2011 WL 5598321, at *5-6 (D. Nev. Nov. 15, 2011); *Parker v. GreenPoint Mortg. Funding Inc.*, No. 3:11-cv-00039-ECR-RAM, 2011 WL 5248171, at *4 (D. Nev. Nov. 1, 2011); *Chavez v. Cal. Reconveyance Co.*, No. 2:10-cv-00325-RLH-LRL, 2010 WL 2545006 (D. Nev. June 18, 2010). Plaintiff thus cannot state a claim based on his securitization argument.

As noted, all of Plaintiff's claims, including his fraud-based claims, are premised on the illegality of the securitization of Plaintiff's loan without his knowledge.

Accordingly, Plaintiff's claims are dismissed. In addition, as discussed below, Plaintiff's federal claims are time-barred.

C. Claims Based on Federal Statutes

Plaintiff's eighth claim for violations of TILA and HOEPA are based on allegations that Defendants failed "to provide Plaintiff with accurate material disclosures" and "to fully inform home buyers of the pros and cons of adjustable rate mortgages" in understandable terms. (Dkt. no. 1-1 at 23-24.) He seeks monetary damages. (*Id.*) Plaintiff's ninth claim seeks rescission for Defendants' alleged TILA violations. (*Id.* at 25-26.)

TILA requires creditors to disclose certain information about the terms of a particular loan to

the prospective borrower. [Fn. 6] See, e.g., 15 U.S.C. §§ 1631-32, 1638; 12 C.F.R. § 226.17. Any claim for damages arising under TILA is limited by a one-year statute of limitations. 15 U.S.C. § 1640(e). The rescission remedy that the statute provides is limited by a three-year statute of limitations. 15 U.S.C. § 1635(f). This provision "completely extinguishes the right of rescission at the end of the 3-yearperiod." *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998). The statute of limitations period begins upon execution of the contract because plaintiffs possess all information relevant to the discovery of any non-disclosures at the time the loan documents are signed. *King v. California*, 784 F.2d 910, 915 (9th Cir. 1986) (explaining that the limitations period runs from the date of the transaction); see also *Meyer v. Ameriquest Mortg. Co.*, 342 F.3d 899, 902 (9th Cir. 2003).

Here, Plaintiff's loan was executed on March 26, 2007. (Dkt. no. 1-1 at 10.) The statute of limitations under TILA thus commenced as of that date. *See King*, 784 F.2d at 915. Plaintiff filed this lawsuit in February 2015, which is long past the expiration of the one-year and three-year statutes of limitations. Thus, unless equitable tolling applies, Plaintiff's claim would be untimely.

The Ninth Circuit has held that equitable tolling of claims for damages under TILA may be appropriate "in certain circumstances," and can

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[Fn. 6] HOEPA is an amendment to TILA and is subject to TILA's limitation periods. *Weingartner v. Chase Home Fin., LLC*, 702 F. Supp. 2d 1276, 1286 (D. Nev. 2010).

operate to "suspend the limitations period until the borrower discovers or had to discover the fraud or nondisclosures that form the basis of the TILA action." *King*, 784 F.2d at 914-15. District courts have discretion to evaluate specific claims of fraudulent concealment and equitable tolling and to "adjust the limitations period accordingly." *Id.* at 915. "Because the applicability of the equitable tolling doctrine often depends on matters outside the pleadings, it "is not generally amenable to resolution on a Rule 12(b)(6) motion."' *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir.1995) (quoting *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 (9th Cir. 1993)). When, however, a plaintiff fails to allege any facts demonstrating that he or she could not have discovered the alleged violations by exercising due diligence, dismissal may be appropriate. *See Meyer*, 342 F.3d at 902-03 (refusing to toll statute of limitations on TILA claim because plaintiff was in full possession of all loan documents and did not allege any concealment of loan documents or other action that would have prevented discovery of the alleged TILA violations).

Here, Plaintiff has not alleged any facts to permit the Court to equitably toll the statute of limitations. Plaintiff only alleges that Defendants are not his "lenders" and do not have the same rights as his lenders. This allegation is not enough to toll the statute of limitations. Plaintiff's TILA claims are therefore time-barred and subject to dismissal.

Plaintiff also alleges a violation of RESPA, 12 U.S.C. § 2601 et seq., but he failed to identify the particular provision that Defendants purportedly

violated. Plaintiff's factual allegations similarly fail to clarify this point. Defendants argue that regardless of the RESPA provision on which Plaintiff bases his claim, his claim is time-barred under RESPA's three-year statute of limitations. The Court agrees with Defendants.

RESPA contains a one-year and a three-year statute of limitations depending on the particular provision involved. 12 U.S.C. § 2614. Plaintiff filed this action more than four years after his loan originated. As with Plaintiff's TILA claims, his RESPA claim is time-barred.

D. Leave to Amend

If the court grants a motion to dismiss, it must then decide whether to grant leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) ("[A] district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995))). The court should "freely give" leave to amend, Fed.R.Civ.P.15(a), when there is no "undue delay, bad faith [,] dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of ... the amendment, [or] futility of amendment." *Farnan v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is denied only when it is clear that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

Because the Court finds that Plaintiff's claims are premised upon a legally untenable securitization argument, the Court further finds that amendment would be futile and denies leave to amend. In addition, amendment of Plaintiff's TILA and RESPA claims would be futile because they are time-barred.

In addition, the Court finds it appropriate to dismiss Plaintiff's claims against Defendants First American and Aurora, even though these Defendants have failed to appear. Where a plaintiff "'cannot possibly win relief,'" a trial court may dismiss a complaint for failure to state a claim without "giv[ing]notice of its intention to dismiss and [without giv[ing] the plaintiff some opportunity to respond." *Sparling v. Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988) (quoting *Wong v. Bell*, 642 F.2d 359, 362 (9th Cir. 1981)); see also *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) ("trial court may dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6). Such a dismissal may be made without notice where the claimant cannot possibly win relief." (citation omitted)). In light of the finding that Plaintiff's claims fail as a matter of law, the Court finds that the interest of justice compels dismissal of these two Defendants.

V. APPLICATION FOR TEMPORARY RESTRAINING ORDER

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F. 3d 832, 839 n.7 (9th Cir. 2001).

A temporary restraining order may be issued if a plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Oef. Council, Inc.*, 555 U.S. 7, 20 (2008). "[I]njunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* at 22. The Ninth Circuit has held "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *Alliance for the Wild Rockies v. Cottrell,* 632 F.3d 1127, 1132 (9th Cir. 2011).

In light of the Court's findings that Plaintiff's claims are legally deficient, Plaintiff cannot meet the first factor of the *Winter* test. Accordingly, Plaintiff's application for a temporary restraining order (dkt. no. 1-1 at 42-50) is denied.

VI. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the parties' motions.

It is therefore ordered that Plaintiff's motion to remand (dkt. no. 22) is denied.

It is further ordered that Defendants' motion to dismiss (dkt. no. 7) is granted.

It is further ordered that Plaintiff's application for temporary restraining order (dkt.no. 1-1 at 42-50) is denied.

The Clerk is directed to enter judgment in favor of Defendants Nationstar Mortgage, Bank of America, N.A., Wells Fargo Bank, N.A., as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Series 2007-3, and Mortgage Electronic Registration Systems, Inc.

The Court *sua sponte* dismisses Defendants First American Trustee Servicing Solutions, LLC and Aurora Loan Services LLC.

The Clerk is instructed to close this case.

DATED THIS 4th day of November 2015.

/s/
MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

APPENDIX C: Denial of Rule 59(e) Motion

[Filed 12/28/2015]

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Joel Beck, Plaintiff, v. NATIONSTAR MORTGAGE, LLC; et al., Defendants.	Case No. 3:15-cv-00166-MMD-VPC ORDER

This action involves a dispute over title and ownership to real property subject to a promissory note and deed of trust securing a residential mortgage loan. In addressing Defendants' motion to dismiss, the Court found that "all of Plaintiff's claims, including his fraud-based claims, are premised on the illegality of the securitization of Plaintiff's loan without his knowledge," and dismissed Plaintiff's claims based on that finding. (Dkt. no. 34.) The Court further found that Plaintiff's eighth, ninth and tenth claims are barred by the applicable statute of limitations.[Fn. 1] (*Id.*) Plaintiff now seeks reconsideration by filing his"Demand for New Trial Jury Demand." (Dkt. no.

[Fn. 1] These claims are based on violations of the Truth in Lending Act, the Home Ownership and Equity Protection Act, and the Real Estate Settlement Procedures Act. (Dkt. no. 1-1 at 15-25.)

36.)

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

Rule 59(e) provides that any motion to alter or amend a judgment shall be filed no later than 28 days after entry of the judgment. The Ninth Circuit has held that a Rule 59(e) motion for reconsideration should not be granted "absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).

Under Rule 60(b), a court may relieve a party from a final judgment, order or proceeding only in the following circumstances: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief from the judgment. *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th Cir. 2000). See also *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000) (noting that the district court's denial of a

Rule 60(b) motion is reviewed for an abuse of discretion). A motion for reconsideration must set forth the following: (1) some valid reason why the court should revisit its prior order; and (2) facts or law of a "strongly convincing nature" in support of reversing the prior decision. *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). A motion for reconsideration is thus properly denied when the movant fails to establish any reason justifying relief. *See Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (holding that a district court properly denied a motion for reconsideration in which the plaintiff presented no arguments that were not already raised in his original motion). Moreover, a district court has discretion not to consider claims and issues that were not raised until a motion for reconsideration. *Hopkins v. Andaya*, 958 F.2d 881, 889 (9th Cir. 1992). It is not an abuse of discretion to refuse to consider new arguments in a Rule 60(b) motion even though "dire consequences" might result. *Schanen v. United States Dept. of Justice*, 762 F.2d 805, 807-08 (9th Cir. 1985).

Plaintiff argues that the Court did not focus entirely on his Complaint and erred when it focused but solely on allegations relating to securitization of the Note. (Dkt. no. 36 at 2; dkt no. 38 at 2.) First, mere disagreement with an order is an insufficient basis for reconsideration. Nor should reconsideration be used to make new arguments or ask the Court to rethink its analysis. *See N.W. Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925-26 (9th Cir.1988). Plaintiff has not demonstrated that the Court committed clear error.

Second, while Plaintiff claims that the Court failed to consider other issues raised, the examples he cited do not relate to the allegations in the Complaint. For example, Plaintiff offers as an example of fraud his contention that certain documents were not served on the date indicated on the certificate of service. (Dkt. no. 36 at 2.) Even if certain documents were not timely served, that fact has no import on the Court's consideration of the claims in the Complaint. Moreover, Plaintiff was given the full opportunity to be heard on Defendants' motion to dismiss.

Plaintiff makes unfounded allegations about the relationship between the Court and counsel.[Fn.2] He cites to Judge Cooke's reference to Akerman, the law firm representing Defendants, as evidence that that firm frequently appeared before the Court. However, there is nothing remarkable about a law firm's frequent representation of litigants before the Court. That fact alone is not enough to give rise to an appearance of impropriety.

[Fn. 2] In his reply brief, Plaintiff alleges that the "Court erred in not disclosing recently discovered relationship with Judge, Judge's immediate family and Defendant." (Dkt. no. 38 at 2.) He then references an alleged telephone call with Heidi Parry-Stern where she stated that she could not represent Plaintiff because her firm has had a former relationship with Defendant. It is not clear to the Court how the conversation with Heidi Parry-Stern relates to his allegation about a "recently discovered relationship with Judge." The Court is not aware of any such relationship.

In sum, Plaintiff has offered no valid reason for the Court to reconsider its decision. Plaintiff's "Demand for New Trial" (dkt. no. 36) is denied.

DATED THIS 28th day of December 2015.

/s/ MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

APPENDIX D: Denial of Rehearing

[Filed April 2, 2018]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Joel Beck, Plaintiff-Appellee, v. NATIONSTAR MORTGAGE, LLC; et al., Defendants/Appellees.	No: 16-15122 D.C. No. 3:15-cv-00166-MMD-VPC District of Nevada, Reno ORDER

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

The Panel has voted to deny the petition for panel rehearing.

The full court has been advised of the Petition for Rehearing En Banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Beck's Petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 34) are denied.

No further filings will be entertained in this closed case.

APPENDIX E: STATUTORY PROVISIONS

28 U.S.C. § 1447 - Procedure after removal generally:

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.