EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD A. HAASE and AUDREY L. HAASE, Plaintiffs, V. COUNTRYWIDE HOME LOANS, INC., BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., DEUTSCHE BANK, AG, MORGAN STANLEY ABS CAPITAL I, INC., BARRETT, DAFFIN, FRAPPIER, TURNER, ENGEL, L.L.P., and ANGELO MOZILO, Defendants.	§ § § § § § § § § § § § § § § §	CIVIL ACTION NO. H-12-1538

MEMORANDUM AND RECOMMENDATION

Before the Magistrate Judge in this case that has been referred pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) are two Motions for Partial Summary Judgment on Defendant Deutsche Bank National Trust Company's counterclaim for foreclosure under TEX. R. CIV. P. 735:

Defendant's Motion for Summary Judgment on Counterclaim (Document No. 3); and

Plaintiffs' Motion for Partial Summary Judgment (Document No. 39);

a Motion for Summary Judgment by Defendants Bank of America, N.A. and Deutsche Bank National Trust Company on Plaintiffs' claims:

Defendants Bank of America, N.A. and Deutsche Bank National Trust Company's Motion for Partial Summary Judgment (Document No. 9);

and two motions by Plaintiffs seeking to set aside the order entered in state court prior to removal granting Defendant Countrywide Home Loans, Inc. summary judgment on Plaintiffs' claims:

Plaintiffs' Motion to Vacate Countrywide Home Loans, Inc.'s No Evidence and Partial Summary Judgment in the 400th District Court for the State of Texas (Document No. 33), and

Plaintiffs' Motion for Rule 60(b) Relief from Countrywide Summary Judgment in Texas (Document No. 58).

Having considered the motions, the responses, the additional briefing, the allegations in Plaintiffs' First Amended Complaint (Document No. 10), which was allowed by Order signed on October 9, 2012 (Document No. 78), the summary judgment evidence, the supplemental submission on Plaintiffs' sole federal claim (Document No. 82), and the applicable law, the Magistrate Judge RECOMMENDS, for the reasons set forth below, that Defendants Bank of America, N.A. and Deutsche Bank National Trust Company's Motion for Partial Summary Judgment (Document No. 9) be GRANTED with respect to Plaintiffs' RESPA claim, and that the remaining state law claims be REMANDED to state court pursuant to 28 U.S.C. § 1367(c).

I. Background[1] and Procedural History

This case involves a home equity loan. Plaintiffs Richard and Audrey Haase obtained a home equity loan from New Century Mortgage on June 5, 2006. In connection therewith, Plaintiffs executed a Texas Home Equity Note, payable to New Century Mortgage (referred to hereafter as the "Note"), and a Texas Home Equity Security Instrument (referred to hereafter as "Security Agreement"), which granted New Century Mortgage a security interest in the property located at 4402 Ringrose Drive, Missouri City, Texas 77459. As is relevant to this case and the issues raised, the Note provided:

[1] This background information is taken from Plaintiffs' allegations and the documents Plaintiffs have attached to their First Amended Complaint. (Document No. 10).

> This is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution (the "Extension of Credit). In return for the Extension of Credit that I have received evidenced by this Note, I promise to pay U.S. $173,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is New Century Mortgage Corporation.
>
> I will make all payments under this Note in the form of cash, check or money order.
>
> I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."
>
> I understand that this is not an open-end account that may be debited from time to time or under which credit may be extended from time to time.
>
> The property described above by the Property Address is subject to the lien of the Security Instrument executed concurrently herewith (the "Security Instrument").

Exhibit A to Plaintiffs' First Amended Complaint (Document No. 10). In addition, the Security Agreement stated, in parts relevant to this case, that:

> 5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Extension of Credit. . . .
>
> If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might now protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under thus Section 5 shall become additional debt of the Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

Exhibit C to Plaintiffs' First Amended Complaint (Document No. 10). As of the date the Note and Security Agreement were executed, New Century Mortgage was both the lender/mortgagee and the loan/mortgage servicer.

On November 3, 2006, Countrywide Home Loans sent Plaintiffs a letter stating that "[t]he servicing of your mortgage loan, that is, the right to collect payment from you, is being assigned, sold or transferred from New Century Mortgage Corporation to Countrywide Home Loans, Inc. The effective date of the transfer will be the date that your first payment will be due to the new servicer, which will be December 01, 2006." Exhibit E to Plaintiffs' First Amended Complaint (Document No. 10).

Plaintiffs allege that thereafter, in August 2007, Countrywide began refusing to accept their scheduled mortgage payments of $1243.70. *See* Exhibit F to Plaintiffs' First Amended Complaint (Document No. 10). In response to correspondence sent by Plaintiffs on August 30, 2007, Countrywide explained in a letter dated September 11, 2007, that the monthly payment on the Note had increased to $1,493.56, as a result of Countrywide's purchase of homeowners' insurance for Plaintiffs' residence following the expiration of Plaintiffs' insurance on April 6, 2007. Exhibit G to Plaintiffs' First Amended Complaint (Document No. 10). The letter further stated:

> This will confirm that your payment of $1,243.70 was applied to your account on September 6, 2007, as the August 2007 installment. However, all future payments are required to be in the amount of $1,493.56 or until evidence of sufficient insurance coverage has been received.

Id. On September 25, 2007, Plaintiffs obtained their own homeowners' insurance, with an effective date of September 19, 2007. Exhibit H to Plaintiffs' First Amended Complaint (Document No. 10). On November 8, 2007, Plaintiffs received a letter from Countrywide stating that the amount to be

paid to bring the loan current was $3,265.33, which included accumulated late charges of $584.09. Exhibit J to Plaintiffs' First Amended Complaint (Document No. 10). Also on November 8, 2007, Countrywide advised Plaintiffs by separate letter: "We have received your payment in the amount of $1,243.70. This amount is less than your current monthly payment of $1,290.62. We have applied this payment to your account. However, future payments that are less than the total amount due each month will be returned to you." Exhibit I to Plaintiffs' First Amended Complaint (Document No. 10). In an additional, follow-up letter, dated November 28, 2007, Countrywide explained as follows the basis for the change in Plaintiffs' monthly payment:

> My research of your concerns revealed that your preferred homeowners insurance policy with Texas Fair Plan and Associates expired, on April 6, 2007. As evidence of renewal was never received, Countrywide purchased a Lender Placed Policy ("LPP") for homeowners coverage on your behalf, resulting in a premium of $1,241.00 being disbursed and an escrow account being established to maintain coverage on the property. This will confirm that Countrywide cancelled the policy we purchased in your behalf upon receipt of evidence of your preferred insurance with Cypress Texas Lloyds Insurance Company effective September 19, 2007, the date of you[r] new policy. Further. Countrywide credited a pro-rated refund of $678.00 to your escrow account on October 5, 2007, for the unused portion of the LLP premium. The October 5, 2007, credit, resulted in a remaining negative escrow deficiency of $563.00 which was spread over 12 months and added to you[r] monthly payment, increasing it to $1290.62 effective October 2007.
>
> The amount received for the October 2007 payment was $1,243.70 which is less than the new monthly payment amount. As such, Countrywide has updated your account to a status such that future payments for less than the amount due will not be accepted. Please note that in order to request a refund for the balance of the LLP premium, Countrywide will need to receive evidence of your preferred coverage for April 6, 2007, through September 19, 2007.

Exhibit N to Plaintiffs' First Amended Complaint (Document No. 10).

On December 31, 2007, Plaintiffs filed suit against Countrywide Home Loans, Inc. in the 400th District Court of Fort Bend County, Texas. In their original petition, Plaintiffs alleged claims

against Countrywide Home Loans, Inc. of breach of contract, violations of the Texas Deceptive Trade Practices Act, and slander. In support of those claims, Plaintiffs alleged that Countrywide breached the contract when it "began to wrongfully refuse Plaintiffs' monthly payment of $1,243.70 in August of 2007" and "began to demand of Plaintiff a monthly payment ranging from $1,290.62 to $2,987.12." Original Petition at 2. The basis of Plaintiffs' claims was that they were improperly charged by Countrywide for homeowners insurance after they had obtained their own insurance, and that Countrywide Home Loans, Inc. breached the loan agreement when it refused to accept the original payment amount of $1,243.70. Plaintiffs have not, at least since the date they filed suit in state court, made any payments on the Note.

On June 18, 2008, while the case was pending in state court, an assignment of the "Note and the Deed of Trust" was recorded in the records of the Fort Bend County Clerk. The written assignment, which reflected an assignment of the Note and Deed of Trust from New Century Mortgage Corporation to Deutsche Bank National Trust Company as Trustee on behalf of Morgan Stanley ABS Capital I, Inc. Trust 2006-HE6, Mortgage Pass-Through Certificates, Series 3006-HE6, was signed on June 4, 2008, with an effective date of April 23, 2008. Exhibit K to Plaintiffs' First Amended Complaint (Document No. 10).

In July 2008, BAC Home Loans Servicing, L.P. became the mortgage servicer on the Note. Thereafter, on July 1, 2011, Bank of America, N.A. became the mortgage servicer.

Through numerous amendments in state court, various defendants were added. In addition, in the eighth amended petition, which was filed in state court on May 15, 2012, Plaintiffs set forth, for the first time, a claim under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. ("RESPA"). That federal claim prompted Defendants to remove the case to this court. Since

removal, Plaintiffs have filed a First Amended Complaint that names the following as Defendants: (1) Countrywide Homes Loans, Inc. ("Countrywide"); (2) Bank of America Corporation; (3) Bank of America, N.A.; (4) Deutsche Bank AG; (5) Deutsche Bank Trust Company; (6) Morgan Stanley ABS Capital I, Inc. ("Morgan Stanley"); (7) Barrett Daffin Frappier Turner & Engel, LLP ("Barrett Daffin"); and (8) Angelo Mozilo. There is nothing in the record to show that Defendant Mozilo or Defendant Deutsche Bank AG has been served. In addition, the record shows that the state trial court, on September 22, 2011, granted summary judgment in Countrywide's favor on all Plaintiffs' claims.

II. Standard of Review – Summary Judgment

Rule 56(a) provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The moving party must initially "demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 106 S. Ct. 2548, 2553 (1986). Once the moving party meets its burden,[2] the burden shifts to the nonmovant, "who must, by submitting or referring to evidence, set out specific facts showing that a genuine issue exists that summary judgment should not be granted." *Norwegian Bulk Transport A/S v. Int'l Marine Terminals P'ship*, 520 F.3d 409, 412 (5th Cir. 2008); *see also Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir. 1998). A party opposing a properly supported motion for summary judgment may not

[2] Where "the dispositive issue is one on which the nonmoving party will bear the burden of proof at trial, the moving party may satisfy its burden by merely pointing out that the evidence in the record contains insufficient proof concerning an essential element of the nonmoving party's claim." *Norwegian Bulk Transport A/S v. Int'l Marine Terminals P'ship*, 520 F.3d 409, 412 (5th Cir. 2008).

rest upon mere allegations or denials in a pleading, and unsubstantiated assertions that a fact issue exists will not suffice. *Celotex*, 106 S. Ct. at 2548. Instead, "the nonmoving party must set forth specific facts showing the existence of a 'genuine' issue concerning every essential component of its case." *Morris*, 144 F.3d at 380.

In considering a motion for summary judgment, all reasonable inferences to be drawn from both the evidence and undisputed facts are to be viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986). "If the record, viewed in this light, could not lead a rational trier of fact to find" for the nonmovant, then summary judgment is proper. *Kelley v. Price- Macemon, Inc.*, 992 F.2d 1408, 1413 (5th Cir. 1993) (citing *Matsushita*, 106 S. Ct. at 1351). On the other hand, if "the factfinder could reasonably find in [the nonmovant's] favor, then summary judgment is improper." *Id.* Even if the standards of Rule 56 are met, a court has discretion to deny a motion for summary judgment if it believes that "the better course would be to proceed to a full trial." *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. at 2505, 2513 (1986).

III. Discussion – Summary Judgment on Plaintiffs' RESPA Claim

Plaintiffs have asserted against Defendants Bank of America, N.A. and Deutsche Bank claims of breach of contract, violation of Article XVI Section 50(a) of the Texas Constitution, unfair collection practices and deceptive trade practices, fraud, conspiracy, conversion, and violations of the real Estate Settlement Procedures Act of 1974 ("RESPA"). Based on the disposition of many of the same claims in state court as against Defendant Countrywide, Defendants Bank of America, N.A. and Deutsche Bank argue that they are likewise entitled to summary judgment. (Document No.

9). In addition, Bank of America, N.A. and Deutsche Bank argue that summary judgment is warranted on Plaintiffs' claims against them because: (1) there is no evidence and no allegations that Bank of America, N.A. or Deutsche Bank breached the loan agreement; (2) the uncontroverted evidence shows that while Countrywide was the mortgage servicer, Plaintiffs first breached the loan agreement by refusing to pay the amount provided for by the Note, plus the amount due for the homeowners' insurance that was procured by Countrywide on Plaintiffs' behalf; and (3) each claim fails in light of the uncontroverted facts and summary judgment evidence. In a supplemental submission that was filed on October 30, 2012 (Document No. 82), Defendants[3] further argue, with respect to Plaintiffs' RESPA claim, that summary judgment is warranted on several bases. First, Defendants argue that the uncontroverted summary judgment evidence shows that Plaintiffs received notice of the change in the loan servicer from New Century Mortgage to Countrywide Home Loan, Inc., and received notice of the change in the loan servicer from BAC Home Loan Servicing, L.P. to Bank of America, N.A. With respect to the change in the loan servicer from Countrywide Home Loans, Inc. to BAC Home Loan Servicing, L.P., Defendants state that while they have been unable to locate a notice of that change, any RESPA claim fails because there is no summary judgment evidence that Plaintiffs sustained any damages as a result of the lack of notice. With respect to Plaintiffs' claim under RESPA that Countrywide failed to respond to a "qualified written request" for information, Defendants maintain that the summary judgment evidence shows that the August 30, 2007, letter sent by Plaintiffs was sent to the wrong address, and that Countrywide, in any event

[3] As is relevant to this Memorandum and Recommendation and the discussion of Plaintiffs' RESPA claims, "Defendants" includes Defendant Bank of America, N.A., Deutsche Bank, and ostensibly Countrywide.

timely responded to the August 30, 2007, letter. Finally, Defendants argue that all of Plaintiff's RESPA claims/allegations are barred by the applicable two year statute of limitations.

The only federal claim alleged in this case is for violations of RESPA.[4] Such a claim, whether premised on lack of notice of a change in loan servicers under 12 U.S.C. § 2605(c), or on lack of a timely response to a "qualified written request" for information under 12 U.S.C. § 2605(e), requires allegations and proof of actual damages. 12 U.S.C. § 2605(f)(1)(A); *Broussard v. PNC Bank*, Civil Action No. H-11-1874, 2012 WL 2994653 n. 3 (S.D. Tex. 2012) ("To recover for a claim under RESPA, the borrower must show actual damages resulted from the violation of the statute to pursue a private cause of action under it."). In addition, such a claim, brought under 12 U.S.C. § 2605, is subject to a three year statute of limitations. 12 U.S.C. § 2614; *Snow v. First American Title Ins. Co.*, 332 F.3d 356, 359 (5th Cir. 2003) ("Private plaintiffs, too, have a three-year limitations period for suits alleging a violation of § 2605.").

Here, in support of their RESPA claim Plaintiffs have alleged:

> 102. There is not evidenced 1) New Century proving [sic] Notice to Plaintiffs that Countrywide was to Service Plaintiffs' Mortgage, 2) Countrywide providing Notice to Plaintiffs that Bank of America was to Service Plaintiffs' Mortgage, nor 3) Bank of America providing Notice to Plaintiffs that Bank of America is the new Servicer of Plaintiffs' Mortgage pursuant to 12 USC Section 2605, which requires.
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> 103. There is also no evidence of the Lender responding within 60 days of Plaintiffs' August 30, 2007 in regard to Plaintiffs' Monthly payments and $561 sought by the Lender in regard to Homeowner's Insurance; while the only available evidence is that of the Lender misleading Plaintiffs; and while, 12 USC Section 2605 Title 12 requires response.

First Amended Complaint (Document No. 10) at 36, 38.

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[4] There is what can only be described as a "stray" reference to the Federal Debt Collection Practices Act (FDCPA) in Plaintiffs' First Amended Complaint (Document No. 10) at 28. That stray reference does not state a claim under the FDCPA within the meaning of *Twombly* and *Iqbal*.

With the exception of the allegation that Plaintiffs did not received notice of the change in loan servicer from BAC Home Loan Servicing, L.P. to Bank of America, N.A., in 2011, Plaintiffs' RESPA claims are time-barred. Plaintiffs' claims that they did not receive notice of the change in loan servicers from New Century Mortgage to Countrywide in 2006, did not receive notice of the change in loan servicers from Countrywide to BAC Home Loan Servicing, L.P. in 2008, and did not receive a response to their August 30, 2007, "qualified written request" for information, are all based on events that occurred in 2006, 2007, and 2008. Any RESPA claim would have accrued at that time. Plaintiffs then had, under 12 U.S.C. § 2614, three years from the date their claims accrued to assert a RESPA claim. The RESPA claim(s) were not added to this case until May 15, 2012, between four and five years after the claims accrued. Thus, other than the claim related to the notice of the change in loan servicers from BAC Home Loan Servicing, L.P. to Bank of America, N.A. in July 2011, Plaintiffs' RESPA claims are time-barred.

The RESPA claims all also fail on the merits in light of the uncontroverted summary judgment evidence. Notice was provided to Plaintiffs of the change in loan servicer from New Century Mortgage to Countrywide in 2006, *see* Exhibit E to Plaintiffs' First Amended Complaint (Document No. 10), and from BAC Home Loan Servicing, L.P. to Bank of America in July 2011, *see* Exhibit L to Plaintiffs' First Amended Complaint (Document No. 10); *see also* Exhibit B-1 to Defendants' Supplemental Briefing (Document No. 82). In addition, with respect to Plaintiffs' letter of August 30, 2007, in which they sought information about the change in their loan payment amount, the uncontroverted summary judgment evidence is that the letter was sent to Angelo R. Mozilo at Countrywide Financial Corporation, 4500 Park Granada, Calabasas CA 91302, Exhibit F to Plaintiffs' First Amended Complaint (Document No. 10). This is not the address provided by

Countrywide for "qualified written requests." Countrywide, nonetheless, responded to Plaintiffs' August 30, 2007 written inquiry, with their own written correspondence dated September 11, 2007. *See* Exhibit G to Plaintiffs' First Amended Complaint (Document No. 10). Finally, Plaintiff's purported lack of notice that the loan servicer had changed from Countrywide to BAC Home Loan Servicing, L.P. in July 2008, cannot support a RESPA claim on the merits in the absence of damages associated with such lack of notice. *See Kareem v. American Home Mortgage Servicing, Inc.*, 2012 WL 2384143 (5th Cir. 2012); *Broussard*, 2012 WL 2994653 n. 3; *Hurd v. BAC Home Loans Servicing, L.P.*, ___ F.Supp.2d ___, 2012 WL 1106932 *18-*19 (N.D. Tex. 2012). Plaintiffs have not offered any such damages evidence and cannot have reasonably been damaged given that this case was pending in state court at the time the mortgage servicer changed from Countrywide to BAC Home Loan Servicing, L.P. and all foreclosure proceedings had, at that time, ceased.

In all, Plaintiffs have not raised a genuine issue of material fact on their RESPA claims or Defendants' statute of limitations affirmative defense thereto. Defendants are, accordingly, entitled to summary judgment on Plaintiffs' RESPA claims.

IV. Discussion – Supplemental Jurisdiction

As set forth above, the only federal claim in this case is based on alleged RESPA violations. The other claims are all state law claims that were pending in state court for nearly four and a half years prior to removal of this case. Based on the recommendation made herein that summary judgment be granted to Defendants Bank of America N.A., Deutsche Bank and Countrywide on Plaintiffs' RESPA claims and the recommendation that the claims against Defendants Bank of

America Corporation, Morgan Stanley and Barrett Daffin all be dismissed under Rule 12(b)(6), all that would remain in this case are state law claims.

In such a situation, where no federal claim remains, the Court has ample discretion to decline supplemental jurisdiction over the state law claims. In fact, "[t]he 'general rule' is to decline to exercise jurisdiction over pendent state-law claims when all federal claims are eliminated from a case before trial." *Oliver v. Lewis*, ___ F.Supp.2d ___, 2012 WL 3779909 (S.D. Tex. 2012) (citing *Brookshire Bros. Holding, Inc. v. Dayco Products, Inc.*, 554 F.3d 595, 602 (5th Cir. 2009)). 28 U.S.C. § 1367(c) provides:

> The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if –
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> (1) the claim raises a novel or complex issue of State law,
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> (2) the claim substantively predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
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> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

In determining whether to exercise or decline supplemental jurisdiction over state law claims, both the factors listed in § 1367(c), and common-law factors of "judicial economy, convenience, fairness and comity" are to be considered. *Enoch v. Lampasas County*, 641 F.3d 155, 159 (5th Cir. 2011). Forum manipulation may also be considered. *Id.* at 160. When a case has been removed from state court, state law claims over which the court declines to exercise supplemental jurisdiction may be remanded, as opposed to dismissed. *Id.*

Here, given that Defendants are entitled to summary judgment on Plaintiffs' RESPA claim, the only claims remaining in this case are state law claims. § 1367(c)(3). In addition, Plaintiff's state law claims have always predominated over the RESPA claim. § 1367(c)(2). With respect to the common law factors of judicial economy, convenience, fairness and comity, the parties' submissions show that at the time of removal this case had been pending in state court nearly four and a half years prior to its removal, the state trial court had granted a motion for summary judgment in favor of Countrywide, and the case was set for trial in June 2012. Under those circumstances, judicial economy, convenience, fairness and comity all weigh in favor of declining supplemental jurisdiction over the state law claims.[5] In all, however, both the statutory and common-law factors weigh in favor of declining supplemental jurisdiction over the remaining state law claims.

V. Conclusion and Recommendation

Based on the foregoing and the conclusion that there is no summary judgment evidence to support the essential elements of Plaintiffs' claim under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq, the Magistrate Judge

RECOMMENDS that Defendants' Motion for Partial Summary Judgment (Document No. 9) be GRANTED as to Plaintiffs' RESPA claim. Based on this recommendation and the separate Recommendation granting the Motions to Dismiss of Defendants Bank of America Corporation, Morgan Stanley and Barrett Daffin, the Magistrate Judge further

[5] As Plaintiffs' eighth amended petition did contain a federal claim under RESPA, there is no concern as to forum manipulation by either side.

RECOMMENDS that the remaining state law claims be REMANDED to state court pursuant to 28 U.S.C. § 1367(c).

The Clerk shall file this instrument and provide a copy to all counsel and unrepresented parties of record. Within fourteen (14) days after being served with a copy, any party may file written objections pursuant to 28 U.S.C. § 636(b)(1)(C), FED. R. CIV. P. 72(b), and General Order 80-5, S.D. Texas. Failure to file objections within such period shall bar an aggrieved party from attacking factual findings on appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Ware v. King*, 694 F.2d 89 (5th Cir. 1982), *cert. denied*, 461 U.S. 930 (1983); *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982) (en banc). Moreover, absent plain error, failure to file objections within the fourteen day period bars an aggrieved party from attacking conclusions of law on appeal. *Douglass v. United Services Automobile Association,* 79 F.3d 1415, 1429 (5th Cir. 1996). The original of any written objections shall be filed with the United States District Clerk.

Signed at Houston, Texas, this 1st day of November, 2012.

Frances H. Stacy

FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE