

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

DOYLE WARKENTIN,

Plaintiff and Appellant,

v.

COUNTRYWIDE HOME LOANS et al.,

Defendants and Respondents.

F052660 & F053148

(Super. Ct. No. 148984)

**OPINION**

APPEAL from a judgment of the Superior Court of Merced County. Ronald W. Hansen, Judge.

Doyle Warkentin, in pro. per., for Plaintiff and Appellant.

Sanford Shatz and David A. Brooks for Defendants and Respondents.

-ooOoo-

A few months after he refinanced his home loan, plaintiff Doyle Warkentin received a letter from Countrywide Home Loans, Inc. (Countrywide) notifying him that Countrywide had assumed the servicing of his home loan. The letter advised plaintiff of his rights “[u]nder the Fair Debt Collections Practices Act,” and disclosed, among other things, that plaintiff had 30 days in which to dispute the amount of the debt. After the 30-day period expired, Countrywide sent a notice of default to plaintiff because he was delinquent on his loan payments. Plaintiff responded to the notice of default by certified letter disputing that he had a contractual obligation to pay Countrywide and demanding verification of any such obligation. When Countrywide failed to address the issues raised in plaintiff’s letter and continued to seek foreclosure, plaintiff filed his complaint for violation of the Fair Debt Collection Practices Act (15 U.S.C. § 1692g, hereafter FDCPA) and, after amendment thereof, for violation of the Real Estate Settlement Procedures Act (12 U.S.C. § 2601, hereafter RESPA). Following several rounds of demurrers, the trial court finally sustained Countrywide’s demurrer to the plaintiff’s third amended complaint without leave to amend. Upon entry of judgment of dismissal, the trial court granted Countrywide’s motion for recovery of attorney fees pursuant to contract. Plaintiff appeals from the judgment of dismissal and the order granting attorney fees on the ground the trial court should not have sustained the demurrer without leave to amend. We agree and accordingly reverse the judgment, vacate the attorney fees order, and instruct the trial court to grant leave to amend as to the RESPA cause of action.

### **FACTS AND PROCEDURAL HISTORY**

Plaintiff’s original complaint was filed on November 18, 2005. It alleged that on May 4, 2005, Countrywide sent a letter to plaintiff informing him that Countrywide had commenced the servicing of plaintiff’s home loan regarding plaintiff’s residence in

Winton, California.<sup>1</sup> After receiving the letter, plaintiff allegedly contacted Countrywide and was told they could not locate the paperwork evidencing plaintiff's loan and Countrywide's authority to service the loan.<sup>2</sup> On June 14, 2005, Countrywide served a notice of default and acceleration on plaintiff concerning the loan. On June 29, 2005, plaintiff sent a letter disputing Countrywide's authority to service the loan and demanding proof thereof. Countrywide allegedly failed or refused to respond to plaintiff's written request and instead pursued foreclosure remedies. Countrywide's conduct allegedly violated FDCPA, and accordingly plaintiff sought injunctive relief to prohibit the foreclosure along with an award of damages.

On the same day that plaintiff's complaint was filed, plaintiff filed a declaration attaching the several documents referenced in the complaint. In addition to supplying the exhibits to the complaint, the declaration and attached documents were submitted in support of plaintiff's request for a temporary restraining order and preliminary injunction.

On January 17, 2006, the trial court denied plaintiff's request for a preliminary injunction and Countrywide was allowed to proceed with the foreclosure sale scheduled for January 30, 2006. Shortly thereafter, the foreclosure was canceled because plaintiff made a payment to reinstate his loan.

---

<sup>1</sup> The May 4, 2005 letter was incorporated by reference into the complaint, but it was physically attached to plaintiff's accompanying declaration, not to the complaint itself. Plaintiff's complaint stated that "[a] true and correct copy of the [May 4, 2005 letter] is attached to the declaration of Doyle Warkentin served herewith and incorporated herein by reference." Other documents alleged to be incorporated by reference in the complaint were also attached to plaintiff's declaration. Later, when plaintiff proposed a second amended complaint in response to Countrywide's demurrer to the first amended complaint, the trial court required that the exhibits be attached to the second amended complaint itself.

<sup>2</sup> As admitted in plaintiff's accompanying declaration, before he sent his June 29, 2005 letter, all his contacts with Countrywide were by telephone call.

On February 7, 2006, plaintiff filed his first amended complaint asserting two distinct causes of action. The first cause of action was for violation of FDCPA and the second cause of action was for violation of RESPA. The first cause of action continued to request injunctive relief to prevent foreclosure, even though that issue was rendered moot by the reinstatement of plaintiff's loan. The second cause of action alleged that plaintiff's June 29, 2005 letter constituted a qualified written request under RESPA, and that Countrywide violated the provisions of RESPA by failing to timely respond and by submitting adverse credit reports regarding plaintiff's delinquency on his loan.

Countrywide demurred to the first amended complaint on grounds of failure to state a cause of action and uncertainty. Among other things, Countrywide's demurrer asserted that the claim for injunctive relief was moot, that Countrywide's May 4, 2005 letter complied with the two federal statutes and that plaintiff failed to respond in writing within the 30-day period provided by law. Plaintiff did not file an opposition to the demurrer, but merely submitted a proposed second amended complaint. The trial court sustained the demurrer to the first amended complaint with leave to amend. Additionally, because plaintiff had referred to exhibits but failed to attach them, the trial court ordered that plaintiff must file a corrected second amended complaint with exhibits attached.

Plaintiff's second amended complaint, as corrected to include the attachment of referenced exhibits,<sup>3</sup> was filed on July 19, 2006. The second amended complaint labeled plaintiff's action as one "for damages derived from [Countrywide's] refusal to comply with debt transfer rules" (capitalization omitted). The second amended complaint alleged that after receiving Countrywide's May 4, 2005 letter, plaintiff "in mid-May, [] contacted Countrywide and demanded proof that it had the right to receive the loan repayments,"

---

<sup>3</sup> Plaintiff accomplished this by attaching to the second amended complaint a copy of his prior declaration (with exhibits) that had accompanied his original complaint. All of the documents referenced in the second amended complaint were thereby attached to the pleading.

and that Countrywide told plaintiff it was “trying [to] find the requisite documents to prove that it could legally collect the debt.” On June 29, 2005, plaintiff sent his letter disputing Countrywide’s right to service the loan and demanding verification thereof pursuant to FDCPA. Countrywide never provided plaintiff with the mandated proof of debt ownership, yet it commenced foreclosure proceedings against the plaintiff. Allegedly, “[s]o long as a dispute existed over Countrywide’s title to the debt, all efforts to foreclose should have ceased.”

Further, the second amended complaint alleged that the debt was a federally related mortgage loan within the meaning of RESPA, yet Countrywide failed to respond as required to plaintiff’s June 29, 2005 letter “pursuant to RESPA, Sec[ti]on 6 (e) 9 (1) (A) and (B).” Countrywide then allegedly sent adverse credit reports concerning plaintiff to consumer reporting agencies “in direct violation of RESPA, Sec[ti]on 6 (e) (3).”<sup>4</sup> Countrywide’s wrongful acts in violation of the federal statutes allegedly caused plaintiff damages and entitled plaintiff to an award of attorney fees.

On August 22, 2006, Countrywide filed its demurrer to the second amended complaint. The demurrer asserted that plaintiff failed to state a cause of action because Countrywide’s May 4, 2005 letter complied with the notice requirements of FDCPA, and plaintiff failed to respond in writing within the 30-day period. Moreover, when plaintiff did respond in writing (on June 29, 2005), not only was it untimely but he sent the letter to the wrong address. As to plaintiff’s allegation that Countrywide violated RESPA, the demurrer asserted that the second amended complaint failed to adequately explain how Countrywide violated RESPA and that the allegations were vague, ambiguous and unintelligible.

---

<sup>4</sup> Plaintiff’s citation to “Sec[ti]on 6” was never clarified, as RESPA contains no section number six. Nevertheless, it was clear from other allegations that the federal law being referred to as RESPA was 12 United States Code section 2601 et seq.

On September 22, 2006, the trial court heard Countrywide's demurrer to the second amended complaint and sustained it with 30 days leave to amend. The trial court noted at the hearing that plaintiff's own exhibits confirmed that plaintiff failed to send a written demand within the 30-day notice period. The trial court said it would give plaintiff "one last chance" to state a cause of action, but warned plaintiff's counsel, "You're going to have to explain those exhibits."

On October 20, 2006, plaintiff filed his third amended complaint. Rather than explaining the prior exhibits, plaintiff deleted them. Plaintiff's third amended complaint alleged that within 30 days from receipt of Countrywide's May 4, 2005 announcement, plaintiff "verbally demanded" that Countrywide provide him with proof of its right to collect monies from plaintiff. The demand was allegedly "within the time limits set forth" in FDCPA. In response to plaintiff's verbal demand, Countrywide allegedly told plaintiff "we don't have the required documents, but we have 60 days to locate them." On June 14, 2005, when Countrywide served a notice of default on plaintiff, it was allegedly in "direct violation" of the 60-day ban on foreclosure under FDCPA.

The third amended complaint additionally alleged the debt was a federally related mortgage loan within the meaning of RESPA, but that Countrywide's May 4, 2005 letter failed to comply with the requirements of RESPA. Allegedly, Countrywide then sent adverse credit reports regarding plaintiff to consumer reporting agencies "in direct violation of RESPA, Section 6 (e) (3)." Plaintiff sought recovery of general and special damages for the alleged statutory violations.

On December 12, 2006, Countrywide filed its demurrer to the third amended complaint. Countrywide argued in its demurrer that the allegations of the third amended complaint, along with the exhibits attached to prior versions thereof, confirmed that Countrywide had properly notified plaintiff of his rights under FDCPA and that plaintiff had failed to submit a timely *written* dispute as required by that statute. As to the alleged violation of RESPA, the demurrer asserted that the third amended complaint still failed to

adequately and clearly state the nature of the alleged violation. Thus, the RESPA claim was allegedly vague, ambiguous and unintelligible.

On January 23, 2007, the trial court sustained Countrywide's demurrer to the third amended complaint without leave to amend. The trial court explained at the hearing that the FDCPA requires a written request and that there are sound reasons for such a rule: "The Court believes that ... there [are] good policy reasons why it had to be in writing, otherwise, anyone could assert a verbal request and we end up with problems of proof." The trial court's order sustaining demurrer without leave to amend was entered on January 30, 2007. Judgment of dismissal was entered that same day. Subsequently, the trial court granted Countrywide's motion for recovery of attorney fees in the amount of \$16,550, based on a provision in the deed of trust authorizing such recovery. Plaintiff appealed separately from the judgment of dismissal and the order granting motion for attorney fees.<sup>5</sup>

## **DISCUSSION**

Plaintiff contends on appeal that the trial court erred in sustaining Countrywide's demurrer to the third amended complaint without leave to amend and, as a consequence thereof, also erred in awarding attorney fees to Countrywide. We agree.

### **I. Standard of Review**

"In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether

---

<sup>5</sup> The separately filed appeals have been consolidated.

the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

## **II. Trial Court Erred in Sustaining Demurrer to Third Amended Complaint Without Leave to Amend**

We first consider whether the third amended complaint stated a cause of action under FDCPA. Specifically, plaintiff alleged that he verbally disputed the debt and requested verification of Countrywide’s right to collect the debt. Countrywide allegedly violated FDCPA by pursuing foreclosure or taking other actions regarding the debt without responding to plaintiff’s verification request.

The section of FDCPA relevant to plaintiff’s claims is 15 United States Code section 1692g, which provides as follows regarding validation of debts:

“(a) Notice of debt; contents [¶] Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing --

“(1) the amount of the debt;

“(2) the name of the creditor to whom the debt is owed;

“(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

“(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy

of such verification or judgment will be mailed to the consumer by the debt collector; and

“(5) a statement that, upon the consumer’s written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

“(b) Disputed debts [¶] If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.”<sup>6</sup>

It is clear from plaintiff’s allegations that he demanded a *verification of the debt* from Countrywide. That is, plaintiff sought proof that Countrywide had the right to collect the debt. The operative provision regarding such a request for verification is 15 United States Code section 1692g(a)(4). The problem for plaintiff is that this provision expressly requires the debtor to submit the dispute “in writing within the thirty-day period.” (15 U.S.C. § 1692g(a)(4).) The allegations of the third amended complaint establish that no written demand was made within the 30-day period. The pleading admits that Countrywide’s written notice was sent on May 4, 2005, but plaintiff only communicated “verbally” with Countrywide during the 30-day period. Moreover, the

---

<sup>6</sup> In 2006, the following clarifying language was added to the end of 15 United States Code section 1692g(b): “Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) of this title unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer’s right to dispute the debt or request the name and address of the original creditor.” (Pub.L. 109-351, tit. VIII, § 802(c) (Oct. 13, 2006) 120 Stat. 1966.)

exhibits attached to prior versions of the complaint reflect that plaintiff did not submit the dispute in writing until his June 29, 2005 letter, which was well beyond the 30-day period.

Plaintiff's allegations incorrectly assumed that his oral communication to Countrywide triggered Countrywide's obligation to provide verification of the debt and required Countrywide to cease collection of the debt until such verification was sent to plaintiff. As explained above, the statutory duty to provide verification of the debt was never triggered because plaintiff failed to submit his dispute in writing within the 30-day period. For the same reason, Countrywide was not required to cease its collection efforts under 15 United States Code section 1692g(b). This provision only requires the debt collector to cease collection efforts pending verification of the debt "[i]f the consumer notifies the debt collector in writing within the thirty-day period." (15 U.S.C. § 1692g(b).)<sup>7</sup> It is plain from the allegations that this statutory condition never occurred. We conclude that plaintiff failed to state a cause of action for violation of the relevant provisions of FDCPA. (See *Mahon v. Credit Bureau of Placer County, Inc.* (9th Cir. 1999) 171 F.3d 1197, 1202-1203 [cause of action under FDCPA without merit where consumer failed to send written notice of dispute within 30-day period].)

However, the third amended complaint *also* alleged that Countrywide violated RESPA. RESPA regulates the real estate settlement process (*Hardy v. Regions Mortg., Inc.* (11th Cir. 2006) 449 F.3d 1357, 1359), as well as the servicing of federally regulated mortgage loans (*MorEquity, Inc. v. Naeem* (N.D.Ill. 2000) 118 F.Supp.2d 885, 900).

---

<sup>7</sup> For certain purposes that are not pertinent here, a consumer's oral statement of dispute may suffice to trigger limited rights. This is indicated by the language of United States Code section 1692g(a)(3), which omits the requirement of written notice. (See *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2005) 430 F.3d 1078, 1082.) For example, an oral statement of dispute may preclude a debt collector from communicating the consumer's credit information to others without including the fact that the debt is in dispute. (*Ibid.*)

Federally regulated mortgage loans include any loans secured by a first or subordinate lien on residential real property. (12 U.S.C. § 2602(1)(A).)

Section 2605 of RESPA governs the servicing of mortgage loans and the administration of escrow accounts. Among other things, this section requires a servicer of any federally related mortgage loan to notify the borrower in writing of any assignment, sale or transfer of the servicing of the loan to any other person. (12 U.S.C. § 2605(b)(1).) Of particular importance in the present case, this section also requires the servicer to respond to a “qualified written request” for information from the borrower. (12 U.S.C. § 2605(e)(1).) RESPA defines a “qualified written request” as a written correspondence that “(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.” (12 U.S.C. § 2605(e)(1)(B).) “Not later than 60 days ... after the receipt from any borrower of any qualified written request,” the servicer is required to provide the borrower with the requested information relating to the servicing of the loan or an explanation why such information is unavailable. (12 U.S.C. § 2605(e)(2).)<sup>8</sup>

During the 60-day period after the qualified written request is made, RESPA expressly protects the borrower from reports by the servicer to a consumer reporting agency. The relevant provision states as follows: “During the 60-day period beginning on the date of the servicer’s receipt from any borrower of a qualified written request relating to a dispute regarding the borrower’s payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such

---

<sup>8</sup> At oral argument, Countrywide argued the borrower has a 30-day deadline to make a qualified written request after receiving notice that the servicing of the loan has been transferred. No such limitation appears in RESPA.

period or qualified written request, to any consumer reporting agency ....” (12 U.S.C. § 2605(e)(3).) Finally, RESPA authorizes borrowers to pursue damage remedies in the event a servicer fails to comply with any of RESPA’s provisions. (12 U.S.C. § 2605(f).)

Here, the third amended complaint failed to allege that plaintiff made a qualified written request for information in accordance with RESPA. Consequently, not only did plaintiff fail to state a cause of action, but the pleading was vague and uncertain in regard to the basis for plaintiff’s claim. (Code Civ. Proc., § 430.10, subs. (e), (f).)

Accordingly, the trial court correctly sustained Countrywide’s demurrer to the third amended complaint.

Nevertheless, we believe the trial court erred in sustaining the demurrer without leave to amend. Plaintiff’s June 29, 2005 letter to Countrywide, which was referred to in the third amended complaint and was attached to prior versions of plaintiff’s complaint, expressly disputed that Countrywide had authority to service the loan and requested verification of same. The June 29, 2005 letter would appear to be adequate as a “qualified written request” under RESPA, thereby triggering an obligation on the part of Countrywide to respond to the inquiry within 60 days and prohibiting any negative reports to consumer reporting agencies during that time period. (See, e.g., 12 U.S.C. § 2605(e)(1), (2) & (3).) The third amended complaint expressly alleged that plaintiff suffered damages as a result of adverse reports to consumer reporting agencies. Thus, although the third amended complaint was insufficient because plaintiff failed to clearly and specifically allege that the June 29, 2005 letter constituted a qualified written request under RESPA, the pleading nevertheless included the existence of facts that would otherwise be sufficient to state a claim under RESPA if set forth in correct form with a statement of the ultimate facts constituting the cause of action. The defect, then, was plainly curable. Indeed, plaintiff affirmatively argued that such a basis existed for stating

a RESPA claim in a document filed in opposition to the demurrer entitled “Declaration of Doyle Warkentin in Opposition to Demurrer” (capitalization omitted).<sup>9</sup>

Because the plaintiff’s failure to state a cause of action was primarily an issue of form, not substance, resulting more from inept pleading than an inability to state a cause of action, we believe that leave to amend should have been granted even though plaintiff had a number of prior opportunities for amendment. “[T]he trial court is obligated to look past the form of a pleading to its substance. Erroneous or confusing labels attached by the inept pleader are to be ignored if the complaint pleads facts which would entitle the plaintiff to relief.” (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) A demurrer should not be sustained without leave to amend if there is a reasonable possibility the defect can be cured by amendment. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1037.) Since a reasonable possibility for curative amendment was apparent from the allegations themselves and from plaintiff’s opposition to the demurrer, leave to amend should have been granted.

Our conclusion is not altered by Countrywide’s defensive claim that plaintiff’s June 29, 2005 letter was sent to an incorrect office address at Countrywide. Countrywide notes that the administrative regulations implementing RESPA allow a servicer, in its notice letter to the borrower, to set forth “a separate address where qualified written requests must be sent.” (24 C.F.R. § 3500.21(d)(3)(ii) (2001).) The same regulations also provide: “By notice either included in the Notice of Transfer or separately delivered by first-class mail, postage prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.” (24 C.F.R.

---

<sup>9</sup> The document was also entitled “THIRD AMENDED COMPLAINT,” but that label does not appear to be accurate as the document is a legal and factual argument stating the reasons for allowing leave to amend.

§ 3500.21(e)(1) (2001).<sup>10</sup> However, the question of whether plaintiff's qualified written request was actually sent to an incorrect office address at Countrywide was inherently a *factual issue* that was not disclosed from the face of the pleadings.<sup>11</sup> Nor were such factual matters presented for judicial notice, even if the trial court could have properly judicially noticed such facts.<sup>12</sup> Of course, in our review of whether a cause of action is stated for purposes of a demurrer, we look solely to the allegations of the complaint and matters that may be judicially noticed. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.) It would be entirely inappropriate for us to turn a demurrer into an evidentiary hearing on factual issues. We therefore conclude that leave to amend must be allowed despite Countrywide's extraneous factual assertion that plaintiff's qualified written request went to the wrong address.

Furthermore, Countrywide failed to establish with cogent argument and legal authority its assumption that sending a qualified written request to the wrong office of the servicer will necessarily defeat the borrower's claim under RESPA. Since the question of the legal effect, if any, of sending a qualified written request to an incorrect office of the servicer was not adequately addressed or briefed, and was unnecessary to the disposition of this appeal, we do not resolve it at this time. We do, however, make a few general comments. Under RESPA's express statutory terms, a servicer's duty to respond

---

<sup>10</sup> Contrary to plaintiff's suggestion, the above regulations were in effect at the time of the transactions herein.

<sup>11</sup> At the very least, the establishment of such a fact would require proof that Countrywide's written notice to plaintiff contained the necessary language specifying that all qualified written requests under RESPA must to be sent to a particular address and that plaintiff's June 29, 2005 letter was not sent there.

<sup>12</sup> Judicial notice relates to matters that are deemed to be indisputably true. (1 Witkin, Cal. Evidence (4th ed. 2000) Judicial Notice, § 1, p. 102.) We offer no opinion of whether, or under what conditions, the purported factual issue here could be judicially noticed.

is triggered by “the *receipt* from any borrower of any qualified written request.” (12 U.S.C. § 2605(e)(2), italics added.) If “receipt” is the controlling concept, as this language suggests, a RESPA cause of action may at least *arguably* be viable even if a qualified written request was initially sent to an office other than the one specified in a servicer’s notice of transfer letter.<sup>13</sup> Certainly, Countrywide must take this statutory wording into consideration in its legal argument. We do not decide the question here, although we emphasize that RESPA is a remedial consumer protection statute that must be construed liberally to best serve Congress’s intent. (*Wanger v. EMC Mortgage Corp.* (2002) 103 Cal.App.4th 1125, 1134-1135 [liberally construing RESPA provision regarding notice of transfer as requiring the servicer to exercise reasonable care and diligence in determining the correct address of the borrower when mailing a notice of transfer].) Our point is simply this: Countrywide failed to show with supporting legal analysis and authority that if plaintiff sent the correspondence to an incorrect address, he could not state a cause of action under RESPA.<sup>14</sup> Of course, Countrywide may reassert its legal contentions with fuller elaboration and clarity in the trial court at an appropriate motion or hearing following our remand.

---

<sup>13</sup> For example, a qualified written request might be internally forwarded to the correct office or address of the servicer after initially being sent by the borrower to the wrong office or address. Or a servicer might expressly acknowledge to the borrower the receipt of a qualified written request under RESPA despite the fact it was sent to the wrong office. In both of these examples, there would arguably be “receipt” by the servicer of the qualified written request. If that is the case, we note, without deciding, that the servicer’s duties under RESPA, while not excused, might arguably be postponed due to the delay (in getting the request to the correct office) caused by the borrower’s error.

<sup>14</sup> Even if Countrywide is correct that sending a qualified written request to the specified address is ordinarily required to state a cause of action, there would still be a further question of whether to apply principles of waiver or estoppel -- such as where a borrower is told by the servicer’s authorized representative to send the qualified written request to a particular address (other than the address designated in the servicer’s written notice).

**DISPOSITION**

The judgment of dismissal is reversed. The order awarding attorney fees is vacated. The matter is remanded and the trial court is instructed to grant plaintiff leave to amend his complaint to state a potential cause of action under RESPA. Each party shall bear their own costs on appeal.

\_\_\_\_\_  
Kane, J.

WE CONCUR:

\_\_\_\_\_  
Vartabedian, Acting P.J.

\_\_\_\_\_  
Cornell, J.