UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

#88(11/19)

Case No.	CV 18-2580 PSG (MRWx)	Date	November 12, 2021
Title	Maxine Gilliam v. Joel Levine		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): The Court GRANTS Defendant's motion for summary judgment.

Before the Court is a motion for summary judgment filed by Defendant Joel Levine ("Defendant"). *See generally* Dkt. # 88 ("*Mot.*"). Plaintiff Maxine Gilliam ("Plaintiff") opposed, *see generally* Dkt. # 96 ("*Opp.*"), and Defendant replied, *see generally* Dkt. # 98 ("*Reply*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the moving, opposing, and reply papers, the Court **GRANTS** Defendant's motion in its entirety.

I. Background

This case arises out of a dispute over a loan related to real property located at 10424 Ruthelen Street in Los Angeles, California (the "Property"). *See Defendant's Statement of Uncontroverted Facts*, Dkt. # 88-4 ("*DSUF*"), ¶ 5; *Plaintiff's Statement of Genuine Disputes*, Dkt. # 96-7 ("*PSGD*"), ¶ 5.[1]

[1] Despite being given an opportunity to fix her opposition, *see* Dkt. # 95, Plaintiff again fails to respond to the bulk of Defendant's statement of uncontroverted facts. The Court thus deems the facts to which Plaintiff supplies no response undisputed. *See* Fed. R. Civ. P. 56(e) ("If a party . . . fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . (2) consider the fact undisputed for purposes of the motion."); L.R. 56-3 (in deciding a motion for summary judgment, "the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the "Statement of Genuine Disputes" and (b) controverted by declaration or other written evidence filed in opposition to the motion"); *Castlepoint Nat'l Ins. Co. v. Weather Masters Waterproofing, Inc.*, No. CV 13-06137 MMM

Lou Easter Ross purchased the Property in 1966. *See Plaintiff's Statement of Uncontroverted Facts*, Dkt. # 96-7 ("*PSUF*"), ¶ 10; *Defendant's Reply to Plaintiff's Statement of Uncontroverted Facts*, Dkt. # 98-7 ("*DRPSUF*"), ¶ 10. In 1986, she created the Lou Easter Ross Trust ("Ross Trust") and transferred the Property into the Ross Trust. *DSUF* ¶¶ 17–18; *PSGD* ¶¶ 17–18; Dkt. # 90-1, Exs. 11–12. Lou Easter Ross named her sister—Plaintiff—as successor trustee upon her death. *See PSUF* ¶¶ 1–3; *DRPSUF* ¶ 2; Dkt. # 90-1, Ex. 11. Lou Easter Ross died in 2012. *DSUF* ¶ 21; *PSUF* ¶ 1.

Defendant is the trustee of the Joel Sherman Levine Revocable Trust ("Levine Trust") and invests in loans through the Levine Trust. *DSUF* ¶¶ 1–2; *PSGD* ¶¶ 1–2. Plaintiff maintains that she is a retired teacher. *PSUF* ¶ 1.

In May 2015, Plaintiff approached broker Joseph Perez ("Broker") of Better Loans & Realty ("BLR") about obtaining a loan. *PSUF* ¶ 9; *DRPSUF* ¶ 9. Plaintiff engaged BLR to procure a lender for a $150,000 loan to be secured by the Property. *DSUF* ¶ 6; *PSGD* ¶ 6; Dkt. # 90-1, Ex. 2. On June 7, Broker provided Plaintiff a mortgage loan disclosure statement, describing a $150,000 loan with a three-year term and a final balloon payment due on July 1, 2018. *PSUF* ¶ 11; *DRPSUF* ¶ 11; Dkt. # 96-4, Ex. 10. The statement indicated that it did not constitute a loan commitment and listed "Investor TBD" under the intended lender. Dkt. # 96-4, Ex. 10. Broker also gave Plaintiff a "good faith estimate" describing similar loan terms and an "intent to proceed with application" stating that Plaintiff had applied for a loan covered by the Real Estate Settlement Procedures Act ("RESPA"). *PSUF* ¶ 11; *DRPSUF* ¶ 11; Dkt. # 96-4, Exs. 11–12.

On June 10, Broker e-mailed Defendant and invited Defendant to fund the loan, the purpose of which is disputed. *DSUF* ¶ 5; *PSGD* ¶ 5. Broker and Defendant exchanged a series of e-mails in which Broker indicated that "[t]he subject property has a tenant in place paying $2,000 monthly" and that Plaintiff would be "using the funds to invest in a small rental." *DSUF* ¶ 7; *PSGD* ¶ 7; Dkt. # 90-1, Ex. 1. Broker attached an unsigned Uniform Residential Loan Application ("loan application"), which stated that: (1) the Property was an "investment" property and the purpose of the refinance loan was "business"; (2) Plaintiff was a "Real Estate

(FFMx), 2014 WL 12567166, at *2 n.8 (C.D. Cal. June 2, 2014) (deeming proposed uncontroverted facts to which opposing party did not respond undisputed); *Global Med. Sols., Ltd. v. Simon*, No. CV 12-04686 MMM (JCx), 2013 WL 12065418, at *1 n.9 (C.D. Cal. Sept. 24, 2013) (same).

Investor (retired teacher)"; and (3) Plaintiff owned three pieces of real property. *See DSUF* ¶ 5; *PSGD* ¶ 5; Dkt. # 90-1, Ex. 1.

Broker initially told Defendant that the loan term was three years, consistent with the mortgage loan disclosure statement and good faith estimate Broker had given Plaintiff. Dkt. # 90-1, Ex. 1. Defendant responded that he had funds available but that he would be more comfortable with a two-year term. Dkt. # 90-1, Ex. 3. Broker replied that Plaintiff was "okay with" a two-year term with the option for a one-year extension. *Id.*

On June 13, Plaintiff signed (1) a truth-in-lending disclosure statement that listed Defendant, as trustee of the Levine Trust, as the creditor and described a two-year loan term with a balloon payment due on July 1, 2017; (2) specific closing instructions describing similar terms; (3) an occupancy and financial status affidavit certifying that the Property was an "investment property"; and (4) a statement of information listing her occupation as "retired." *DSUF* ¶ 12; *PSGD* ¶ 12; *PSUF* ¶¶ 11–15; *DRPSUF* ¶¶ 11–15; Dkt. # 96-4, Exs. 9, 13, 14; Dkt. # 90-1, Ex. 7; *Declaration of Maxine Gilliam*, Dkt. # 96-2 ("*Gilliam Decl.*"), ¶ 19. Plaintiff also signed, as successor trustee of the Ross Trust, (1) a note indicating that she received a $150,000 loan from Defendant as trustee of the Levine Trust, which described a two-year, interest-only loan with a balloon payment due on July 1, 2017; (2) an "addendum to note–extension," stating that Plaintiff could request a one-year extension of the loan between April 1 and June 1, 2017; and (3) a deed of trust securing the loan with the Property. *DSUF* ¶ 10; Dkt. # 90-1, Exs. 5–6. Finally, Plaintiff signed a document indicating that the proceeds of the loan should be wired to a bank account titled "R.R.S.L. Investment." *DSUF* ¶ 14; *PSGD* ¶ 14; Dkt. # 90-1, Ex. 9.

A few weeks later, Defendant received a letter from an attorney for the beneficiary of the Ross Trust, La Randa Ross ("Beneficiary"), claiming that Beneficiary resided at the Property and had not authorized Plaintiff to enter into the loan. *DSUF* ¶ 16; Dkt. # 90-1, Ex. 10. Prior to funding the loan, Defendant did not know that Beneficiary resided at the Property. *DSUF* ¶ 15. Although Plaintiff maintains that she sought the loan "to make necessary repairs" to the Property, *PSUF* ¶ 9, she does not provide evidence that she told Broker that Beneficiary was the tenant living at the Property or that Broker or Plaintiff informed Defendant of this fact before the parties entered into the loan. After receiving the letter from Beneficiary's attorney, Defendant asked Plaintiff to return the loan funds and to unwind the loan transaction, but Plaintiff refused. *DSUF* ¶ 24. Defendant continued to receive loan payments from Plaintiff until the end of the two-year term, which were made from accounts for "Bulls Eye Now, Inc." and "R.R.S.L. Investments." *DSUF* ¶¶ 25–26; Dkt. # 90-1, Ex. 19.

According to Plaintiff, in April 2017, Defendant declined to grant the optional one-year loan extension. *Gilliam Decl.* ¶ 22. After Plaintiff failed to make the final loan payment, including the balloon payment, Defendant recorded a notice of default and an election to sell under deed of trust. *DSUF* ¶ 27. On March 5, 2018, Plaintiff sent Defendant a notice of rescission of the loan. *Id.* ¶ 34; *PSUF* ¶ 18; Dkt. # 90-1, Ex. 23. Defendant did not respond to the notice. *PSUF* ¶ 18. On March 30, Plaintiff filed the instant action against Defendant. *See generally* Dkt. # 1. Plaintiff's operative Second Amended Complaint asserts four causes of action:

- First Cause of Action: Violations of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601, et seq., RESPA, 12 U.S.C. §§ 2601, et seq., and Regulation Z, 12 C.F.R. §§ 226.15, 226.23. *Second Amended Complaint*, Dkt. # 15 ("*SAC*"), ¶¶ 70–98.

- Second Cause of Action: Violation of the Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"), Cal. Civ. Code §§ 178, et seq. *SAC* ¶¶ 99–102.

- Third Cause of Action: Accounting and reimbursement. *Id.* ¶¶ 103–05.

- Fourth Cause of Action: Declaratory relief. *Id.* ¶¶ 106–14.

The Court granted Defendant's motion to dismiss the Second Amended Complaint. *See generally* Dkt. # 19. The Ninth Circuit reversed and remanded the matter to this Court in 2020. *See generally* Dkts. # 24, 29. On April 27, 2021, the Court denied Plaintiff's motion for partial summary judgment on her first cause of action, finding Plaintiff had failed to show that she obtained the loan for personal purposes. *See generally* Dkt. # 59. Defendant now moves for summary judgment on all of Plaintiff's claims, claiming that the loan was obtained for a business purpose. *See generally Mot.*

II. Requests for Judicial Notice

Plaintiff and Defendant have each filed a request for judicial notice of several items, including state court filings, opinions, and judgments; a bankruptcy court order; and other public records. *See generally* Dkts. # 88-3, 96-1. Among other items, Defendant asks the Court to take judicial notice of a certified and recorded copy of the grant deed transferring title to the Property into the Ross Trust. Dkt. # 88-3, ¶ 1; Dkt. # 90-1, Ex. 12. This item is publicly available as a matter of public record, and thus its contents can be accurately and readily determined without

reasonable dispute. *See* Fed. R. Evid. 201(b); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (explaining that courts "may take judicial notice of . . . matters of public record"); *CollegeSource, Inc. v. AcademyOne, Inc.*, 709 F. App'x 440, 442 n.1 (9th Cir. 2017) (same). Plaintiff does not oppose Defendant's request. Accordingly, the Court **GRANTS** Defendant's request for judicial notice of the grant deed, Dkt. # 90-1, Ex. 12.

While the Court recognizes that the remaining items presented by the parties are likely proper subjects for judicial notice, the Court does not find these items necessary for deciding this motion and therefore need not take judicial notice of them.

III. Legal Standard

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the nonmoving party will have the burden of proof at trial, the movant can prevail by pointing out that there is an absence of evidence to support the nonmoving party's case. *See id.* If the moving party meets its initial burden, the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. Rather, it draws all reasonable inferences in the light most favorable to the nonmoving party. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987). The evidence presented by the parties must be capable of being presented at trial in a form that would be admissible in evidence. *See* Fed. R. Civ. P. 56(c)(2). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

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IV. Evidentiary Objections

Plaintiff and Defendant assert various evidentiary objections along with their opposition and reply briefs. *See generally* Dkts. # 96-3, 98-3, 98-4, 98-5, 98-6. To the extent that the Court relies on objected-to evidence, it relies only on admissible evidence and, therefore, **OVERRULES** the objections. *See Godinez v. Alta-Dena Certified Dairy LLC*, No. CV 15-01652 RSWL (SSx), 2016 WL 6915509, at *3 (C.D. Cal. Jan. 29, 2016).

V. Discussion

The Court considers in turn whether Defendant is entitled to summary judgment as to Plaintiff's (A) first, (B) second, and (C) third and fourth causes of action.

A. First Cause of Action: Violations of TILA, RESPA, and Regulation Z

Rescission and damages are available as remedies for violations of TILA only in "consumer credit transactions." *Gilliam v. Levine*, 955 F.3d 1117, 1120 (9th Cir. 2020) (quoting 15 U.S.C. § 1635(i)(4)). Regulation Z implements TILA and thus also applies to consumer credit transactions. *See* 12 C.F.R. § 226.1(a)–(b). A loan qualifies as a consumer credit transaction under TILA if the loan was issued (1) to a natural person and (2) "primarily for personal, family, or household purposes." *Gilliam*, 955 F.3d at 1120 (quoting 15 U.S.C. § 1602(i)). Loans obtained for business purposes are not covered by TILA. *Id.* Similarly, "RESPA does not apply to 'credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes.'" *Id.* (citing 12 U.S.C. § 2606(a)(1)).

The plaintiff bears the burden of proving that the loan was obtained for personal purposes rather than business purposes. *See Gilliam*, 955 F.3d at 1120 (the "borrower must demonstrate that the loan . . . was obtained" primarily for personal reasons). In making this determination, courts "examine the transaction as a whole,' paying particular attention to 'the purpose for which the credit was extended.'" *Slenk v. Transworld Sys., Inc.*, 236 F.3d 1072, 1075 (9th Cir. 2001) (quoting *Bloom v. I.C. Sys., Inc.*, 972 F.2d 1067, 1068 (9th Cir. 1992)). Although the purpose of a loan is a factual issue, *Thorns v. Sundance Props.*, 726 F.2d 1417, 1419 (1984), courts grant motions for summary judgment on this issue when "consideration of the relevant factors direct the conclusion that the loan was . . . primarily for business purposes." *Bergman v. Fidelity Nat'l Fin., Inc.*, No. 2:12–cv–05994–ODW (MANx), 2012 WL 6013040, at *4–5 (C.D. Cal. 2012).

The Ninth Circuit uses a five-factor test to determine whether a loan was obtained primarily for business or personal purposes: (1) "[t]he relationship of the borrower's primary occupation to the acquisition"; (2) "[t]he degree to which the borrower will personally manage the acquisition"; (3) "[t]he ratio of income from the acquisition to the total income of the borrower"; (4) "[t]he size of the transaction"; and (5) "[t]he borrower's statement of purpose for the loan." *Thorns*, 726 F.2d at 1419. The Court considers each of the five factors in turn.

i. Factor One: Borrower's Primary Occupation

The closer the relationship between the borrower's primary occupation and the acquisition, "the more likely [the loan] is to be [for a] business purpose." *Thorns*, 726 F.2d at 1419.

Defendant argues that the first factor indicates a business purpose because Plaintiff's loan application identified her as a real estate investor and Broker told Defendant that the loan would be used to invest in a small rental property. *Mot.* 15:1–3.

Plaintiff counters that Broker completed the loan application on Plaintiff's behalf and suggests there is no evidence to corroborate the representations Broker made to Defendant. *See Opp.* 11:12–18, 12:6–7; *PSUF* ¶¶ 12–13. Plaintiff does not dispute that the loan application "described her as a real estate investor (retired teacher)" or claim that this description was incorrect. *See PSUF* ¶ 12. However, Plaintiff maintains that she is a retired teacher and points to the statement of information document listing her occupation as "retired." *Id.* ¶ 1; Dkt. # 96-4, Ex. 14. She argues that she "was in no financial position to perform as a real estate investor," *Opp.* 12:10–12, yet she admits that when she applied for the loan, she owned three pieces of real property and collected rent from one property, *PSUF* ¶¶ 6–8.

The Court agrees with Defendant. Even if Plaintiff did not complete the loan application herself, Plaintiff does not dispute that Broker was acting as her agent in procuring a lender, that Broker provided Defendant with a copy of an agreement indicating as much, or that Defendant relied on the accuracy of Plaintiff's and Broker's representations in deciding to fund the loan. *See DSUF* ¶¶ 6, 8; *PSGD* ¶¶ 6, 8; Dkt. # 90-1, Ex. 2. Acting as Plaintiff's agent, Broker represented through e-mails to Defendant and the loan application that Plaintiff was both a real estate investor and retired teacher and that the loan was intended "to invest in a small rental." *See DSUF* ¶¶ 5, 7; *PSGD* ¶¶ 5, 7; Dkt. # 90-1, Ex. 1. And Plaintiff's status as a retired teacher does not preclude her from being a real estate investor. Instead, her admission that she owned several pieces of real property and earned rent from at least one property is consistent with being

a real estate investor, even if she was also retired from her teaching career. *See Daniels v. SCME Mortgage Bankers, Inc.*, 680 F. Supp. 2d 1126, 1130 (C.D. Cal. 2010) (finding that plaintiff failed to explain how his occupation as an electrician "preclude[d] the possibility" that the loan was for investment purposes and noting that plaintiff owned three other properties from which he earned rental income). Given the close relationship between Plaintiff's stated occupation as a real estate investor and the represented purpose of the loan to invest in the Property, the first factor points toward a business purpose.

ii. Factor Two: Borrower's Personal Management of Acquisition

The greater the borrower's personal involvement in managing the acquisition, "the more likely [the loan] is to be [for a] business purpose." *Thorns*, 726 F.2d at 1419.

Defendant argues that the loan was intended "to invest in a small rental . . . by [] Plaintiff who is a real estate investor." *Mot.* 15:1–3. Plaintiff counters that she "conducted no business on behalf of the [Ross] Trust," but she cites no evidence to support this assertion. *See Opp.* 12:8–9.

The Court finds that this factor weighs slightly in favor of a business purpose for two reasons. First, although Plaintiff provides no evidence of how the loan funds were actually used, she declares that she was entrusted by Lou Easter Ross to "maintain the [P]roperty" on behalf of Beneficiary. *See Gilliam Decl.* ¶ 5. Second, Plaintiff has not provided any evidence indicating that she did not personally manage the Property or that any other entity did so instead. *See Acevedo v. Loan Co. of San Diego*, No. 20-cv-1263-BAS-MSB, 2020 WL 4596760, at *4 (S.D. Cal. Aug. 10, 2020) (finding plaintiff seemed to personally manage relevant properties because he did not provide "any evidence that he . . . use[d] a property management company or that he d[id] not personally manage the properties"). Thus, Plaintiff seems to have personally managed the Property.

iii. Factor Three: Ratio of Income from Acquisition to Total Income

The higher the ratio of income from the acquisition to the borrower's total income, the more likely the loan is for a business purpose. *Thorns*, 726 F.2d at 1419. The parties provide no evidence or arguments about this factor. Thus, this factor is neutral.

iv. Factor Four: Size of Transaction

"The larger the transaction, the more likely it is to be [for a] business purpose." *Thorns*, 726 F.2d at 1419. Here, the loan was for $150,000, which is relatively small. *See Cox v. LB Lending, LLC*, No. EDCV 17-1580 JGB (SPx), 2017 WL 6820171, at *6 (C.D. Cal. Nov. 16, 2017) (finding loans of $180,000 and $270,000 consistent with personal purpose of home refinance); *cf. Acevedo*, 2020 WL 4596760, at *4 (finding $1.2 million loan large); *Sundby*, 2020 WL 5535357, at *10–12 (finding $2.6 million and $3.1 million loans large). As such, the fourth factor weighs in favor of a personal purpose.

v. Factor Five: Statement of Purpose

Plaintiff contends that she approached Broker to seek a loan "to make necessary repairs" to the Property and that Broker indicated to Defendant that the Property "need[ed] some updating." *Opp.* 12:5–8; *Gilliam Decl.* ¶ 11; Dkt. # 90-1, Ex. 3. The Court is unconvinced that such statements indicate a personal purpose because they are not inconsistent with the business purpose of repairing and updating investment property.

Again, Plaintiff does not dispute that—while acting as her agent—Broker represented the loan's purpose was "to invest in a small rental," stated that the Property's tenant was paying $2,000 in monthly rent, and listed the Property as an investment property. *See DSUF* ¶¶ 6–8; *PSGD* ¶¶ 6–8; Dkt. # 90-1, Ex. 1. Nor does Plaintiff dispute that the occupancy and financial status affidavit she signed certified that the Property was an "investment property." *DSUF* ¶ 12; *DRPSUF* ¶¶ 11–15; Dkt. # 90-1, Ex. 7. While not dispositive, listing a property as an "investment" property on loan documents suggests a business purpose. *See Daniels*, 680 F. Supp. 2d at 1130 (finding listing of property as "investment" on loan application was a "significant deficiency" as to personal purpose); *Acevedo*, 2020 WL 4596760, at *3–5 (noting that loan disclosure statement asserted that property was held for investment purposes); *cf. Sundby*, 2020 WL 5535357, at *9 (finding loan application did not indicate business purpose in part because "investment" box was not selected). Moreover, Plaintiff's loan application states the purpose of the refinance loan as "business." Dkt. # 90-1, Ex. 1.

Although Plaintiff argues that several other loan documents indicate the loan was a consumer credit transaction covered by TILA, RESPA, and Regulation Z, the Court is unconvinced for three reasons.

First, Plaintiff points to the good faith estimate, mortgage loan disclosure statement, and intent to proceed with application that she received from Broker. *Opp.* 4:4–15, 13:1–14; Dkt. # 96-4, Exs. 10–12. However, Broker provided each of these documents to Plaintiff on June 7, *PSUF* ¶ 11, before Broker contacted Defendant about the possibility of funding the loan. Thus, they do not provide evidence that the loan Plaintiff later obtained from Defendant was a consumer credit transaction. Moreover, the mortgage loan disclosure statement states that it does not constitute a loan commitment and lists "Investor TBD" under the intended lender. Dkt. # 96-4, Ex. 10. And although the intent to proceed with application states that Plaintiff applied for a loan covered by RESPA and was given a good faith estimate, Dkt. # 96-4, Ex. 12, the document similarly does not provide evidence that the loan Defendant funded was covered by RESPA.

Second, Plaintiff points to the truth-in-lending disclosure statement listing Defendant as creditor and argues that such a disclosure would be unnecessary if the loan was not covered by TILA. *Opp.* 13:15–20; Dkt. # 96-4, Ex. 9. However, the Consumer Financial Protection Bureau's official interpretation of Regulation Z states that "the creditor is, of course, free to make the disclosures, and the fact that disclosures are made . . . is not controlling on the question of whether the transaction was exempt" from TILA. 12 C.F.R. § 1026.3(a), Official Interpretation 1026.3(a)-1. Such official interpretations of Regulation Z are entitled to deference by courts. *See Gilliam*, 955 F.3d at 1120. Also, the disclosure statement explicitly states that it "is neither a contract nor a commitment to lend." Dkt. # 96-4, Ex. 9. Thus, the fact that Defendant provided Plaintiff with a truth-in-lending disclosure statement does not mean the loan was covered by TILA.

Third, Plaintiff contends that the statement of information indicates that the loan purpose was for construction, *Opp.* 12:3–4; *Gilliam Decl.* ¶ 19; Dkt. # 90-1, Ex. 3, but the statement of information in the record does not mention construction. Nor does Plaintiff explain why construction would be inconsistent with an investment purpose.

Additionally, while courts should not "focus[] exclusively on . . . documentary evidence" to determine the purpose of a loan but should also look to "facts illustrating the actual use" of the funds, *Slenk*, 236 F.3d at 1076, Plaintiff fails to provide any evidence of how the loan funds were actually used. Yet, it is undisputed that Plaintiff directed the loan funds to be wired to an account for R.R.S.L. Investment and made each loan payment from business accounts for Bulls Eye Now, Inc. and R.R.S.L. Investments, *DSUF* ¶¶ 14, 25–26; *PSGD* ¶ 14; Dkt. # 90-1, Exs. 9, 19, which further suggests a business purpose.

In sum, the loan application, occupancy and financial status affidavit, Broker's e-mails to Defendant, and the bank accounts used to receive funds and make payments indicate that the loan was made for business purposes. Meanwhile, Plaintiff does not provide any evidence that the loan funds were actually used for personal purposes. *Cf. Slenk*, 236 F.3d at 1076 (finding evidence that backhoe purchased with loan funds "was used strictly for personal use" sufficient to survive summary judgment despite documentary evidence indicating business purpose); *Cox*, 2017 WL 6820171, at *6 (at motion to dismiss stage, plaintiff's allegation that all loan funds were used to refinance her house and provide for personal expenses pointed toward personal purpose); *Sundby*, 2020 WL 5535357, at *12–13 (evidence of use of funds to refinance mortgage on plaintiff's home indicated personal purpose despite loan document suggesting business purpose). Thus, the fifth factor weighs in favor of a business purpose.

vi. Conclusion

Viewing the transaction as a whole, the Court concludes that the loan was obtained primarily for business purposes. Although the fourth factor points toward a personal purpose, a court need not find that all factors point in one direction to grant summary judgment as to the primary purpose of a loan. *See Bergman*, 2012 WL 6013040, at *4–5 (finding loan was primarily for business purposes because first and second factors, along with other relevant facts, so indicated, despite third and fifth factors weighing in other direction); *Sundby*, 2020 WL 5535357, at *11–14 (concluding primary purpose of loans was personal even though second and fourth factors pointed toward a business purpose).

Defendant has demonstrated the absence of a genuine dispute that the loan was obtained for a business purpose, and Plaintiff has not set forth sufficient evidence to raise a genuine dispute as to the loan's primary purpose. *See Anderson*, 477 U.S. at 248; *Celotex*, 477 U.S. at 323. Because Plaintiff has failed to meet her burden of proving that she obtained the loan for personal purposes, *see Gilliam*, 955 F.3d at 1120, Defendant is entitled to summary judgment on Plaintiff's first cause of action for violations of TILA, RESPA, and Regulation Z. *See* 15 U.S.C. § 1635(i)(4); 12 U.S.C. § 2606(a)(1); 12 C.F.R. § 226.1(a)–(b). Accordingly, the Court **GRANTS** Defendant's motion as to Plaintiff's first cause of action.

B. Second Cause of Action: Violation of the Rosenthal Act

Defendant argues that the Levine Trust "has not taken any actions which would constitute a violation of" the Rosenthal Act. *Mot.* 21:25–28. Plaintiff fails to respond and does not otherwise argue that Defendant has violated the Rosenthal Act. In fact, her opposition entirely

fails to brief her second cause of action. Plaintiff has accordingly conceded the argument that Defendant did not violate the Rosenthal Act. *See Tapia v. Wells Fargo Bank, N.A.*, No. CV 15-03922 DDP (AJWX), 2015 WL 4650066, at *2 (C.D. Cal. Aug. 4, 2015) (arguments to which no response is supplied are deemed conceded); *Silva v. U.S. Bancorp*, No. 5:10-cv-01854-JHN-PJWx, 2011 WL 7096576, at *3 (C.D. Cal. Oct. 6, 2011) (same). Thus, the Court **GRANTS** Defendant's motion for summary judgment as to Plaintiff's second cause of action.

C. Third and Fourth Causes of Action: Accounting and Reimbursement and Declaratory Relief

Plaintiff's third and fourth causes of action meet a similar fate. These causes of action are derivative of Plaintiff's underlying claims of TILA, RESPA, and Rosenthal Act violations and thus fail based on the failure of her first and second causes of action. *See Gonzales v. Chase Home Fin. LLC*, No. 10cv2140 JAH (WMc), 2011 WL 13356137, at *4 (S.D. Cal. Oct. 26, 2011) (holding plaintiff's claim for an accounting failed because it was derivative of failed TILA and other claims); *Arango v. Reconstruct Co., N.A.*, No. 09 CV 01754 MMA (JMA), 2010 WL 2404652, at *6 (S.D. Cal. June 14, 2010) (because the "right to an accounting is derivative in nature," demand for accounting failed due to failure of RESPA claim); *Johnson v. Caliber Home Loans, Inc.*, No. ED CV 16–2136 PA (GJSx), 2017 WL 1945692, at *6 (claim for declaratory relief failed because it was derivative of failed TILA and RESPA claims).

As with her second cause of action, Plaintiff does not respond to Defendant's arguments that her third and fourth causes of action fail, *see Mot.* 23:7–24:1, and again does not brief her last two cause of action. As such, she concedes the failure of these causes of action. *See Tapia*, 2015 WL 4650066, at *2; *Silva*, 2011 WL 7096576, at *3.

The Court therefore **GRANTS** Defendant's motion for summary judgment as to Plaintiff's third and fourth causes of action.

VI. Conclusion

For the foregoing reasons, the Court **GRANTS** Defendant's motion for summary judgment in full. This order closes the case.

IT IS SO ORDERED.