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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTURO VERDUZCO and DELILA VERDUZCO,

Plaintiffs,

v.

INDYMAC MORTGAGE SERVICES, a division of ONE WEST BANK FSB; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; SIERRA PACIFIC MORTGAGE; WBJ, INC.; DANIEL RUPP,

Defendants.

2:09-cv-02371-GEB-KJN

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS PLAINTIFFS' FEDERAL CLAIMS AND DECLINING TO EXERCISE SUPPLEMENTAL OVER PLAINTIFFS' REMAINING STATE CLAIMS*

Defendants IndyMac Mortgage Services, a division of One West Bank FSB ("IndyMac") and Mortgage Electronic Registration Systems, Inc. ("MERS") filed a motion to dismiss Plaintiffs' first amended complaint under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be granted. Defendant Sierra Pacific Mortgage ("Sierra") also filed a motion to dismiss under Rule 12(b)(6). Plaintiffs oppose each motion.¹ For the reasons stated

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

¹ Plaintiffs filed their opposition briefs late, thus indicating Plaintiffs are willing to risk being sanctioned for failure to comply (continued...)

1 below, Plaintiffs' federal claims are dismissed with prejudice and
2 Plaintiffs' state claims are dismissed without prejudice under 28
3 U.S.C. § 1367(c) (3).

4 I. LEGAL STANDARD

5 A Rule 12(b) (6) motion "challenges a complaint's compliance
6 with . . . pleading requirements." Champlaie v. BAC Home Loans
7 Servicing, LP, No. S-09-1316 LKK/DAD, 2009 WL 3429622, at *1 (E.D.
8 Cal. Oct. 22, 2009). A pleading must contain "a short and plain
9 statement of the claim showing that the pleader is entitled to relief
10" Fed. R. Civ. P. 8(a) (2). The complaint must "give the
11 defendant fair notice of what the [plaintiff's] claim is and the
12 grounds upon which relief rests" Bell Atlantic Corp. v.
13 Twombly, 550 U.S. 544, 555 (2007). Further, "[a] pleading that offers
14 labels and conclusions or a formulaic recitation of the elements of a
15 cause of action will not do. Nor does a complaint suffice if it
16 tenders naked assertions devoid of further factual enhancement."
17 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).

18 To avoid dismissal, a plaintiff must allege "only enough
19 facts to state a claim to relief that is plausible on its face."
20 Twombly, 550 U.S. at 547. "A claim has facial plausibility when the
21 plaintiff pleads factual content that allows the court to draw the
22 reasonable inference that the defendant is liable for the misconduct
23 alleged." Iqbal, 129 S. Ct. at 1949. Plausibility, however, requires
24 more than "a sheer possibility that a defendant has acted unlawfully."
25 Id. "When a complaint pleads facts that are merely consistent with a
26 defendant's liability, it stops short of the line between possibility

27
28 ¹(...continued)
with the filing deadline in the applicable local rule.

1 and plausibility of entitlement to relief.” Id. (quotations and
2 citation omitted).

3 In evaluating a dismissal motion under Rule 12(b)(6), the
4 court “accept[s] as true all facts alleged in the complaint, and
5 draw[s] all reasonable inferences in favor of the plaintiff.” Al-Kidd
6 v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009). However, neither
7 conclusory statements nor legal conclusions are entitled to a
8 presumption of truth. See Iqbal, 129 S. Ct. at 1949-50.

9 II. BACKGROUND

10 A. Plaintiffs’ Allegations

11 Plaintiffs allege that in July 2005, Defendant Daniel Rupp
12 represented that he was a loan officer for Defendant WBJ, Inc. and
13 solicited Plaintiffs to refinance the loan on their residence, located
14 at 425 South Sixth Street in Oakdale, Sacramento County, California.
15 (First Amended Compl. (“FAC”) ¶¶ 7, 39.) Plaintiffs allege that Rupp
16 told them “he could get the ‘best deal’ and the ‘best interest rates’
17 available on the market.” (Id. ¶ 41.) Plaintiffs also allege that
18 Rupp overstated their income on their loan applications without their
19 knowledge or permission. (Id. ¶ 42.)

20 Plaintiffs allege that on October 7, 2005 they obtained a
21 \$256,000 loan. (Id. ¶ 43, 50.) Plaintiffs also obtained a \$32,000
22 home equity line of credit. (Id.) Plaintiffs allege: “The
23 terms of the loans were memorialized in two Promissory Notes, which
24 was secured by two Deeds of Trust on the Property. The Deeds of Trust
25 identified Greenhead Investments, Inc. as Trustee, and Defendant
26 Sierra as Lender.” (Id. ¶ 50.)

27 Plaintiffs allege they “were not given a copy of any of the
28 loan documents prior to [the] closing as required” and “were only

1 given a few minutes to sign the documents.” (Id. ¶ 48.) Plaintiffs
2 also allege they “did not receive the required copies of a proper
3 notice of cancellation.” (Id.) Plaintiffs further allege that
4 “[w]hen the loan was consummated, [they] did not receive the required
5 documents and disclosures, including, but not limited to the TILA
6 disclosure, and the required number of copies of the Notice of Right
7 to Cancel stating the date that the rescission period expires.” (Id.
8 ¶ 65.)

9 **B. Procedural Background**

10 Plaintiffs filed their initial complaint in this federal
11 court on August 25, 2009, alleging eleven claims under federal and
12 California law against eight named defendants. Defendants IndyMac and
13 MERS; Sierra; and WBJ, Inc. and Daniel Rupp each filed dismissal
14 motions on October 1, 10, and 23, 2009, respectively. These dismissal
15 motions, however, were mooted when Plaintiffs filed their now
16 operative, first amended complaint on November 10, 2009. Plaintiffs’
17 first amended complaint is the subject of each Defendants’ now pending
18 dismissal motion. Plaintiffs’ only remaining federal claims are: (1)
19 a Truth in Lending Act claim alleged against Sierra; and (2) a Real
20 Estate Settlement Procedures Act claim alleged against Sierra and
21 IndyMac.

22 **III. DISCUSSION**

23 **A. Defendants’ Dismissal Motion**

24 **1. Federal Claims**

25 **a. Truth in Lending Act**

26 Sierra argues Plaintiffs’ Truth in Lending Act (“TILA”)
27 claims for damages and rescission should be dismissed since they are
28 time-barred by the applicable statute of limitations. (Sierra Mot. to

1 Dismiss 5:1-7:13.) Plaintiffs respond that their claims are timely
2 filed because the doctrine of equitable tolling suspends the
3 prescribed statute of limitations periods. (Plts.' Opp'n to Sierra
4 Mot. 9:7-10:14.)

5 **i. TILA Damages Claim**

6 Plaintiffs allege Sierra "violated TILA by":

7 failing to provide required disclosures prior to
8 consummation of the transaction as required by 15
9 U.S.C. § 1638, fail[ing] to make required
10 disclosures clearly and conspicuously in writing as
11 required by 15 U.S.C. § 1632(a), 12 C.F.R §
12 226.5(a)(1), fail[ing] to timely deliver to
13 Plaintiffs TILA notices as required by 15 U.S.C. §
14 1638(b), and fail[ing] to disclose all finance
15 charge details, the annual percentage rate based
16 upon properly calculated and disclosed finance
17 charges and amounts financed as defined by 15
18 U.S.C. § 1602(u).

14 (FAC ¶ 84.) Plaintiffs further allege that "[t]he facts surrounding
15 [their] loan transactions were purposefully hidden to prevent
16 Plaintiffs from discovering the true nature of the transactions" and
17 "[the] [f]acts surrounding these transactions continue to be hidden
18 from the Plaintiffs to this day." (FAC ¶ 49.)

19 TILA "requires creditors . . . provide borrowers with clear
20 and accurate disclosures of terms [of their loan including] . . .
21 finance charges, annual percentage rates of interest, and the
22 borrower's rights." Beach v. Ocwen Fed. Bank, 523 U.S. 410, 412
23 (1998) (citing 15 U.S.C. §§ 1631, 1632, 1635, 1638)). Failure to
24 satisfy TILA's disclosure requirements subjects a lender to "statutory
25 and actual damages traceable to a lender's failure to make the
26 requisite disclosures" Id. (citing 15 U.S.C. § 1640(e)).
27 TILA, however, imposes a one-year statute of limitations within which
28 a claim for damages "may be brought." 15 U.S.C. § 1640(e). "[A]s a

1 general rule[,] [this] limitations period starts [to run] at the
2 consummation of the transaction." King v. California, 784 F.2d 910,
3 915 (9th Cir. 1986). "Consummation" is defined under the statute as
4 "the time that a consumer becomes contractually obligated on a credit
5 transaction." Grimes v. New Century Mortgage Corp., 340 F.3d 1007,
6 1009 (9th Cir. 2003) (quoting 12 C.F.R. § 226.2(a)(13)).

7 Plaintiffs allege they became "contractually obligated on a
8 credit transaction" on October 7, 2005, when they entered their loans.
9 (FAC ¶ 50.) The statute of limitations for bringing their TILA
10 damages claim, therefore, expired on October 7, 2006. Plaintiffs,
11 however, did not file their original complaint in this case until
12 August 25, 2009. Nonetheless, Plaintiffs argue the statute of
13 limitations should be equitably tolled because "Sierra failed to
14 provide the requisite disclosures to the Plaintiffs at the inception
15 of the loan." (Plts.' Opp'n to Sierra Mot. 10:6-7.) Plaintiffs
16 further argue they "were not given a copy of any of the loan documents
17 prior to closing" nor were they "allowed to review the documents [or]
18 explained the terms of the loan." (Id. 9:23-25.)

19 The doctrine of equitable tolling may "suspend the
20 limitations period" "in certain circumstances," such as when the
21 borrower did not have reasonable opportunity to discover the alleged
22 fraud or nondisclosures that form the basis of the their TILA claim.
23 King v. California, 784 F.3d 910, 915 (9th Cir. 1986). "Equitable
24 tolling focuses on whether there was excusable delay by the plaintiff
25 and may be applied if, *despite all due diligence*, a plaintiff is
26 unable to obtain vital information bearing on the existence of his
27 claim." Huseman v. Icicle Seafoods, Inc., 471 F.3d 1116, 1120 (9th
28 Cir. 2006) (quotations and citations omitted) (emphasis in original).

1 "Because the applicability of [equitable tolling] often depends upon
2 matters outside the pleadings, it is not generally amendable to
3 resolution on a Rule 12(b)(6) motion." Supermail Cargo, Inc. v.
4 United States, 68 F.3d 1204, 1206 (9th Cir. 1995) (quotations and
5 citation omitted). However, when a plaintiff fails to allege any
6 facts demonstrating that the alleged TILA violations could not have
7 been discovered by due diligence during the one-year statutory period,
8 equitable tolling should not be applied and dismissal at the pleading
9 stage is appropriate. See Meyer v. Ameriquest Mortgage Co., 342 F.3d
10 899, 902 (9th Cir. 2003) (dismissing TILA claim, despite request for
11 equitable tolling, because plaintiff was in possession of all loan
12 documents and did not allege any concealment or other conduct that
13 would have prevented discovery of the alleged TILA violations during
14 the one year limitations period).

15 Plaintiffs' allegations are wholly insufficient to justify
16 equitably tolling the statute of limitations period applicable to
17 their TILA damages claim. The TILA violations about which Plaintiffs
18 complain occurred at or prior to the closing of Plaintiffs' loan
19 transaction in October 2005, nearly four years prior to the
20 commencement of this lawsuit. Plaintiffs have failed to explain why
21 they were prevented from discovering Sierra's alleged TILA violations
22 within the one year statutory period. See Blanco v. Am. Home Mortg.
23 Servicing, Inc., No. CIV 2:09-578 WBS DAD, 2009 WL 4674904, at *3
24 (E.D. Cal. Dec. 4, 2009) (finding equitable tolling inapplicable where
25 plaintiff did not explain "what prevented her from later reviewing the
26 loan documents, which she admittedly was given at closing").

27 //

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1 Nothing indicates that, at the time of the closing,
2 [P]laintiffs were unaware of the fact that they had
3 been prevented from reviewing [their loan]
4 documents, or that [P]laintiffs were somehow unable
5 to bring a claim based on this purported
6 wrongdoing. Similarly, a failure to make
7 disclosures does not itself prevent a borrower from
8 learning that the disclosures should have been made
9

6 Baldain v. Am. Home Mortgage Servicing, Inc., No. CIV S-09-0931
7 LKK/GGH, 2010 WL 56143, at *9 (E.D. Cal. Jan. 5, 2010).

8 Since Plaintiffs have not alleged sufficient facts to invoke
9 the doctrine of equitable tolling, their TILA damages claim is time-
10 barred. Further, Sierra's initial dismissal motion notified
11 Plaintiffs that their claim was barred by the statute of limitations.
12 However, Plaintiffs failed to allege sufficient facts in their first
13 amended complaint to justify drawing the inference that the doctrine
14 of equitable tolling suspends the applicable statute of limitations
15 period. Nor does Plaintiffs' opposition brief provide a basis for
16 allowing Plaintiffs an additional opportunity to amend their equitable
17 tolling allegations. Therefore, Plaintiffs' TILA damages claim is
18 dismissed with prejudice.

19 **ii. TILA Rescission Claim**

20 Plaintiffs also allege that they "have a continuing right to
21 rescind [their] loan[s] . . . pursuant to 15 U.S.C. § 1635(a) and (f)
22 and 12 C.F.R. § 226.23(b)(5)." (FAC ¶ 83.) Under 15 U.S.C. §
23 1635(a), a borrower has until midnight on the third business day
24 following the consummation of the loan to rescind the transaction. A
25 borrower's right to rescind the loan transaction, however, is extended
26 to three years if the lender either fails to deliver to the borrower
27 "all material disclosures" or "the notice of right to rescind." 12
28

1 C.F.R. §§ 226.23(a)(3), (b)(1). Nonetheless, a borrower's right to
2 rescission "expire[s] three years after the date of the consummation
3 of the transaction" 15 U.S.C. § 1635(f). This three-year
4 limitations period "represents an absolute limitation on rescission
5 actions [and] bars any claims filed more than three years after the
6 consummation of the transaction. Therefore, § 1635(f) is a statute of
7 repose, depriving the courts of subject matter jurisdiction when a §
8 1635 claim is brought outside of the three-year limitation period."
9 Miguel v. Country Funding Corp., 309 F.3d 1161, 1164 (9th Cir. 2002)
10 (quotations and citation omitted).

11 Since Plaintiffs' consummated their loans on October 7,
12 2005, the three-year statute of limitations period expired on October
13 7, 2008. Plaintiffs, however, did not file their initial complaint in
14 this case until August 25, 2009. Plaintiffs allege they "give notice
15 of rescission by and through [the filing of their] First Amended
16 Complaint." (FAC ¶ 83.) "Because [Plaintiffs] did not attempt to
17 rescind . . . within the three-year limitation period, [their] right
18 to rescind [has] expired" and the court lacks subject matter
19 jurisdiction over their TILA rescission claim. Miguel, 309 F.3d at
20 1164-65. Therefore, Plaintiffs' TILA rescission claim is dismissed
21 with prejudice.

22 **b. Real Estate Settlement Procedures Act**

23 Defendants Sierra and IndyMac each argue Plaintiffs' Real
24 Estate Settlement Procedures Act ("RESPA") claims should be dismissed.
25 These Defendants contend Plaintiffs have not sufficiently pled a
26 violation of RESPA; their claim under 12 U.S.C. § 2607 is barred by
27 the one-year statute of limitations; and Plaintiffs failed to allege
28 actual damages. (Sierra Mot. to Dismiss 9:26-11:13; IndyMac Mot. to

1 Dismiss 13:5-15:2.) Plaintiffs rejoin that Defendants' "violations of
2 RESPA caused them damage." (Plts.' Opp'n to IndyMac Mot. 16:27-
3 17:11.) Further, Plaintiffs argue that any applicable statute of
4 limitations period should be equitably tolled. (Plts.' Opp'n to
5 Sierra Mot. 14:6-19.)

6 Plaintiffs allege in their complaint that Defendants
7 violated various provisions of 12 U.S.C. § 2605 by failing to provide
8 Plaintiffs with notice of the assignment, sale or transfer of the
9 servicing rights to Plaintiffs' loan and by failing to provide a
10 proper response to a qualified written request sent by Plaintiffs.
11 (FAC ¶¶ 116-118, 120, 122.) Plaintiffs also allege these Defendants
12 violated "12 U.S.C. § 2607 by receiving 'kickbacks' or referral fees
13 disproportional to the work performed." (Id. ¶ 119.) Plaintiffs
14 allege that as a result of Defendants' RESPA violations, Plaintiffs
15 "have suffered and continue to suffer damages and costs of suit."
16 (Id. ¶ 124.)

17 **a. Section 2605 Claims**

18 Section 2605(f) imposes liability on loan servicers for
19 actual and statutory damages for any failure to comply with the
20 requirements of section 2605. 12 U.S.C. § 2605(f). Section 2605(f)
21 provides:

22 Whoever fails to comply with any provision of
23 [section 2605] shall be liable to the borrower for
24 each such failure to the following amounts
25 In the case of any action by an individual, an
26 amount equal to the sum of - (A) any actual damages
27 to the borrower as a result of the failure; and (B)
28 any additional damages, as the court may allow, in
the case of a pattern or practice of noncompliance
with the requirements of this section, in an amount
not to exceed \$1,000.

1 12 U.S.C. § 2605(f)(1)(A), (B). While section 2605(f)(1)(A) "does not
2 explicitly make a showing of damages part of the pleading standard, a
3 number of courts have read the statute as requiring a showing of
4 pecuniary damages in order to state a claim [for actual damages under
5 section 2605 of RESPA]." Pok v. Am. Home Mortgage Servicing, Inc.,
6 No. CIV 2:09-2385 WBS EFB, 2010 WL 476674, at *5 (E.D. Cal. Feb. 3,
7 2010) (quoting Allen v. United Fin. Mortgage Corp., No. 09-2507 SC,
8 2009 WL 2984170, at *5 (N.D. Cal. Sept. 15, 2009)). "[A]lleging a
9 breach of RESPA duties alone does not state a claim
10 Plaintiff[s] must, at a minimum, also allege that the breach resulted
11 in actual damages." Id. (quoting and citing Hutchinson v. Del. Sav.
12 Bank FSB, 410 F. Supp. 2d 374, 383 (D.N.J. 2006)); see also Lal v. Am.
13 Home Servicing, Inc., 680 F. Supp. 2d 1218, 1223 (E.D. Cal. 2010)
14 (finding that plaintiff alleging a RESPA claim under section 2605 must
15 allege a loss related to the alleged violation); Allen, 660 F. Supp.
16 2d at 1097 (requiring plaintiff to allege pecuniary loss to state a
17 RESPA claim for actual damages); Singh v. Washington Mut. Bank, No. C-
18 09-2771 MMC, 2009 WL 2588885, at *5 (N.D. Cal. Aug. 19, 2009)
19 (dismissing RESPA claim since "plaintiffs have failed to allege they
20 suffered any actual damages as a result" of defendants' alleged RESPA
21 violation). This pleading requirement, however, is interpreted
22 liberally. Yulaeva v. Greenpoint Mortgage Funding, Inc., No. CIV S-
23 09-1504 LKK/KJM, 2009 WL 2880393, at *15 (E.D. Cal. Sept. 3, 2009).
24 Nonetheless, "the loss alleged must be related to the RESPA violation
25 itself." Lal, 680 F. Supp. 2d at 1223. Further, "simply having to
26 file suit [does not suffice] as a harm warranting actual damages. If
27 such were the case, every RESPA suit would inherently have a claim for
28 damages built in." Id.

1 Plaintiffs merely allege that as a result of Defendants'
2 alleged RESPA violations, they "have suffered and continue to suffer
3 damages and costs of suit." (FAC ¶ 124.) "Even under a liberal
4 pleading standard for harm, this level of generality fails." Pok,
5 2010 WL 476674, at *5 (finding same allegation of harm insufficient to
6 state a section 2605 claim for actual damages); see also Lal, 680 F.
7 Supp. 2d at 1223 (stating that "simply having to file suit [does not]
8 suffice" to state a section 2605 claim for actual damages).

9 IndyMac's initial dismissal motions alerted Plaintiffs to
10 this defect in their section 2605 claim. However, Plaintiffs' first
11 amended complaint includes the same deficient allegation. Therefore,
12 allowing amendment would be futile and Plaintiffs' section 2605 claim
13 is dismissed with prejudice.

14 **ii. Section 2607 Claim**

15 Section 2614 provides that a section 2607 claim "may be
16 brought . . . [within] 1 year . . . from the date of the occurrence of
17 the violation" 12 U.S.C. § 2614. "The primary ill that §
18 2607 is designed to remedy is the potential for unnecessarily high
19 settlement charges, . . . caused by kickbacks, fee-splitting, and
20 other practices that suppress price competition for settlement
21 services. This ill occurs, if at all, when the plaintiff pays for the
22 tainted service, typically at the closing." Jensen v. Quality Loan
23 Serv. Corp., No. 09-CV-01789 OWW-DLB, --- F. Supp. 2d ----, 2010 WL
24 1136005, at *10 (E.D. Cal. Mar. 22, 2010) (quoting Snow v. First Am.
25 Title Ins. Co., 332 F.3d 356, 359-60 (5th Cir. 2003)). Therefore,
26 "[b]arring extenuating circumstances, the date of the occurrence of
27 the violation is the date on which the loan closed." Ayala v. World
28 Savings Bank, FSB, 616 F. Supp. 2d 1007, 1020 (C.D. Cal. 2009)

1 (quoting Bloom v. Martin, 865 F. Supp. 1386-87 (N.D. Cal. 1994), aff'd
2 by, 77 F.3d 318 (9th Cir. 1996)); see also Jensen, 2010 WL 1136005, at
3 *10 (stating that "courts have considered the 'occurrence of the
4 violation' as the date the loan closed."); Finley v. LaSalle Bank Nat.
5 Ass'n, No. C 09-2965 SI, 2009 WL 3401453, at *2 n.3 (N.D. Cal. Oct.
6 20, 2009) (noting that the one-year statute of limitations period for
7 a section 2607 claim began to run when plaintiff signed loan
8 documents).

9 Here, Plaintiffs' loans "closed" on October 7, 2005. (FAC ¶
10 50.) Therefore, the one-year statute of limitations expired on
11 October 7, 2006. However, Plaintiffs did not file their original
12 complaint in this case until August 25, 2009. Plaintiffs counter the
13 motion, arguing in their opposition briefs that the doctrine of
14 equitable tolling should apply to their RESPA claim. However, neither
15 Plaintiffs' complaint nor their opposition briefs explain why
16 Plaintiffs could not have discovered, with due diligence, IndyMac and
17 Sierra's alleged violation of section 2607 within the one-year
18 statutory period. Plaintiffs, therefore, have not shown that the
19 doctrine of equitable tolling applies to their section 2607 claim.

20 Plaintiffs were alerted to this defect in their section 2607
21 claim by Sierra's initial dismissal motion, yet Plaintiffs' first
22 amended complaint includes the same deficient allegation. Since
23 Plaintiffs have already been provided with the opportunity to amend
24 this claim once and were unable to cure the identified deficiency,
25 Plaintiffs' section 2607 claim is dismissed with prejudice.

26 **B. Supplemental Jurisdiction Over Plaintiffs' State Law Claims**

27 Since Plaintiffs' TILA and RESPA claims have been dismissed,
28 only state claims remain pending. The Court, therefore, may sua

1 sponte decide whether to continue exercising supplemental jurisdiction
2 over the state law claims. See Acri v. Varian Assocs., Inc., 114 F.3d
3 999, 1001 n.3 (9th Cir. 1997) (en banc) (suggesting that a district
4 court may, but need not, sua sponte decide whether to continue
5 exercising supplemental jurisdiction under 28 U.S.C. § 1367(c)(3)
6 after all federal law claims have been dismissed).

7 Under 28 U.S.C. § 1367(c)(3), a district court “may decline
8 to exercise supplemental jurisdiction over a [state law] claim” when
9 “all claims over which it has original jurisdiction” have been
10 dismissed. This decision should be informed by the values of economy,
11 convenience, fairness and comity as delineated by the Supreme Court in
12 United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1996). Acri,
13 114 F.3d at 1001.


14 Comity weighs in favor of declining supplemental
15 jurisdiction since state courts have the primary responsibility for
16 developing and applying state law. See Acri, 114 F.3d at 1001
17 (stating that “in the usual case in which all federal-law claims are
18 eliminated before trial, the balance of factors will point towards
19 declining to exercise jurisdiction over the remaining state-law
20 claims” (quotations and citation omitted)); Curiel v. Barclays Capital
21 Real Estate Inc., No. S-09-3074 FCD/KJM, 2010 WL 729499, at *1 (E.D.
22 Cal. Mar. 2, 2010) (stating “primary responsibility for developing and
23 applying state law rests with the state courts” and declining to
24 exercise supplemental jurisdiction after dismissal of the federal
25 claims). Further, none of the other Gibbs factors favor retaining
26 supplemental jurisdiction over Plaintiffs’ remaining state law claims
27 in this case. Therefore, the court declines to exercise supplemental
28

1 jurisdiction over Plaintiffs' state law claims and those claims are
2 dismissed without prejudice under 28 U.S.C. § 1367(c) (3).

3 **IV. CONCLUSION**

4 For the reasons stated above, Plaintiffs' TILA and RESPA
5 claims are dismissed with prejudice and Plaintiffs' remaining state
6 law claims are dismissed without prejudice under 28 U.S.C. §
7 1367(c) (3).

8 Dated: May 27, 2010

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12 GARLAND E. BURRELL, JR.
13 United States District Judge
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