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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHARITY MAE PANTALIAN, No. 2:09-cv-02262-MCE-GGH  
Plaintiff,  
v. ORDER  
RESMAE MORTGAGE CORPORATION  
et al.,  
Defendants.

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Through this action Plaintiff, Charity M. Seymour, f.k.a. Charity M. Pantalion, ("Plaintiff") seeks relief from this Court's dismissal of her case against Defendant Christopher Cox on July 27, 2010 (ECF No. 43) and Defendants ResMAE Mortgage Corp. ("ResMAE"), Wilshire Credit Corp. ("Wilshire"), Mortgage Electronic Registration Systems, Inc. ("MERS"), Merrill Lynch Mortgage Investors, Inc., and Merrill Lynch Investors Trust Series 2006 RM5 on June 23, 2010 (ECF No. 42.).<sup>1</sup>

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<sup>1</sup> Defendants Home Loans Direct ("DE HDL"), Hisham Desouki, Jonathan Annett, Fox Fields Financial, Inc., and Christopher Fox were served but never entered a responsive pleading, and thus were in default when the case was dismissed.

1 Specifically, Plaintiff requests the Court re-open the case as to  
2 all Defendants pursuant to Federal Rule of Civil Procedure 60(b)(1)  
3 and (6).<sup>2</sup> On Dec 20, 2010 Plaintiff filed a Stipulation for  
4 Dismissal of the entire action against remaining Defendants Lodes  
5 Capital Escrow and Nikki Hall, (ECF No. 44.) and the Clerk of Court  
6 closed the case.

7 As a matter of background, Plaintiff's original complaint was  
8 filed on August 17, 2009. Plaintiff alleged that on or about  
9 August 16, 2006, she obtained a loan from several of the original  
10 Defendants which was secured by a deed of trust naming Defendant  
11 ResMAE as the lender. (Compl. 6-7, ECF No. 1). Plaintiff also  
12 alleged that Defendants ResMAE and Wilshire violated the Truth in  
13 Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., by failing to  
14 satisfy the statute's disclosure requirements. (Id. at 9-11.)  
15 Furthermore, Plaintiff accused Defendants Wilshire, DE HDL,  
16 Desouki, Cox, Lodes Capital, Hall, Fox Fields, and Fox of violating  
17 the Real Estate Settlement Procedures Act ("RESPA") (12 U.S.C.  
18 § 2605), and, together with Defendants Merrill Lynch Mortgage  
19 Investor's Inc. and Merrill Lynch Investors Trust Series 2006 RM5,  
20 of violating unspecified Securities and Exchange Commission ("SEC")  
21 rules and regulations. (Id. at 11, 17.)<sup>3</sup>

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23 <sup>2</sup> All further references to "Rule" or "Rules" are to the Federal  
24 Rules of Civil Procedure unless otherwise noted.

25 <sup>3</sup> Plaintiff's complaint also alleges various state causes of  
26 action, including violations of California's Rosenthal Act (Cal.  
27 Civ. Code § 1788 et seq.), unfair competition (Cal. Bus. and Prof.  
28 Code § 17200), misrepresentation, fraud, breach of fiduciary duty  
and negligence; however, after the federal claims were dismissed,  
the Court declined to exercise supplemental jurisdiction over the  
state causes of action.

1           The magistrate judge's Findings and Recommendations, adopted  
2 by this Court, concluded the following: 1) Plaintiff's service on  
3 all Defendants was defective, thus Defendants were entitled to  
4 dismissal; 2) the district court had no authority to issue an order  
5 addressing any claims against Defendant ResMAE due to a permanent  
6 injunction imposed by a Delaware Bankruptcy Court prohibiting any  
7 claims against this Defendant after June 15, 2007; 3) Plaintiff's  
8 original complaint alleges RESPA violations against seven of the  
9 twelve Defendants; however, she provided no facts other than the  
10 conclusory allegation that Defendant Wilshire "acknowledged TILA  
11 and RESPA violations;" 4) Plaintiff alleged no facts related to any  
12 specific SEC violations; and 5) Plaintiff's TILA claims were not  
13 only filed beyond the TILA statute of limitations but Plaintiff  
14 also did not tender repayment of the amount advanced by the lender  
15 as required by TILA. (See F&R, ECF No. 34.)

16           Plaintiff's current motion requests the case be reopened  
17 pursuant to Rule 60(b) due to 1) alleged errors or neglect by the  
18 Court in interpreting TILA; 2) the court's alleged failure to  
19 thoroughly read her Reply and Opposition; and 3) violation of her  
20 due process rights when she was denied an opportunity to amend her  
21 complaint at a March 25, 2010 hearing. (Mot. for Relief, ECF  
22 No. 46-2.)

23           A court has the power to revisit prior decisions of its own,  
24 though it should be loathe to do so in the absence of extraordinary  
25 circumstances, such as where the initial decision was "clearly  
26 erroneous." Christianson v. Colt Indus. Operating Corp., 486 U.S.  
27 800, 817 (1988).

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1 Specifically, Rule 60(b) enumerates the grounds upon which a motion  
2 for relief from an order or judgment may be made. It specifies  
3 that:

4 On motion and upon such terms as are just, the court may  
5 relieve a party or a party's legal representative from a  
6 final judgment, order, or proceeding for the following  
7 reasons: (1) mistake, inadvertence, surprise or excusable  
8 neglect; (2) newly discovered evidence which by due  
9 diligence could not have been discovered before the  
10 court's decision; (3) fraud by the adverse party; (4) the  
11 judgment is void; (5) the judgment has been satisfied; or  
12 (6) any other reason justifying relief.

13 In the instant case, Plaintiff has not met the "clearly  
14 erroneous" standard for reopening this case on any of the grounds  
15 for dismissal cited in the Findings and Recommendations. Further,  
16 Plaintiff's motion does not address many of the specific issues  
17 raised by the Court, including the permanent injunction imposed by  
18 a Delaware Bankruptcy Court prohibiting any claims against  
19 Defendant ResMAE, or any of the RESPA and SEC deficiencies noted in  
20 the Findings.


21 Similarly, Plaintiff's motion fails to demonstrate the Court's  
22 error in its application of TILA. Plaintiff's motion cites a case  
23 from the Northern District of Illinois, Stewart v. BAC Home Loans  
24 Servicing, to justify her assertion that her claim is not time-  
25 barred despite being filed beyond § 1635(f) three-year limitations  
26 period. 2011 WL 862938 (N.D. Ill. Mar 10, 2011). However, the  
27 holding in Stewart is contrary to Ninth Circuit precedent that  
28 § 1635(f) deprives a court of subject matter jurisdiction for any  
claim brought outside the three-year statute of limitations. See  
Miguel v. Country Funding Corp., 309 F.3d 1161, 1164 (9th Cir.  
2002).

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1 Finally, this case was closed in December 2010 after Plaintiff  
2 herself stipulated to the dismissal of the remaining defendants.  
3 The Court finds no compelling reason to reopen the case.  
4 Therefore, for the reasons set forth above, Plaintiff's Motion for  
5 Relief from Judgment is DENIED.<sup>4</sup>

6 IT IS SO ORDERED.

7 Date: June 20, 2011

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12 MORRISON C. ENGLAND, JR.  
13 UNITED STATES DISTRICT JUDGE  
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28 <sup>4</sup> Because oral argument will not be of material assistance, the  
Court deems this matter suitable for decision without oral  
argument. E.D. Cal. Local Rule 230(g).