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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHAE and YUNG CHON,
Plaintiffs,
v.
DOWNEY SAVINGS and LOAN,
et al.,
Defendants.

No. 2:10-cv-00509-MCE-KJN

MEMORANDUM AND ORDER

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Plaintiffs Chae and Yung Chon ("Plaintiffs") seek redress from Defendant Central Mortgage Company ("Defendant") based on alleged violations of the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA"), among other state causes of action. Presently before the Court is Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint ("FAC") for failure to state a claim upon which relief may be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6).¹ For the reasons set forth below, Defendant's Motion to Dismiss is granted.

¹ All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless otherwise noted.

1 **BACKGROUND²**

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3 This action stems from a residential mortgage loan on
4 Plaintiffs' property. It is unclear from Plaintiffs' FAC whether
5 the loan in question was an original financing loan, or some sort
6 of refinancing transaction on an existing mortgage. Plaintiffs
7 do not disclose the date of their completed mortgage transaction
8 in the FAC, however Defendant believes that the latest possible
9 date of the transaction would have been September 2005, and the
10 Deed of Trust attached to the original complaint lists the loan
11 agreement date as August 22, 2005. Plaintiffs allege that they
12 have been victimized by the oppressive terms of their loan, and
13 all the Defendants' "unscrupulous conduct." Further, Plaintiffs
14 allege that they did not receive the required disclosures at the
15 time of refinancing, including the notice of the right to cancel,
16 in violation of TILA and RESPA. In their FAC, Plaintiffs
17 additionally request equitable tolling as to their TILA claim.

18
19 **STANDARD**

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21 On a motion to dismiss for failure to state a claim under
22 Rule 12(b)(6), all allegations of material fact must be accepted
23 as true and construed in the light most favorable to the
24 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
25 337-38 (9th Cir. 1996).

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28 ² The factual assertions in this section are based on the
allegations in Plaintiffs' FAC unless otherwise specified.

1 Rule 8(a)(2) requires only "a short and plain statement of the
2 claim showing that the pleader is entitled to relief," to "give
3 the defendant fair notice of what the...claim is and the grounds
4 upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544,
5 555 (2007) (internal citations and quotations omitted). Though
6 "a complaint attacked by a Rule 12(b)(6) motion" need not contain
7 "detailed factual allegations, a plaintiff's obligation to
8 provide the 'grounds' of his 'entitlement to relief' requires
9 more than labels and conclusions, and a formulaic recitation of
10 the elements of a cause of action will not do." Id. at 555
11 (quoting Papasan v. Allain, 478 U.S. 265, 2869 (1986)). A
12 plaintiff's "factual allegations must be enough to raise a right
13 to relief above the speculative level." Id. (citing 5 C. Wright
14 & A. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)
15 ("[T]he pleading must contain something more...than...a statement
16 of facts that merely creates a suspicion [of] a legally
17 cognizable right of action.")).

18 Further, "Rule 8(a)(2)...requires a 'showing,' rather than a
19 blanket assertion, of entitlement to relief. Without some
20 factual allegation in the complaint, it is hard to see how a
21 claimant could satisfy the requirements of providing...grounds on
22 which the claim rests." Twombly, 550 U.S. at 555 n.3 (internal
23 citations omitted). A pleading must then contain "only enough
24 facts to state a claim to relief that is plausible on its face."
25 Id. at 570. If the "plaintiffs...have not nudged their claims
26 across the line from conceivable to plausible, their complaint
27 must be dismissed." Id.

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1 **A. TILA Claim**

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3 Plaintiffs seek to rescind their loan and recover damages
4 pursuant to TILA, 15 U.S.C. § 1600 et. seq. Defendants argue
5 that Plaintiffs' claim is time-barred because civil damages are
6 subject to a one-year statute of limitations, and claims for
7 rescission have a three-year statute of limitations.

8 For a plaintiff to collect civil damages from a defendant
9 who failed to provide disclosures mandated by TILA, the statute
10 of limitations requires plaintiff to file suit within one year
11 from the "date of occurrence" of the alleged violation.
12 15 U.S.C. § 1640(e). The "date of occurrence" is the date the
13 transaction is consummated, which in the case of a mortgage loan,
14 is when the plaintiff closed on the loan. See Walker v.
15 Washington Mut. Bank FA, 63 F. App'x. 316, 317 (9th Cir. 2003).

16 To sustain a claim for rescission under TILA, a consumer may
17 elect to cancel their residential mortgage loan within three days
18 of either the consummation of the transaction or delivery of
19 required disclosures and rescission forms. 15 U.S.C.
20 § 1635(f)(3). If the required disclosures are not provided, then
21 the right to cancel the transaction extends to three years after
22 the date the loan closed. 15 U.S.C. § 1635(f).

23 In the instant case, Plaintiffs are time-barred from
24 asserting any damages under TILA, as the date of occurrence (the
25 date of the loan transaction) was more than one year from the
26 date the case was filed, and more than three years after any
27 material disclosures should have been provided and Plaintiffs
28 should have subsequently discovered the omission.

1 However, to save their claims, Plaintiffs argue that
2 equitable tolling should apply to suspend the statutes of
3 limitations. The Ninth Circuit has held that "the doctrine of
4 equitable tolling may, in appropriate circumstances, suspend the
5 limitations period until the borrower discovers or had reasonable
6 opportunity to discover the fraud or nondisclosures that form the
7 basis of the TILA action." King v. State of California, 784 F.2d
8 910, 915 (9th Cir. 1986). In determining justifiable application
9 of the equitable tolling doctrine, a court "focuses on whether
10 there was excusable delay by the plaintiff." Johnson v.
11 Henderson, 314 F.3d 409, 414 (9th Cir. 2002). To establish
12 excusable delay, the plaintiff must show "fraudulent conduct by
13 the defendant resulting in concealment of the operative facts,
14 failure of the plaintiff to discover the operative facts that are
15 the basis of his cause of action within the limitations period,
16 and due diligence by the plaintiff until discovery of those
17 facts." Federal Election Com'n v. Williams, 104 F.3d 237, 240-41
18 (9th Cir. 1996).

19 Here, Plaintiffs have failed to demonstrate they conducted
20 the requisite due diligence. In the FAC, Plaintiffs argue they
21 did not have a reasonable opportunity to discover any TILA
22 violations within the one-year statute of limitations because
23 they were "not informed in any manner of the TILA tolerances."
24 (FAC ¶ 35.) Plaintiffs do not provide any further facts or
25 information about the documents they read and reviewed, or any
26 conduct on their part, that suggests excusable delay occurred.
27 Plaintiffs' lack of information about their conduct leaves the
28 Court an insufficient basis to invoke equitable tolling.

1 While Plaintiffs suggest Defendants concealed facts about the
2 mortgage, they have not shown a scintilla of due diligence on
3 their part. Equitable tolling will not be applied, and thus the
4 statute of limitations period has run. Accordingly, Defendant's
5 Motion to Dismiss Plaintiffs' TILA claim is granted.

6 There are few material differences between Plaintiffs
7 original complaint and the FAC in regards to the TILA claim, and
8 it is clear to this Court that no amendment will cure Plaintiffs'
9 deficiencies with respect to TILA's definitive statutes of
10 limitations. As a result, leave to amend this cause of action is
11 denied.

12 13 **B. RESPA**

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15 Plaintiffs allege that Defendant is in violation of RESPA,
16 12 U.S.C. § 2605, for failing to provide the required disclosures
17 about the loan in question. RESPA requires mortgage loan
18 servicers who make "federally related mortgages" to provide
19 certain disclosures to their customers about the type of loan and
20 its obligations therein. 12 U.S.C. § 2605(a). Failure of the
21 mortgage loan servicer to comply with the statute results in
22 potential damages and costs. 12 U.S.C. § 2605(f).

23 Plaintiffs fail to allege any material facts that begin to
24 demonstrate Defendant violated the terms of RESPA. There is
25 little more in the FAC than a recitation of the law, which, under
26 Twombly, simply cannot sustain a complaint upon which relief can
27 be granted. As such, Defendant's Motion to Dismiss as to this
28 cause of action is granted.

