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

MARSON MATUTE,)	
)	2:10-cv-02932-GEB-GGH
Plaintiff,)	
)	
v.)	<u>ORDER</u> *
)	
CHEVY CHASE F.S.B., CAPITAL ONE)	
N.A., B.F. SAUL MORTGAGE)	
COMPANY, and DOES 1-100,)	
)	
Defendants.)	
_____)	

Defendants Chevy Chase F.S.B., Capital One N.A., and B.F. Saul Mortgage Company ("Defendants") move for dismissal of Plaintiff's Complaint under Federal Rule of Civil Procedure ("Rule") 12(b)(6), arguing Plaintiff fails to state viable claims against them. Plaintiff did not file an opposition or statement of non-opposition in response to Defendants' motion as required by Local Rule 230(c). Nor did Plaintiff file a response to a Rule 4(m) Order concerning whether other defendants in this action should be dismissed for lack of service of process. Those defendants have been dismissed in a separate order.

This case was removed from state court based on federal question jurisdiction, premised on Plaintiff's claim under the Truth in

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

1 Lending Act ("TILA"). For the reasons stated below, Plaintiff's TILA
2 claim will be dismissed with prejudice, and this action will be remanded
3 to the state court from which it was removed.

4 I. LEGAL STANDARD

5 Dismissal of a claim under Rule 12(b)(6) is appropriate only
6 where the complaint either 1) lacks a cognizable legal theory, or 2)
7 lacks factual allegations sufficient to support a cognizable legal
8 theory. Balistreri v. Pacific Police Dept., 901 F.2d 696, 699 (9th Cir.
9 1988). To avoid dismissal, a plaintiff must allege "enough facts to
10 state a claim to relief that is plausible on its face." Bell Atlantic
11 Corp. v. Twombly, 550 U.S. 544, 547 (2007).

12 In deciding a Rule 12(b)(6) motion, the material allegations
13 of the complaint are accepted as true and all reasonable inferences are
14 drawn in favor of the plaintiffs. See al-Kidd v. Ashcroft, 580 F.3d
15 949, 956 (9th Cir. 2009). However, "the tenet that a court must accept
16 as true all of the allegations contained in a complaint is inapplicable
17 to legal conclusions." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
18 "A pleading that offers 'labels and conclusions' or 'a formulaic
19 recitation of the elements of a cause of action will not do.' Nor does
20 a complaint suffice if it tenders 'naked assertion[s]' devoid of
21 'further factual enhancement.'" Id. (quoting Twombly, 550 U.S. at 555,
22 557). "In sum, for a complaint to survive a motion to dismiss, the
23 nonconclusory 'factual content,' and reasonable inferences from that
24 content, must be plausibly suggestive of a claim entitling the plaintiff
25 to relief." Moss v. United States Secret Serv., 572 F.3d 962, 969 (9th
26 Cir. 2009).

1 **II. BACKGROUND**

2 On or about July 26, 2007, Plaintiff obtained a loan from B.F.
3 Saul Mortgage, which was secured by their real property, located at 8520
4 Modena Way, Elk Grove, CA 95624. (Compl. ¶¶ 1, 5-6, Ex. A.)

5 The relevant deed of trust identifies Chevy Chase Bank, F.S.B.
6 as the trustee and Mortgage Electronic Registration Systems, Inc. as a
7 nominee for the lender and the lender's successors and assigns.¹ (Compl.,
8 Ex. A.)

9 Plaintiff alleges Defendants "improperly conducted the
10 original sale," and are wrongfully pursuing foreclosure proceedings
11 against them. (Compl. ¶¶ 7-8.)

12 **III. DISCUSSION**

13 **A. TILA Damages Claim**

14 Plaintiff seeks "attorneys fees and statutory damages under
15 TILA." (Compl. ¶ 8.) Plaintiff alleges Defendants violated TILA
16 "regarding the nature of the original loan documents," by "under
17 disclos[ing] the applicable finance charge." Id. Defendants argue
18 Plaintiff's TILA damages claim should be dismissed because it is barred
19 by the applicable one-year statute of limitations. (Defs.' Mot. 6:17-
20 20.)

21 An action under TILA for actual or statutory damages must be
22 brought "within one year from the date of the occurrence of the
23 violation." 15 U.S.C. § 1640(e). "[A]s a general rule[, this]
24 limitations period starts [to run] at the consummation of the
25 transaction." King v. California, 784 F.2d 910, 915 (9th Cir. 1986).

26
27 ¹ The deed of trust "may be considered" in ruling on Defendants'
28 Rule 12(b)(6) motion, since it was attached as an exhibit to Plaintiff's
Complaint. Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896
F.2d 1542, 1555 n.19 (9th Cir. 1989).

1 "Consummation" is defined under the statute as "the time that a consumer
2 becomes contractually obligated on a credit transaction." Grimes v. New
3 Century Mortgage Corp., 340 F.3d 1007, 1009 (9th Cir. 2003) (quoting 12
4 C.F.R. § 226.2(a)(13)).

5 Plaintiff became "contractually obligated on a credit
6 transaction" in July of 2007, when he obtained the loan and executed the
7 promissory note and deed of trust. (Compl. ¶¶ 5-6.) Therefore, the
8 statute of limitations expired on Plaintiff's TILA damages claim in July
9 of 2008. Further, since Plaintiff has not alleged a basis for equitably
10 tolling this claim, Plaintiff's TILA damages claim against Defendants is
11 dismissed with prejudice.

12 **B. State Law Claims**

13 Since only state law claims remain, the Court considers
14 whether it should continue exercising supplemental jurisdiction under 28
15 U.S.C. § 1367(c)(3). See Acri v. Varian Assocs., Inc., 114 F.3d 999,
16 1000 (9th Cir. 1997) (en banc) (suggesting that a district court may,
17 but need not, *sua sponte* decide whether to continue exercising
18 supplemental jurisdiction under 28 U.S.C. § 1367(c)(3) after all federal
19 law claims have been dismissed). The decision to decline supplemental
20 jurisdiction under 28 U.S.C. § 1367(c)(3) is informed by the values of
21 economy, convenience, fairness, and comity as delineated by the Supreme
22 Court in United Mine Workers of America v. Gibbs, 383 U.S. 715, 726
23 (1966). Id. at 1001. "[I]n the usual case in which all federal-law
24 claims are eliminated before trial, the balance of [the] factors to be
25 considered . . . will point toward declining to exercise jurisdiction
26 over the remaining state-law claims." Carnegie-Mellon Univ. v. Cohill,
27 484 U.S. 343, 350 n.7 (1988).

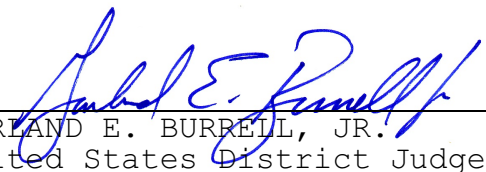
1 Three of the four Gibbs factors weigh against the continued
2 exercise of supplemental jurisdiction over Plaintiff's state claims.
3 Judicial economy does not favor continuing to exercise supplemental
4 jurisdiction since time has not been invested analyzing the state
5 claims. See Otto v. Heckler, 802 F.2d 337, 338 (9th Cir. 1986) ("[T]he
6 district court, of course, has the discretion to determine whether its
7 investment of judicial energy justifies retention of jurisdiction or if
8 it should more properly dismiss the claims without prejudice.")
9 (citation omitted). Nor do the comity and fairness factors weigh in
10 favor of exercising supplemental jurisdiction since "[n]eedless
11 decisions of state law should be avoided both as a matter of comity and
12 to promote justice between the parties, by procuring for them a
13 surer-footed reading of applicable law." Gibbs, 383 U.S. at 726.
14 Therefore, Plaintiff's state claims will be remanded under 28 U.S.C. §
15 1367(c).

16 IV. CONCLUSION

17 For the stated reasons, Plaintiff's TILA damages claim is
18 dismissed with prejudice, and Plaintiff's remaining state claims are
19 remanded to the Superior Court of California in the County of
20 Sacramento, from which this case was removed.

21 Judgment shall be entered in favor of Defendants on
22 Plaintiff's TILA damages claim.

23 Dated: March 3, 2011

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GARLAND E. BURRELL, JR.
United States District Judge