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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JULIA M. CARLON, CHRISTINE M. CARLON,	)	Case No. 2:11-CV-00499-JAM-GGH
	)	
Plaintiffs,	)	<u>REMAND ORDER</u>
	)	
v.	)	
	)	
TAYLOR, BEAN & WHITAKER MORTGAGE COMPANY, CENTRAL LOAN ADMINISTRATION AND REPORTING, OCWEN LOAN SERVICE, LLC, and DOES 1 through 100,	)	
	)	
Defendants.	)	

This matter comes before the Court on Defendants Central Loan Administration and Reporting ("CENLAR") and OCWEN Loan Servicing, LLC's ("OCWEN") (collectively "Defendants") Motion to Dismiss (Doc. #5) Plaintiffs Julia Carlon and Christine Carlon's (collectively "Plaintiffs") Complaint (Doc. #1, Exhibit A) pursuant to Federal Rule of Civil Procedure 12(b)(6). Also before the Court is Defendants' Motion to Expunge the Recorded Lis Pendens (Doc. #6), which includes a request for an award of attorneys' fees and costs pursuant to California Code of Civil Procedure section 405.38.

1 Plaintiffs oppose both motions (Docs. #10, 11).<sup>1</sup> For the reasons  
2 set forth below, Plaintiffs fail to state a claim for relief under  
3 Federal Law, depriving this Court of original jurisdiction.

4  
5 I. FACTUAL AND PROCEDURAL BACKGROUND

6 This action arises out of a residential mortgage taken out on  
7 Plaintiffs' property, located at 4329 Figwood Way in Sacramento,  
8 California. See Plaintiff's Complaint, Doc. #1, Exhibit A  
9 ("Comp.") at ¶ 2. During 2009 and 2010, Defendants CENLAR and  
10 OCWEN began servicing Plaintiffs' loan, which was originated by  
11 non-moving Defendant Taylor, Bean & Whitaker Mortgage Corporation,  
12 after Taylor Bean & Whitaker Mortgage Corporation suddenly rejected  
13 one of Plaintiffs' mortgage payments. Id. at ¶¶ 2-8, 13-16.  
14 Plaintiffs were unable to contact Defendant CENLAR after it began  
15 servicing their loan, and therefore did not make loan payments  
16 between August 2009 and January 2010 because they did not know  
17 where to send their money. Id. at ¶¶ 13-20. When Plaintiffs  
18 received a statement of the amount in arrears on their loan, they  
19 were unable to pay the total. Id. at ¶¶ 20-21. Plaintiffs  
20 unsuccessfully attempted to negotiate a modification of the  
21 obligation with Defendant OCWEN, which lead to the filing of this  
22 case. Id. at 20-26.

23 Defendants properly removed this case pursuant to 28 U.S.C.  
24 section 1441, as Plaintiffs pled a cause of action in their  
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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled for June 1, 2011.

1 complaint under a federal statute, 12 U.S.C. section 2601. Doc.  
2 #1.<sup>2</sup>

3  
4 II. OPINION

5 A. Legal Standard

6 1. Federal Rule of Civil Procedure 12(b)(6)

7 A party may move to dismiss an action for failure to state a  
8 claim upon which relief can be granted pursuant to Federal Rule of  
9 Civil Procedure 12(b)(6). In considering a motion to dismiss, the  
10 court must accept the allegations in the complaint as true and draw  
11 all reasonable inferences in favor of the plaintiff. Scheuer v.  
12 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by  
13 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319,  
14 322 (1972). Assertions that are mere "legal conclusions," however,  
15 are not entitled to the assumption of truth. Ashcroft v. Iqbal,  
16 129 S. Ct. 1937, 1950 (2009) (citing Bell Atl. Corp. v. Twombly,  
17 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, a  
18 plaintiff needs to plead "enough facts to state a claim to relief  
19 that is plausible on its face." Twombly, 550 U.S. at 570.  
20 Dismissal is appropriate where the plaintiff fails to state a claim  
21 supportable by a cognizable legal theory. Balistreri v. Pacifica  
22 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

23 Upon granting a motion to dismiss for failure to state a  
24 claim, the court has discretion to allow leave to amend the  
25 complaint pursuant to Federal Rule of Civil Procedure 15(a).

26 \_\_\_\_\_  
27 <sup>2</sup> Although Defendants' removal may have been untimely, Plaintiffs  
28 did not move to remand and thereby waived their right to challenge  
the removal. More importantly, the removal was substantively  
proper, and therefore the timeliness was not addressed sua sponte  
by this Court at the time the case was removed.

1 "Dismissal with prejudice and without leave to amend is not  
2 appropriate unless it is clear . . . that the complaint could not  
3 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon, Inc.,  
4 316 F.3d 1048, 1052 (9th Cir. 2003).

## 5 2. Jurisdiction

6 It is well settled that a court "ha[s] an independent  
7 obligation to address sua sponte whether [it] has subject-matter  
8 jurisdiction." See, e.g., Dittman v. California, 191 F.3d 1020,  
9 1025 (9th Cir.1999).

10 Pursuant to 28 U.S.C. section 1441, "a defendant may remove an  
11 action filed in state court to federal court if the federal court  
12 would have original subject matter jurisdiction over the action."  
13 Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1243 (9th  
14 Cir. 2009). When a district court has original jurisdiction over a  
15 claim, it "shall have supplemental jurisdiction over all other  
16 claims that are so related to claims in the action . . . that they  
17 form part of the same case or controversy . . . ." 28 U.S.C. §  
18 1367(a). However, a court has discretion to "decline to exercise  
19 supplemental jurisdiction over a claim [] if: . . . (3) the  
20 district court has dismissed all claims over which it has original  
21 jurisdiction . . . ," id. at § 1367(c), and it is appropriate to  
22 remand for lack of subject matter jurisdiction "at any time before  
23 final judgment . . . ." Id. at § 1447(c).

## 24 B. Claims for Relief

### 25 1. Federal Claim

26 Plaintiffs seek relief for a violation of 12 U.S.C. section  
27 2601, the Real Estate Settlement Procedures Act ("RESPA"). Comp.  
28 at ¶¶ 68-73. Plaintiffs allege Defendant CENLAR "fail[ed] to

1 notify Plaintiffs of the assignment, sale, or transfer of the  
2 mortgage servicing rights relating to [their loan] at least fifteen  
3 (15) days before making that change . . . .” Id. at ¶¶ 70, 72.  
4 This transfer occurred sometime prior to January 18, 2010. Id. at  
5 ¶¶ 20, 70, 72. Defendants properly point out that Plaintiffs’  
6 conclusory allegations fail to state a claim upon which relief can  
7 be granted. Defendants’ Points and Authorities in Support of their  
8 Motion to Dismiss, Doc. #5, at pg. 9-10. Specifically, Plaintiffs  
9 do not plead actual damages which resulted from Defendant’s alleged  
10 violation of RESPA, a requirement to maintain a cause of action  
11 under RESPA. See Singh v. Washington Mutual Bank, 2009 WL 2588885  
12 (N.D. Cal. Aug. 19, 2009). Accordingly, Defendants’ motion to  
13 dismiss is granted, and Plaintiffs’ claim under RESPA is dismissed.

14       Allowing amendment in this case would be futile. Eminence  
15 Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir.  
16 2003). Plaintiffs’ claim is barred by RESPA’s one-year statute of  
17 limitations, as the complaint was filed on January 18, 2011, and  
18 the last alleged violation of RESPA by Defendant CENLAR occurred 15  
19 days prior to January 18, 2010, at the latest, which was more than  
20 one year prior to the filing of Plaintiff’s complaint. 12 U.S.C. §  
21 2614; see also Levald, Inc. v. City of Palm Desert, 988 F.2d 680  
22 (9th Cir. 1993) (authorizing sua sponte dismissal of a complaint as  
23 time-barred by the statute of limitations). Accordingly,  
24 Plaintiffs’ RESPA claim is dismissed with prejudice.

25               2.    State Law Claims

26       Plaintiffs assert six causes of action against Defendants  
27 under California law for breach of contract, breach of covenant of  
28 good faith and fair dealing, negligence, declaratory relief,

1 violation of civil code section 2924, and violation of business and  
2 professions code section 17200. See Comp. As set forth above,  
3 Plaintiffs' only claim asserted against Defendant CENLAR under  
4 federal law has been dismissed without leave to amend.

5 Additionally, on July 28, 2011, this Court issued an Order  
6 dismissing Plaintiffs' claims against Defendant Taylor, Bean &  
7 Whitaker Mortgage Company, which included a claim under RESPA, due  
8 to Plaintiffs' failure to timely serve their complaint. Doc. #22.  
9 Therefore, Plaintiffs' only federal claim in this case, which was  
10 the basis for removal, has been dismissed as to all Defendants.

11 Pursuant to 28 U.S.C. section 1367, this Court exercises its  
12 discretion to decline supplemental jurisdiction over Plaintiffs'  
13 remaining claims, which all arise under state law. Accord Keen v.  
14 American Home Mortgage Servicing, Inc., 2010 WL 624306, at \*1 (E.D.  
15 Cal. Feb. 18, 2010) ("In the usual case in which federal law claims  
16 are eliminated before trial, the balance of factors will point  
17 toward declining to exercise jurisdiction over the remaining state  
18 law claims.") (internal citations omitted).

19 Accordingly, this Court will not address the merits of the  
20 remaining issues raised in Defendants' Motion to Dismiss.

21 C. Motion to Expunge

22 In light of this Court's remand, Defendants' Motion to Expunge  
23 is dismissed without prejudice to re-file in state court.

24  
25 III. ORDER

26 For the reasons set forth above, the Court no longer has  
27 original jurisdiction over this action and declines to exercise  
28 supplemental jurisdiction over Plaintiff's remaining state law

1 claims. Accordingly, the Court REMANDS this action back to the  
2 Superior Court of California, County of Sacramento.

3 The Clerk shall close this case.

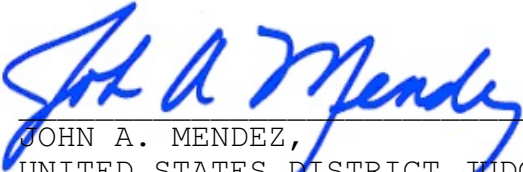
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5 IT IS SO ORDERED.

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7 Dated: August 4, 2011

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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