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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SILVIA BURLEY, as chairperson  
of the California Valley Miwok  
Tribe; and the CALIFORNIA  
VALLEY MIWOK TRIBE, as a  
federally recognized tribe of  
the Miwok people,

Plaintiffs,

v.

ONEWEST BANK, FSB; MERIDIAN  
FORECLOSURE SERVICE; DEUTSCHE  
BANK NATIONAL TRUST COMPANY;  
and DOES 1-10, inclusive,

Defendants.

CIV. NO. 2:14-1349 WBS EFB  
MEMORANDUM AND ORDER RE: MOTION  
TO DISMISS

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Plaintiffs Silvia Burley and the California Valley  
Miwok Tribe ("Miwok Tribe") brought this action against  
defendants OneWest Bank, FSB ("OneWest"), Deutsche Bank National  
Trust Company ("Deutsche Bank"), and Meridian Foreclosure Service

1 ("Meridian") to recover title over land and damages in connection  
2 with the alleged wrongful foreclosure and sale of the plaintiffs'  
3 real property. On August 26, 2014, this court issued an order  
4 ("Aug. 26, 2014 Order") dismissing plaintiffs' case for lack of  
5 subject matter jurisdiction and giving plaintiffs' twenty days to  
6 file an amended complaint.<sup>1</sup> (Docket No. 17.) Plaintiffs filed  
7 their First Amended Complaint ("FAC") asserting claims under the  
8 Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691, et  
9 seq., the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601, et  
10 seq., and several state law claims essentially repeated from  
11 their original Complaint. (Docket No. 18.)

12 I. Factual & Procedural History

13 Burley is the chairperson of the Miwok Tribe, which is  
14 a federally-recognized Indian tribe. (FAC ¶¶ 20-21.) On March  
15 29, 2002, the Miwok Tribe purchased a parcel of land in Stockton,  
16 California. (Id. ¶ 14.) Shortly after doing so, the Miwok Tribe  
17 issued a resolution authorizing Burley to obtain a loan for the  
18 property and to take title to the property on behalf of the Miwok  
19 Tribe. (Id. ¶¶ 25, 28.) After receiving title, Burley allegedly  
20 refinanced the property on behalf of the Miwok Tribe in 2006 and  
21 2007, and quitclaimed the property back to the Miwok Tribe in  
22 2008. (Id. ¶¶ 19-24.) Financing was originally provided by

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24 <sup>1</sup> The August 26, 2014 Order addressed two related cases:  
25 Burley v. OneWest Bank, FSB, Civ. No. 2:14-1349 WBS EFB, and  
26 Deutsche Bank National Trust Co. v. Burley, Civ. No. 2:14-1567  
27 WBS EFB. The court dismissed the first action, Burley v. OneWest  
28 Bank, FSB, for lack of subject matter jurisdiction, (see Aug. 26,  
2014 Order at 8-9), and the court remanded the second action,  
Deutsche Bank National Trust Co. v. Burley, to the San Joaquin  
County Superior Court pursuant to 28 U.S.C. § 1447, (id at 13.)

1 IndyMac Bank ("IndyMac"). (Id. ¶ 22.) In March 2009, after  
2 IndyMac entered bankruptcy, OneWest purchased the assets of  
3 IndyMac from the Federal Deposit Insurance Corporation ("FDIC"),  
4 including the beneficial interest in plaintiffs' loan. (Id. ¶  
5 59)

6 Burley and the Miwok Tribe allege that they are waiting  
7 for funds owed to them by the Revenue Sharing Trust Fund.<sup>2</sup> (Id.  
8 ¶ 46, 86.) In the meantime, plaintiffs fell behind on loan  
9 payments for the property. (See id. ¶ 57.) On February 19,  
10 2010, OneWest recorded a Notice of Default and initiated  
11 foreclosure proceedings. (Id. ¶¶ 61, 88.) A Trustee's Deed Upon  
12 Sale recorded in San Joaquin County on November 6, 2013, reflects  
13 that Deutsche Bank purchased the property at a foreclosure sale  
14 for roughly one-third of the alleged amount of unpaid debt. (Id.  
15 ¶ 72.)

16 Plaintiffs allege that the terms of financing reflected  
17 in the Deed of Trust filed with the Official Records of San  
18 Joaquin County on April 30, 2007, are different from the terms  
19 that plaintiffs had originally agreed to during discussions with  
20 the defendants' representatives. (Id. ¶ 38, 45-46.) As a  
21 result, plaintiffs contend that OneWest listed an "excessive"  
22 amount on its Notice of Default, wrongfully foreclosed on the  
23 property, and initiated an unlawful detainer action against  
24 Burley. (Id. ¶¶ 61, 63, 75.) Defendants also allegedly  
25 discriminated against plaintiffs during their application for the

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27 <sup>2</sup> The Revenue Sharing Trust Fund redistributes money from  
28 Indian tribes in California that operate gaming establishments to  
those, like the Miwok Tribe, that do not.

1 loan, (id. ¶¶ 17, 77-79), and failed to comply with certain  
2 requirements of foreclosure over tribal land, (id. ¶ 63).

3 Defendants now move to dismiss all claims in the FAC pursuant to  
4 Federal Rule of Civil Procedure 12(b)(6) for failure to state a  
5 claim upon which relief can be granted. (Docket No. 22.)

## 6 II. Discussion

7 On a motion to dismiss under Rule 12(b)(6), the court  
8 must accept the allegations in the complaint as true and draw all  
9 reasonable inferences in favor of the plaintiff. See Scheuer v.  
10 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by  
11 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S.  
12 319, 322 (1972). To survive a motion to dismiss, a plaintiff  
13 must plead "only enough facts to state a claim to relief that is  
14 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.  
15 544, 570 (2007). This "plausibility standard," however, "asks  
16 for more than a sheer possibility that a defendant has acted  
17 unlawfully," and where a plaintiff pleads facts that are "merely  
18 consistent with a defendant's liability," it "stops short of the  
19 line between possibility and plausibility." Ashcroft v. Iqbal,  
20 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557).

### 21 A. Equal Credit Opportunity Act Claim

22 It is well established that "[a] district court may  
23 dismiss a claim '[i]f the running of the statute is apparent on  
24 the face of the complaint.'" Cervantes v. Countrywide Home  
25 Loans, Inc., 656 F.3d 1034, 1045 (9th Cir. 2011) (quoting Jablon  
26 v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980)).

27 "However, a district court may do so 'only if the assertions of  
28 the complaint, read with the required liberality, would not

1 permit the plaintiff to prove that the statute was tolled.'" Id.

2           The ECOA prohibits a creditor from discriminating  
3 against an applicant for credit "on the basis of race, color,  
4 religion, national origin, sex or marital status, or age," as  
5 well as use of "any public assistance program," or "because the  
6 applicant has in good faith exercised any right under this  
7 chapter." 15 U.S.C. § 1691(a). The ECOA defines "applicant" as  
8 "any person who applies to a creditor directly for an extension,  
9 renewal, or continuation of credit, or applies to a creditor  
10 indirectly by use of an existing credit plan for an amount  
11 exceeding a previously established credit limit." Id.

12 § 1691a(b). Aggrieved applicants may bring an action for damages  
13 and equitable remedies against "[a]ny creditor who fails to  
14 comply with any requirement imposed" by the ECOA. Id. § 1691e.

15           However, § 1691e(f) requires an applicant to bring any  
16 claim within five years "after the date of the occurrence of the  
17 violation." Id. § 1691e(f). The same subsection provides an  
18 express exception to this limitation allowing for an applicant to  
19 bring an action "not later than one year after" the commencement  
20 of a proceeding or action by the Attorney General or any agency  
21 having responsibility for administrative enforcement under  
22 § 1691(c) against the creditor, if the Attorney General or agency  
23 itself commenced its action within five years of the occurrence  
24 of the violation. Id.

25           Here, plaintiffs' FAC alleges that defendants  
26 discriminated against the Miwok Tribe during its loan application  
27 and refinancing. (FAC ¶¶ 17, 77-79.) Plaintiffs specifically  
28 allege that IndyMac refused to allow the Miwok Tribe to use

1 property that it owned in its own name as security for that loan.  
2 (See id. ¶ 79.) Instead, IndyMac allegedly insisted that Burley  
3 take title in her own name to any property used as security and  
4 that her name, not the Tribe's, be used on the loan origination  
5 and refinancing. (See id.)

6 Plaintiffs' allegations in their FAC, (FAC ¶¶ 14, 44),  
7 as well as the Deed of Trust dated April 20, 2007 that is  
8 attached to the FAC and lists "IndyMac Bank" as the lender and  
9 "Silvia Burley" as the borrower, (FAC Ex. B-7), clearly show that  
10 plaintiffs refinanced the property at issue in 2007. Because the  
11 discriminatory conduct giving rise to plaintiffs' ECOA claim  
12 allegedly occurred when plaintiffs sought financing through  
13 IndyMac, (see FAC ¶¶ 17, 79), the alleged discrimination could  
14 not have occurred later than April 20, 2007--the date Burley  
15 signed the Deed of Trust on the property.

16 It is therefore clear from the face of plaintiffs' FAC  
17 that the five-year statute of limitations has run on plaintiffs'  
18 ECOA claim. Under the normal five-year limitation period,  
19 plaintiffs' claim ran no later than April 20, 2012. See 15  
20 U.S.C. § 1691e(f). Even assuming that some enforcement action  
21 was brought by the Attorney General or authorized agency within  
22 the meaning of § 1691e(f), which plaintiffs neither allege nor  
23 suggest occurred, plaintiffs would need to have commenced this  
24 action no later than April 20, 2013. Id.

25 Moreover, court finds no basis in plaintiffs' FAC that  
26 might plausibly support equitable tolling in this case. A court  
27 applies equitable tolling "in situations where, despite all due  
28 diligence, the party invoking equitable tolling is unable to

1 obtain vital information bearing on the existence of the claim.”  
2 Cervantes, 656 F.3d at 1045 (quoting Socop-Gonzalez v. I.N.S.,  
3 272 F.3d 1176, 1193 (9th Cir. 2001)). The plaintiffs have not  
4 alleged circumstances beyond their control that prevented them  
5 from discovering defendants’ alleged acts of discrimination. In  
6 fact, because plaintiffs’ base their claim of discrimination on  
7 the fact that defendants refused to let the Miwok Tribe use its  
8 own land as security for the loan, there is no question that  
9 plaintiffs were aware of the alleged facts constituting their  
10 claim when they applied for the loan in or before 2007.

11 Accordingly, because it is clear from plaintiffs’ FAC  
12 and the April 20, 2007 Deed of Trust attached to it that the  
13 applicable statute of limitations for any ECOA claim based on  
14 alleged discrimination during plaintiffs’ application for credit  
15 in 2007 ran well before plaintiffs filed this action, the court  
16 must grant defendants’ motion to dismiss this claim. See  
17 Cervantes, 656 F.3d at 1045-46.

18 B. Truth In Lending Act Claim

19 Among the various obligations of creditors created by  
20 TILA is the requirement that “not later than 30 days after the  
21 date on which a mortgage loan is sold or otherwise transferred or  
22 assigned to a third party, the creditor that is the new owner or  
23 assignee of the debt shall notify the borrower in writing of such  
24 transfer.” 15 U.S.C. § 1641(g) (1). Under TILA, any creditor who  
25 fails to comply with the requirement to give notice to a borrower  
26 of a mortgage loan sale under § 1641(g) “with respect to any  
27 person is liable to such person.” Id. § 1640(a). TILA’s  
28 liability provision contains a one-year statute of limitations

1 accruing from the date of the violation. Id. § 1640(e).

2 Here, plaintiffs allege two transfers of their loan for  
3 which they received no notice as required by § 1641(g)(1):

4 First, in March 2009, IndyMac allegedly transferred plaintiffs'  
5 loan to OneWest. (FAC ¶¶ 59, 168.) Second, in June 2010, the  
6 loan was allegedly transferred again to Deutsche Bank. (Id. ¶¶  
7 61, 168.) The 30-day window in which § 1641(g)(1) required the  
8 creditors to provide notice to plaintiffs of these transfers thus  
9 expired in April 2009 and July 2010, respectively.

10 The statute of limitations under § 1640(e) therefore  
11 ran on plaintiffs' first alleged violation in April 2010 and  
12 their second alleged violation in July 2011.

13 Similar to their ECOA claim, the FAC has no allegations  
14 suggesting that equitable tolling may save this claim.

15 Plaintiffs' FAC shows that plaintiffs were informed of IndyMac's  
16 transfer of the loan to OneWest in February 19, 2010, when  
17 OneWest recorded a Notice of Default and initiated foreclosure  
18 proceedings against the property in question. (FAC ¶ 61.)

19 Plaintiffs even attach the Notice of Default, which shows that it  
20 was filed on "Fri Feb 19 08:59:52 PST 2010" with the San Joaquin  
21 County Recorders and lists "OneWest Bank, FSB," along with  
22 contact information for OneWest's office in San Diego, as the  
23 sender. (See id. Ex. E-15.) Therefore, this is plainly not a  
24 case where "despite all due diligence, the party invoking  
25 equitable tolling is unable to obtain vital information bearing  
26 on the existence of the claim." Cervantes, 656 F.3d at 1045.

27 Plaintiffs could have easily discovered that a loan transfer had  
28 taken place when the new creditor notified them of default and



1 began to foreclose the secured property. Even if the statute of  
2 limitations was tolled until February 19, 2010, the time for  
3 plaintiffs to bring their TILA claim still ran in 2011.

4 Similarly, plaintiffs state in their FAC that “[o]n  
5 June 21, 2010, an Assignment of Deed of Trust was recorded in the  
6 Official Records of San Joaquin County . . . to grant the Deed of  
7 Trust to Deutsche Bank National Trust Company, as Trustee of the  
8 IndyMac INDA Mortgage Loan Trust 2007-AR3.” (FAC ¶ 66.)

9 Plaintiffs do not attach this Deed of Trust or documentation of  
10 its assignment to their FAC, but the court must still assume the  
11 truth of their allegation that an assignment of the Deed of Trust  
12 was “recorded in the Official Records of San Joaquin County” on  
13 June 21, 2010. (*Id.*); *see Scheuer*, 416 U.S. at 236. The FAC  
14 alleges no facts that might explain why plaintiffs, exercising  
15 due diligence as required by the equitable tolling standard,  
16 could not have learned of the assignment of the loan to Deutsche  
17 Bank at that time. *See Cervantes*, 656 F.3d at 1045 (declining to  
18 equitably toll a statute of limitations because “plaintiffs have  
19 not alleged circumstances beyond their control” that prevented  
20 them from understanding loan documents that were readily  
21 accessible to them). Therefore, the court concludes that the  
22 statute of limitations ran on plaintiffs’ TILA claim for this  
23 alleged violation in 2011.

24 Accordingly, because the applicable statute of  
25 limitations for plaintiffs’ TILA claim based on these two alleged  
26 violations ran before plaintiffs brought this action, the court  
27 must grant defendants’ motion to dismiss this claim. *See id.* at  
28 1045-46.

1 C. The Court Declines to Exercise Supplemental  
2 Jurisdiction Over Plaintiffs' State-Law Claims

3 Under 28 U.S.C. § 1367, a federal court may exercise  
4 supplemental jurisdiction over state-law claims that are  
5 sufficiently related to those claims over which they have  
6 original jurisdiction. 28 U.S.C. § 1367(a); United Mine Workers  
7 of Am. v. Gibbs, 383 U.S. 715, 725 (1966). However, a district  
8 court "may decline to exercise supplemental jurisdiction over a  
9 claim . . . if . . . the district court has dismissed all claims  
10 over which it has original jurisdiction." 28 U.S.C.  
11 § 1367(c)(3); see also Acri v. Varian Assocs., Inc., 114 F.3d  
12 999, 1000 (9th Cir. 1997). In fact, the Ninth Circuit has stated  
13 its preference that district courts do not exercise supplemental  
14 jurisdiction over a plaintiffs' state-law claims when the court  
15 has dismissed all of plaintiffs' federal-law claims before trial.  
16 See Acri, 114 F.3d at 1001.

17 Accordingly, because the court will dismiss all  
18 plaintiffs' federal-law claims for failure to state a claim upon  
19 which relief can be granted, the court declines to exercise  
20 supplemental jurisdiction over plaintiffs' remaining state-law  
21 claims pursuant to 28 U.S.C. § 1367(c)(3).

22 D. Leave to Amend

23 The decision to grant leave to amend the pleadings "is  
24 within the sound discretion of the district court." ABM Indus.,  
25 Inc. v. Zurich Am. Ins. Co., 237 F.R.D. 225, 227 (N.D. Cal. 2006)  
26 (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th  
27 Cir. 1987)). In exercising its discretion, Rule 15 counsels that  
28 "the court should freely give leave [to amend] when justice so

1 requires." Fed. R. Civ. P. 15(a)(2); see also Ascon Properties,  
2 Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) ("We  
3 have stressed Rule 15's policy of favoring amendments, and we  
4 have applied this policy with liberality."). But "leave need not  
5 be granted where the amendment of the complaint would cause the  
6 opposing party undue prejudice, is sought in bad faith,  
7 constitutes an exercise in futility, or creates undue delay."  
8 Ascon Properties, 866 F.2d at 1160.

9 The court dismissed plaintiffs' initial Complaint for  
10 want of federal question jurisdiction,<sup>3</sup> and granted plaintiffs  
11 leave to amend. (See Aug. 26, 2014 Order at 9.) Plaintiffs  
12 responded by filing the instant FAC, which abandons the claim  
13 upon which they originally predicated federal jurisdiction and  
14 substitutes two, new, federal claims for violations of the ECOA  
15 and TILA. The court now dismisses these two federal claims for  
16 failure to state a claim upon which relief can be granted.

17 Having already given leave to amend once, the court has  
18 granted plaintiffs ample opportunity present their best federal  
19 claims to support jurisdiction in this court. However, because  
20 plaintiffs have raised their new federal claims under the ECOA  
21 and TILA for the first time in their FAC, the court will afford  
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23 <sup>3</sup> The parties do not have diversity of citizenship that  
24 would allow this court to exercise subject matter jurisdiction  
25 pursuant to 28 U.S.C. § 1332, as Burley is a citizen of  
26 California, the Miwok Tribe is a federally-recognized tribal  
27 organization located in the San Joaquin Valley of California, and  
28 defendant OneWest is a federal savings bank with its principal  
place of business in California. (FAC ¶¶ 20-22; see August 26,  
2014 Order at 4); 28 U.S.C. § 1332 ("[A] corporation shall be  
deemed to be a citizen of every State and foreign state . . .  
where it has its principal place of business.").

1 them one more opportunity to amend those claims and only those  
2 claims to state a claim upon which relief can be granted. Leave  
3 is not granted to add new or additional claims not included in  
4 the FAC.

5 IT IS THEREFORE ORDERED that OneWest Bank, FSB and  
6 Deutsche Bank National Trust Company's motion to dismiss, be, and  
7 the same hereby is, GRANTED.

8 Plaintiffs have twenty days to file a second amended  
9 Complaint, addressing the deficiencies in their claims for an  
10 ECOA violation and/or TILA violation, if they can do so  
11 consistent with this Order.

12 Dated: December 2, 2014

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14 **WILLIAM B. SHUBB**  
15 **UNITED STATES DISTRICT JUDGE**  
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