

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JEFFREY SCHULKEN, et al.,  Plaintiffs,  v.  WASHINGTON MUTUAL BANK, HENDERSON, NV, et al.,  Defendants.	) ) ) ) ) ) ) ) ) ) )	Case No.: 09-CV-02708-LHK   <b>ORDER GRANTING-IN-PART AND          DENYING-IN-PART PLAINTIFFS          LEAVE TO AMEND</b>
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I. INTRODUCTION

Jeffrey Schulken and Jenifer Schulken (collectively, "Plaintiffs") bring this putative class action against Washington Mutual Bank ("WaMu") and JPMorgan Chase ("Chase") (collectively, "Defendants"), alleging violations of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601, *et seq.*, and its implementing statute, Regulation Z, 12 C.F.R. 226.1, *et seq.*; violations of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and breach of contract. Generally, Plaintiffs allege that Defendants improperly suspended and reduced credit limits on home equity lines of credit ("HELOCs").

Plaintiffs filed a motion for class certification on June 2, 2011, as scheduled in the Case Management Order entered by this Court on February 9, 2011. *See* Dkt. No. 69. Also on June 2, 2011, the Court held a Case Management Conference (CMC). At the CMC, Plaintiffs stated that they intended to amend their Third Amended Complaint to change the class definitions to match

1 the definitions submitted in their motion for class certification. The Court asked the parties to  
2 stipulate to the proposed amendments if possible. On June 9, 2011, Plaintiffs filed a motion for  
3 leave to file a fourth amended complaint (4AC). Mot., Dkt. No. 90. The hearing on this motion  
4 was set for September 8, 2011. The Court finds this matter suitable for decision without oral  
5 argument, and hereby VACATES the September 8, 2011 hearing. *See* Civ. L. R. 7-1(b). For the  
6 reasons set forth below, the Court GRANTS-IN-PART and DENIES-IN-PART Plaintiffs' motion  
7 for leave.

## 8 II. BACKGROUND

9 The proposed 4AC adds significant factual detail to the allegations in the Third Amended  
10 Complaint (TAC). In addition, the 4AC adds several claims and amends the original class to  
11 define two classes, each with one subclass. The TAC asserted that Plaintiffs obtained a \$250,000  
12 HELOC from WaMu in October, 2005. TAC ¶ 10. The HELOC was secured by their primary  
13 residence, and Plaintiffs allege it was used primarily for personal family and household purposes.  
14 TAC ¶ 17. On September 25, 2008, the United States Office of Thrift Supervision seized WaMu  
15 and put it into FDIC receivership. TAC ¶ 11. After this, Chase purchased and assumed "all  
16 mortgage servicing rights and obligations of" WaMu, including the Plaintiffs' HELOC account.  
17 TAC ¶ 12.

18 On March 13, 2009, Plaintiffs received an "Income Verification Request" letter from Chase  
19 requesting certain financial information. TAC ¶ 18. In response to the letter, Plaintiffs submitted  
20 financial information. TAC ¶ 19. On March 19, 2009, Plaintiffs discovered that their HELOC had  
21 been suspended. TAC ¶ 20. The following day, Plaintiffs received a letter from Chase stating that  
22 their HELOC had been suspended for failure to submit the financial information requested on  
23 March 13, 2009. TAC ¶ 20. Plaintiffs alleged that their income did not materially change or  
24 decrease at any time, and that the Defendants had no reasonable basis to conclude that Plaintiffs  
25 would be unable to meet the terms of their HELOC. TAC ¶ 23.

26 On the basis of these allegations, Plaintiffs sought (in the TAC) to represent a class  
27 consisting of "All WAMU and Chase HELOC borrowers in the United States who had their  
28 respective HELOCs reduced or suspended due to WAMU's or Chase's conclusion that the

1 borrower would be unable to fulfill their payment obligations due to a purported material adverse  
2 change in financial circumstances.” TAC ¶ 26. On behalf of this class, Plaintiffs asserted the  
3 following claims for relief: 1) a declaration that Chase violated TILA and Regulation Z based on  
4 Chase’s suspension of HELOC accounts in the absence of a material change in income or a  
5 reasonable belief that borrowers would be unable to repay their debt obligations; 2) actual and  
6 statutory damages for the same TILA and Regulation Z violations asserted in the first claim; 3)  
7 actual and statutory damages under TILA and Regulation Z for Defendants’ failure to give notice  
8 of the specific reasons that HELOC accounts were suspended; 4) damages for breach of the  
9 HELOC contracts based on suspension of HELOC accounts without any material change in income  
10 or reasonable belief that borrowers would be unable to repay their debt obligations; and 5) HELOC  
11 reinstatement and restitution for UCL violations based on unlawful acts (violations of TILA and  
12 Regulation Z), unfair acts (suspending accounts without advance notice), and asserted fraudulent  
13 acts (allegedly false statements or material omissions made when Chase communicated with  
14 customers about suspended HELOC accounts).

15 In the 4AC, Plaintiffs expand upon the allegations in the TAC. Plaintiffs allege that the  
16 Income Verification Letters were sent to borrowers under the “4506-T Program,” a program  
17 designed to reach borrowers ineligible for other HELOC-suspension programs designed by Chase  
18 to suspend HELOCs. 4AC ¶ 7. Plaintiffs allege that under the 4506-T Program, Chase requested  
19 that customers fill out an IRS Form 4506-T (a Request for Transcript of Tax Return) and recent  
20 paystubs. 4AC ¶ 8. Plaintiffs allege that Chase then suspended the accounts of all “Incomplete  
21 Responders,” customers who provided only one of the requested items (either paystubs or the  
22 4506-T form, but not both). 4AC ¶ 11. Plaintiffs allege Chase also suspended the accounts of  
23 “Non-Responders,” those who failed to submit any response to the Income Verification Letters  
24 within 14 days. *Id.* A third group of customers provided both signed 4506-T forms and paystubs.<sup>1</sup>  
25 For these customers, Chase calculated a Debt-to-Income ratio (DTI) based on the submitted  
26 information. 4AC ¶ 13. If the DTI was below a certain threshold, the account was not suspended

27 <sup>1</sup> Non-Responders and Incomplete Responders could move into the group of customers who  
28 provided complete information if they submitted information after appealing the suspension of  
their HELOC.

1 (or was reinstated) after a “reasonableness review.” 4AC ¶ 14. If the DTI was above a certain  
2 threshold, Chase suspended the HELOC automatically. *Id.* If the DTI was between these two  
3 thresholds, Chase compared the present DTI to the DTI at origination. These customers’ HELOCs  
4 could be suspended based on factors including their disposable income and their relationship with  
5 the bank. *Id.*

6 In the 4AC, Plaintiffs allege that they used their HELOC to pay for personal, family and  
7 household expenses, and “occasionally, but by no means primarily,” to pay for expenses relating to  
8 the family daycare the Schulkens ran out of their home since 2000. 4AC ¶¶ 17-18. Plaintiffs  
9 allege that they received an Income Verification Letter on March 17, 2009, and that they returned it  
10 to Chase the same day with a signed 4506-T form and an annotation that they are both self-  
11 employed. 4AC ¶ 21. Plaintiffs allege that two days later, they found that Chase had suspended  
12 their HELOC. 4AC ¶ 21. On March 21, 2009, they received a letter from Chase stating that the  
13 suspension was based on Chase’s inability to verify the Plaintiffs’ financial information, because  
14 they did not submit paystubs. 4AC ¶ 21.

15 After this, the Plaintiffs provided additional financial information to Chase. On March 31,  
16 2009, the Plaintiffs received a letter from Chase stating that their HELOC would remain suspended  
17 because Chase determined that Plaintiffs had insufficient income to satisfy their debt obligations.  
18 4AC ¶ 25. Plaintiffs contacted Chase to dispute this, arguing that their income had “hardly  
19 changed” since they opened the HELOC account. 4AC ¶ 26. Chase responded that because the  
20 Plaintiffs’ monthly income at origination was listed as \$11,500, their present income was  
21 materially lower. 4AC ¶ 27. The Plaintiffs responded that they had never earned \$11,500 monthly,  
22 and that WaMu must have intentionally misrepresented their income if their loan application stated  
23 this. 4AC ¶ 28-29. Plaintiffs allege that the “vast majority” of HELOC accounts processed  
24 through the 4506-T Program were “stated income” loans in which the borrower’s income had not  
25 been objectively verified at origination. 4AC ¶ 29. Plaintiffs further allege Chase’s awareness that  
26 comparing customers’ verified present incomes to their stated incomes would “be more likely to  
27 falsely demonstrate adverse changes in borrower financial conditions when none actually had  
28 occurred,” and intentionally used this method of DTI comparison to “increase the likelihood of

1 issuing a suspension.” 4AC ¶ 29, 33. Plaintiffs allege that their income had not materially  
2 decreased since origination of their HELOC, that they had never missed or been late with a  
3 payment on the HELOC, that their home had not significantly decreased in value, and that they had  
4 substantially paid down the principal balance on the account since origination. 4AC ¶ 31.

5 Plaintiffs allege that their HELOC contract allowed Chase to request “a current financial  
6 statement, a new credit application, or both,” but that this language did not authorize Chase to  
7 request the 4506-T form or paystubs, or to suspend their account when they failed to produce this  
8 information. 4AC ¶ 34. Plaintiffs allege that other potential class members’ HELOC agreements  
9 were silent about submission of additional information, and thus that Chase was not authorized to  
10 request such information from those customers, either. 4AC ¶ 34.

11 Based on these allegations, Plaintiffs define the following classes and subclasses:

12 Inability to Verify Class:

13 All HELOC borrowers nationwide who were parties to the Schulken HELOC  
14 Contract and whose HELOCs Chase blocked through the 4506-T Program when the  
15 customers did not provide either a complete IRS Form 4506-T, paystubs, or both,  
16 upon Chase’s request.

17 Inability to Verify California Subclass:

18 All Inability to Verify Class members whose homes securing the HELOCs are  
19 located in California.

20 Stated Income Class:

21 All heritage WaMu HELOC borrowers nationwide whose HELOCs were originated  
22 based on stated incomes but who were blocked by Chase at any time through the  
23 4506-T Program based upon a determination by Chase that the borrowers’ verified  
24 current financial information showed a material adverse change in financial  
25 circumstances from their stated incomes on file when they opened their accounts.

26 Stated Income California Subclass:

27 All Stated Income Class members whose homes securing the HELOCs are located  
28 in California.

Plaintiffs assert the following claims on behalf of these classes: 1) account reinstatement  
and statutory damages for TILA and Regulation Z violations on behalf of the Inability to Verify  
Class, based on the suspension of HELOCs due to customers’ failure to provide 4506-T forms,  
paystubs, or both; 2) alternatively, injunctive relief and a declaration that Chase violated TILA and  
Regulation Z based on violations asserted in the first claim; 3) HELOC reinstatement and statutory  
damages for TILA and Regulation Z violations on behalf of the Stated Income Class, based on the

1 use of verified current DTI as compared to unverified origination DTI as a basis for HELOC  
2 suspension; 4) alternatively, injunctive relief and a declaration that Chase violated TILA and  
3 Regulation Z based on violations asserted in the third claim; 5) HELOC reinstatement and statutory  
4 damages for TILA and Regulation Z violations on behalf of the Inability to Verify Class, based on  
5 insufficient notice of HELOC reductions; 6) HELOC reinstatement for breach of contract on behalf  
6 of the Inability to Verify Class; 7) HELOC reinstatement for breach of contract on behalf of the  
7 Stated Income class; and 8) injunctive relief for UCL violations on behalf of the California  
8 subclasses, based on unlawful and unfair acts as alleged in the other claims, and on additional  
9 alleged unfair and fraudulent acts.

10 III. LEGAL STANDARD

11 Under Federal Rule of Civil Procedure 15(a), a party may amend its pleading once as a  
12 matter of course within 21 days of serving it. Fed. R. Civ. Pro. 15(a)(1). After that initial period  
13 has passed, amendment is permitted only with the opposing party's written consent or leave of the  
14 court. *Id.* 15(a)(2). Rule 15 instructs that "[t]he court should freely give leave when justice so  
15 requires." *Id.* Although this rule "should be interpreted with extreme liberality, leave to amend is  
16 not to be granted automatically." *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990)  
17 (internal citation and quotation marks omitted). Courts commonly consider four factors when  
18 determining whether to grant leave to amend: (1) bad faith on the part of the movant; (2) undue  
19 delay; (3) prejudice to the opposing party; and (4) futility of the proposed amendment. *Foman v.*  
20 *Davis*, 371 U.S. 178, 182 (1962); *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980,  
21 986 (9th Cir. 1999). "[I]t is the consideration of prejudice to the opposing party that carries the  
22 greatest weight." *Eminence Capital*, 316 F.3d at 1052 (citing *DCD Programs*, 833 F.2d at 185).  
23 "Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a  
24 presumption under Rule 15(a) in favor of granting leave to amend." *Id.* (citation omitted). "The  
25 party opposing leave to amend bears the burden of showing prejudice." *Serpa v. SBC Telecomms.,*  
26 *Inc.*, 318 F. Supp. 2d 865, 870 (N.D. Cal. 2004) (citing *DCD Programs*, 833 F.2d at 187).

27 IV. DISCUSSION  
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1 Chase argues that Plaintiffs should be denied leave to amend their complaint to add the  
2 allegations and claims relating to Chase’s comparison of stated income and verified income. Chase  
3 moves on two grounds. First, Chase argues that Plaintiffs unreasonably delayed seeking to amend  
4 their complaint, because they knew that their own HELOC was suspended based on a comparison  
5 of verified and stated income as of April 2009 and therefore could have stated this claim much  
6 sooner. Second, Chase argues that it will be prejudiced if the Court allows the amendment,  
7 because it will lose the opportunity to challenge Plaintiffs’ individual claims in a dispositive  
8 motion to be decided before class certification.<sup>2</sup> Neither argument provides a sufficient basis for  
9 the Court to deny leave to amend.

10 a. Undue Delay

11 It does appear that Plaintiffs could have stated their claims based on the income  
12 comparisons sooner than they did. In the proposed 4AC, Plaintiffs allege that they were aware of  
13 the circumstances of their own HELOC suspension before the initial complaint was filed. See 4AC  
14 ¶¶ 27, 28 (“Mr. Schulken explained to Chase that the \$11,200 figure was inaccurate, that neither he  
15 nor his wife had ever provided such an inflated income figure to WaMu, and that if the Schulken’s  
16 loan file indicated such an income, then WaMu had intentionally misrepresented their income.”).  
17 Plaintiffs argue that they could not assert this theory until they had additional detail regarding the  
18 HELOC contracts of potential class members, which they did not obtain until “starting in February  
19 2011.” However, Plaintiffs submitted their first four complaints without the benefit of this  
20 discovery. It is not clear why the TILA and breach of contract claims asserted in the TAC could be  
21 pled without discovery of class members’ contracts while the income comparison claims could not.  
22 In addition, while Plaintiffs complain that Chase failed to produce discovery of putative class  
23 members’ contracts and its policies until starting early in 2011, it appears that Plaintiffs could have  
24 been more diligent in asserting their rights to discovery. For example, the Court granted-in-part  
25 and denied-in-part Chase’s third motion to dismiss in October, 2010. It is not clear why Plaintiffs  
26 waited until a CMC in February 2011 to raise deficiencies in Chase’s production with the Court.

27 \_\_\_\_\_  
28 <sup>2</sup> The Court set a deadline of April 7, 2011 for Chase to move for summary judgment on Plaintiffs’  
individual claims as pled in the TAC, but Chase did not file such a motion.

1 Even accepting Plaintiffs’ argument that they could not, in good faith, allege that Chase  
2 applied its policy of income comparison to the entire class until discovery of this policy, it still  
3 appears that Plaintiffs could have moved to amend their complaint before filing their motion for  
4 class certification. Chase points out that by April 8, 2011, Plaintiffs’ expert had articulated and  
5 opined on the income comparison theory. Surely if Plaintiffs’ expert could express his opinion of  
6 the theory by that time, Plaintiffs had a good faith basis to plead claims based on the theory. Had  
7 Plaintiffs moved to amend their complaint before submitting their motion for class certification,  
8 these issues could have been resolved before the deadline for filing a class certification motion.

9 Despite all of this, the Court finds that Plaintiffs’ delay is not so significant that leave to  
10 amend should be denied. Since the filing of the initial complaint, Chase has been on notice that  
11 Plaintiffs alleged Chase suspended HELOCs in the absence of a material change in customer  
12 income. The additional details Plaintiffs seek to add in the 4AC regarding comparison of stated  
13 and verified income flesh out a theory Plaintiffs have stated all along. Clearly, it would have been  
14 preferable for Plaintiffs to move to amend their complaint as soon as possible—and certainly  
15 before filing a motion for class certification asking the Court to certify classes that were not even  
16 described in the operative complaint. However, the fact that Plaintiffs moved to amend in a matter  
17 of days after their class certification motion was filed enabled the Court to address this issue before  
18 the class certification motion itself. Delay alone is not a sufficient ground to deny leave to amend.  
19 *See Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999) (“Undue delay by itself, however, is  
20 insufficient to justify denying a motion to amend.”).

21 Chase cites two cases in which courts denied motions for leave to amend class action  
22 complaints, but these cases are distinguishable. In one, discovery had been closed for nine months  
23 when the motion for leave to amend was filed, and the court noted it would likely need to be  
24 reopened if the amendments were allowed. *In re Taco Bell Wages and Hours Actions*, No. 1:07-  
25 cv-01314 OWW DLB, 2011 U.S. Dist. LEXIS 47758 at \*16-\*18 (E.D. Cal. May 3, 2011). In the  
26 other case, the court denied leave to amend not solely based on the plaintiff’s delay, but also  
27 because amendment would prejudice the defendant by vastly increasing the scope of discovery, and  
28 would be futile. *Mansfield v. Midland Funding, LLC*, No. 09cv358 L(WVG), 2011 U.S. Dist.



1 LEXIS 34102 at \*12-\*17 (S.D. Cal. Mar. 30, 2011). As discussed below, the Court rejects Chase’s  
2 argument that Chase will be prejudiced by the proposed amendment. Plaintiffs’ delay in moving to  
3 amend, by itself, is insufficient to deny leave to amend. *Bowles*, 198 F.3d at 758. However, the  
4 Court asks that both parties cooperate to avoid any further delays in this litigation. Such delays  
5 unnecessarily complicate case management and waste the resources of the Court and the parties.

6 b. Prejudice

7 Chase argues that it will be prejudiced if Plaintiffs are permitted to file their 4AC. Chase  
8 cites no authority for either of its prejudice arguments, and the Court does not find them  
9 persuasive.<sup>3</sup> Chase argues that because the deadline for filing summary judgment motions relating  
10 to the named Plaintiffs’ individual claims has passed, Chase will lose the opportunity to have such  
11 a motion regarding the income comparison claims determined before class certification is decided.<sup>4</sup>  
12 Although it would have been preferable to decide such a motion before considering class  
13 certification, this is not a sufficient basis to deny Plaintiffs leave to amend. Chase can move for  
14 summary judgment at any time before the November 17, 2011 deadline for dispositive motions.  
15 Because Chase has not yet had an opportunity to move for summary judgment of the Schulken’s  
16 individual income comparison claims, it may do so before the November 17, 2011 deadline.

17 Similarly, Chase argues the amendment will deprive it of the opportunity to bring a motion  
18 to dismiss the “income comparison” claims before class certification is decided. Chase has raised  
19 some of the arguments it says it might have brought in a motion to dismiss in its opposition to the  
20 motion for class certification (for example, its argument that the named Plaintiffs do not have  
21 standing to seek certain relief). The Court will address those arguments when it resolves the  
22 renewed class certification motion, if any. Chase also states its belief that Plaintiffs’ “income  
23 comparison” claims should be dismissed for failure to state a claim. However, Chase could have  
24 opposed leave to amend on the grounds of futility by demonstrating that Plaintiffs had failed to  
25 state a claim, but Chase chose not to. If Chase has a meritorious argument that the newly-added

26 <sup>3</sup> The Court notes that Chase has been on notice of Plaintiffs’ income comparison theory for several  
27 months. In its opposition, Chase admits that the income comparison theory was disclosed no later  
28 than April 8, 2011, when Plaintiffs served their expert report. *See* Opp’n at 4.

<sup>4</sup> As noted above, Chase was provided the opportunity to move for summary judgment on  
Plaintiffs’ claims in the TAC, but chose not to.

1 income comparison theory fails to state a claim, Chase may move to dismiss in lieu of answering  
2 the 4AC. However, Chase is cautioned against filing a meritless motion to dismiss. Three motions  
3 to dismiss have already been decided in this case.

4 c. Futility in Amendment

5 In its opposition to the class certification motion, Chase argued that Plaintiffs cannot seek  
6 equitable relief under TILA because such relief is not available as a matter of law. Although Chase  
7 did not raise this argument in its opposition to the motion for leave to amend, the Court will  
8 address it now because there is no point in granting leave to amend to claim relief that is not  
9 available. Chase relies on an opinion by the Eleventh Circuit holding that TILA does not allow  
10 equitable relief (such as injunctive or restitutionary relief). *Christ v. Ben. Corp.*, 547 F.3d 1292  
11 (11th Cir. 2008). The Eleventh Circuit noted that in enacting TILA, Congress “designated certain  
12 federal agencies, including the Federal Trade Commission, as the primary enforcement agencies of  
13 TILA, with the power to enforce compliance through ‘all of its functions and powers,’ including  
14 orders of restitution.” *Christ*, 547 F.3d at 1297 (internal brackets and citations omitted). In  
15 addition, Congress provided private rights of action to consumers, but limited the potential relief to  
16 actual damages, statutory damages, and attorney’s fees and costs.<sup>5</sup> *Id.* In the context of class  
17 actions, Congress further limited the potential relief by capping the recovery at “the lesser of  
18 \$500,000 or 1 per centum of the net worth of the creditor.” *Id.* In light of TILA’s “comprehensive  
19 statutory scheme of remedies” and Congress’s silence as to any equitable relief available to private  
20 litigants, the Eleventh Circuit found no implied right to injunctive or other equitable relief under  
21 TILA. *Id.*, 547 F.3d at 1289.

22 As Chase points out, numerous district courts outside the Eleventh Circuit have followed  
23 the Eleventh Circuit’s reasoning, or independently arrived at the same conclusion, and ruled that  
24 equitable relief is not available to individuals or classes asserting TILA violations. *See, e.g.*,  
25 *Watkinson v. MortgageIT, Inc.*, No. 10-CV-327 - IEG (BLM), 2010 U.S. Dist. LEXIS 53540 at  
26 \*32-33 (S.D. Cal. June 1, 2010) (relying on *Christ* and finding that equitable remedies of  
27 restitution and disgorgement are not available under TILA); *Volovnik v. Benzel-Busch Motor Car*

28 <sup>5</sup> In certain situations, other relief (such as rescission) is available. *See* 15 U.S.C. § 1635(a).

1 *Corp.*, No. 09 Civ. 10595 (DAB) (JLC), 2010 U.S. Dist. LEXIS 97046 at \*25-26 (S.D.N.Y. July  
2 29, 2010) (following the “trend among other courts” in finding enumerated TILA remedies  
3 exclusive); *Reeder v. HSBC USA, Inc.*, No. 09-cv-2043, 2009 U.S. Dist. LEXIS 114651 at \*26-27  
4 (N.D. Ill. Dec. 8, 2009) (relying on *Christ* and finding that TILA does not provide injunctive relief  
5 for class claims). In addition, courts in this district have relied on similar reasoning to find that  
6 other statutory remedies are exclusive. *See Yasin v. Equifax Info. Servs., LLC*, No. C-08-1234  
7 MMC, 2008 U.S. Dist. LEXIS 111051 at \*6-11 (N.D. Cal. July 16, 2008) (finding no implied right  
8 to equitable relief under the Fair Credit Reporting Act in part based on delegation of enforcement  
9 of the FCRA to federal agencies).

10 Judge Alsup, of this Judicial District, has held otherwise. In *Hofstetter v. Chase Home Fin.,*  
11 *LLC*, No. C 10-01313 WHA. 2011 U.S. Dist. LEXIS 38124 at \*27-\*28 (N.D. Cal. Mar. 31, 2011),  
12 Judge Alsup held that “[t]he cited TILA provision does not address equitable remedies, much less  
13 preclude them.” This Court respectfully disagrees with Judge Alsup, and finds the Eleventh  
14 Circuit’s reasoning in *Christ* persuasive. The Ninth Circuit has warned against reading too much  
15 into statutory silence, and that a court must “construe the details of an act in conformity with its  
16 dominating general purpose . . . read text in the light of context and . . . interpret the text so far as  
17 the meaning of the words fairly permits so as to carry out in particular cases the generally  
18 expressed legislative policy.” *Clark v. Capital Credit & Collection Servs.*, 460 F.3d 1162, 1169  
19 (9th Cir. 2006). If TILA simply provided a private right of action and the enumerated remedies, it  
20 would be harder to say whether Congress’ silence regarding injunctive relief for private actions  
21 indicated an intention to preclude such relief. But in light of TILA’s “comprehensive statutory  
22 scheme of remedies,” including designation of the FTC as the primary TILA enforcement agency,  
23 the Eleventh Circuit’s conclusion that Congress intentionally limited the remedies available to  
24 private parties bringing TILA claims gains support. *See Christ*, 547 F.3d at 1289. This conclusion  
25 is further supported by the fact that Congress has explicitly limited the remedies available in class  
26 actions asserting TILA claims. Plaintiffs characterize their claim to \$500,000 in statutory damages  
27 as “incidental” to an injunction requiring reinstatement of millions of dollars in HELOC accounts,  
28 but TILA says that \$500,000 is all Plaintiffs, as a class, can recover. 15 U.S.C. § 1640(a)(2)(B).

1 “In the few cases that have considered the applicability of Rule 23(b)(2) classes in a TILA context,  
2 classes have been rejected where monetary relief was the primary objective of the litigation.” 6  
3 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 21:9 (4th ed. 2002).

4 Plaintiffs’ first through fifth claims in the proposed 4AC seek injunctive relief based on  
5 asserted TILA violations. Because the Court concludes that Plaintiffs are not entitled to this relief  
6 as a remedy for a TILA violation, Plaintiffs’ request for leave to amend their complaint to claim  
7 injunctive relief for the asserted TILA violations is DENIED. Otherwise, Plaintiffs’ request for  
8 leave to amend is GRANTED.

9 V. CONCLUSION

10 Accordingly, Plaintiffs are GRANTED leave to amend their complaint as specified in the  
11 4AC, but must remove any claims to a right to injunctive relief based on violations of TILA or  
12 Regulation Z. Plaintiffs shall file their 4AC within **seven calendar days of the date of this**  
13 **Order**. In light of this Order, the briefing on the pending motion for class certification is largely  
14 focused on irrelevant issues. Accordingly, the Court DENIES the motion for class certification  
15 without prejudice. The hearing on this motion set for July 21, 2011 is hereby VACATED. The  
16 CMC scheduled to follow the hearing will go forward as planned. The parties shall come to the  
17 CMC prepared to discuss ADR.

18 Plaintiffs shall file any renewed motion for class certification within **21 days of the date of**  
19 **this Order**. In briefing a renewed motion for class certification, the Court would appreciate it if  
20 the parties would address whether Plaintiffs may seek injunctive relief for their breach of contract  
21 claims, and what subpart of Rule 23(b) Plaintiffs should move under to certify a class seeking  
22 statutory damages under TILA. The motion shall be briefed under the Civil Local Rules (meaning  
23 that the opposition is due 14 days after the motion is filed, and the reply is due 7 days after the  
24 opposition is filed). *See* Civ. L.R. 7-3. The class certification motion is set for hearing on October  
25 6, 2011 at 1:30 p.m. in courtroom eight on the fourth floor. Otherwise, the case schedule remains  
26 as set.

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**IT IS SO ORDERED.**

Dated: July 20, 2011

  
LUCY H. KOH  
United States District Judge