

1 **I. BACKGROUND**

2 The Carneros, a married couple, filed the instant action on October 1, 2009, alleging
3 federal and state law claims arising out of the refinancing of their home located at 1558
4 Minnesota Avenue, San Jose, California. On March 22, 2010, the Court dismissed the complaint
5 with leave to amend for failure to state a claim upon which relief could be granted. On April 22,
6 2010, the Carneros filed the operative FAC, alleging twenty-two claims for relief. Federal
7 subject matter jurisdiction appears to be based on the existence of a federal question, specifically,
8 the Carneros’ first claim for violation of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et*
9 *seq.*

10 **II. LEGAL STANDARD**

11 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed
12 against a defendant for failure to state a claim upon which relief may be granted against that
13 defendant. “Dismissal can be based on the lack of a cognizable legal theory or the absence of
14 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901
15 F.2d 696, 699 (9th Cir. 1990). For purposes of evaluating a motion to dismiss, the court “must
16 presume all factual allegations of the complaint to be true and draw all reasonable inferences in
17 favor of the nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

18 However, mere conclusions couched in factual allegations are not sufficient to state a
19 cause of action. *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *see also McGlinchy v. Shell Chem.*
20 *Co.*, 845 F.2d 802, 810 (9th Cir. 1988). The complaint must plead “enough facts to state a claim
21 to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A
22 claim is plausible on its face “when the plaintiff pleads factual content that allows the court to
23 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*
24 *v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). Thus, “for a complaint to survive a motion to dismiss, the
25 non-conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly
26 suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962,
27 969 (9th Cir. 2009).

1 **III. DISCUSSION**

2 Although the FAC is fifty-four pages in length (excluding exhibits), it – like the original
3 complaint – fails to allege clearly the sequence of events giving rise to this lawsuit. Rather, the
4 FAC jumps around chronologically to such an extent that the Court is at a loss to understand
5 which loan is at issue and what each defendant is alleged to have done with that loan – in short,
6 what happened. Moreover, the FAC refers the reader to the original complaint for background or
7 clarification on some points. This manner of pleading is not permitted. An amended complaint
8 must be a complete document in and of itself, and may not refer the reader to exhibits or
9 allegations contained in an earlier version of the pleading. *See* Civ. L.R. 10-1 (“Any party filing
10 or moving to file an amended pleading must reproduce the entire proposed pleading and may not
11 incorporate any part of a prior pleading by reference.”); *see also Loux v. Rhay*, 375 F.3d 55, 57
12 (9th Cir. 1967) (“The amended complaint supersedes the original, the latter being treated
13 thereafter as non-existent”).

14 Because the Court cannot make any meaningful assessment of the Carneros’ claims as
15 they presently are drafted, the Court will dismiss the FAC with leave to amend. While it is
16 reluctant to set a page limit on the Carneros’ pleading, the Court suggests strongly that the
17 complaint be limited to approximately ten or twelve pages. Federal Rule of Civil Procedure 8
18 requires that for each claim asserted, the plaintiff must set forth “a short and plain statement of
19 the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Each allegation
20 must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). It would be helpful to the Court if
21 the Carneros were to describe the circumstances surrounding the loan at issue in simple,
22 straightforward language. The Carneros’ numerous general allegations regarding the mortgage
23 industry are not useful and add nothing to their claims.

24 In offering guidance with respect to amendment, the Court will focus on the only federal
25 claim alleged, which is for violation of TILA. Unless and until the Carneros state a viable
26 federal claim, this Court declines to exercise supplemental jurisdiction over their state law
27 claims. *See Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805-06 (9th Cir.
28 2001).

1 It is important that the Carneros explain precisely what role each defendant played in the
2 loan transaction at issue, and how each defendant’s actions violated particular provisions of
3 TILA. If the loan transaction was completed more than one year before the Carneros filed this
4 lawsuit, their TILA damages claims likely are barred by the one-year statute of limitations. *See*
5 15 U.S.C. § 1640(e). Ordinarily, the one-year limitations period begins to run when the
6 transaction underlying the violation is “consummated.” *King v. California*, 784 F.2d 910, 915
7 (9th Cir. 1986). However, “the doctrine of equitable tolling may, in the appropriate
8 circumstances, suspend the limitations period until the borrower discovers or had reasonable
9 opportunity to discover the fraud or nondisclosures that form the basis of the TILA action.”
10 *King*, 784 F.2d at 915. The district court must evaluate a request for equitable tolling to
11 determine if application of the one-year limitations period “would be unjust or frustrate the
12 purpose of the Act.” *Id.* If the Carneros believe that equitable tolling applies to this case, they
13 must allege when they discovered the fraud or nondisclosures at issue, why they did not discover
14 such fraud or nondisclosures earlier, and how application of the one-year limitations period
15 would be unjust or frustrate the purposes of TILA.

16 If the Carneros seek rescission of the loan, they must allege that they have the present or
17 future ability to tender all of the loan proceeds. *See Powell v. Residential Mortg. Capital*, C 09-
18 4928 JF (PVT), 2010 WL 2133011, at *4-5 (N.D. Cal. May 24, 2010) (explaining this Court’s
19 rationale for requiring a plaintiff to allege an ability to tender before permitting the plaintiff to
20 pursue a TILA rescission claim).

21 As discussed above, any amended complaint must be complete in and of itself, meaning
22 that it should not refer to prior pleadings and that all exhibits referenced in the amended
23 complaint shall be attached thereto. If the Carneros once again fail to allege a viable federal
24 claim, the Court will dismiss this action without leave to amend.²

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26 ² After Jose and Marta made their appearances at the hearing, a third individual stated that
27 he also was present on behalf of Plaintiffs. It is unclear who this individual is; Jose and Marta
28 are the only named plaintiffs in this action, and they are representing themselves *pro se*. If this
individual asserts a legal interest in this action, he should be added as a named plaintiff.

1 **IV. ORDER**

2 (1) The motions to dismiss are GRANTED, WITH LEAVE TO AMEND; and

3 (2) Any amended complaint shall be filed and served on or before August 23, 2010.

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7 DATED: 7/22/2010

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11 JEREMY FOGEL
12 United States District Judge
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1 Copies of Order served on:

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