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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMIE WOODSON, an individual;
SABINE WOODSON, an individual,

Plaintiffs,

vs.

COUNTRYWIDE HOME LOANS, a
foreign corporation authorized to do
business in California, and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 09cv2707-LAB (JMA)

**ORDER ON DEFENDANT'S
MOTION TO DISMISS**

This is the rare case that alleges violations of the Truth in Lending Act ("TILA") in home loan documents, but doesn't involve a home in or facing foreclosure. In fact, the Plaintiffs' home doesn't exist any longer. It was destroyed in a wildfire that ravaged southern California in the fall of 2007. Plaintiffs discovered the alleged TILA violations, they say, when they were living in a rental home and trying to determine how to finance the building of a new home on their torched property.

I. Factual Background

Until it was destroyed, the Woodsons owned a home at 17116 El Vuelo in Rancho Sante Fe, California. They obtained two loans from Countrywide in January of 2007, using the property as collateral. The first loan, obtained on January 15, 2007, was a refinance loan

1 for \$2 million. The second loan, obtained on January 19, 2007¹, was a home equity line of
2 credit for \$800,000.² After their home burned, the Woodsons received \$500,000 from their
3 insurance company, all of which was applied to the second loan.

4 On January 7, 2009, the Woodsons' lawyer wrote to Countrywide with a "loan audit"
5 detailing various failures to disclose and overstatements in the loan documents. (Compl. Ex.
6 1.) The letter threatened rescission of the loans, but proposed instead a "loan subordination"
7 on the following terms:

8 [O]ur clients would accept a settlement of their claims by way of
9 a subordination of the first priority Countrywide loan to a new
10 construction loan for the reconstruction of their home. This
11 subordination would entail the payoff in full of the second priority
12 Countrywide loan at the time of the subordination. The
13 proposed construction loan would be in the amount of
14 \$4,000,000 and would be made by La Jolla Bank and Trust . . .
In light of this, we would propose that the remaining loan's
interest rate be modified to a fixed interest rate of 4.5% for the
balance of the term of the loan. This adjustment would be
sufficient to allow our clients to continue to hold the property
pending construction of their new home and to be able to pay
principal and interest payments on a monthly basis

15 (*Id.*) Countrywide either failed to respond to the January 7, 2009 letter or else responded
16 in the negative.³

17 The Woodsons' lawyer followed up with a second letter on May 19, 2009. (Compl.
18 Ex. 2.) That letter asserted and exercised a right to rescind the loans under TILA, voiding
19 Countrywide's security interest in their property. The letter also represented that the
20 Woodsons were prepared to tender the amount due under the loans. Finally, the letter
21 offered, for the second time, to renegotiate the first priority loan in lieu of rescission.⁴ Again,
22 Countrywide either failed to respond or else declined the Woodsons' overtures.

24 ¹ The complaint (¶ 19) says the second loan was obtained on January 19, 2009, which
25 the Court presumes is an error.

26 ² That the first loan was a refinance loan and the second a home equity line of credit
the Court gathers from Countrywide's motion to dismiss.

27 ³ The record isn't clear on this point.

28 ⁴ The first letter proposed a renegotiated fixed interest rate of 4.5%, and the second
letter proposed a rate of 4.625%.

1 **II. Procedural History**

2 The Woodsons filed the present lawsuit on October 12, 2009. It was removed to
3 federal court on December 3, 2009. The Woodsons state six causes of action. The first and
4 second allege violations of TILA and the California Business and Professions Code,
5 respectively. The third cause of action seeks declaratory relief. The fourth cause of action
6 alleges predatory lending in violation of the California Financial Code. The fifth and sixth
7 causes of action allege fraud and negligent misrepresentation, respectively.

8 Countrywide filed a motion to dismiss the Woodsons' complaint, and, in the
9 alternative, a motion to strike portions of it, on December 10, 2009. Countrywide's stance
10 is that the TILA and other violations the Woodsons allege are concocted in order to force the
11 loan subordination and modification that the Woodsons need if they're to afford the
12 construction of a new home on their property.

13 **III. Legal Standard**

14 A rule 12(b)(6) motion to dismiss for failure to state a claim challenges the legal
15 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In
16 considering such a motion, the Court accepts all allegations of material fact as true and
17 construes them in the light most favorable to the non-moving party. *Cedars-Sinai Med. Ctr.*
18 *v. Nat'l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007). A complaint's
19 factual allegations needn't be detailed, but they must be sufficient to "raise a right to relief
20 above the speculative level . . ." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
21 "[S]ome threshold of plausibility must be crossed at the outset" before a case can go
22 forward. *Id.* at 558 (internal quotations omitted). A claim has "facial plausibility when the
23 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
24 defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, — U.S. —, 129 S.Ct. 1937,
25 1949 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks
26 for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

27 While a court must draw all reasonable inferences in the plaintiff's favor, it need not
28 "necessarily assume the truth of legal conclusions merely because they are cast in the form

1 of factual allegations.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir.
2 2003) (internal quotations omitted). In fact, no legal conclusions need to be accepted as
3 true. *Ashcroft*, 129 S.Ct. at 1949. A complaint doesn’t suffice “if it tenders ‘naked
4 assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* That includes a mere formulaic
5 recitation of the elements of a cause of action; this will not do either. *Bell Atlantic Corp.*, 550
6 U.S. at 555. The general point of these pleading requirements is to “give the defendant fair
7 notice of what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355
8 U.S. 41, 47 (1957).

9 **IV. Discussion**

10 The Court will consider the Woodsons’ claims in sequence.

11 **A. Truth in Lending Act Claims**

12 The Woodsons’ first cause of action alleges violations of TILA. They seek rescission
13 of the loans as well as actual damages, statutory damages, and costs. (Compl. ¶ 32.)

14 **1. Timeliness Concerns - Damages**

15 Claims for damages under TILA must be brought “within one year from the date of the
16 occurrence of the violation.” 15 U.S.C. § 1640(e). The Woodsons’ loans were executed on
17 January 15 and 19, 2007. To the extent they seek damages for “Defendants’ failure to
18 deliver all the material disclosures required by the Truth in Lending Act” (Compl. ¶ 30), the
19 claim is time-barred. It was due on January 19, 2008.

20 The failure to rescind, however, “is itself a separate violation” of TILA for which
21 damages are available. *In re Ameriquest Mortg. Co. Mortg. Lending Practices Litig.*, No. 05-
22 CV-7097, 2007 WL 1832113 at *1 (N.D. Ill. June 25, 2007). Specifically,

23 Where a creditor refuses to cancel a loan after receiving timely
24 notice of rescission, the creditor violates TILA . . . Pursuant to 15
25 U.S.C. § 1640(e), the obligor has one year from the date of
refusal to file suit for damages arising out of the failure to
rescind.

26 *Brewer v. IndyMac Bank*, 609 F.Supp.2d 1104, 1114 (E.D. Cal. 2009). To the extent the
27 Woodsons seek damages *only* for Countrywide’s failure to rescind the loans (Compl. ¶ 31),
28 and not for the alleged non-disclosures and overstatements that gave rise to the asserted

1 right to rescind, the claim is not time-barred. The Woodsons' notice of rescission is dated
2 May 19, 2009,⁵ and "within 20 days after receipt of a notice of rescission, the creditor shall
3 return to the obligor any money or property given as earnest money, downpayment, or
4 otherwise, and shall take any action necessary or appropriate to reflect the termination of
5 any security interest created under the transaction." 15 U.S.C. § 1635(b). That means that
6 the one-year statute of limitations began to run 21 days after May 19, 2009, or June 9, 2009.
7 This lawsuit was filed on October 12, 2009, just four months later. The Woodsons' claim for
8 damages based upon a failure to rescind the loans is therefore timely.⁶

9 2. **Timeliness Concerns - Rescission**

10 TILA gives borrowers the right to rescind a loan transaction "until midnight of the third
11 business day following the consummation of the transaction." 15 U.S.C. § 1635.
12 Countrywide argues that it's too late for the Woodsons to rescind the loans because they
13 were executed more than three days ago; in fact, they were executed more than two *years*
14 ago.

15 Countrywide must know, however, that a borrower's right of rescission expires three
16 *years* after the date of consummation of a transaction if the borrower doesn't receive the
17 notices and material disclosures that TILA requires. 15 U.S.C. § 1635(f); 12 C.F.R. §
18 226.23(a)(3). The Woodsons allege TILA violations that would have the effect of activating
19 this extension, and they initiated this lawsuit within three years of January 19, 2007, the loan
20 consummation date. Their claim for rescission, assuming the underlying TILA violations are
21 adequately pled, is therefore timely.

23 ⁵ Countrywide actually disputes that the May 19, 2009 letter was a valid rescission
24 notice, an issue to be addressed below.

25 ⁶ Countrywide accuses the Woodsons of switching theories, first arguing, in their
26 complaint, that they are entitled to damages for underlying TILA violations, and then arguing,
27 in their opposition brief, that they are entitled to damages for Countrywide's failure to rescind
28 the loans because of the underlying TILA violations. As the Court reads the Woodsons' complaint, however, both theories are articulated. Paragraph 30 seeks damages for Countrywide's alleged "failure to deliver all the material disclosures required by the Truth in Lending Act," and paragraph 31 claims damages for "Defendants' failure to take the action necessary and appropriate to reflect the termination of the security interest within 20 days after Plaintiffs' rescission of the transaction."

1 **3. Rescission - Offer to Tender**

2 Countrywide argues that the Woodsons’ rescission claim — and, presumably, its
3 claim for damages for Countrywide’s failure to rescind — must fail because the Woodsons
4 “have failed to allege that they have tendered the loan proceeds to Countrywide.” Not only
5 that, Countrywide argues that the Woodsons’ *offer* to tender the loan proceeds is insufficient
6 because it is conditional. The May 19, 2009 rescission letter sent to Countrywide by the
7 Woodsons’ lawyer stated, “Our clients are prepared to tender an amount due after
8 appropriate credits are made by you to the subject account.” (Compl. Ex. 2.) The
9 Woodsons’ complaint states, “Plaintiffs are prepared to tender a principal amount after the
10 appropriate credits are made for interest, finance charges and any other fees or payments
11 applicable under the statute.” (Compl. ¶ 27.) Finally, the complaint’s prayer for relief seeks

12 [a]n order that, because Defendants failed to act in response to
13 Plaintiffs’ notice of Rescission, Plaintiffs have no duty to tender
14 the loan proceeds to Defendants, but in the alternative, if tender
15 is required, a determination of the amount of the tender
obligation in light of all of the Plaintiffs’ claims, and an order
requiring the Defendants to accept tender on reasonable terms
and over a reasonable period of time.

16 (Compl. p. 16.) Countrywide also points out that the May 19, 2009 letter contained the
17 heading “REQUEST FOR LOAN MODIFICATION (*And Notice of Rescission*),” and gave
18 Countrywide 30 days to respond (rather than the 20-day period required by TILA), which
19 undermines, arguably, the Woodsons’ claim that the letter was a plain and proper rescission
20 notice.

21 There is no need for further analysis. This Court has already found that an almost
22 identical complaint filed by the Woodsons’ lawyer in another case (following an almost
23 identical rescission letter sent to the defendant lender) did an inadequate job of pleading
24 facts that would establish an ability to tender. *See Cook v. Wells Fargo Bank*, No. 09-CV-
25 2757, 2010 WL 1289892 at *4 (Mar. 26, 2010). The plaintiffs in that case alleged in their
26 complaint that they were “prepared to tender a principal amount after the appropriate credits
27 are made for interest, finance charges and any other fees or payments applicable under the
28 statute.” *Id.* Their prayer for relief sought an order that “Plaintiffs have no duty to tender the

1 loan proceeds to Defendant, but in the alternative, if tender is required, a determination of
2 the amount of the tender obligation in light of all of Plaintiffs' claims, and an order requiring
3 the Defendant to accept tender on reasonable terms and over a reasonable period of time."

4 *Id.* The rescission letter stated, "Our clients are prepared to tender an amount due after
5 appropriate credits are made by you to the subject account." The exact same pleadings
6 appear in this case, and faced with them in *Cook* Judge Hayes concluded,

7 The Complaint's allegation that Plaintiffs 'are prepared to tender
8 a principal amount' is a conclusory statement and fails to meet
9 Plaintiffs' burden of alleging the factual basis of their entitlement
10 to relief. Plaintiffs have alleged a willingness, or 'preparedness,'
11 to tender, but have not pled facts that would establish their ability
to tender. Plaintiffs have thus failed to provide '[f]actual
allegations . . . enough to raise [their] right to relief above the
speculative level' as to their TILA claims. See *Bell Atl. Corp. v.*
Twombly, 550 U.S. 544, 555 (2007).

12 *Id.* at *5. The Woodsons note in their opposition brief that their case "is unlike the majority
13 of truth in lending cases brought before California Courts in that the Woodson's [sic] are
14 **actually ready and willing to tender the entire amount of the borrowed funds** in the
15 event that the Court determines that it is necessary." (Opp'n Br. at 6.) Be that as it may,
16 there is no difference between the pleadings in this case and the pleadings in *Cook* that
17 justify a different decision here on the question of tender. The Woodsons' TILA claims are
18 dismissed without prejudice.

19 **B. Remaining Claims**

20 Judge Hayes's decision in *Cook* continues to be helpful with respect to the Woodsons'
21 remaining claims. In short, the Court needn't reach them because, with the Woodsons' TILA
22 claim gone, the Court lacks jurisdiction over the remaining claims in the complaint. The
23 Notice of Removal asserts federal question jurisdiction pursuant to 28 U.S.C. § 1331 in
24 virtue of the TILA claims, and supplemental jurisdiction over the Woodsons' state law claims;
25 there is no apparent basis for diversity jurisdiction. See *Ove v. Gwinn*, 264 F.3d 817, 826
26 (9th Cir. 2001) ("A court may decline to exercise supplemental jurisdiction over related state-
27 law claims once it has dismissed all claims over which it has original jurisdiction.").

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1 **V. Conclusion**

2 Countrywide's motion to dismiss is **GRANTED WITH LEAVE TO AMEND**. The
3 Woodsons have thirty days from the date this order is entered to file an amended complaint.

4 A few admonitions:

5 First, the Woodsons obviously filed the same boilerplate complaint that their lawyer
6 has used in other cases he has litigated or is litigating. The Court frowns upon that. The
7 Court expects, and Countrywide is entitled to, a fresh complaint that is perfectly tailored to
8 the facts of this case. A boilerplate complaint, when recognized as such, immediately
9 detracts from the seriousness with which anyone can be reasonably expected to take a
10 plaintiff's case. Frankly, it makes it appear that a case is driven more by a lawyer's business
11 model than by a client's actual interests.

12 Second, the Woodsons are advised to read the *Bell Atlantic* and *Iqbal* decisions
13 insofar as they address pleading standards that a complaint must meet in order to survive
14 a motion to dismiss. *Conley v. Gibson*, which the Woodsons cite in their opposition brief,
15 is no longer the best law on this issue.

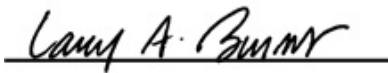
16 Third, the Woodsons allege a number of deficiencies (nondisclosures,
17 understatements, etc.) in the loan documents provided by Countrywide. In their amended
18 complaint, they should make clear what statutes each alleged deficiency violates.

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20 **IT IS SO ORDERED.**

21 DATED: June 23, 2010

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HONORABLE LARRY ALAN BURNS
United States District Judge

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