

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CHIAKI MASHBURN and TADAAKI
10 HAYAKAWA

CASE NO. C11-0179-JCC

11 Plaintiff,

ORDER

12 v.

13 WELLS FARGO BANK, NA,

14 Defendant.

15 This matter comes before the Court on Defendant's motion for summary judgment and
16 alternative motion to dismiss (Dkt. No. 10), Plaintiffs' response (Dkt. No. 15), and Defendant's
17 reply (Dkt. No. 17). Having thoroughly considered the parties' briefing and the relevant record,
18 the Court hereby GRANTS the motion for the reasons explained herein.

19 **I. BACKGROUND**

20 In 2007, Plaintiffs Tadaaki Hayakawa and Chiaki Mashburn jointly owned property
21 located at 13320 SE 44th Place, Bellevue, WA. (Dkt. No. 15 at 1.) On July 20, 2007, Plaintiff
22 Hayakawa signed a quitclaim deed, conveying his interest in the property to his daughter,
23 Plaintiff Mashburn. (*Id.*) Plaintiffs recorded the quitclaim deed on August 7, 2007. (*Id.*) On July
24 31, 2007, Plaintiff Mashburn individually obtained a refinance loan from World Savings Bank,
25 F.S.B., and signed a deed of trust granting the bank a first position lien against the property to
26 secure the loan. (*See* Dkt. No. 12-1.) On July 31, 2007, Plaintiff Mashburn also received and

1 signed a notice of right to cancel that informed her that she could cancel or rescind the loan until
2 midnight on August 3, 2007. (*See* Dkt. No. 12-3.)

3 Plaintiff Mashburn defaulted on her loan in 2009. Following her default, Plaintiff
4 Mashburn began a loan modification application, but she failed to respond to at least two written
5 requests from Defendant Wells Fargo Bank asking her to supply required information. (*See* Dkt.
6 No. 13 at 2.) In July 2010, Plaintiff Mashburn submitted a request to rescind the loan. (Dkt. No.
7 15 at 3.) Defendant denied her request as untimely. (Dkt. No. 10 at 2.) In November 2010,
8 Plaintiff Mashburn requested information in the form of a qualified written request under the
9 Real Estate Settlement Procedures Act (RESPA) and again asked to rescind her loan. (*Id.* at 3.)
10 Defendant replied, providing explanations and loan information and denied her rescission
11 request. (*Id.*)

12 **II. DISCUSSION**

13 Summary judgment is appropriate when “there is no genuine dispute as to any material
14 fact and the movant is entitled to judgment as a matter of the law.” Fed. R. Civ. P. 56(a). A
15 defendant is entitled to move for summary judgment by alleging that the nonmoving party has
16 failed to make a sufficient showing on an essential element of his or her case. *Celotex Corp. v.*
17 *Catrett*, 477 U.S. 317, 323 (1985). To overcome such a motion, the plaintiff bears the burden of
18 producing evidence with respect to the identified element. “One of the principal purposes of the
19 summary-judgment rule is to isolate and dispose of factually unsupported claims or defenses.”
20 *Id.* at 323.

21 Rule 12(b)(6) of the Federal Rules of Civil Procedure allows a party to test the formal
22 sufficiency of an opponent’s claim for relief by bringing a motion to dismiss for failure to state a
23 claim. “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
24 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, ---
25 U.S. ---, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
26 (2007)). A complaint has stated a claim “plausible on its face” when it “pleads factual content

1 that allows the court to draw the reasonable inference that the defendant is liable for the
2 misconduct alleged.” *Id.* In reviewing Defendant’s motion, then, the Court accepts all factual
3 allegations in the complaint as true and draws all reasonable inferences from those facts in favor
4 of Plaintiff. *Al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009). However, “conclusory
5 allegations of law and unwarranted inferences will not defeat an otherwise proper motion to
6 dismiss.” *Vasquez v. L.A. Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007). Although Rule 12(b)(6)
7 does not require courts to assess the probability that a plaintiff will eventually prevail, the
8 allegations made in the complaint must cross “the line between possibility and plausibility of
9 ‘entitlement to relief’”: if the facts are merely consistent with Defendant’s liability but cannot
10 ground a reasonable inference that Defendant actually is liable, the motion to dismiss will
11 succeed. *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 557).

12 **A. Plaintiff Hayakawa’s Claims**

13 Defendant alleges that Plaintiff Hayakawa lacks standing under all of the federal statutory
14 claims asserted in Plaintiffs’ complaint and under all of the state law claims, since those claims
15 depend entirely on the federal statutory claims. (Dkt. No. 10 at 4–5.) Specifically, Defendant
16 contends that Plaintiff Hayakawa lacks standing because he was not an “obligor” under the Truth
17 in Lending Act (TILA), a “borrower” under RESPA, or an “applicant” under the Equal Credit
18 Opportunity Act (ECOA). (*Id.*) The Court agrees.

19 TILA requires a creditor to disclose certain terms, charges, and other items related to a
20 credit transaction “to the person who is obligated on a consumer lease or a consumer credit
21 transaction.” 15 U.S.C. § 1631(a). When the consumer credit transaction is secured by the
22 “principal dwelling of the person to whom credit is extended,” the creditor must disclose to the
23 obligor that “the obligor shall have the right to rescind the transaction until midnight of the third
24 business day following the consummation of the transaction.” 15 U.S.C. 1635(a). If the creditor
25 does not make the proper disclosures to the obligor, the “obligor’s right of rescission shall expire
26 three years after the date of consummation of the transaction or upon the sale of the property.” 18

1 U.S.C. 1635(f). The right of rescission extends to “each consumer whose ownership interest is or
2 will be subject to the security interest.” 12 C.F.R § 226.15(a).

3 Plaintiffs allege that Plaintiff Hayakawa had an ownership interest in the property at the
4 time the property was refinanced, thus requiring Defendant to notify Plaintiff Hayakawa of his
5 right to rescind. (Dkt. No. 15 at 2–3.) However, on July 20, 2007, Plaintiff Hayakawa conveyed
6 the property to Plaintiff Mashburn by signing a quitclaim deed. (*Id.* at 1.) While the quitclaim
7 deed was not recorded until August 7, 2007 (a week after the refinancing), the recordation date is
8 irrelevant. In Washington, a quitclaim deed conveys all of the grantor’s interest in property upon
9 delivery of the deed unless the deed provides for the reservation of rights. *See* Wash. Rev. Code
10 § 64.04.050. Recordation is not mandatory for a deed to be valid and enforceable. *See* Wash.
11 Rev. Code § 65.08.070 (“A conveyance of real property . . . *may* be recorded in the office of the
12 recording officer of the county where the property is situated.”) (emphasis supplied). The
13 purpose of recordation is “to make a deed recorded first superior to any unrecorded conveyance
14 of the property unless there is actual knowledge of an unrecorded transfer.” *Altabet v. Monroe*
15 *Methodist Church*, 777 P.2d 544, 545 (Wash. Ct. App. 1989). Thus, when Plaintiff Mashburn
16 refinanced the loan on July 31, 2007, Plaintiff Hayakawa no longer had an interest in the
17 property and had no right to rescind the transaction. Accordingly, Defendant was not required to
18 notify Plaintiff Hayakawa of a right to rescind when he had no such right. Since Plaintiff
19 Hayakawa was not an obligor on the loan and had no right of rescission, Plaintiff Hayakawa does
20 not have standing to bring the present TILA claim.

21 Plaintiff Hayakawa also does not have standing to bring the RESPA or ECOA claims
22 since he was not a borrower and did not apply for a loan. RESPA requires creditors to make
23 certain disclosures and respond to certain inquiries by borrowers, including responding to
24 qualified written requests by borrowers. *See* 12 U.S.C. § 2605. Plaintiff Mashburn was the only
25 borrower on the loan at issue. (*See* Dkt. No. 12-1 at 2.) Plaintiff Hayakawa was not a borrower
26 and, thus, was not entitled to receive any disclosures or responses from Defendant under RESPA.

1 ECOA prohibits discrimination against applicants to credit transactions. 15 U.S.C. § 1691. Under
2 ECOA, the term “applicant” means “any person who applies to a creditor directly for an
3 extension, renewal, or continuation of credit or applies to a creditor indirectly by use of an
4 existing credit plan for an amount exceeding a previously established credit limit.” 15 U.S.C. §
5 1691a(b). Only Plaintiff Mashburn applied for the loan at issue. Plaintiff Hayakawa was neither a
6 borrower nor an applicant and is not entitled to any relief under RESPA or ECOA.

7 Since Plaintiff Hayakawa was not a borrower, applicant for a loan, and had no interest in
8 the property, he also has no standing to bring the other claims in the complaint, all of which rely
9 upon the assumption that he had an interest in the property or was a borrower or applicant for the
10 loan. Accordingly, the Court dismisses with prejudice all of Plaintiff Hayakawa’s claims for lack
11 of standing.

12 **B. Plaintiff Mashburn’s Claims**

13 **1. TILA Rescission Claim**

14 Plaintiff Mashburn’s TILA rescission claim is time-barred. TILA provides borrowers
15 with the right to rescind certain consumer transactions. 15 U.S.C. § 1635(a). The rescission right
16 extends to “each consumer whose ownership interest is or will be subject to the security
17 interest.” 12 C.F.R. § 226.15(a). If each such consumer receives notice of his rescission right in
18 accordance with 12 C.F.R. § 226.15(b), the right to rescind expires at midnight of the third
19 business day following the consummation of the credit transaction. 15 U.S.C. § 1635(a). If each
20 consumer is not properly provided notice of his rescission right, his right of rescission expires
21 three years after the consummation of the transaction or upon the sale of the property, whichever
22 occurs first. 15 U.S.C. § 1635(f).

23 Here, Plaintiff Mashburn does not dispute that Defendant provided her with the requisite
24 two copies of the notice of right to cancel.¹ (*See* Dkt. No. 16 at 2.) However, Plaintiffs contend

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26 ¹ While Plaintiffs’ response states that Plaintiff Mashburn denies the presumption that she
received two copies of the notice of right to cancel, Plaintiff Mashburn’s declaration, which was

1 that Plaintiff Hayakawa retained an interest in the property at the time of the refinancing and,
2 thus, that Defendant was required to provide Plaintiff Hayakawa with notice of his rescission
3 right. (Dkt. No. 15 at 3.) However, as discussed above, Plaintiff Hayakawa conveyed any interest
4 he had in the property to Plaintiff Mashburn on July 20, 2007, when he signed the quitclaim
5 deed. Thus, Plaintiff Hayakawa had no interest in the property at the time of the refinancing and
6 no rescission right. Defendant was not required to provide him notification of a right that he did
7 not possess. Accordingly, Plaintiff Mashburn's rescission right expired on August 3, 2007, the
8 third business day after the consummation of the refinancing. Plaintiff's requests in July and
9 November 2010 to rescind the transaction were untimely. The Court grants Defendant summary
10 judgment on Plaintiffs' TILA rescission claim.

11 **2. Claims Relying Entirely on TILA Rescission Claim**

12 Plaintiffs' first cause of action is for breach of contract, breach of covenant of good faith
13 and fair dealing, and specific performance. (Dkt No. 1 at 7.) The first cause of action relies
14 entirely on Plaintiffs' claim that Defendant failed to provide the requisite disclosures and that
15 Defendant wrongfully rejected Plaintiff Mashburn's rescission requests in July and November
16 2010. However, as the Court concluded above, Plaintiffs' rescission request was untimely and,
17 thus, Plaintiffs' TILA rescission claim fails. Since Plaintiffs' TILA claims fail, Plaintiffs' first
18 cause of action, which is completely dependent on the TILA claim also fails. Defendant did not
19 breach a contract with Plaintiffs, did not breach a covenant of good faith and fair dealing, and
20 Plaintiffs are not entitled to specific performance. Accordingly, the Court grants Defendant
21 summary judgment on Plaintiffs' first cause of action.

22 Plaintiffs' fourth cause of action for declaratory relief, fifth cause of action to quiet title,
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24 attached to the response, states exactly the opposite. In her declaration, Plaintiff Mashburn
25 declares, under penalty of perjury, that she "received two copies of the Notice of Right to
26 Cancel." (Dkt. No. 16 at 2.) Additionally, at the time of the execution of the refinancing, Plaintiff
specifically acknowledged in writing that she received the two copies. (Dkt. No. 12-3 at 2.) The
Court accepts her declaration and signed acknowledgement as true.

1 sixth cause of action for slander of title, and seventh cause of action for violation of the Federal
2 Fair Debt Collections Practices Act similarly rely entirely on Plaintiffs' assumption that they
3 were entitled to a rescission of the agreement. (*See* Dkt. No. 1 at 13–16.) Since the Court
4 concluded that Plaintiffs' rescission request was untimely, the Court grants Defendant summary
5 judgment on Plaintiffs' fourth, fifth, sixth, and seventh causes of action.

6 **3. TILA Damages Claim**

7 Plaintiffs allege a number of other TILA violations, including failure to state due dates of
8 payments, failure to include an itemization of amount financed, and failure to state the number of
9 payments that Plaintiff Mashburn was to make under the loan. (Dkt. No. 1 at 11–12.) However,
10 Plaintiffs' TILA damages claim is time barred.

11 An action under TILA must be brought “within one year from the date of the occurrence
12 of the violation.” 15 U.S.C. § 1640(e); *see also* *Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001,
13 1007 (9th Cir. 2008) (applying a one-year limitations period for TILA claims). In *Meyer v.*
14 *Ameriquist Mortg. Co.*, 342 F.3d 899 (9th Cir. 2003), the Ninth Circuit affirmed summary
15 judgment dismissing a TILA claim as time barred. The court reasoned that, because the failure to
16 make the required disclosures occurred, if at all, at the time the loan documents were signed, the
17 plaintiffs were in full possession of all information relevant to the discovery of a TILA violation
18 on the day that the loan papers were signed and the limitations period expired one year from that
19 day. *Id.* at 902.

20 Similarly, Plaintiffs in this case were in full possession of all information relevant to the
21 alleged TILA violation on July 31, 2007, the day that Plaintiff Mashburn signed the loan papers.
22 Thus, the limitations period expired one year later on July 31, 2008. Plaintiffs initiated the
23 present action in February 2011, more than two years after the limitations period expired.
24 Plaintiffs' TILA damages claim is time barred and the Court dismisses Plaintiffs' TILA damages
25 claims with prejudice.

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1 **4. RESPA Claim**

2 Plaintiff Mashburn alleges that, on November 6, 2010, Plaintiffs submitted a qualified
3 written request under RESPA to Wachovia Mortgage, the current note holder. (Dkt. No. 1 at 6.)
4 Plaintiffs allege that they received no response to that request and, thus, that Defendant violated
5 RESPA. (*Id.* at 6, 9.) RESPA requires loan servicers, upon receiving a qualified written request
6 from a borrower, to respond within “20 days (excluding legal public holidays, Saturdays, and
7 Sundays) unless the action requested is taken within such period.” 12 U.S.C. § 2605(e)(1)(A).

8 According to Defendant, Defendant received correspondence from Plaintiff Mashburn on
9 November 12, 2010. (*See* Dkt. No. 11-1 at 2.) On November 26, 2010, Defendant provided a
10 response to Plaintiff Mashburn, including explanations of the ownership of the loan and of
11 Defendant’s refusal to accept a rescission, a copy of the promissory note, and contact
12 information should Plaintiff Mashburn have additional questions. (*Id.* at 2–26.) Defendant’s
13 response was timely and appears to be adequate. *See* 12 U.S.C. § 2605(e)(2)(C). Plaintiffs do not
14 refute these facts. Thus, Plaintiffs fail to make a sufficient showing that Defendant did not
15 respond to their qualified written request, an essential element of their RESPA claim.
16 Accordingly, the Court grants Defendant summary judgment on Plaintiffs’ RESPA claim.

17 **5. ECOA Claim**

18 Plaintiffs assert that Defendant committed ECOA violations by not providing certain
19 disclosures at the time of the initial loan application and by not providing disclosures and notice
20 of adverse action when Plaintiffs sought pre-default loan assistance. (Dkt. No. 1 at 18–21.)
21 ECOA creates a right of action against a creditor who discriminates against an applicant “with
22 respect to any aspect of a credit transaction . . . on the basis of race, color, religion, national
23 origin, sex or marital status, or age.” 15 U.S.C. § 1691. ECOA provides, “Each applicant against
24 whom adverse action is taken shall be entitled to a statement of reasons for such action from the
25 creditor.” 15 U.S.C. § 1691(d)(2). “Adverse action” is defined as “a denial or revocation of
26 credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in

1 substantially the amount or on substantially the terms requested.” 15 U.S.C. § 1691(d)(6).

2 “Adverse action” does not include “a refusal to extend additional credit under an existing credit
3 arrangement where the applicant is delinquent or otherwise in default, or where such additional
4 credit would exceed a previously established credit limit.” *Id.*

5 To assert a claim under ECOA, Plaintiffs must allege that: (1) they are members of a
6 protected class; (2) they applied for credit with defendants; (3) they qualified for credit; and (4)
7 they were denied credit, despite being qualified. *Hafiz v. Greenpoint Mortg. Funding, Inc.*, 652
8 F.Supp. 2d 1039, 1045 (N.D. Cal. 2009) (citing decisions of the Third, Fifth, and Tenth Circuits);
9 *see also Shiptet v. Veneman*, 620 F.Supp. 2d 1203, 1232 (D. Mont. 2009). Plaintiffs’ ECOA
10 claim fails because Defendant granted Plaintiff Mashburn credit and Defendant did not take any
11 adverse action against Plaintiff Mashburn.

12 In considering Plaintiffs’ allegation that Defendant violated ECOA by not providing
13 Plaintiff Mashburn with certain disclosures at the time of the loan application, Plaintiffs’ claim
14 fails on summary judgment review. Plaintiff Mashburn applied for credit with Defendant and
15 was granted such credit, as evidenced by her obtaining the refinancing loan. Thus, Plaintiffs fail
16 to make a sufficient showing on an essential element of their claim—that Plaintiff Mashburn was
17 denied credit despite being qualified.

18 Plaintiffs’ claim that Defendant violated ECOA by not providing later disclosures and
19 notice of adverse action also fails upon summary judgment review. Plaintiff Mashburn sought
20 pre-default loan assistance in the form of a loan modification. Defendant’s denial of the loan
21 modification does not constitute an adverse action, because it was a refusal to extend additional
22 credit under an existing credit arrangement where the applicant was delinquent. Such a refusal is
23 explicitly excluded from ECOA’s definition of adverse action. 15 U.S.C. § 1691(d)(6). Since
24 Defendant’s refusal was not an adverse action, Defendant was not required to make disclosures
25 regarding the refusal. Accordingly, Plaintiffs’ ECOA claims fails.

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1 **6. Fraudulent Inducement and Concealment and Consumer Protection Act**
2 **Violation Claims**

3 Federal savings banks are subject to the Home Owners' Loan Act (HOLA) and regulated
4 by the Office of Thrift Supervision (OTS). 12 U.S.C. § 1464; *Silvas*, 415 F.3d at 1005. As a
5 national bank, Defendant Wells Fargo is not itself subject to HOLA or regulated by OTS. *See*
6 *Bank of America v. City and County of San Francisco*, 309 F.3d 551, 561–62. (9th Cir. 2002).
7 However, Plaintiff Mashburn's loan originated with World Savings Bank, which was a federal
8 savings bank subject to HOLA and OTS regulations. (Dkt. No. 1 at 1.) World Savings changed
9 its name to Wachovia Mortgage, F.S.B., and merged into Defendant Wells Fargo. (Dkt. No. 12 at
10 2.) HOLA still applies to this action because Plaintiff's loan originated with a federal savings
11 bank and was therefore subject to the requirements set forth in HOLA and OTS regulations. *See*
12 *Khan v. World Savings Bank, F.S.B.*, No. 10-CV-04305, 2011 WL 133030, at *2–3 (N.D. Cal.
13 Jan. 14, 2011); *Lopez v. Wachovia Mortg.*, No. 10-01645, 2010 WL 2836823, at 2 (N.D. Cal.
14 July 19, 2010). The OTS promulgated regulations providing that HOLA preempts state laws for
15 certain credit activities. 12 C.F.R. § 560.2 The list of areas that are specifically preempted
16 includes all state laws relating to the terms of credit, disclosures and advertising, security
17 property, and processing mortgages. 12 C.F.R. § 560.2(b).

18 Here, HOLA and OTS preempt Plaintiffs' state law claims for fraudulent inducement and
19 concealment and for violations of Washington's Consumer Protection Act. *See Silvas*, 514 F.3d
20 at 1004–05 (finding that California's consumer protection act was preempted by HOLA); *see*
21 *also Fultz v. World Savings and Loan Ass'n*, 571 F.Supp 2d 1195, 1198 (W.D. Wash. 2008)
22 (finding that HOLA preempts state law fraud, emotional distress, fiduciary duty, and Consumer
23 Protection Act claims that were based on the defendant's alleged failure to provide meaningful
24 and timely disclosures); *Sharma v. Wachovia*, No. 10-CV-2274, 2011 WL 66506, at *3 (E.D.
25 Cal. Jan. 7, 2011) (“Because all of Plaintiffs' state claims [breach of contract, unjust enrichment,
26 and violations of consumer protection statute] involve types of law listed in paragraph 560.2(b),

1 all of Plaintiffs' claims are preempted by HOLA and must be dismissed.") Here, Plaintiffs' state
2 law fraudulent inducement and concealment claim and Consumer Protection Act claim are based
3 on Defendant's alleged failure to provide meaningful and timely disclosures, which is
4 specifically listed in paragraph 560.2(b) as an area where HOLA preempts state law.
5 Accordingly, Plaintiff's claims are preempted by HOLA. The Court dismisses Plaintiffs' claims
6 for fraudulent inducement and concealment and for Consumer Protection Act violations with
7 prejudice.

8 **III. CONCLUSION**

9 For the foregoing reasons, the Court GRANTS Defendant's motion for summary
10 judgment and alternative motion to dismiss (Dkt. No. 10). The Court dismisses all of Plaintiffs'
11 claims with prejudice.

12 DATED this 19th day of July 2011.

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16 John C. Coughenour
17 UNITED STATES DISTRICT JUDGE
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