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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NIKI-ALEXANDER SHETTY; et al., Plaintiffs-Appellants, v. THOMAS BLOCK; et al., Defendants-Appellees.	No. 22-55138 D.C. No. 2:21-cv-05796-DMG-KS MEMORANDUM* (Filed Aug. 22, 2023)
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Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, District Judge, Presiding

Submitted August 18, 2023**
Pasadena, California

Before: TASHIMA, CHRISTEN, and SUNG, Circuit
Judges.

Plaintiffs-Appellants Niki-Alexander Shetty, Adina Zaharescu, and the Niki-Alexander Family Trust appeal from the district court's order dismissing their complaint for lack of federal jurisdiction. The court held that Plaintiffs-Appellants' rescission cause of action under the federal Truth in Lending Act, 15

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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U.S.C. § 1635 et seq. (“TILA”), is barred by the statute of limitations and, having dismissed the only federal cause of action on the merits, declined to exercise supplemental jurisdiction over Plaintiffs-Appellants’ remaining state-law claims. We review dismissal on statute of limitations grounds *de novo*, *Gregg v. Dep’t of Pub. Safety*, 870 F.3d 883, 886–87 (9th Cir. 2017), and we affirm.

The parties agree that, borrowing from California contract law, a four-year statute of limitations applies. *See* Cal. Civ. Proc. Code § 337(a); *DelCostello v. Int'l Bhd. Of Teamsters*, 462 U.S. 151, 158 (1983). The only question on appeal is whether Plaintiffs-Appellants’ rescission cause of action under TILA arose in 2008, when New Haven Financial, Inc. refused to rescind Zaharescu’s home mortgage loan, or in 2021, when Defendant-Appellee Thomas Block took steps to enforce it. Under 15 U.S.C. § 1635(b), the rescission cause of action arose in 2008. *See Hoang v. Bank of Am.*, 910 F.3d 1096, 1102 (9th Cir. 2018).

15 U.S.C. § 1635(b) provides that “[w]ithin 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction.” In *Hoang*, we explained that § 1635(b) meant the borrower’s rescission cause of action arose when the lender “failed to take any action to wind up the loan within 20 days of receiving [the borrower’s] notice of rescission.” 910 F.3d at 1102. Thus, in this

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case, the rescission cause of action arose in 2008, when New Haven Financial, Inc. failed to take any action to rescind the loan and terminate the security interest within 20 days after it received Zaharescu's July 2008 notice of rescission. Plaintiffs-Appellants' TILA cause of action is therefore time-barred.

AFFIRMED.

UNITED STATES DISTRICT COURT **JS-6**
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No. CV 21-5796- DMG (KSx) Date January 27, 2021

Title ***Niki-Alexander Shetty, et al. v.
Thomas Block and S.B.S. Trust
Deed Network*** Page 1 of 7

Present: The Honorable **DOLLY M. GEE, UNITED
STATES DISTRICT JUDGE**

<u>KANE TIEN</u>	<u>NOT REPORTED</u>
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s)	Attorneys Present for Defendant(s)
None Present	None Present

Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS' MOTION TO DISMISS [29] AND PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER [36]

On July 18, 2021, Plaintiffs Niki-Alexander Shetty (“Shetty”), Adina Zaharescu (“Zaharescu”), and the Niki-Alexander Family Trust (“the Trust”), filed a complaint against Defendants Thomas Block (“Block”) and S.B.S Trust Deed Network, asserting the following causes of action: (1) enforcement of rescission of a loan under the Truth in Lending Act, 15 U.S.C. section 1635 *et seq.* (“TILA”); (2) an action to cancel an instrument pursuant to California Civil Code section 3412; (3)

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violation of California’s Unfair Competition Law, California Business and Professions Code section 17200 *et seq.* (“UCL”); (4) a claim for declaratory relief; and (5) violation of California’s Rosenthal Fair Debt Collection Practices Act, California Civil Code section 1788 *et seq.* (the “Rosenthal Act”). [Doc. # 1.] On August 26, 2021, Defendants moved to dismiss the Complaint (“MTD”). [Doc. # 29.] The motion is fully briefed. [Doc. ## 33 (“Opp.”), 34 (“Reply”).] The Court took the MTD under submission on September 23, 2021. [Doc. # 35.]

On January 25, 2022, Plaintiffs filed an Application for a Temporary Restraining Order (“TRO”), seeking to stop a February 22, 2022 foreclosure on Shetty’s home. [Doc. # 36.]

Having duly considered the parties’ written submissions, the Court **GRANTS** Defendant’s MTD and **DENIES as moot** Plaintiffs’ TRO.

I. FACTUAL BACKGROUND¹

In 1996, Shetty purchased a home at 4351² La Barca Drive, Tarzana, California, Assessor Parcel

¹ The Court accepts all material facts alleged in the Complaint as true solely for the purpose of deciding the motion to dismiss.

² In paragraph 3 of the Complaint, Plaintiffs identify the location of the home as 4351 La Barca Drive. In paragraph 10, Plaintiffs identify it as 4352 La Barca Drive. It is clear from the Complaint that Plaintiffs are referring to the same property in both paragraphs. Because the exhibits attached to the Complaint refer to the property as 4351 La Barca Drive, and there is no other

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Number 2177-005-034. Compl. ¶¶ 10-11. The home is currently owned by the NikiAlexander Family Trust. *Id.* at ¶¶ 11, 3.³

In December 2005, Zaharescu contacted New Haven Financial, Inc. (“New Haven”)⁴ in response to an ad to inquire about a loan to purchase a property located at 9218 Chaparral Road, Chatsworth, California. Compl. at ¶ 13. Zaharescu spoke with an agent at New Haven, Dan Lambert, who instructed her to send him a copy of a loan application she had already completed for another mortgage company. Zaharescu sent Lambert a prior mortgage loan application and a copy of her recent credit report. New Haven offered to provide her a loan for fifty percent of the purchase price at an interest rate of nine percent amortized over ten years. Lambert also told Zaharescu that New Haven was a direct lender. *Id.* at ¶ 14.

On December 29, 2005, New Haven sent Zaharescu loan documents, which Zaharescu signed. Compl. at ¶¶ 15-16. Zaharescu received only blank copies of the documents she signed; she did not receive any signed copies of her loan documents. *Id.* at ¶ 16. After signing the documents, she received phone calls from New Haven requesting additional documentation.

reference to 4352 La Barca Drive, the Court will assume for purposes of this motion that the reference in paragraph 10 was a typographical error.

³ It is not clear from the pleadings at what point the Trust became the owner of the home.

⁴ New Haven Financial, Inc. is not named as a defendant in this case.

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Fearing that the loan with New Haven would not fund in time for her to close the purchase of the Chaparral Road property, Zaharescu obtained a loan from Liberty Financial instead. The Liberty Financial loan closed on January 20, 2006. *Id.* at ¶ 17.

On January 31, 2006, New Haven sent Zaharescu a letter signed by someone named Ron Santillan, along with a check for \$77,786.00 from New Haven and a closing statement reflecting a closing date of January 27, 2006. Compl. at ¶ 18. Zaharescu contacted Lambert on February 3, 2006, explaining that she had received a loan from another provider and would no longer need the New Haven loan. Lambert told her the loan could not be undone, but that she should keep the money to make monthly payments on the loan. *Id.* at ¶ 19.⁵

Zaharescu and Shetty married on January 28, 2007. Compl. at ¶ 12. In August 2007, Zaharescu was hospitalized due to complications from childbirth and was unable to return to work. *Id.* at ¶ 20. Shetty was also unable to return home due to immigration issues until May 2008. *Id.* Because of these problems, beginning in February 2008, Zaharescu was unable to make her monthly payments to New Haven. *Id.* On April 9, 2008, New Haven and the Emrek Family Trust recorded a Notice of Default on the property. *Id.* at ¶ 29.

On or about July 7, 2008, Zaharescu sent a rescission demand under TILA and a request for documents

⁵ It is not clear whether Lambert told Zaharescu to keep the money to make monthly payments on the New Haven loan or the Liberty Financial loan.

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to New Haven. Compl. at ¶ 31. New Haven denied Zaharescu's TILA rescission demand. Compl. at ¶ 31.

On July 7, 2008, New Haven provided a copy of the loan file. The loan file showed that the Note and Deed of Trust had been altered to reflect a different lender, different collateral, and different terms than the loan she had originally signed. *Id.* at ¶¶ 22-23. Zaharescu did not authorize or consent to these changes. *Id.* at ¶ 23. Zaharescu alleges New Haven altered the Note and Deed of Trust by altering or forging them. *Id.* at ¶ 36.

In the documents provided by New Haven in 2008, the name of the lender, the payment start dates, and the description of the property securing the obligation had been changed. The initial loan documents did not list a lender, but referred to an attached exhibit (which Zaharescu never received). The 2008 loan documents listed "Jack Emrek and Sue Emrek, Trustees of the Emrek Family Trust as to an undivided 100.00% interest" as the lender. *Id.* at ¶ 25. The initial loan documents reflect payment start dates of February 1, 2006 and January 1, 2026. The 2008 loan documents listed the dates as March 1, 2006 and February 1, 2026. *Id.* Finally, the initial loan documents described the property securing the obligation by reference to an attached exhibit (which Zaharescu never received). The 2008 loan documents described the property securing the obligation as "Lot 25 of Tract 28017, in the City of Los Angeles, County of Los Angeles, state of California, as per map recorded in Book 756, Pages 70 through 76 inclusive of Maps, in the office of the County Recorder

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of the said county. APN # 2177-005-034.” *Id.* at ¶¶ 26-27. This latter property is 4351 La Barca Drive, Shetty’s home. *See id.* at ¶ 35.

New Haven provided Zaharescu with a “Notice of Right to Cancel,” identifying the loan transaction date as December 21, 2005, and referring to an exhibit for the identity of the person or entity to whom the Notice should be sent.⁶ The exhibit was not attached to the Notice. Compl. at ¶ 28.

On September 25, 2008, Zaharescu recorded a Notice of Rescission with the Los Angeles County Recorder and mailed copies to New Haven and the Emrek Family Trust by certified mail. *Id.* at ¶ 32.

On July 7, 2011, the Emrek Family Trust assigned the Deed of Trust to Block and recorded the assignment with the Los Angeles County Recorder. Neither New Haven nor the Emrek Family Trust informed Zaharescu of the assignment. *Id.* at ¶ 38. On April 26, 2021, Block recorded a Note of Default on the home. *Id.* at ¶ 39.

II.
LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to

⁶ It is not clear from the Complaint when New Haven provided this Notice. This fact is not, however, relevant to the Court’s resolution of this Motion.

relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Under Rule 12(b)(6), a defendant may seek to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion, a complaint must articulate “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. *Id.* (citing *Twombly*, 550 U.S. at 555). Legal conclusions, in contrast, are not entitled to the assumption of truth. *Id.*

III. DISCUSSION

Defendants contend that Plaintiffs’ TILA claim is barred by the statute of limitations. Defendants argue that the limitations period expired in 2012, four years after Zaharescu gave notice of rescission on or about July 7, 2008. *Id.*

If a creditor fails to make required disclosures under TILA, a borrower is given three years from the loan’s consummation date to rescind certain loans. *Hoang v. Bank of America, N.A.*, 910 F.3d 1096, 1098 (9th Cir. 2018) (citing 15 U.S.C. § 1635(f)). To rescind, a borrower need only notify the creditor of their intent

to rescind within the three-year period. *Id.* at 1100. After notice of rescission is given, the creditor must take steps to wind up the loan within 20 days of receiving the notice of rescission. 15 U.S.C § 1635(b); *Hoang*, 910 F.3d at 1100.

When a lender fails to act on a borrower's notice of rescission, courts in the Ninth Circuit look to state law to determine the statute of limitations for a borrower's suit to enforce the rescission. *Hoang*, 910 F.3d at 1101. In *Hoang*, the Ninth Circuit reasoned that since a loan agreement is a written contract, the state statute of limitations for a breach of contract applies to such an action. *Id.* In California, the statute of limitations for a breach of contract action is four years. Cal. Civ. Proc. Code. § 337.

In this case, the parties agree that the statute of limitations is four years, but disagree about when Plaintiffs' claim accrued. Plaintiffs argue that under California law, their TILA claim did not accrue until Block filed the Notice of Default on April 26, 2021. The cases to which Plaintiffs cite, however, stand for the well-established proposition that a plaintiff must suffer actual harm before a cause of action accrues. *See, e.g., Garver v. Brace*, 47 Cal.App.4th 995, 999-1000 (1996) ("As a general rule, the statute of limitations cannot run before [. . .] events have developed to a point where plaintiff is entitled to a legal remedy, not merely a symbolic judgment such as an award of nominal damages.").

In *Hoang*, the Ninth Circuit determined that the plaintiff’s claim for enforcement of rescission under TILA arose “when the [lender] failed to take any action to wind up the loan within 20 days of receiving [the borrower’s] notice of rescission.” 910 F.3d at 1102. The Ninth Circuit was applying Washington’s statute of limitations in *Hoang*, but the court’s reasoning does not conflict with the cases cited by Plaintiff, or with the general principle that a claim does not accrue until the plaintiff suffers actual harm. Plaintiffs have not adequately explained why the result under California law should be any different from the result reached in *Hoang* under Washington law.

Plaintiffs have not cited, nor has the Court been able to identify, any case in which a court has found that a cause of action to enforce rescission under TILA arose any later than the time at which the lender failed to take action to wind up the loan. To the contrary, a number of courts applying California law have determined that a claim to enforce rescission under TILA accrues when the lender fails to take action to wind up the loan. *See Mondragon v. Bank of Am., NA*, 831 F. App’x 357 (9th Cir. 2020) (affirming dismissal of a TILA claim because plaintiff failed to bring suit within four years of receipt of defendants’ refusal to rescind the loan); *Toye v. Newrez LLC*, No. 19-CV-02322-BAS-LL, 2020 WL 4569128, at *4 (S.D. Cal. Aug. 7, 2020), *aff’d*, 859 F. App’x 787 (9th Cir. 2021) (finding the statute of limitations began to run at the time of the breach, and the breach occurred when defendants failed to honor plaintiffs’ rescission notice); *Jamali v. Martingale*

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Invs., LLC, No. B290141, 2019 WL 5956925, at *8 (Cal. Ct. App. Nov. 13, 2019) (unpublished) (finding “[plaintiff’s] cause of action to enforce rescission arose when [lender] failed to take any action to wind up her loan within 20 days of receiving [plaintiff’s] notice of rescission”).

In light of the authority discussed above, the Court concludes that the statute of limitations for enforcement of rescission began to run at the latest 20 days after Zaharescu recorded her notice of rescission on September 25, 2008. This occurred 13 years before the filing of this complaint, well outside the four-year statute of limitations. Hence, Plaintiffs’ claim is barred by the statute of limitations and must be dismissed.

Although generally a court granting a motion to dismiss should also grant leave to amend, leave to amend need not be granted when any amendment would be an exercise in futility, “such as when the claims are barred by the applicable statute of limitations.” *Hoang*, 910 F.3d at 1103. Here, granting Plaintiffs leave to amend would be futile. *Accord Toye v. Newrez LLC*, No. 19-CV-02322-BAS-LL, 2020 WL 4569128, at *5 (S. D. Cal. Aug. 7, 2020), *aff’d*, 859 F. App’x 787 (9th Cir. 2021) (denying leave to amend a complaint in similar circumstances). Thus, the Court dismisses Plaintiffs’ TILA claim with prejudice.

Finally, Defendants ask the Court to decline to exercise supplemental jurisdiction over Plaintiffs’ state law claims. Under 28 U.S.C. section 1337(c)(3), a federal district court has broad discretion to decline to

exercise supplemental jurisdiction over state law claims when it “has dismissed all claims over which it has original jurisdiction.” “[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). Because the Court has dismissed the only federal claim at the pleadings stage and only state law claims remain, the Court declines to exercise supplemental jurisdiction over Plaintiffs’ state law claims.

IV. CONCLUSION

In light of the foregoing, Defendant’s motion to dismiss is **GRANTED**, with prejudice, as to the TILA claim and, without prejudice, as to the state law claims. Plaintiffs’ complaint is **DISMISSED** in its entirety. Plaintiffs’ TRO is therefore **DENIED, without prejudice, as moot.**⁷

IT IS SO ORDERED.

⁷ The TRO is denied without prejudice because, if Plaintiffs refile their state law claims in state court, they may refile their TRO application.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NIKI-ALEXANDER SHETTY; et al.,	No. 22-55138
Plaintiffs-Appellants,	D.C. No.
v.	2:21-cv-05796-DMG-KS
THOMAS BLOCK; et al.,	Central District of
Defendants-Appellees.	California, Los Angeles
	ORDER
	(Filed Oct. 17, 2023)

Before: TASHIMA, CHRISTEN, and SUNG, Circuit Judges.

Judge Christen and Judge Sung vote to deny the petition for rehearing en banc, and Judge Tashima so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is DENIED.
