IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

PATRICK BAEHR, et al.,	*	
Plaintiffs,	*	
v.	*	
THE CREIG NORTHROP TEAM, P.C., et al.	*	Civil Action No.: 1:13-cv-00933-WDQ
Defendants.	*	

MEMORANDUM IN SUPPORT OF DEFENDANTS LONG & FOSTER REAL ESTATE, INC., CARLA NORTHROP, CREIGHTON NORTHROP, AND THE CREIG NORTHROP TEAM, P.C.'S MOTION TO DISMISS

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Defendants Long & Foster Real Estate, Inc. ("Long & Foster"), Creig Northrop, Carla Northrop, and The Creig Northrop Team, P.C. ("The Northrop Team") (collectively "Defendants"), through their counsel, and pursuant to Fed.R.Civ.P. 12(b)(6), submit this memorandum in support of their motion to dismiss the Complaint filed by plaintiffs Patrick and Christine Baehr ("Plaintiffs") and state as follows:

Plaintiffs' Complaint is barred by the statute of limitations. The Complaint asserts a single cause of action for an alleged violation of § 8 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607 ("RESPA"). The statute of limitations for an alleged violation of 12 U.S.C. § 2607 is one year from the date of the closing. Plaintiffs' closing occurred in July 2008. The Complaint was filed in March 2013. Accordingly, the Complaint was filed more than three years after the expiration of the statute of limitations and is time-barred.

The Complaint fails to include allegations sufficient to toll the statute of limitations. A RESPA violation is not a "self-concealing wrong" and an allegation that a defendant failed to disclose alleged payments is insufficient to toll the statute of limitations. Rather, tolling of a RESPA claim requires allegations of affirmative acts of concealment. The allegations in Plaintiffs' Complaint are wholly insufficient to meet this standard. Far from alleging any affirmative acts, the Complaint only alleges that Defendants failed to disclose their "compensation relationships" with Lakeview. A failure to disclose compensation arrangements does not toll the statute of limitations under RESPA as a matter of law. Accordingly, the Complaint is time-barred.

Even if Plaintiffs had pled facts sufficient to support equitable tolling, equitable tolling under RESPA is limited to a three year time period. After three years, the statute of limitations

becomes a statute of repose. *Pedraza v. United Guaranty Corporation*, 114 F. Supp. 2d 1347, 1353-54 (S.D. Ga. 2000). Since the Complaint was filed more than four years after the closing, equitable tolling is no longer available to Plaintiffs and the Complaint must be dismissed.

The Complaint also fails to allege facts sufficient to support a RESPA claim against Carla Northrop. Plaintiffs admit that their closing occurred in July 2008. They also admit that Lakeview only made payments to Carla Northrop between 2000 and 2007. Plaintiffs, therefore, do not allege that any payments were made to Carla Northrop in connection with their transaction. As such, Plaintiffs fail to allege facts sufficient to state a RESPA claim against Ms. Northrop. Similarly, the Complaint does not allege that Lakeview made any payments to Long & Foster, and the Complaint otherwise fails to allege facts sufficient to support a RESPA cause of action against Long & Foster.

Finally, the present Complaint is the second attempt by Plaintiffs' counsel to assert a RESPA class action against the Defendants. In December 2011, Plaintiffs' counsel filed a putative class action against Long & Foster, Creig Northrop, The Northrop Team and others in the Circuit Court for Howard County, Maryland. On March 15, 2013, the Circuit Court for Howard County, Maryland dismissed all of the claims filed against Long & Foster, The Northrop Team and Creig Northrop in the first amended complaint, and denied Plaintiffs' counsel's motion for class certification. On March 14, 2013, Plaintiffs' counsel filed a second amended complaint which asserted a putative RESPA class action against the Defendants. The Circuit Court for Howard County subsequently denied Plaintiffs' counsel's motion for certification of the RESPA class. A motion to dismiss the individual RESPA claims is pending. Plaintiffs' counsel filed the present action after the Circuit Court for Howard County denied their motion for certification of the RESPA class.

I. Factual Background[1]

Plaintiffs retained Creig Northrop, The Northrop Team, and Long & Foster to represent them in the purchase of a home in Glenwood, Maryland. Complaint at ¶¶ 2, 27. In connection with the purchase, Plaintiffs were referred to Lakeview Title Company, Inc. ("Lakeview") for title and settlement services in or around June 2008. *Id.* at ¶ 28. Plaintiffs elected to use Lakeview for their title and settlement services and closed on the purchase of their home on July 25, 2008. *Id.* Long & Foster is a real estate broker. *Id.* at ¶ 11. Creig Northrop, Carla Northrop and The Northrop Team are agents of Long & Foster. *Id.* at ¶ 13.

A. The Carla Northrop Employment Agreement

Carla Northrop was a "full-time employee of The Northrop Team since 2000." Complaint at ¶ 18. Plaintiffs allege that from "2000 through 2007," Carla Northrop and Lakeview Title entered into a "sham employment agreement . . . to disguise payments of illegal referral fees." *Id.* at ¶ 17. Plaintiffs allege that Ms. Northrop did not perform any actual work or services for Lakeview. *Id.* The "employment agreement was not disclosed to Plaintiffs" or any of the putative class members. *Id.* at ¶ 46.

B. The Marketing Agreement

In 2008, Lakeview ceased payments to Carla Northrop and executed a Marketing Agreement with Creig Northrop and The Northrop Team. Complaint at ¶ 19. The Marketing Agreement provided that Creig Northrop and The Northrop Team would provide "marketing services" and that they would designate Lakeview as their exclusive settlement and title company to the exclusion of any other settlement service provider in connection with settlement, residential, and commercial real estate purchases. *Id.* at ¶ 20. It also provided that Creig

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[1] As they must, Defendants adopt the facts as they are set forth in the Complaint solely for this motion to dismiss. Defendants deny any and all wrongdoing and deny any violations of RESPA.

Northrop and The Northrop Team would not endorse any entity that provides real estate and settlement and title insurance services other than Lakeview. *Id.* at ¶ 21.

Under the Marketing Agreement, Lakeview agreed to pay Creig Northrop and The Northrop Team $6,000 a month for marketing services. Complaint at ¶ 22. Plaintiffs allege that Lakeview actually paid Creig Northrop and The Northrop team in excess of $6,000 a month, and in some cases as much as $12,000 a month. *Id.* Plaintiffs further allege that there are no records of any real marketing or services reasonably related to the amounts paid by Lakeview. *Id.* at ¶ 23. The Marketing Agreement and payments to Creig Northrop and The Northrop Team were "never disclosed to" Plaintiffs or any other clients of Creig Northrop and The Northrop Team. *Id.* at ¶ 24.

C. Plaintiffs' Cause of Action and the Putative Class

Plaintiffs claim that the actions of Defendants violate Section 8 of RESPA as set forth in 12 U.S.C. § 2607. They allege that the payments received by Carla Northrop between 2000 and 2007 and the payments received by Creig Northrop under the Marketing Agreement starting in 2008 constitute prohibited payments and an acceptance of a kickback, fee or thing of value under 12 U.S.C. § 2607(a). Complaint at ¶ 49. Plaintiffs seek to bring this claim on their own behalf and on behalf of the following putative class:

> Maryland residents who retained Long & Foster, Mr. Northrop and The Northrop Team to represent them in the purchase of a primary residence between January 1, 2000 to present and settled on the purchase of their primary residence at Lakeview.

Id. at ¶ 31.

D. Plaintiffs' Counsel's Fraud and RESPA Action Against the Defendants in the Circuit Court for Howard County

On December 8, 2011, Plaintiffs' counsel in the present case filed a putative class action suit against Defendants Long & Foster Real Estate, Inc., Creighton Northrop, The Creig

Northrop Team, P.C., Prosperity Mortgage Corp., Wells Fargo, Inc., Michelle Mathews, Suzanne Windesheim, and PNC Mortgage, in the Circuit Court for Howard County, Maryland. *See LaRocca, et al. v. The Creig Northrop Team, P.C., et al.*, Case No. 13-C-11089075 (the "Howard County Action"). The Howard County Action was filed as a putative class action and asserts eleven causes of action based on allegations that the defendants had engaged in fraudulent loan financing practices relating to the sale of plaintiffs' homes, and one cause of action seeking certification of a RESPA class based on the same allegations asserted in the present Complaint.[2]

On March 15, 2013, the Circuit Court for Howard County granted summary judgment on all claims which had been filed against Long & Foster, The Northrop Team and Creig Northrop.[3] The Circuit Court also denied the motion for class certification. On March 14, 2013, Plaintiffs' counsel filed a second amended complaint which asserted a new cause of action under RESPA and sought certification of a RESPA class. The RESPA claim in the Howard County Action names the same defendants and includes the same factual allegations as the present action. The Circuit Court for Howard County denied plaintiffs' motion for class certification of the RESPA claim. A motion to dismiss the individual RESPA claims on statute of limitations grounds is pending.

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[2] The second amended complaint is the most recent complaint filed by Plaintiffs' counsel. The causes of action include: fraud (Count I); fraud (Count II); constructive fraud (Count III); civil conspiracy (Count IV); negligence (Count V); aiding and abetting tortious conduct (Count VI); respondeat superior (Count VII); unfair and deceptive trade practices (Count VIII); violation of the Maryland Mortgage Fraud Protection Act (Count IX); violation of the Maryland Secondary Mortgage Lending Law (Count X); unjust enrichment (Count XI); and RESPA (Count XII).

[3] The Circuit Court for Howard County granted summary judgment in favor of Creig Northrop, The Northrop Team, and Long & Foster on all claims that existed at the time the motion for summary judgment was filed. Plaintiffs' counsel filed a second amended complaint which added a RESPA claim and added Long & Foster to Count X a day before the Circuit Court filed its Opinion and Order granting the motion for summary judgment. A motion to dismiss the newly added RESPA claim is pending. The second amended complaint also added Carla Northrop as a new party.

II. Argument

Plaintiffs' claim is barred by the statute of limitations.[4] The statute of limitations for a violation of 12 U.S.C. § 2607 is one year from the date of the closing. The closing occurred in July 2008 and the Complaint was filed in March 2013. Accordingly, the Complaint was filed over three years after the statute of limitations expired. The Complaint also fails to plead facts sufficient to support equitable tolling under RESPA. Further, equitable tolling is not available to RESPA claims older than three years. Finally, the Complaint fails to allege facts sufficient to state a substantive RESPA claim against Carla Northrop and Long & Foster.

A. Standard of Review

Under Fed.R.Civ.P. 12(b)(6), an action may be dismissed for failure to state a claim upon which relief can be granted. Rule 12(b)(6) tests the legal sufficiency of a complaint, but it does not "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir.2006). The court must consider all well-pleaded allegations in a complaint as true and must construe all factual allegations in the light most favorable to the plaintiff. *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 783 (4th Cir. 1999) (citing *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir.1993)).

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[4] "The statute of limitations is an affirmative defense that a party typically must raise in a pleading under Fed.R.Civ.P. 8(c)." *Interphase Garment Solutions, LLC v. Fox Television Stations, Inc.*, 566 F.Supp.2d 460, 463 (D. Md. 2008) (citing *Eniola v. Leasecomm Corp.*, 214 F.Supp.2d 520, 525 (D. Md. 2002)). "However, dismissal is proper 'when the face of the complaint clearly reveals the existence of a meritorious affirmative defense.'" *Id.* (quoting *Brooks v. City of Winston–Salem*, 85 F.3d 178, 181 (4th Cir. 1996). "A complaint showing that the governing statute of limitations has run on the plaintiff's claim for relief is the most common situation in which the affirmative defense appears on the face of the pleading and provides a basis for a motion to dismiss under Rule 12(b)(6)." *Id.* (quoting 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357, at 714 (3d ed. 2004)).

The court, however, "need not accept the legal conclusions drawn from the facts, and [ ] need not accept as true unwarranted inferences, unreasonable conclusions or arguments," *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009). The factual allegations in a complaint "must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). A plaintiff must show the "grounds of his entitlement to relief," and offer "more than labels and conclusions." *Id.* It is not sufficient that the well-pleaded facts suggest "the mere possibility of misconduct." *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009). A court need not agree with legal conclusions couched as factual allegations, or conclusory factual allegations devoid of any reference to actual events. *Iqbal*, 129 S.Ct. at 1950; *United Black Firefighters v. Hirst*, 604 F.2d 844, 847 (4th Cir. 1979); *see also Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009).

B. The Complaint is Barred by RESPA's One Year Statute of Limitations

Plaintiffs' Complaint asserts a single cause of action for an alleged violation of 12 U.S.C. § 2607. Complaint at §§ 44-50. 12 U.S.C. § 2614 provides that the statute of limitations for alleged violations of 12 U.S.C. § 2607 is one year "from the date of the occurrence of the violation." For claims brought under Section 2607 of RESPA, the "date of the occurrence of the violation" is the date of the closing. *See Snow v. First American Title Insurance Company*, 332 F.3d 356, 359 (5th Cir. 2003) ("The phrase 'the date of the occurrence of the violation' refers to the closing."). The Complaint alleges that the closing occurred on or about July 25, 2008. Complaint at ¶ 28. Accordingly, the statute of limitations for Plaintiffs' RESPA claim expired on or about July 26, 2009. Plaintiffs' Complaint, therefore, was filed more than three years after the statute of limitations expired.

C. The Complaint Fails to Allege Facts Sufficient to Toll the Statute of Limitations[5]

Plaintiffs have failed to plead facts sufficient to support equitable tolling of their RESPA claim. Equitable tolling under RESPA is granted sparingly, and bare allegations of concealment are insufficient to toll the statute of limitations. Courts consistently have held that RESPA claims are not self-concealing and that plaintiffs must allege affirmative acts of fraud. Plaintiffs' Complaint only alleges that Defendants failed to disclose the payments and agreements with Lakeview, and that Plaintiffs were not aware of the payments and agreements. Such allegations fall far short of meeting the standard for equitable tolling.

1. Legal Standard for Equitable Tolling of a RESPA Claim

As this Court has found in evaluating RESPA claims, "any invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes." *Minter v. Wells Fargo Bank. N.A.*, 2013 WL 593963 at *13 (D. Md. 2013) (quoting *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000)). Accordingly, equitable tolling is permitted only in the narrowest circumstances. *Chao v. Va. Dep't of Transp.*, 291 F.3d 276, 283 (4th Cir. 2002). The equitable tolling doctrine in RESPA cases has been applied "sparingly; for example . . . when the statute of limitations was not complied with because of defective pleadings [or] when a claimant was tricked by an adversary into letting a deadline expire." *Ayon v. JPMorgan Chase Bank*,

[5] There appears to be a circuit split regarding whether equitable tolling applies to RESPA claims. *Compare*, *Hardin v. City Title & Escrow Co.*, 797 F.2d 1037, 1041 (D.C.Cir.1986) (holding that RESPA is not subject to equitable tolling) and *Zaremski v. Keystone Title Assocs., Inc.*, 884 F.2d 1391, 1989 WL 100656, *1 (4th Cir. Aug. 30, 1989) (unpublished), with *Lawyers Title Ins. Corp. v. Dearborn Title Corp.*, 118 F.3d 1157, 1166–1167 (7th Cir.1997) (applying equitable tolling to RESPA). The District Court of Maryland has found that equitable tolling does apply. *Minter v. Wells Fargo Bank, N.A.*, 675 F.Supp.2d 591, 596 (D. Md. 2009). Defendants hereby preserve the argument that equitable tolling does not apply to RESPA claims.

N.A., No. CV F 12-0355 LJO SKO, 2012 U.S. Dist. LEXIS 49650, at *21-22 (E.D. Cal. Apr. 9, 2012) (*quoting Scholar v. Pac. Bell*, 963 F.2d 264, 267-68 (9th Cir. 1992)). The *Ayon* court noted that "Courts have been generally unforgiving, however, when a late filing is due to claimant's failure 'to exercise due diligence in preserving his legal rights.'" *Id.*

Plaintiffs bear the burden of establishing: "(1) [defendants] fraudulently concealed facts that are the basis of the plaintiff's claim, and (2) the plaintiff failed to discover those facts within the statutory period, despite (3) the exercise of due diligence." *Supermarket of Marlinton, Inc. v. Meadow Gold Dairies, Inc.*, 71 F.3d 119, 122 (4th Cir. 1995) (quotation omitted). The first element, fraudulent concealment, requires plaintiffs to establish that defendants had a duty to disclose the information allegedly concealed. *Minter v. Wells Fargo Bank, N.A.,* 279 F.R.D. 320, 324 (D. Md. 2012); *Supermarket of Marlinton, Inc.*, 71 F.3d at 125-26; *Blondell v. Littlepage*, 413 Md. 96, 119, 991 A.2d 80, 94 (Md. 2010).

Even if plaintiffs could establish a duty to disclose, fraudulent concealment requires evidence of more than a mere failure to disclose illegal conduct. This Court has recognized that equitable tolling of a RESPA claim requires each plaintiff to "provide evidence of affirmative acts of concealment undertaken by the defendants." *Minter v. Wells Fargo, N.A.*, 279 F.R.D. 320 (D. Md. 2012); *see also Pocahontas Supreme Coal Co. Inc. v. Bethlehem Steel Corp.*, 828 F. 2d 211, 218-19 (4th Cir. 1987); *Pinney Dock & Transport Corp. v. Penn. Cent. Corp.*, 838 F.2d 1445, 1472 (6th Cir. 1988) (holding that mere silence, or one's unwillingness to divulge allegedly wrongful activities does not by itself establish fraudulent concealment).

Affirmative acts of concealment must be more than a mere failure to disclose because a RESPA violation is not a "self-concealing wrong." *Minter v. Wells Fargo Bank, N.A.*, 2013 WL 593963 at *15 (D. Md. 2013), *citing Egerer v. Woodland Realty, Inc.*, 556 F.3d 415 (6th Cir.

2009); *Kay v. Wells Fargo & Co.*, 247 F.R.D. 572, 577 (N.D. Cal. 2007)). In *Mullinax v. Radian Guar, Inc.*, 199 F. Supp. 2d 311, 329 (M.D.N.C. 2002) the court found as follows:

> [B]ased on the Fourth Circuit's standard, the Court concludes that a violation of RESPA alone is not a self-concealing wrong, because the elements of RESPA do not include fraud, deception, or concealment. Instead, RESPA is violated when the lender or the insurer gives or accepts a "fee, kickback, or thing of value" in return for the referral of business "incident to or a part of a real estate settlement service." 12 U.S.C. § 2607. Accordingly, even if a kickback scheme "is generally secretive, it need not be so," and therefore it does not qualify as a self-concealing wrong. (citations omitted).

"[M]erely intoning the word 'fraudulently' in a complaint is not sufficient" to raise the defense of equitable tolling." *Minter v. Wells Fargo Bank, N.A.*, 675 F.Supp.2d 591, 596 (D. Md. 2009), quoting *Weinberger v. Retail Credit Co.*, 498 F.2d 552, 555 (4th Cir.1974). Rather, "a plaintiff seeking to escape the statute in such a case shall make 'distinct averments as to the time when the fraud, mistake, concealment or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether by the exercise of ordinary diligence, the discovery might not have been made.' " *Id.* (citations omitted).

As to the second and third elements, "[t]he objective standard of due diligence requires reasonable investigation of the possibility of misrepresentation once an individual has been placed on inquiry notice of wrongdoing." *Brumbaugh v. Princeton Partners*, 985 F.2d 157, 162 (4th Cir. 1993). In the Fourth Circuit, "[i]nquiry notice is triggered by evidence of the possibility of fraud, not by complete exposure of the alleged scam." *Go Computer, Inc. v. Microsoft Corp.*, 508 F.3d 170, 179 (4th Cir. 2007) (quoting *Brumbaugh*, 985 F.2d at 162) (emphasis added). This holds true even if the "fraud is allegedly well-disguised." *Id.* Finally, "'due diligence' contemplates more than [a mere] un-pursued inquiry. . . ." *Pocahontas Supreme Coal*, 828 F.2d

at 219. A plaintiff must make a reasonable inquiry under the circumstances in light of the facts of which he or she has been give notice. *Brumbaugh*, 985 F.2d at 162.

2. The Complaint Fails to Allege Facts Sufficient to Support Equitable Tolling of the Statute of Limitations

Plaintiffs' Complaint falls far short of the standard for pleading equitable tolling of a RESPA claim. It does nothing more than allege that Defendants failed to disclose the payments from Lakeview to the Defendants. It alleges that the "compensation relationships between Lakeview and the Northrop Defendants was never disclosed to, and actively concealed from, the Northrop Defendants' clients, including the plaintiffs." Complaint at ¶ 24. It alleges that the "Defendants concealed the existence of financial compensation paid by Lakeview to the Northrop Defendants from Plaintiffs and class members." *Id.* at ¶ 50. These allegations do not constitute "affirmative acts of concealment undertaken by the defendants." To the contrary, they constitute bare allegations of non-disclosure which cannot support equitable tolling of a RESPA claim.

In *Grant v. Shapiro & Burson*, LLP, 871 F.Supp.2d 462 (D. Md. 2012), the District Court of Maryland found that bare allegations of concealment and due diligence were "wholly insufficient" to support a claim for equitable tolling of the statute of limitations under RESPA. *Id.* at 470 n.10. Plaintiffs in *Grant* had alleged in the complaint that "Defendants' misconduct was concealed from Plaintiff, which prevented [her] from readily discovering the misconduct, which [s]he was duly diligent in attempting to ascertain." *Id.* Noting that a plaintiff must "allege with specificity 'fraudulent concealment on the part of the defendants' and the inability of the plaintiff, despite due diligence, to discover the fraud," the Court found that the "complaint's conclusory allegation regarding fraudulent concealment is wholly insufficient to make this showing." *Id.* (citations omitted).

The District Court went on to compare the tolling of the statute of limitations under RESPA to the requirements established under the Truth in Lending Act ("TILA"). Citing *Davis v. Edgemere Fin. Co.*, 523 F. Supp. 1121, 1126 (D. Md. 1981), the Court stated:

> "[a]pplication of the fraudulent concealment doctrine in the context of the disclosure requirements of . . . TILA requires more than mere nondisclosure" because "[o]therwise in a context in which nondisclosure is the gravamen of the violation, then just about every failure by defendant to disclose as required by . . . TILA would seemingly bring about tolling."

Grant, 871 F.Supp.2d at 470 n. 10. *See also Wadhwa v. Aurora Loan Services, LLC*, 2011 WL 1601593 at *3 (E.D. Cal. 2011) (a "failure to disclose . . . does not itself toll the statute of limitations [under RESPA]. . . . [A] contrary rule would render the one-year statute of limitations meaningless."), *quoting Garcia v. Wachovia Mortg. Corp.*, 676 F.Supp.2d 895, 906 (C.D. Cal. 2009).

The Complaint also suggests that the fact that Lakeview entered into a Marketing Agreement with Creig Northrop and an employment arrangement with Carla Northrop constitute affirmative acts of concealment and were used to "disguise" payments to Defendants. Complaint at ¶¶ 17, 46, 47. This argument cannot withstand scrutiny. The Complaint admits that Defendants did not disclose the existence of the Marketing Agreement or the employment agreement to the Plaintiffs or any of the putative class members, and that Plaintiffs did not have knowledge of any "compensation relationships." *Id.* at ¶¶ 24, 50. The agreements cannot "disguise" payments if the agreements are never disclosed to Plaintiffs and Plaintiffs never learn of the agreements. Plaintiffs appear to suggest that the Marketing Agreement made the payments to Creig Northrop and the Northrop Team appear legitimate to Plaintiffs. This argument only makes sense, however, if Defendants disclosed the Marketing Agreement to

Plaintiffs or Plaintiffs were aware of the agreement. Since the agreements were never disclosed, Plaintiffs are left with nothing more than a bare allegation of non-disclosure.

Further, the fact that Lakeview entered into formal agreements with Creig Northrop, Carla Northrop, and the Northrop Team weighs against equitable tolling of the claim. The agreements show that the parties did not attempt to conceal the fact that Lakeview was providing compensation. While Defendants dispute Plaintiffs' claim that the agreements were invalid and "sham agreements," it is undisputed that payments were made pursuant to formal agreements as opposed to payments "under the table." If Plaintiffs were aware of the agreements (contrary to the admissions in the Complaint), then they were on inquiry notice that Defendants were receiving money from Lakeview. If Defendants never disclosed the agreements, then they were not being used to conceal the payments. In either event, the allegation that Defendants had compensation agreements with Lakeview does not support equitable tolling of the RESPA claim.

D. RESPA's Three Year Limitation on Equitable Tolling

Even if this Court found that the Complaint alleged facts sufficient to support equitable tolling of RESPA's one year statute of limitations, the Complaint should be dismissed as equitable tolling of RESPA claims is limited to three years – at which time it becomes a statute of repose. Since Plaintiffs' claim was filed more than four years after Plaintiffs' closing, equitable tolling does not save Plaintiffs' claim.

In *Pedraza v. United Guaranty Corporation*, 114 F. Supp. 2d 1347 (S.D. Ga. 2000), the only case of which Defendants are aware that directly examines how long the statute of limitations period could be tolled under RESPA, the court held that it was "convinced that the three year period of limitation provided by § 2614 is most reasonably read as a statute of repose in light of the overall structure of RESPA." *Id.* at 1354. It stated:

> Just because equitable tolling is available, however, does not mean that equitable tolling can save a claim for an indefinite period of time. Indeed, RESPA provides two limitations periods, a one year period for private enforcement, and a three year period for public enforcement. The Supreme Court interpreted the second of the two limitations periods provided by the Securities Exchange Act of 1934 as a statute of repose. *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 359–60, 111 S.Ct. 2773, 2780, 115 L.Ed.2d 321 (1991). Equitable tolling is not applicable to statutes of repose, in contrast to statutes of limitation. *Weddel v. Secretary of Health and Human Services*, 100 F.3d 929, 931 (Fed. Cir. 1996). Although the language of § 2614 differs slightly from that of the 1934 Act, the Court is convinced that the three year period of limitation provided by § 2614 is most reasonably read as a statute of repose in light of the overall structure of RESPA. Therefore, equitable tolling under RESPA is limited to claims alleging violations of RESPA that occurred within three years of the violation.

Id. at 1353-54. *See also Rivera v. BAC Home Loans Servicing, L.P.*, 756 F.Supp.2d 1193, 1199 (N.D. Cal. 2010) (RESPA claims are "subject to a one-year statute of limitations and a three-year statute of repose, respectively."); *Mendoza v. Wilmington Finance*, 2011 WL 2182914 (N.D. Cal. June 6, 2011) (holding that a five year old RESPA claim "is not subject to equitable tolling because it is subject to a three-year statute of repose.").

Plaintiffs' closing occurred on July 25, 2008. Even if equitable tolling applied to Plaintiffs' claim, the statute of limitations would become a statute of repose as of July 26, 2011. Since Plaintiffs filed their Complaint in March 2013, it is time-barred and this Court should dismiss the Complaint.

E. The Complaint Fails to State a Cause of Action Against Carla Northrop

Plaintiffs' claim against Carla Northrop should be dismissed for the additional reason that the Complaint fails to allege facts to support a RESPA cause of action against her. The alleged RESPA violation occurred during the closing on Plaintiffs' home in July 2008. Complaint at ¶ 28. The Complaint admits that Lakeview only made payments to Carla Northrop between

2000 and 2007. *Id.* at ¶ 17. The Complaint further alleges that "[i]n 2008, Lakeview ceased paying Ms. Northrop and began funneling the illegal kickbacks for referrals through a sham "Marketing Agreement" between Mr. Northrop, The Northrop Team, and Lakeview." *Id.* at ¶ 19. Accordingly, there is no allegation that Carla Northrop received a payment in relation to Plaintiffs' transaction or that Carla Northrop referred Plaintiffs to Lakeview Title. To the contrary, the Complaint states that "Plaintiffs engaged Long & Foster, Creig Northrop, and The Northrop Team to represent them in the purchase of a new home." *Id.* at ¶ 27. The Complaint, therefore, fails to allege facts sufficient to support a RESPA claim against Carla Northrop.

F. The Complaint Fails to State a Cause of Action against Long & Foster Real Estate, Inc.

Similarly, the Complaint fails to allege facts to support a RESPA claim against Long & Foster. Plaintiffs allege that Carla Northrop executed a "sham employment arrangement" with Lakeview and that Creig Northrop executed a "sham Marketing Agreement" with Lakeview. Complaint ¶¶ 46-47. Each circumstance where the Complaint mentions Long & Foster falls into two categories: (i) identifying Long & Foster for purposes of background explanation; or (ii) reciting threadbare and conclusory allegations. The Complaint does not allege that Long & Foster executed any agreements with Lakeview. It does not allege that Long & Foster received any payments or other items of value from Lakeview.

There are two additional instances that demonstrate Plaintiffs have failed to satisfy the requisite Rule 8 pleading requirements with respect to Long & Foster: (i) the section articulating questions of law and fact common to all members and (ii) the demand and prayer for relief in Count I. First, the common questions of fact and law do not mention Long & Foster at all. Instead, each subparagraph explains in detail the alleged involvement of other defendants in the alleged schemes. *See* Complaint ¶ 34. Second, in Count I, the Complaint generically states that

"Defendants participated in a concealed scheme to generate unearned fees, kickbacks, and things of value through a sham employment arrangement and a sham Marketing Agreement in violation of RESPA and in violation of Title 24 C.F.R. Section 3500.14 et seq." *Id.* at ¶ 44. Assuming Paragraph 44 includes Long & Foster, this allegation does nothing more than allege that all of the defendants violated RESPA. It does not identify the sections or subsections of RESPA that Long & Foster violated. In each subsequent paragraph, Plaintiffs again allege how the other defendants participated in the alleged scheme in violation of specified sections of RESPA. None of these paragraphs, however, reference Long & Foster. *See id.* at ¶¶ 45-51.

Indeed, the Complaint is completely devoid of any allegation of a specific RESPA violation by Long & Foster other than an unsubstantiated association with the remaining defendants. Absent additional facts beyond Plaintiffs' bare conclusion that Long & Foster violated RESPA, Plaintiffs have failed to meet the pleading requirements under Fed.R.Civ.P. 8. *See Crouch v. City of Hyattsville*, No. 09-2544, 2010 U.S. Dist. LEXIS 123896, at *16 (D. Md. Nov. 23, 2010) (plaintiff cannot impose liability on specific defendants "merely by grouping them together with the central wrongdoer"); *see also Classen Immunotherapies, Inc. v. Biogen IDEC*, 381 F. Supp. 2d 452, 455 (D. Md. 2005) ("A plaintiff does not satisfy Rule 8 when the complaint lump[s] all the defendants together and fail[s] to distinguish their conduct because such allegations fail to give adequate notice to the defendants as to what they did wrong." (internal quotes omitted)). Accordingly, the Complaint fails to allege facts sufficient to support a RESPA cause of action against Long & Foster.

Conclusion

For the reasons set forth above, Defendants respectfully request that this Court dismiss Plaintiffs' Complaint with prejudice.

Dated: May 13, 2013

Respectfully submitted,

_____/s/_____

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