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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WAYNE SAMP, et al., Plaintiffs, v. JPMORGAN CHASE BANK, N.A., et al., Defendants.	Case No. EDCV 11-1950VAP(SPx) **ORDER GRANTING MOTIONS TO DISMISS** **[Motions filed on October 4, 2012]**

Before the Court are five motions to dismiss, filed by: (1) United Guaranty Residential Insurance Company ("United Guaranty") (Doc. No. 130) ("UG Motion"); (2) Genworth Mortgage Insurance Corp. ("Genworth") (Doc. No. 131) ("Genworth Motion"); (3) Radian Guaranty ("Radian") and Mortgage Guaranty Insurance Corporation ("Mortgage Guaranty") (collectively, "Radian Defendants") (Doc. No. 132) ("Radian Motion")[1]; (4) JPMorgan Chase Bank, N.A.

[1]The Radian Motion was also filed by Triad Guaranty Insurance Corporation ("Triad"), but Triad was voluntarily dismissed by Plaintiff on March 7, 2013. (See Doc. No. 157.)

("JPMorgan Chase Bank"), Chase Bank USA, N.A. ("Chase"), JPMorgan Chase & Co. ("JPMorgan Chase") (collectively, the "JPMorgan Defendants"), and Cross Country Insurance Company ("Cross Country") (Doc. No. 135) ("JPMorgan Motion"); and (5) Republic Mortgage Insurance Company ("Republic") (Doc. No. 137) ("Republic Motion").

These matters came before the court for hearing on April 29, 2013. The Court has considered all the papers filed in support of, and in opposition to, the five motions to dismiss. For the reasons set forth below, the Court GRANTS (1) the UG Motion; (2) the Genworth Motion; (3) the Radian Motion; (4) the JPMorgan Motion; and (5) the Republic Motion. Plaintiffs' claims against all defendants are dismissed, without leave to amend.

I. BACKGROUND

A. Factual Allegations

1. Plaintiffs' Mortgage Loans

On June 6, 2008, Plaintiffs Wayne Samp and Roberta Samp ("the Samps") obtained a mortgage loan from Defendant JPMorgan Chase Bank for the purchase of their house in Hemet, California. (FAC ¶ 19.) In connection with the loan, JPMorgan Chase Bank required the Samps to pay for private mortgage insurance. (Id.) JPMorgan Chase Bank selected Defendant Genworth as the private mortgage insurance provider. (Id.)

On January 27, 2005, Plaintiffs Daniel Komarchuk and Susan Komarchuk ("the Komarchuks") obtained a mortgage loan from Chase Manhattan Mortgage Corporation[2] ("Chase Manhattan") for the purchase of their house in Antioch, Illinois. (Id. at ¶ 20.) In connection with the loan, Chase Manhattan required the Komarchuks to pay for private mortgage insurance. (Id.) Chase Manhattan selected Defendant Republic as the private mortgage insurance provider. (Id.)

On April 28, 2005, Plaintiff Annetta Whitaker obtained a mortgage loan from JPMorgan Chase Bank for the purchase of her house in Harrisburg, Pennsylvania. (Id. at ¶ 21.) In connection with the loan, JPMorgan Chase Bank required Whitaker to pay for private mortgage insurance. (Id.) JPMorgan Chase Bank selected Defendant United Guaranty as the private mortgage insurer. (Id.)

2. The "Scheme"

Plaintiffs allege that JPMorgan Chase Bank, along with Cross Country (allegedly a subsidiary of JPMorgan Chase Bank and JPMorgan Chase, and an affiliate of Chase), violated the Real Estate Settlement Procedures Act ("RESPA") by engaging in a "single, coordinated

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[2]Chase Home Finance, LLC ("Chase Home Finance") is the successor by merger to Chase Manhattan. (FAC at 7 n. 4.) Chase Home Finance merged with and into JPMorgan Chase Bank on or about May 1, 2011. (Id.)

scheme" soliciting kickbacks from private mortgage insurers including United Guaranty, Genworth, Radian, Triad, Mortgage Guaranty, and Republic (collectively, the "Insurers"), in exchange for directing Plaintiffs to purchase mortgage insurance from those insurers. (Id. at ¶¶ 11, 14.) Plaintiffs allege JPMorgan Chase Bank required them to purchase private mortgage insurance from the Insurers, who in turn were required by contract to surrender a portion of the Plaintiffs' premiums to purchase reinsurance from Cross Country. (Id.)

Plaintiffs aver that by requiring the Insurers to purchase reinsurance from Cross Country, JPMorgan Chase Bank effectively was forcing the insurers to pay a kickback for customer referrals, because the contracts between the Insurers and Cross Country were structured such that Cross Country would not suffer any actual losses if the insured mortgagors defaulted. (Id. at ¶ 12.) In addition to violating RESPA, Plaintiffs allege this scheme caused them to pay higher premiums for mortgage insurance, as the Insurers were paying back a portion of the premiums to Cross Country. (Id. at ¶ 15.)

B. Procedural History

Plaintiffs, on behalf of themselves and, putatively, others similarly situated, filed their original complaint on December 9, 2011. (See Doc. No. 1). On March 2, 2012, Plaintiffs filed a First Amended Complaint (Doc. No. 79) ("FAC"), asserting two claims for relief: (1) violation of RESPA, 12 U.S.C. § 2607; and (2) unjust enrichment. (See FAC ¶ 156-174.) The FAC was filed against: JPMorgan Chase Bank, Chase, Cross Country, United Guaranty, PMI Mortgage Insurance Co., Mortgage Guaranty ("PMI Mortgage"), Genworth, Republic, Radian, and Triad. (See generally FAC.)

All five motions to dismiss were filed on October 4, 2012. On December 14, 2012, the Court issued a minute order ordering Plaintiffs to file a single opposition addressing all five motions to dismiss. (Doc. No. 150.) On December 21, 2012, Plaintiffs filed their opposition (Doc. No. 151) ("Opposition"). United Guaranty filed their Reply on January 28, 2013 (Doc. No. 153). Republic filed its reply on March 1, 2013 (Doc. No. 156). The JPMorgan Defendants, Genworth, and the Radian Defendants filed their respective replies on March 11, 2013 (Doc Nos. 158, 159, and 160).[3]

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[3]On March 19, 2013, Plaintiffs filed a notice of supplemental authority. (See Doc. No. 166.) As Defendants point out (see Doc. Nos. 171 and 173), Plaintiffs' notice contains seven pages of additional argument. The Court rejects Plaintiffs' notice as an improper sur-reply (see L.R. 7-10), but has considered the additional authority provided by Plaintiffs.

On March 23, 2013, Plaintiffs filed a second notice of supplemental authority. (See Doc. No. 181.) Again, Plaintiffs' notice contains six pages of additional argument. The Court rejects Plaintiffs' notice as an (continued...)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) allows a party to bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); Conley v. Gibson, 355 U.S. 41, 47 (1957) (holding that the Federal Rules require that a plaintiff provide "'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." (quoting Fed. R. Civ. P. 8(a)(2))); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

[3](...continued)
improper sur-reply (see L.R. 7-10), but has considered the additional authority provided by Plaintiffs.

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 556). Recently, the Ninth Circuit clarified that (1) a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and (2) "the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing the party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Although the scope of review is limited to the contents of the complaint, the Court may also consider exhibits submitted with the complaint, Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990), and "take judicial notice of matters of public record outside the pleadings," Mir v. Little Co. of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

III. DISCUSSION

A. Chase and JPMorgan Chase

Chase and JPMorgan Chase argue they should be dismissed because there are no allegations that they issued, insured or re-insured Plaintiffs' loans or participated in the purported scheme. (JPMorgan Motion at 22.) In their Opposition, Plaintiffs stated they do not oppose the dismissal of Chase and JPMorgan Chase. (Opp. at 50 n. 31.) At the hearing, Plaintiffs' counsel argued that they did not agree to dismiss these parties. The footnote in Plaintiffs' Opposition, however, is clear: "Plaintiffs do not oppose dismissal of these Defendants, without prejudice, at this time." (Id.)

Therefore, the Court DISMISSES Plaintiffs' claims against Chase Bank USA, N.A. and JPMorgan Chase & Co., without prejudice.

B. Statutory Standing

The Radian Defendants argue that Plaintiffs cannot state a RESPA claim against them because they were not the insurers on Plaintiffs' loans –- in other words, the Radian Defendants argue that there is a lack of statutory standing. (Radian Mot. at 8-9.) The Radian Defendants argue they are only alleged to have violated RESPA on the loans of other borrowers, not Plaintiffs. (Id. at 9.) Plaintiffs, on the other hand, argue that the FAC alleges the Radian Defendants to be part of an overarching agreement that violates RESPA.[4] (Opp. at 11.)

Plaintiffs allege that the Radian Defendants violated two sections of RESPA: 12 U.S.C. § 2607(a) and 12 U.S.C. § 2607(b).

Under 12 U.S.C. § 2607(a), "[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or

[4]In its May 7, 2012 Order, the Court found that Plaintiffs had Article III standing, but declined to determine whether Plaintiffs had statutory standing because the argument was raised in a Rule 12(b)(1) motion and therefore not jurisdictional. (See May 7, 2012 Order (Doc. No. 125) at 12.)

otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person." Here, as the Radian Defendants correctly point out, they did not provide any settlement service involving Plaintiffs' mortgage loans. (Radian Mot. at 8.) Moreover, the Radian Defendants did not give nor accept any fee or kickback on Plaintiffs' loans. (Id.)

Under 12 U.S.C. § 2607(b), "[n]o person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed." Similarly, here, the Radian Defendants did not give nor accept any portion, split, or percentage of any charge made or received in connection with Plaintiffs' loans. (Radioan Mot. at 8-9.)

Plaintiffs, however, rely on this Court's May 7, 2012 Order, in which the Court found that Plaintiffs sufficiently demonstrated Article III standing. (May 7, 2012 Order at 12.) In that Order, the Court found that Plaintiffs sufficiently alleged that the Insurers, including the Radian Defendants, engaged in a scheme with JPMorgan Chase Bank and Cross Country, in which JPMorgan

Chase Bank steered buyers to the Insurers, and in exchange, JPMorgan Chase Bank demanded the Insurers purchase reinsurance from Cross Country. (Order at 10.) While this single, overarching scheme –- a "rimmed wheel" conspiracy –- was sufficient for Article III standing, there is nothing to suggest that it meets the requirements to state a claim under either sections 2607(a) or (b) of RESPA.

Plaintiffs rely on Spears v. First American eAppraiseIT, 2010 WL 2674031 (N.D. Cal. July 2, 2010) for their argument that they have statutory standing to pursue a RESPA claim against the Radian Defendants. (Opp. at 15.) In Spears, Washington Mutual Bank ("WMB") allegedly conspired with First American eAppraiseIT ("EA") and Lender's Service, Inc. ("LS") to inflate the appraised value of property securing plaintiffs' mortgage loans so that WMB could sell the aggregated security interests in these properties at inflated prices. Spears, 2010 WL 2674031 at *1. WMB retained EA and LSI to administer its appraisal program. Id. EA and LSI performed all of WMB's appraisals, and WMB's borrowers (the plaintiffs) became EA and LSI's largest source of business. Id. Plaintiffs alleged that defendants engaged in the following conduct as part of the conspiracy to inflate appraisals: (1) EA and LSI complied with WMB's demand that all of its appraisals be performed by appraisers from a specific list, which contained appraisers selected by WMB’s loan origination staff; (2) WMB maintained the contractual right to challenge appraisals by requesting a reconsideration of value and they used these requests to get EA and LSI to increase appraisal values; (3) WMB requested that EA and LSI hire former WMB employees as appraisal business mangers; and (4) EA and LSI altered appraisal reports to reflect higher property values, remove negative references, and make other changes so that the final appraisal reports complied with WMB’s wishes. (Id.)

In opposing plaintiff’s motion for class certification, EA argued that there was a lack of commonality and individual inquiries were necessary. Id. at *5. Plaintiffs, on the other hand, alleged that all referrals that EA received from WMB were part of a single agreement between WMB and EA, an agreement that violated RESPA’s anti-kickback provision. Id. at *6. The Court stated that, if Plaintiffs’ allegations were true, then “each class member’s appraisal would be invovled in the RESPA violation, as a part of the volume of business referred to EA by WMB in exchange for inflated appraisals.” Id.

Spears is inapposite. First, EA did not argue that Plaintiffs lacked standing to bring their claim; rather, it contended plaintiffs could not demonstrated the required commonality to certify their class. Second, and more importantly, Plaintiffs alleged EA conspired with WMB in inflating the appraised value of the property securing their mortgage loans. Id. at *1. Plaintiffs, however, did not allege that other defendants conspired with WMB in inflating the value of the property underlying the mortgage interests of other non-parties. The alleged agreement in Spears, which the Court relied upon to find commonality, was an agreement between the two defendants –– WMB and EA –- both of which allegedly affected plaintiffs' interests directly by inflating the appraised values of the property securing their mortgage loans.

Here, on the other hand, the Radian Defendants had no connection with Plaintiffs' loans, other than the overarching scheme alleged by Plaintiffs. Again, while the overarching scheme supported Article III standing, it does not support a claim under RESPA. The Radian Defendants' conduct did not "involv[e]" or was not "connect[ed]" with Plaintiffs' loans. See 12 U.S.C. §§ 2607(a) and (b). Therefore, Plaintiffs fail to state a RESPA claim against the Radian Defendants. In any event, even if Plaintiffs have successfully stated a RESPA claim against the Radian Defendants, the claim is barred by the statute of limitations, as the Court discusses below.

C. Statute of Limitations on RESPA Claim

Defendants argue that Plaintiffs' RESPA claim is barred by the statute of limitations. An action under 12 U.S.C. § 2607 is subject to a one-year statute of limitations. 12 U.S.C. § 2614. The clock starts to run from "the date of the occurrence of the violation." Id. The occurrence of the violation is generally considered to be the date the loan closed. See Jensen v. Quality Loan Serv. Corp., 702 F. Supp. 2d 1183, 1195 (E.D. Cal. 2010); Enunwaonye v. Aurora Loan Services LLC, 2011 WL 5387269, at *5 (C.D. Cal. Nov. 8, 2011).

Here, Plaintiffs closed their loans in 2005 and 2008. (FAC ¶¶ 19-21.) Plaintiffs' original complaint, which asserted a claim for RESPA, was filed in December 2011. Since the Complaint was filed more than a year after the loans closed, Plaintiffs' RESPA claim is untimely.

1. Equitable Tolling

Plaintiffs argue that the statute of limitations should be equitably tolled. "Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005). "Equitable tolling may be applied if, despite all due diligence, a plaintiff is unable to obtain vital information bearing on the existence of his claim." Santa Maria v. Pacific Bell, 202 F.3d 1170, 1178 (9th Cir. 2000). Equitable tolling "focuses on whether there was excusable delay by the plaintiff . . . [and whether] a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period." Id.

Plaintiffs allege that they "could not, despite the exercise of due diligence, have discovered the underlying basis for their claims." (FAC ¶ 138.) Defendants, on the other hand, argue that Plaintiffs fail to allege facts sufficient to support equitable tolling.

First, the parties dispute whether Plaintiffs were on notice of the possible existence of their claims within the limitations period because the relevant information was disclosed. (JPMorgan Mot. at 8-10; United Guaranty Mot. at 7-8; Republic Mot. at 5; Opp. at 26.) Plaintiffs attached to the Complaint the disclosure forms provided to them. These disclosure forms state:

> **If I am required to have mortgage guaranty insurance**, [JPMorgan Chase Bank] will arrange

> for an insurance company to provide [mortgage guaranty insurance coverage] at [Plaintiffs'] expense. The insurance company may ask another insurance company to assume some or all of the risk under the insurance policy in exchange for a portion of the insurance premium. This is called "reinsurance" and may result in a financial gain to the company providing the reinsurance. [JPMorgan Chase Bank] has an affiliate, Cross Country Insurance Company, that provides reinsurance to mortgage guaranty insurance companies; however, **a reinsurance arrangement with [JPMorgan Chase Bank] will not change my mortgage guaranty insurance premiums**. Even though a reinsurance arrangement involving [JPMorgan Chase Bank's] affiliate will not increase my premiums, I understand that I may exclude my mortgage guaranty insurance coverage from this arrangement.

(Exs. H and HH to Compl. (emphasis in original); <u>see also</u> FAC ¶ 150.)

Plaintiffs received adequate disclosure regarding the relationship between JPMorgan Chase Bank and Cross Country. They were (1) informed of the relationship between JPMorgan Chase Bank and Cross Country; (2) informed of any change in their premiums; and (3) informed that they could obtain insurance through a company other than Cross Country. See Gerhart v. Beazer Homes Holdings Corp., 2009 WL 799256, at *4 (E.D. Cal. Mar. 23, 2009).

Plaintiffs argue, however, that the disclosures were inadequate because (1) they were not informed that there was a preexisting agreement to enter particular reinsurance arrangements (Opp. at 26) and (2) they were not informed that the arrangement was unlawful because it did not involve an adequate assumption of risk by Cross Country and JPMorgan Chase Bank. (Id.)

Equitable tolling "does not postpone the statute of limitations until the existence of a claim is a virtual certainty." Santa Maria, 202 F.3d at 1178. "[T]he law does not insist that plaintiffs be aware of every particular element of their claim. Rather, all that is required is that plaintiffs be aware of the 'possible existence' of a claim." Kay v. Wells Fargo & Co., 247 F.R.D. 572, 578 (N.D. Cal. 2007) (citing Santa Maria, 202 F.3d at 1178-79). Here, by virtue of the disclosures made to them, Plaintiffs had sufficient information about the possible existence of a RESPA claim. See Gerhart, 2009 WL 799256, at *5-6 (plaintiffs possessed sufficient information to have notice of the possible existence of a RESPA claim because they were informed of the relationship between the entities, were aware that the reinsurer would receive some financial gain, were informed they could opt out, and were notified of potential additional fees); Kay, 247 F.R.D. at 578 (finding that plaintiffs had sufficient information even though plaintiffs could not determine whether the "risk insured was commensurate with the amount charged").

Plaintiffs cite Spears v. First American eAppraiselt, LLC, 2013 WL 1748284 (N.D. Cal. Apr. 23, 2013) ("Spears II"), in part, to argue that they could not have discovered the existence of their claim through any amount of investigation. In Spears, the Court found equitable tolling applied because Plaintiffs "could not have obtained access to the internal [] documents necessary to discover the existence of a claim." Spears II, 2013 WL 1748284 at *4. Here, however, Plaintiffs have not argued that they could not have obtained access to certain internal documents; rather, Plaintiffs argue they could not have discovered their claim without the assistance of counsel. This is entirely different from Spears II and insufficient to trigger equitable tolling. See McCarn v. HSBC USA, Inc., 2012 WL 5499433, at *6 (E.D. Cal. Nov. 13, 2012) (rejecting plaintiff's argument that equitable tolling applied because he could not have discovered his claim without the assistance of counsel, finding that this would "entitle[plaintiff] to equitable tolling of the statute of limitations for an indefinite period of time until that plaintiff retains counsel.”).

As Plaintiffs had sufficient information to be put on notice of the possible existence of the RESPA claim at the time they received disclosures in 2005 and 2008, respectively, the Court finds they are not entitled to equitable tolling of the statute of limitations.

2. Equitable Estoppel

Plaintiffs argue they are entitled to relief from the statute of limitations under an equitable estoppel theory. Plaintiffs allege that “Defendants knowingly and actively concealed the basis for Plaintiffs’ claims by engaging in a scheme that was, by its very nature and purposeful design, self-concealing.” (FAC at ¶ 138.)

Equitable estoppel, also known as fraudulent concealment, “necessarily requires active conduct by a defendant, above and beyond the wrongdoing upon which the plaintiff’s claim is filed, to prevent the plaintiff from suing in time.” <u>Santa Maria</u>, 202 F.3d at 1177. “Such conduct may be shown through affirmative representations or active concealment on the part of a defendant.” <u>Kay</u>, 247 F.R.D. at 577. In order to be entitled to equitable estoppel, a plaintiff must “plead with particularity the circumstances surrounding the concealment and state facts showing his due diligence in trying to cover the facts." Id. A court will decide whether to apply equitable estoppel after consideration of the following factors: (1) the plaintiff's actual and reasonable reliance on the defendant's conduct or representations; (2) evidence of improper purpose on the part of the defendant, or of the defendant's actual or constructive knowledge of the deceptive nature of its conduct, and (3) the extent to which the purposes of the limitations period have been satisfied. Miguel, 202 F.3d at 1176.

First, Plaintiffs allege Defendants concealed material facts by misleading Plaintiffs about the relationship between Cross Country and JPMorgan Chase Bank. (FAC at ¶ 145.) As discussed above, however, that relationship was disclosed to Plaintiffs; Plaintiffs received disclosures stating specifically that Cross Country was an affiliate of JP Morgan Chase Bank, and that Cross Country might obtain a financial gain for providing the reinsurance. (See Exs. H and HH to Compl.)

Plaintiffs also allege Defendant concealed that payments made by the Private Mortgage Insurers were kickbacks, and not for actual services rendered (FAC ¶ 145); and concealed their conduct by providing "incomplete and/or inaccurate information to state regulators" (Id. at ¶ 147). Plaintiffs allege that this fraudulent concealment failed to provide "sufficient information to even put [Plaintiffs] on notice of the true nature of [JPMorgan Chase Bank's] captive reinsurance arrangements." The Ninth Circuit, however, "has repeatedly rejected claims of fraudulent concealment where the plaintiffs fail to allege misrepresentations beyond the actual basis for the lawsuit." McCarn 2012 WL 5499433, at *7. To accept otherwise would "merge[] the substantive wrong with the tolling doctrine" and "eliminate the statute of limitations . . . ." Coppinger-Martin v. Solis, 627 F.3d 745, 751-52 (9th Cir. 2010) (quotation and citation omitted); see also Kay, 247 F.R.D. at 577 (to the extent that Plaintiff uses the underlying violation of RESPA to support their allegation of fraudulent concealment, their allegations must be denied).

Despite its many prongs, the essence of Plaintiffs' equitable estoppel argument is that Defendants concealed their fraudulent scheme by holding it out to be a legitimate scheme. As the court in Spears II recently found, this is not enough because it is "part and parcel with the scheme plaintiffs allege [JP Morgan Chase Bank] used to defraud customers in the first place." 2013 WL 1748284, at *5. As all of the conduct Plaintiffs allege is "related to the underlying wrongdoing rather than an effort to prevent plaintiffs from being able to sue," id., Plaintiffs fail to demonstrate that the statute of limitations should be equitably estopped.

3. Discovery Rule

Plaintiffs also argue that the Discovery Rule should toll the statute of limitations.

In California, accrual of a cause of action may be delayed until the plaintiff discovers the facts constituting the cause of action, or, as a reasonable person, should have been put on inquiry that his or her injury was caused by tortious wrongdoing, i.e., the "Discovery Rule." Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797, 807 (2005). Under the Discovery Rule, "suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period." Id. In terms of a plaintiff's suspicion of "elements" of a cause of action, the Discovery Rule refers to the "generic" elements of wrongdoing, causation, and harm. Norgart v. Upjohn Co., 21 Cal. 4th 383, 397 (1999). In other words, "we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them." Fox, 35 Cal. 4th at 807. The Discovery Rule "only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action." Id.

The Discovery Rule does not apply if the statute defines when the claim accrues rather than defining a limitations period from the date of accrual. See Garcia v. Brockway, 526 F.3d 456, 465 (9th Cir. 2008). The RESPA provision at issue here defines the date of accrual, stating that an action for violation of 12 U.S.C. § 2607 may be brought within one year "from the date of the occurrence of the violation." 12 U.S.C. § 2614. Accordingly, the discovery rule does not apply to violations of § 2607. Spears II, 2013 WL 1748284, at *6.

Even if the Discovery Rule could apply, the Court has already found that Plaintiffs had all the necessary facts to discover their RESPA claim at the time the mortgage documents were provided to them. See Gerhart, 2009 WL 799256, at *8.

Plaintiffs have not set forth any basis for tolling the statute of limitations. Accordingly, Plaintiffs' RESPA claim against Defendants is dismissed. Finding that amendment here would be futile, the Courts dismisses the claim without leave to amend. See Deutsch v. Turner Corp., 324 F.3d 692, 718 n. 20 (9th Cir. 2003).

D. Restitution/Unjust Enrichment

Plaintiffs' second claim is for "Common-Law Resitution/Unjust Enrichment." (FAC ¶ 170-74.)[5] Plaintiffs allege that a substantial benefit was conferred upon Defendants because the Insurers "collected and wrongfully paid to [JPMorgan Chase Bank] hundreds of millions of dollars as [JPMorgan Chase Bank's] unlawful split or share of the private mortgage insurance premiums paid by Plaintiffs . . . ." (Id. at ¶ 171.)

"California does not recognize an independent cause of action for unjust enrichment; rather, it is a restitution remedy that must be connected to some underlying wrong." Martin v. Litton Loan Servicing LP, 2013 WL 211133, at *18 (E.D. Cal. Jan. 16, 2013). The conduct upon which Plaintiffs base their claim for restitution/unjust enrichment is the same conduct underlying their RESPA claim.

Defendants argue (Radian Mot. at 19) and Plaintiffs do not contest (Opp. at 49) that the statute of limitations applicable to Plaintiffs' claim for unjust enrichment is two years. See Cal Code. Civ. Proc. § 339.

[5]On April 26, 2013, Plaintiffs filed a notice of voluntary dismissal of their unjust enrichment claim as to United Guaranty, Mortgage Guaranty, Genworth, Republic, and Radian. (See Doc. No. 185.) Accordingly, the unjust enrichment claim only stands against JPMorgan Chase Bank, Cross Country, and PMI Mortgage.

Plaintiffs, however, argue that the statute of limitations is subject to tolling, based on the same arguments for tolling the statute of limitations on their RESPA claim. (Opp. at 49.) The Court found that Plaintiffs were on notice of their RESPA claim at the time of closing, in 2005 and 2008, respectively, when disclosures were made. The Court also found no basis upon which to toll the statute of limitations. Based on these findings, and on the finding that Plaintiffs' second claim is based on the same conduct underlying their RESPA claim, the Court finds that Plaintiffs claim for restitution/unjust enrichment is also time-barred. Accordingly, the Court dismisses Plaintiffs' second claim, without leave to amend.

IV. CONCLUSION

For the reasons set forth above, the Court DISMISSES Plaintiffs' first and second claim against all defendants, without leave to amend.

Dated: May 7, 2013 Virginia A. Phillips

VIRGINIA A. PHILLIPS
United States District Judge