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### **9th Circuit Affirms Dismissal Of FDCPA Claims, Remands TILA Action**

PASADENA, Calif. – In a majority ruling, the Ninth Circuit U.S. Court of Appeals on Oct. 19 affirmed a district court's dismissal of a property owner's claims for violation of the Fair Debt Collection Practices Act (FDCPA), finding that a trustee was not a debt collector under the statute, but remanded the case for further review of her claim for rescission under the Truth in Lending Act (TILA) (Vien-Phuong Thi Ho v. Recontrust Company, NA, et al., No. 10-56884, 9th Cir.; 2016 U.S. App. LEXIS 18836.)

### **Judge Finds TILA And RESPA Did Not Apply To Commercial Loan**

WASHINGTON, D.C. — A District of Columbia federal judge on Oct. 24 granted a motion for summary judgment finding that the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) did not apply to an underlying loan and remanded various causes of action to a state court for lack of jurisdiction (Anthony Floyd v. PNC Mortgage, a division of PNC Bank, N.A., et al., No. 14-2190, D. D.C.; 2016 U.S. Dist. LEXIS 146679).

### **New York Federal Judge Transfers TILA Action Against Lenders To Arizona**

NEW YORK — A New York federal magistrate judge on Nov. 1 granted a motion to transfer a declaratory relief action filed against a bank and lender, finding that the case should be heard in the U.S. District Court for the District of Arizona (Raymond A. Ribail v. Bank of America, N.A., et al., No. 16-CV-04678, S.D. N.Y.; 2016 U.S. Dist. LEXIS 152068).

### **Judge Finds TILA Claims Against Bank Are Barred By Limitations Period**

PHOENIX — An Arizona federal judge on Oct. 20 found that all of the claims for rescission under the Truth in Lending Act (TILA) were barred by a one-year statute of limitation and that the borrowers were prohibited by a loan modification from asserting claims, granting a motion filed by a bank to dismiss the case against them (Allen C. Taylor, et al. v. Deutsche Bank National Trust Company, et al., No. 16-01792, D. Ariz.; 2016 U.S. Dist. LEXIS 145551.)

## **FIRREA**

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### **9th Circuit Affirms Dismissal, Finds No Facts To Support Fraud Claim**

SAN FRANCISCO — The Ninth Circuit U.S. Court of Appeal on Oct. 14 affirmed a district court's dismissal of a borrower's fourth amended complaint and a claim for fraud related to her mortgage, finding that she failed to allege how any fraud on the part of the lender occurred (Dana Y. Coward v. J.P. Morgan Chase Bank, N.A.,

No. 14-16378, 9th Cir.; 2016 U.S. App. LEXIS 18541).

## Foreclosures

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### **11th Circuit Affirms Dismissal, Finds Borrower Failed To Show Causation**

ATLANTA — The 11th Circuit U.S. Court of Appeals on Oct. 20 affirmed a district court's dismissal of a former property owner's wrongful foreclosure claims, finding that she failed to address how an allegedly inadequate notice by a loan servicer caused her to suffer any damages (*Sara Bohannon v. PHH Mortgage Corporation, et al.*, No. 15-14508, 11th Cir.; 2016 U.S. App. LEXIS 18843).

### **Judge Recommends Dismissal Of Foreclosure-Related Claims Against CitiMortgage**

CINCINNATI — A federal magistrate judge on Oct. 18 recommended that a former property owner's claims against a mortgage company be dismissed for lack of subject matter jurisdiction, but declined a lender's request that he be declared a vexatious litigator (*Phillips Brantley v. CitiMortgage*, No. 1:16-cv-707, S.D. Ohio; 2016 U.S. Dist. LEXIS 144020).

### **Federal Judge Finds Foreclosure Claims Are Barred By State Court Case**

ROCKFORD, Ill. — An Illinois federal judge on Oct. 18 granted a lender's motion to dismiss a case filed by a borrower, finding that all of a former property owner's claims related to a foreclosure could have been raised in a previous state court case (*Lorenzo C. Reyes v. CitiMortgage Inc.*, No. 15-50273, N.D. Ill.; 2016 U.S. Dist. LEXIS 143653).

### **Federal Judge Remands Tenant Action Related To Loan To State Court**

AUGUSTA, Ga. — A Georgia federal judge on Oct. 7 remanded a case related to the foreclosure of a mortgage on a rental property to a state court, finding that no federal question was presented (*Virginia M. Bunch v. Sharon Bush Ellison*, No. 116-163, S.D. Ga.; 2016 U.S. Dist. LEXIS 148025.)

### **Judge Finds Borrowers Did Not Properly Serve Lender With Foreclosure Claims**

TACOMA, Wash. — A Washington federal judge on Nov. 2 partially granted a title company's motion to dismiss claims asserted against it in relation to a foreclosure sale, finding that the borrowers sufficiently pleaded their claims but that they failed to properly serve the company with their complaint (*James M. Brewster, et al. v. Seaside Trustee of Washington, Inc., et al.*, No. 16-5732, W.D. Wash.; 2016 U.S. Dist. LEXIS 152257).

## Fiduciary Duty

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## **9th Circuit Finds No Facts To Support Claims Against Lenders**

SEATTLE — The Ninth Circuit U.S. Court of Appeals on Oct. 25 affirmed a district court's dismissal of a borrower's claims for breach of fiduciary duty and negligence against two lenders, finding that they failed to plead sufficient facts to support her causes of action (Bank of America N.A. v. Nancy K. Enright, et al., No. 14-35428, 9th Cir.; 2016 U.S. App. LEXIS 19280).

## **Injunctions**

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### **Federal Judge Refuses To Grant Injunctive Prohibiting Foreclosure**

ORLANDO, Fla. — A Florida federal judge on Oct. 31 refused to grant injunctive relief to a property owner in relation to an attempt to enjoin several lenders from foreclosing on a property and ordered the parties to submit a joint statement as to why the court has jurisdiction over the case (Joseph E. Altier v. Suntrust Mortgage Inc., et al., No. 6:16-cv-1752, M.D. Fla.; 2016 U.S. Dist. LEXIS 150371).

### **Federal Judge Grants Restraining Order Prohibiting Foreclosure Sale Of Property**

LAS VEGAS — A Nevada federal judge on Oct. 20 granted a request filed by property owners for a temporary restraining order enjoining a foreclosure sale, finding that serious questions exist as to the merits of their wrongful foreclosure claims (Gunter Heidig, et al. v. PNC Bank, N.A. C/O Trustee Corps., et al., No. 3:16-cv-00576, D. Nev.; 2016 U.S. Dist. LEXIS 145476).

## **Statute Of Limitations**

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### **Federal Judge Finds RICO Claims Are Barred By Statute Of Limitations**

TACOMA, Wash. — A Washington federal judge on Oct. 31 found that a borrower's claims for violation of the Racketeer Influenced and Corrupt Organizations Act in relation to her mortgage were barred by a four-year statute of limitations and dismissed all of her claims without leave to amend (Danica Ann Nikolich v. Bank of America, N.A., et al., No. 16-5252, W.D. Wash.; 2016 U.S. Dist. LEXIS 149960).

### **Judge Finds All Claims Related To Mortgage Are Barred By Limitations Periods**

TACOMA, Wash. — Since borrowers did not file a lawsuit for 10 years after their mortgage was entered into, a Washington federal judge on Nov. 3 found that their claims for rescission under the Truth in Lending Act (TILA) and all of their other causes of action were barred by applicable statutes of limitations (Ernst Meinhart, et al. v. CMG Mortgage Inc., et al., No. 16-5665, W.D. Wash.; 2016 U.S. Dist. LEXIS 152835).

## Standing

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### **Federal Judge Finds Borrower Lacks Standing To Bring Claims Against MERS**

UTICA, N.Y. — After finding that a former property owner lacked standing to sue a lender for breach of contract and that she failed to allege that she held title to the property, a New York federal judge on Nov. 1 granted the lender's motion to dismiss the complaint for failure to state a claim (*Cynthia Zap v. Mortgage Electronic Registration Systems Inc.*, No. 6:15-cv-00624, N.D. N.Y.; 2016 U.S. Dist. LEXIS 150988).

### **Judge Dismisses Wrongful Foreclosure Claims, Finds Bank Had Standing**

SAN FRANCISCO — A California federal judge on Nov. 1 dismissed claims for wrongful foreclosure, violation of California civil code and other causes of action asserted by a borrower against banks in relation to her residential mortgage, finding that she failed to show that a bank held no interest in the property or that she was discriminated against (*Annie G. Weaver v. Wells Fargo Bank, N.A., et al.*, No. 16-cv-04907, N.D. Calif.; 2016 U.S. Dist. LEXIS 151374).