

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Larry D. Jesinoski  
and Cheryle Jesinoski,

Plaintiffs,

Court File No. 11-CV-474 DWF/FLN

v.

COUNTRYWIDE HOME LOANS, INC.,  
d/b/a AMERICA'S WHOLESALE  
LENDER, a subsidiary of Bank of America  
N.A., BAC HOME LOANS SERVICING,  
LP, a subsidiary of Bank of America, N. A.,  
A Texas Limited Partnership F/K/A  
COUNTRYWIDE HOME LOANS  
SERVICING, LP, MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC., A Delaware Corp., JOHN  
& JANE DOES 1-10,

Defendants.

**DEFENDANTS BANK OF AMERICA,  
N.A. AND MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC.'S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

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Defendants Bank of America, N.A. ("BANA") (s/h/a "Countrywide Home Loans, Inc." and "BAC Home Loans Servicing") and Mortgage Electronic Registrations Systems, Inc. ("MERS") (collectively, "Defendants"), respectfully move this Court for an Order pursuant to Fed. R. Civ. P. 12(c) for Judgment on the Pleadings with respect to the claims in the Amended Complaint of Plaintiffs Larry D. and Cheryle Jesinoski ("Plaintiffs") for rescission based on alleged violations of the Truth in Lending Act and damages based on the alleged violation of state law. The bases of this motion include:

1. Plaintiff's claims for rescission under the Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* (TILA), and Regulation Z, 12 C.F.R. §§ 226 *et seq.*, for rescission in

connection with Defendants' alleged failure to provide proper disclosures at the February 23, 2007 closing are time-barred because they were raised more than three years following the consummation of the underlying refinancing transaction. *See* 15 U.S.C. § 1635(f); *Beach v. Ocwen Federal Bank*, 523 U.S. 410, 417-19 (1998); *Geraghty v. BAC Home Loans Serv., LP*, 2011 WL 3920248, \*6 (D. Minn. Sept. 7, 2011).

2. Plaintiffs' claim for rescission must be dismissed because Plaintiffs failed to allege a present ability to tender back the original \$611,000 loan proceeds, a necessary condition precedent to a claim for rescission. *See Dietz v. Beneficial Loan and Thrift Co.*, 10-cv-3752 (DWF/TNL), 2011 WL 2412738, at \*3 (D. Minn. Jun. 10, 2011).

3. Plaintiffs' Minnesota statutory claims fail because they have not plausibly alleged a "public benefit" to support their standing to bring suit as private attorneys general. *Petersen v. Spectra Financial, Inc.*, 2007 WL 967334, at \*2 (D. Minn. 2007).

Defendant's motion is further supported by the Memorandum in Support submitted herewith.

Dated: October 28, 2011

s/Andre Hanson

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