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CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHRISTINA ARRINGTON, et al., Plaintiffs	:	
v.	:	Civil No. AMD 00-191
COLLEEN, INC., et al., Defendants	:	
JEFFREY LEACH, et al., Plaintiffs	:	
v.	:	Civil No. AMD 00-421
MR. CASH, INC., et al., Defendants	:	

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MEMORANDUM

I. Introduction

The claims in these two cases arise out of defendants' conduct of so-called "pay day loan" or "deferred deposit check-cashing" services. In the first case, plaintiffs Christina Arrington, Rudolph Greene, Peggy Nolan, Renee-Wingo Roberts and Dorothy Smith, individually and as putative class representatives (collectively, the "Arrington Plaintiffs"), assert claims against corporate defendant Colleen, Inc. ("Colleen")[1] and individual defendants Alec Satisky and Brian Satisky (the "Satiskys"). In the second case, plaintiffs

[1]Collen, Inc. conducts business under the names A&B Check Cashing, A&B Check Cashing 3, A&B Check Cashing 7, Hollinswood Check Cashing and People's Check Cashing Service.

Jeffrey and Jacqueline Leach, Russell Biddle, and Francine Johnson, individually and as putative class representatives (collectively, the "Leach Plaintiffs"), assert claims against corporate defendants General Jackson Check Cashing, Inc., Mr. Cash, Inc., Mr. Cash of Ocean City, Inc. (collectively, "Mr. Cash") and Video Recovery Services, Inc. ("VRS") and individual defendants Christopher Mead and Claude Mascari.[2]

Colleen, the Satiskys, Mead[3] and Mascari filed numerous preliminary motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6), some of which relied on material outside the allegations of the complaints, and thus must be treated as motions for summary judgment pursuant to Fed. R. Civ. P. 56. A hearing was held in open court on July 13, 2000, and all parties were heard. I ruled from the bench on the various motions during and at the conclusion of the hearing, and here supplement those ruling.

II. Plaintiffs' Claims

In both cases, plaintiffs have asserted several federal claims. In Count I, plaintiffs assert claims under the federal Truth In Lending Act ("TILA"), 15 U.S.C. § 1640 *et seq.*, and its accompanying Regulation Z, which requires consumer lenders to disclose interest rates

[2]During the hearing held July 13, 2000, I granted plaintiffs' Motion For Leave To File an Amended Complaint adding Ms. Johnson as a plaintiff and General Jackson Check Cashing Services and VRS as defendants.

[3]Mead, who insists upon acting pro se despite the fact that the defendant corporate entities of which he is a controlling person are represented by counsel, has, as a third-party plaintiff, filed suit against the offices of the Attorney General and the Department of Labor, Licensing and Regulation and certain officials of the State of Maryland "for all sums that may be adjudged" against him. Manifestly, these claims are barred by the Eleventh Amendment, but the state is content to remain in the case for the time being.

and certain other information deemed critical by Congress to facilitate the informed use of consumer credit. *See* 12 C.F.R. Part 226. In Count V, plaintiffs assert claims under the civil provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(c), 1964(c), prohibiting enterprises engaged in interstate commerce from collecting debts made unlawful by state usury laws.

Plaintiffs also invoke this court's supplemental jurisdiction, 28 U.S.C. § 1367, by asserting in Counts II, III and IV state law claims brought under the Maryland Consumer Loan Law ("MCLL"), which requires consumer lenders to make disclosures generally consistent with those required by TILA, Md. Code Ann., Commercial Law §§ 12-106(b), 12-306, 12-307, 12-308, 12-312 and 12-313; prohibits lending at usurious rates, *id.* at §§ 12-102, 12-103(c) and 12-306(a)(2); and requires persons engaged in consumer lending to be licensed by the Maryland Department of Labor, Licensing and Regulation, *id.* at § 12-302; Md. Code Ann., Financial Institutions §§ 11-202 and 11-204. In addition, plaintiffs assert in Count VI claims under the Maryland Consumer Protection Act ("MCPA"), which prohibits false or misleading statements or other factual representations which have the tendency to deceive the customer, Md. Code Ann., Commercial Law § 13-301. In Count VII, plaintiffs assert a claim of common law fraud.

III. Motion to Dismiss Standard

A complaint should not be dismissed for failure to state a claim under Fed.R.Civ.P. 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support

of his claim that would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46.(1957); *accord Warth v. Seldin*, 422 U.S. 490, 501 (1975); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). Motions to dismiss for failure to state a claim are "granted sparingly and with caution in order to make certain that plaintiff is not improperly denied a right to have his claim adjudicated on the merits." 5A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure, Civil 2d § 1349 at 192-93 (1990). Rule 8(a)(2) requires only that a complaint include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a).

A claimant is not required to "set out in detail the facts upon which he bases his claim" so long as the claim "will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley*, 355 U.S. at 47. Moreover, all well- pleaded factual allegations are assumed to be true and are viewed in the light most favorable to the plaintiff. *See Jenkins v. McKeithen*, 395 U.S. 411, 421-22 (1969). Only when the factual allegations in support of a claim are not well-pleaded (e.g., when they are "functionally illegible" or "baldly conclusory," *Shuster v. Oppelman*, 962 F.Supp. 394, 395 (S.D.N.Y.1997)), should they not be accepted as true and the claim dismissed.

IV. Supplemental Jurisdiction

All defendants concede that the MCLL claims comprise the same "case and controversy" under 28 U.S.C. § 1367(a). Some argue, however, that I should decline the exercise of supplemental subject matter jurisdiction as to the MCLL claims because they

involve novel and complex questions of state law that will, in any event, substantially predominate over the federal TILA and RICO claims. These arguments are unpersuasive.

A. The Claims Do Not Present "Novel and Complex" Issues of State Law

It is defendants' position that the MCLL does not regulate the transactions here at issue and further, that if in fact these transactions are regulated, the MCLL does not give sufficient notice to persons engaging in these transactions of that fact; and, finally, that if these transactions are regulated by the MCLL, the defendants were justified in relying on an informal letter opinion issued in 1996 by the former Commissioner of Financial Regulation, H. Robert Hergenroeder, that "deferred deposit check cashing" services did not constitute consumer lending under the MCLL (the "Hergenroeder letter").[4] For these reasons, defendants argue, the determination of whether these transactions are consumer loans and thus regulated by the MCLL presents "novel" and "complex" issues of state law which are best resolved by the courts of Maryland. *See* 28 U.S.C. § 1367(c).[5] I disagree.

The question of the proper characterization for the transactions at issue in the cases at bar has not been specifically addressed by the Maryland Court of Appeals. This does not

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[4]As of February 28, 2000, the Commissioner of Financial Regulation of Maryland gave notice to persons making payday loans of its determination that these transactions are regulated by the MCLL. This statement apparently reversed the position expressed by the Hergenroeder letter in July 31, 1996 that these transactions were not regulated.

[5]The supplemental jurisdiction statute provides in relevant part: "The district courts may decline to exercise supplemental jurisdiction over a claim . . . if– (1) the claim raises a novel or complex issue of State law, [or] (2) the state claim substantially predominates over the claim or claims over which the district court has original jurisdiction . . . ." 28 U.S.C. § 1367(c).

mean, however, that the question raised by these cases invariably presents a "novel and complex" issue of law. Quite the contrary, there are instances, of which I am convinced this is one, where the Court of Appeals has not had occasion to rule on the particulars of an issue but where its prior cases in the same or a related context, *see, e.g.*, *Plitt v. Kaufman*, 188 Md. 606, 609, 53 A.2d 673, 674-75 (1947) (discussing Maryland's strong policy against usury); *Andrews v. Poe*, 30 Md. 485 (1869) (same), provide, in conjunction with the relevant portions of the Maryland Code, *see, e.g.*, Md. Code Ann., Commercial Law § 12-303(c)(2) (addressing the "[p]retended purchase of property or of services considered a loan"); *id.* at § 12-301(e) (defining loan); *id.* at § 12-101(f) (defining interest); *id.*, Financial Institutions § 11-204(b)(2)(iii) (providing licensing requirements for all forms of consumer lending), more than sufficient information upon which a federal court may reliably predict how the Maryland Court of Appeals will resolve open questions of state law. *See Hamilton v. York*, 987 F.Supp. 953, 956-57 (E.D.Ky. 1997) (exercising, where TILA and RICO claims were asserted, supplemental jurisdiction over state usury claims against check cashing establishment where state court had not previously ruled on whether interest statutes applied to transactions); *cf. Hunter by Conyer v. Estate of Baecher*, 905 F.Supp. 341-344-45 (E.D. Va. 1995) ("[T]he lack of case law does not make the [claims] unintelligible to this Court); *Gard v. Teletronics Pacing Corp.*, 859 F.Supp. 1349, 1353 (D.Colo. 1994) ("I am not entering an unsettled field of state law where my decision may be of first impression. Rather, there is a bedrock of precedent to guide my decision. Therefore, I need not refuse jurisdiction

based on the concept of judicial comity between the states and the federal courts."); *U. S. Financial Corp. v. Warfield*, 839 F.Supp. 684, 690-91 (D.Ariz. 1993) ("The court does not read section 1367(c)(1) as indicating that a court should decline jurisdiction any time state law issues may arise in a case that apparently have not been decided.").

Defendants' proffer of the Hergenroeder letter does not change my analysis. I rely on the considerations discussed by the Court of Appeals in *Baltimore Gas & Elec. Co v. Public Service Comm'n of Maryland*, 305 Md. 145, 161-62, 501 A.2d 1307 (1986), and applied in *Haigley v. Department of Health and Mental Hygiene*, 128 Md.App. 194, 216-18, 736 A.2d 1185, 1196-98 (1999), which convince me that the Hergenroeder letter is entitled to very little, if any, weight.

In light of the foregoing, the issues raised by the complaints in these cases are not so novel or complex as to warrant my declining the exercise of supplemental jurisdiction over the state law claims.

B. The State Law Claims Will Not "Substantially Predominate" Over the TILA and RICO Claims.

Defendants next argue pursuant to Rule 12(b)(1) and 28 U.S.C. § 1367(c)(2) that I should decline the exercise of supplemental jurisdiction over the state law claims because the state claims will substantially predominate over the federal claims. These arguments rely in large part on the proposed dismissal of the federal RICO claim. As I explain below, I will not dismiss the RICO claim. And, because the TILA, RICO and MCLL inquiries overlap to a

significant degree, I am satisfied that the state law issues should not substantially predominate over the federal claims. *See Turner v. E-Z Check Cashing of Cookeville, TN*, 35 F.Supp.2d 1042, 1052 (M.D.Tenn. 1999) (denying summary judgment for defendant as to TILA claims and exercising supplemental jurisdiction over state consumer protection act claims in case against payday lenders); *Hamilton* 987 F.Supp. 953 (denying defendant's motion to dismiss as to TILA and RICO claims and exercising supplemental jurisdiction over state consumer loan and interest and usury claims against payday lenders).

V. Rule 12(b)(6) Challenges

A. Count II Fails To State A Claim Upon Which Relief May Be Granted

The plaintiffs' MCLL claim alleges that the defendants have failed to make disclosures of the principal amount of the loan, the finance charge, and annual effective rate of simple interest, *see* Md. Code Ann., Commercial Law, § 12-106(b)(i)-(iii) (2000). The applicable section of the MCLL effectively tracks TILA. *See id.* at § 12-106(b)(4) (providing exemption from statute if creditor has complied with applicable disclosure requirements of TILA). The remedy for this claim is grounded in Md. Code Ann., Commercial Law § 12-114(b). That section, however, only provides for criminal-- not civil-- penalties. *See Schaeffer v. United Bank & Trust Co. of Maryland*, 32 Md.App. 339, 349, 360 A.2d 461, 467 (1976), *aff'd*. 280 Md. 10, 370 A.2d 1138 (1979) (stating that section "12-114 provides a criminal penalty for failure to furnish such a statement when it is required, but the statute does not address itself to civil remedies"). Accordingly, Count II is dismissed.

B. Plaintiffs Have Stated A Claim Under TILA

Defendants contend that plaintiffs have failed to state a claim under the TILA. In arguing against the application of the TILA to their businesses, defendants are swimming against a strong current as every court that has examined the issue has concluded that the TILA applies to transactions of the sort at issue in these cases.

1. TILA And Regulation Z Apply To These Transactions

All defendants argue that it is not clear that TILA and Regulation Z apply to the transactions at issue here. They direct my attention to a proposed change to the Federal Reserve Board of Governors' (the "Board") official interpretation of Regulation Z, which implements TILA. *See* 64 Fed. Reg. 60368 (1999); 12 C.F.R. Part 226 Supp. I (official interpretation). The change-- or "addition," since so far as I can tell it did not change or contradict prior policy-- which became final on March 24, 2000, clarified the Board's position that payday lending or deferred deposit check cashing services were covered by Regulation Z. In accordance with normal Board procedures, compliance of payday lenders with Regulation Z is "optional" until October 1, 2000, and mandatory thereafter.

Prior to the Board's clarification of its official interpretation, neither the Board nor any other authoritative body had interpreted TILA or Regulation Z to exempt these transactions. In fact, federal courts have, since 1997, interpreted TILA and Regulation Z to apply to these transactions. *See Hamilton v. York*, 987 F.Supp. 953, 956-57 (E.D. Ky. 1997); *Miller v. HLT Check Exchange*, 215 B.R., 970, 974 (Bankr. E.D. Ky. 1997) (holding that

check cashing fee is "finance charge" under TILA and that debtor-plaintiff had stated a cause of action under TILA and state usury and consumer protection laws); *In re Brigance*, 219 B.R. 486, 493 (Bankr.W.D. Tenn. 1998) ("The [deferred-deposit] transaction . . . clearly is a short-term extension of credit."); *Turner v. E-Z Check Cashing of Cookeville, TN*, 35 F.Supp.2d 1042, 1047 (M.D.Tenn. 1999) ("Courts that have addressed the issue have held, without exception, that deferred presentment transactions are extensions of credit under TILA."). Indeed, the Board's proposed rule change appears to draw on the early decisions of the Seventh Circuit approving the application of TILA to these transactions. *See, e.g., Brown v. Payday Check Advance, Inc.*, 202 F.3d 987, 989 (7th Cir. 2000).[6]

By virtue of the unambiguous federal authority on the application of TILA and Regulation Z to these transactions, and given the absence of any authority or interpretation to the contrary, *see* 15 U.S.C. § 1640(f) (providing for good faith reliance of Board interpretations); 12 C.F.R. § 226, Supp. I, at § 1 (discussing "official status"of the interpretation and extent to which it may be relied upon), I am persuaded that plaintiffs have stated claims under TILA and Regulation Z against the defendants.

2. The Individual Defendants May Be Creditors Under TILA

The individual defendants argue that plaintiffs have failed to allege sufficient facts

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[6] *See also Hahn v. McKenzie Check Advance of Illinois, LLC*, 202 F.3d 998, 999 (7th Cir. 2000)(per curiam) (same); *Smith v. Cash Store Management, Inc.*, 195 F.3d 325, 326 (7th Cir. 1999)(same); *Smith v. Check-N-Go of Illinois, Inc.*, 200 F.3d 511, 513 & n.* (7th Cir.1999)(same).

establishing that they are "creditors" under TILA. The purpose of TILA is to require consumer lenders to disclose their interest rates clearly and conspicuously so that consumers can make informed decisions when shopping for credit. *See* 15 U.S.C. § 1601(a) ("informed use of credit").

TILA applies to "creditors" engaging in open- and closed-end credit transactions. *See id.* at §§ 1637 (open-end) and 1638 (closed-end). Plaintiffs have sufficiently alleged that the corporate defendants, Colleen and Mr. Cash together with their operating entities, are in the business extending credit and were the parties to whom the customers' checks were made payable. *See* Arrington First Amended Complaint at ¶ 67; Leach First Amended Complaint at 71. Plaintiffs have also sufficiently alleged that the defendant offered consumer credit for which defendants charged a fee. *See* Arrington First Amended Complaint at ¶ 66; Leach First Amended Complaint at ¶ 70. These allegations place Colleen and Mr. Cash in the category of creditors targeted by TILA. *See* 15 U.S.C. § 1602(f) (defining creditor); 12 C.F.R. § 226.4 (defining a finance charge as "the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or condition to the extension of credit."); *id.* at § 226.4(b)(5) (providing example of finance charge as "premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss").

The individual defendants contend, however, that unlike the corporate defendants, they may not be sued individually as creditors under TILA since they were never "the

person[s] to whom the debt arising from the consumer credit transaction [was] initially payable on the face of the evidence of the indebtedness . . . ." 15 U.S.C. § 1602(f). Plaintiffs respond by noting that they have sued the individual defendants not because of their status as officers of the corporate defendants but because of the individual defendants' intimate involvement in the creation and ownership of the corporate defendants and in their facilitation of the corporate defendants' engagement in the activities alleged in the complaints.

By virtue of the allegations of the individual defendants' participation, and assuming the factual allegations to be true and viewing them in the light most favorable to the plaintiff, I am persuaded that plaintiffs have alleged sufficient facts so as to foreclose any conclusion at this stage, as a matter of law, that this is not a case justifying, perhaps as a matter of state or federal common law, the piercing the corporate veil. *Cf. Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc.*, 126 Md.App. 294, 306-07, 728 A.2d 783, 789 (1999) (citing *Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc.*, 275 Md. 295, 310, 340 A.2d 225 (1975); *Travel Committee, Inc. v. Pan American World Airways, Inc.*, 91 Md.App. 123, 158-59, 603 A.2d 1301 (1992); *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 685 (4th Cir. 1976)).

Since defendants have not in their motions demonstrated to my satisfaction that plaintiffs can prove "no set of facts in support of [plaintiffs'] claim[s] that would entitle [them] to relief." *Conley*, 355 U.S. at 45-46, *Warth*, 422 U.S. at 501; *Scheuer*, 416 U.S. at

236, the TILA claims will not be dismissed as to the individual defendants.

C. Plaintiffs Have Stated A Claim Under RICO

Defendants next argue that plaintiffs have failed to state a claim upon which relief may be granted because, defendants contend, plaintiffs lack standing to bring a civil RICO claim. In particular, defendants argue that the phrase "injured in his business or property" in RICO's civil action provision, 18 U.S.C. § 1964(c), imposes the requirement that plaintiffs must allege damage to a "commercial" interest to have standing to sue under RICO. *See Sedima, S.P.R.I. v. Imrex Co.*, 473 U.S. 479, 496 (1985) (characterizing the "injury to business or property" requirement as a standing requirement).

RICO makes it unlawful for "any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity *or the collection of unlawful debts*." 18 U.S.C. § 1962(c) (emphasis added). A "'person' includes any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3). An "unlawful debt" under the statute means a debt "(A) . . . . which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred . . . in connection with the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate." 18 U.S.C. § 1961(6).

Plaintiffs have sued under section 1962(c) pursuant to RICO's civil action provision, which provides that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c).

I am not persuaded by defendants' arguments that plaintiffs lack standing to bring this civil RICO action. First, the cases[7] cited by defendants are not controlling in this context because those cases only address the "racketeering activity" portion of §1962(c), as opposed to the "collection of unlawful debt" portion under which this action is pursued. *Cf. Durante Bros., and Sons, Inc. v. Flushing Nat. Bank*, 755 F.2d 239, 247-48 (2d Cir. 1984) (distinguishing between claims brought under "pattern of racketeering activity" and "collection of unlawful debt" portions of the statute for purposes of *Sedima's* application). The "collection of unlawful debt" portion of section 1962(c) specifically targets loansharking and usurious lending. *See id.* at 249-50 (stating that the RICO "collection of unlawful debt" provision was passed in recognition of the "evils of loansharking," and the statute's provisions target persons "in the business of lending money"). That is precisely the harm

[7]Among those cited by defendants are *Van Schaick v. Church of Scientology of Cal., Inc.*, 535 F.Supp. 1125, 1137 (D. Mass. 1982) (stating that "we believe courts should confine § 1964(c) to business loss from racketeering injuries"); *Bast v. Cohen, Dunn & Sinclair*, 95 F.3d 492, 495 (4th Cir. 1995); *Doe v. Roe*, 958 F.2d 763, 769-70 (7th Cir. 1992); and *Brandenburg v. Seidel*, 859 F.2d 1179 (4th Cir. 1988).

complained of here.[8]

Second, even if the "commercial injury" requirement were understood to apply to the "collection of unlawful debt" portion of the RICO statute, the defendants erroneously translate the limitation against actions for "personal injury and pecuniary losses incurred therefrom," *Doe v. Roe*, 958 F.2d 763, 768 (7th Cir. 1992); *Bast v. Cohen, Dunn & Sinclair*, 95 F.3d 492, 495 (4th Cir. 1995), into a "commercial injury" requirement. The defendants also characterize the personal financial loss of usurious interest alleged here as a "personal injury." Loss of interest is not "personal injury," however, it is clearly a property interest protected under the statute. *See* 18 U.S.C. § 1961(6) (defining an unlawful debt as one which is unenforceable when the interest rate is at least twice the enforceable rate).

Thus, because the cases cited by defendants in support of the "commercial injury" requirement only address the "pattern of racketeering activity" portion of the RICO statute, and because defendants have cited no case which applies the same theory to a case, like this one, pursued under the "collection of unlawful debt" portion of the RICO statute, I am

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[8] I note that defendants have cited *Durante Bros.* for the proposition that "the civil RICO action is not simply an action to recover excessive interest or to enforce a penalty for the overcharge. RICO is concerned with evils far more significant than the simple practice of usury." 755 F.2d 239, 248. This statement was made following the Second Circuit's recitation of the ten elements required to prove a claim under the "collection of unlawful debt" portion of the statute. *See id.* The Court summarized that "the RICO provisions require proof of such matters as the use of the ill-gotten funds in the operations of an enterprise that affects interstate commerce and the fact that the debt was incurred in connection with 'the business of' usury.'" *Id.* at 249. In contrast, the Court noted, "a state law claim governed by [the state usury statute] could be established without proof of nine of the ten listed elements of the civil RICO claim." *Id.* My finding, therefore, that RICO concerns itself with the activities alleged here is entirely consistent with *Durante Bros.*

satisfied that plaintiffs have alleged sufficient injury to "property" to have standing. *See Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago*, 747 F.2d 384 (7th Cir. 1984) (holding that respondents' claims that petitioner bank and several of its officers had fraudulently charged excessive interest rates on loans alleged sufficient injury), *aff'd* 473 U.S. 606 (1985); *cf. Brandenburg Seidel*, 859 F.2d 1179, 1187 (4th Cir. 1988)(stating that depositors' complaint against officers and directors of savings and loan associations alleging the loss of interest income on their savings accounts and certificates of deposit, "contain[ed] an adequate allegation of injury to the plaintiffs' business or property."), *overruled on other grounds by Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996).

D. Plaintiffs Claims Were Filed Within The Applicable Statutes of Limitations

The Arrington plaintiffs filed their complaint on January 20, 2000. The Leach plaintiffs filed their complaint on February 11, 2000. Where a class action is filed, the statute of limitations is tolled from the date the class representative files her complaint for members of the putative class until class certification is denied. *See Davis v. Bethlehem Steel Corp.*, 769 F.2d 210, 210 (4th Cir. 1985) (citing *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 554 (1974) and *Crown, Cork & Seal v. Parker*, 462 U.S. 345, 353-54 (1983)).

1. TILA Claims Were Filed Within the Limitations Period

TILA claims must be brought within one year from the date of the occurrence of the violation. *See* 15 U.S.C. § 1640(c). Transactions in which there was a failure to disclose occurring prior to January 20, 1999, for the Arrington plaintiffs are barred. It appears from

the First Amended Complaint that all named Arrington plaintiffs, with the exception of Dorothy Smith, have alleged "occurrences" of the failure to disclose within the TILA limitations period. *See* 15 U.S.C. § 1640(c); First Amended Complaint at ¶¶ 31-33 (Arrington), ¶¶ 36-37 (Greene), ¶ 42 (Nolan), 46 (Wingo-Roberts). The allegations as to Ms. Smith are that she "began doing business . . approximately two years ago [i.e., February 1998] . . . . She entered into numerous transactions . . . thereafter." *See id.* at ¶¶ 49-50. Since the allegations do not demonstrate that Ms. Smith was subject to a failure to disclose within the TILA limitations period, her claim under TILA will be dismissed.

Transactions in which there was a failure to disclose occurring prior to February 11, 1999, for the Leach plaintiffs are barred. It appears from the First Amended Complaint that all the named Leach plaintiffs have alleged "occurrences" of the failure to disclose within the TILA limitations period. *See* 15 U.S.C. § 1640(e).[9] *See* First Amended Complaint at ¶¶ 41-42 (Biddle); *id.* at ¶¶ 42-45 (Johnson). While the allegations with respect to the Leaches do not definitively establish that they were subject to failures to disclose within the limitations period on the initiation of their transactions in "approximately February [and March] of

[9]Where, as here, defendants have been fully apprised of a claim arising out of specified conduct alleged in the original complaint and thereby have notice of that claim, and where defendants have not demonstrated that they would be prejudiced by the adding of new plaintiffs, the claims of the new plaintiffs asserted in an amended complaint involving the same conduct alleged in the original complaint "relate back" to the filing date of the original complaint for limitations purposes. *See* Fed.R.Civ.P 15(c); *Wassel v. Eglowsky*, 399 F.Supp. 1330, 1371 n.1 (D.Md. 1975); 6A Charles A. Wright & Arthur R.. Miller, Federal Prac. & Proc. § 1501 at 154-62 (1990).

1999," they have also alleged a series of "rollover" transactions over a period of approximately eight weeks, *see id.* at ¶¶ 36-37, which would represent separate "occurrences" of the failure to disclose within the TILA limitations period. *See* 15 U.S.C. § 1640(e)).

2. MCLL Claims Were Filed Within The Limitations Period

Since all claims filed by the plaintiffs were filed within the one-year TILA limitations period, they also were filed within the general three-year limitations period for MCLL claims. *See* Md. Code Ann., Cts. & Jud. Proc. § 5-101 ("A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.").

3. Usury Claims Were Filed Within the Limitations Period

The usury provisions of the Maryland Code provide a six-month statute of limitations for usury running from the time the loan is "satisfied." *See* Md. Code Ann., Commercial Law § 12-111. Loans which were satisfied before July 20, 1999 are barred for the Arrington plaintiffs. It appears from the First Amended Complaint that at least one of the Arrington plaintiffs has sufficiently alleged that her loans were satisfied within the limitations period. *See* First Amended Complaint at ¶ 42 (Nolan).

Claims based on loans which were satisfied before August 11, 1999, are barred for the Leach plaintiffs. It appears from the First Amended Complaint that at least one of the Leach plaintiffs has sufficiently alleged that her loans were satisfied within the limitations period.

See First Amended Complaint at ¶¶ 44-45 (Johnson).

4. RICO Claims Were Filed Within the Limitations Period

Since no statute of limitations is contained in the statute, RICO looks to state law for the most analogous claim and applies the appropriate state law statute of limitations. *See DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 158-59 (1983); *Johnson v. Railway Express Agency*, 421 U.S. 454, 462 (1975). Since there is no state analog to the civil RICO claim asserted here, the most appropriate statute of limitations is the general three year statute of limitations provided by Md. Code Ann., Cts. & Jud. Proc. § 5-101. *See Durante Bros.*, 755 F.2d at 248-49; *see also Lawson v. Nationwide Mortg. Corp.*, 628 F.Supp. 804 (D.D.C. 1986) (holding that one-year usury statute of limitations would not effect congressional purpose in enacting RICO as much as general three year statute of limitations for fraud) (citing *Occidental Life Ins. Co. of California v. EEOC*, 432 U.S. 355, 367 (1977) ("State limitations periods will not be borrowed if their application would be inconsistent with the underlying policies of the federal statute)); *Sedima*, 473 U.S. 479 ("RICO is to be liberally construed to effectuate its remedial purpose . . . .").

VI. The Motions For Summary Judgment Will Be Denied

Defendants Mead and Mascari have moved for summary judgment prior to the commencement of discovery. Their motions will be denied. *See* Fed.R.Civ.P 56(f); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5(1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 & n.6 (1986); *Nguyen v. CNA Corp.*, 44 F.3d 234, 242 (4th Cir. 1995).

VII. Conclusion

For the reasons set forth above and on the record on July 13, 2000, defendants' motions to dismiss, except as to Count II and Smith's TILA claims, are denied. The motions for summary judgment are denied.

Filed: August 7, 2000

Andre M. Davis
United States District Judge