

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

ANTOINETTE HAFFORD, <i>et al.</i> ,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	Civil Action No. AW-07-1633
	*	
EQUITY ONE, INCORPORATED, <i>et al.</i> ,	*	
	*	
Defendants.	*	
<hr style="width: 40%; margin-left: 0;"/>		
	*	
JOSE J. CABREJAS, <i>et al.</i> ,	*	
	*	
Plaintiffs,	*	
	*	Civil Action No. AW-06-0975
v.	*	
	*	
ACCREDITED HOME LENDERS, INC.,	*	
	*	
Defendant.	*	

MEMORANDUM OPINION

Presently before the Court in *Hafford, et al. v. Equity One Incorporated, et al.*, Civil Action No. AW-07-1633, is Defendants Equity One, Incorporated (“Equity”) and Popular Financial Services, LLC’s (“Popular”) Motion to Dismiss Plaintiffs’ Class Action Complaint (Doc. No. 8). Also before the Court in *Cabrejas, et al. v. Accredited Home Lenders, Inc.*, Civil Action No. AW-06-975, are Defendant Accredited Home Lenders, Inc.’s (“Accredited”) Motion for Summary Judgment (Doc. No. 33) and Plaintiffs Jose J. Cabrejas, Isabel C. Cabrejas, Patrick E. Price, and Sylvia M. Booze’s (collectively “Plaintiffs”) Motion for Summary Judgment (Doc. No. 40). The same legal issue – whether there has been a violation of the Maryland Secondary Mortgage Loan Law, Md. Code Ann., Com. Law II § 12-401, *et seq.* (“SMLL”) – serves as the basis for the pending

motions in both *Hafford* and *Cabrejas*, and, thus, the Court's decision on this issue will inevitably effect the outcome in both cases. Therefore, as Defendants have requested, the Court has considered the arguments raised by Defendants Equity and Popular in *Hafford* and by Defendant Accredited in *Cabrejas* together in deciding the dispositive motions currently pending before the Court. Accordingly, this Memorandum Opinion will dispose of the pending motions in both cases.

On February 29, 2008, the Court held a joint hearing on the pending motions in *Hafford* and *Cabrejas* (hereinafter "Motions Hearing"). See Local Rule 105.6 (D. Md. 2008). The issues having been fully briefed and argued by the parties, this matter is now ripe for review. For the reasons stated during the hearing and set forth below, the Court will GRANT Defendants Equity and Popular's Motion to Dismiss in *Hafford*, GRANT Defendant Accredited's Motion for Summary Judgment in *Cabrejas*, and DENY the *Cabrejas* Plaintiffs' Motion for Summary Judgment.

Also pending before the Court is the *Hafford* Plaintiffs' Motion to Certify Question to Court of Appeals of Maryland (Doc. No. 20 in Civil Action No. AW-07-1633) and the *Cabrejas* Plaintiffs' MOTION to Certify Question of Law to the Court of Appeals of Maryland (Doc No. 50 in Civil Action No. AW-06-975). For the reasons stated below, the Court will DENY both motions.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Hafford

Plaintiffs Antoinette Hafford ("Hafford"), Linda Fell ("Fell"), and Dennis and Denise Leach ("Leach") bring this action against Defendants Equity One, Inc. ("Equity") and Popular Financial Services, LLC, ("Popular"), claiming a violation of Maryland's Interest and Usury Laws, Md. Code Ann., Com. Law II § 12-101, *et seq.* ("Subtitle I"); the Maryland Secondary Mortgage Loan Law, Md. Code Ann., Com. Law II § 12-401, *et seq.* ("SMLL"); the Credit Grantor Closed End Credit

Provisions, Md. Code Ann., Com. Law II § 12-1001, *et seq.* (“Subtitle 10” or “CLEC”); and the Maryland Consumer Protection Act (“CPA”), Md. Code Ann., Com. Law II § 13-101, *et seq.*

On or about December 16, 2004, Representative Plaintiff Hafford obtained a fixed-rate secondary mortgage loan from Defendant Equity secured by a lien on her residence. According to the Complaint, the principal amount of the loan was \$80,110.70, to be paid over a 20 year term with an interest rate of 9.75%. Hafford alleges that she was injured by the predatory lending practices of Equity One, as the fees charged¹ in connection with her loan are “illegal and excessive,” thereby constituting a violation of the SMLL.

Plaintiffs initiated this suit by filing a class action complaint in the Circuit Court for Prince George’s County, Maryland, on July 18, 2006. On June 20, 2007, Equity and Popular properly removed the case to this Court based on 28 U.S.C. § 1332(a) (diversity jurisdiction), 28 U.S.C. § 1332(d) (the Class Action Fairness Act), and 28 U.S.C. § 1331 (federal question), with 28 U.S.C. § 1367 (supplemental jurisdiction). Plaintiffs initially asserted two counts against Defendants: Count I – violations Subtitle I, the SMLL, and the CLEC;² and Count II – violation of the CPA. On February 28, 2008, Plaintiffs Fell and Leach informed the Court that they were abandoning their

¹ In connection with the closing of the loan, Equity One charged and collected the following fees: Loan Discount Fee of \$1,257.80, Appraisal Fee of \$325.00, Credit Report Fee of \$1.16, Underwriting Fee of \$250.00, Processing Fee of \$250.00, Abstract/Title Fee of \$190.00, and Title Insurance Fee of \$202.00. Defendant Equity contends that the “Abstract/Title Search” and “Title Insurance” fees, although referenced in the complaint, should not be at issue because the SMLL expressly permits a lender to charge and collect Title Examination costs and Title Insurance premiums in addition to a “loan origination fee” that does not exceed 10% of the net loan proceeds. *See* C.L. § 12-410(b)(3) (allowing a lender to require a borrower to insure, and to collect from the borrower the premiums paid for insurance on, “the title of any real property securing the loan”); *see also* 67 Md. Op. Att’y Gen. 98 (interpreting SMLL to allow lender to require borrower to pay for the title examination costs in addition to the title insurance premium.)

² Defendants note, and the Court agrees, that the CLEC (“Subtitle 10”) is inapplicable to this case, as Plaintiffs concede that none of their loans are governed by that subtitle. Plaintiff Hafford admits that her secondary mortgage loan is governed by the SMLL, and Plaintiffs Fell and Leach contend that their loans are governed by Subtitle I. Therefore, Subtitle 10 is not an issue for the purposes of this Memorandum Opinion.

claims under Subtitle I and the CPA.³ Therefore, the sole remaining claim before this court is Plaintiff Hafford's SMLL claim against Defendant Equity.

B. Cabrejas

Plaintiffs Jose J. Cabrejas and Isabel C. Cabrejas ("Cabrejas"), Patrick E. Price ("Price"), and Sylvia M. Booze ("Booze") (collectively "*Cabrejas* Plaintiffs") own residential real estate in Maryland and obtained mortgage loans from Defendant Accredited Home Lenders, Inc.'s ("Defendant" or "Accredited") in Maryland, or obtained mortgage loans that were later transferred to Accredited in Maryland. Accredited is a nationwide, Maryland licensed mortgage lender, whose services include granting loans secured by secondary mortgages. In late 2005, Accredited made loans to Plaintiffs that were secured by secondary mortgages.⁴ In connection with these loans, Accredited charged Plaintiffs various fees related to the origination of the loans.⁵ These fees

³ On February 28, 2008, prior to the Joint Motions hearing, Plaintiffs filed a letter with the Court, informing the Court that Plaintiffs Fell and Leach have abandoned their claims against Defendant Popular. Plaintiffs Fell and Leach have decided not to pursue their claim for prepayment penalties under Subtitle I based on the recent Fourth Circuit ruling, affirming Judge Roger Titus's dismissal of *Gary D. Hicks, et al. v. Wilshire Credit Corporation*, Civil Action No. 06-2195 (D. Md. Feb. 26, 2007). Additionally, Plaintiffs have abandoned their CPA claim based upon this Court's earlier ruling on December 6, 2006, in *Cabrejas, et al. v. Accredited Home Lenders, Inc.*, Civil Action No. AW-06-975. In light of the Plaintiffs' decision not to pursue these claims against Popular, the parties and the Court agreed during the Motions Hearing that dismissal of Popular from this action is appropriate. Accordingly, Popular no longer remains a party to this action. The Court also notes that Plaintiffs Fell and Leach have no claims against Defendant Equity, the sole Defendant remaining in the *Hafford* action.

⁴ Cabrejas obtained a secondary mortgage loan from Accredited on or about August 26, 2005, secured by a lien on their residence at 7 Halfpenny Court, Gaithersburg, Maryland, 20886. The principal amount of the loan was \$99,400.00 for a term of 15 years at 12.49%. Price obtained a secondary mortgage loan from Accredited on or about September 30, 2005, secured by a lien on his residence at 3 Dimely Court, Middle River, Maryland, 21220. The principal amount of the loan was \$58,000.00 for a term of 15 years at 8.99%. Booze obtained a secondary mortgage loan from Accredited on or about July 29, 2005, secured by a lien on her residence at 3081 Chester Grove Road, Unit D, Upper Marlboro, Maryland, 20774. The principal amount of the loan was \$35,700.00 for a term of 15 years at 11.75%.

⁵ Accredited charged the following fees from each of the Plaintiffs:

<u>Type of Fee/Costs</u>	<u>Cabrejas</u>	<u>Price</u>	<u>Booze</u>
Loan Origination Fee	\$994.00	\$0.00	\$200.00
Tax Service Fee	\$66.00	\$66.00	\$66.00

included fees to cover the costs of underwriting the loan, the costs of settlement, and other costs that are a part of originating the loan. Plaintiffs claim that these charges were “illegal and excessive,” and thus, were charged in violation of the SMLL.

On February 24, 2006, Plaintiffs, on behalf of themselves and all others similarly situated, filed a Class Action Complaint in the Circuit Court for Prince George’s County, Maryland, against Defendant Accredited. On March 13, 2006, Plaintiffs filed an Amended Class Action Complaint. Plaintiffs’ Amended Complaint alleged two counts: Count I – that Accredited violated the SMLL; and Count II – that Accredited violated the CPA. Accredited properly removed this action to this Court on April 13, 2006, based on 28 U.S.C. § 1332(a) (diversity jurisdiction) and 28 U.S.C. § 1332(d) (the Class Action Fairness Act), with 28 U.S.C. § 1367 (supplemental jurisdiction). Defendant filed a Rule 12(b)(6) motion to dismiss Count II of Plaintiffs’ Amended Class Action Complaint. On December 6, 2006, the Court issued an Order granting Defendant’s motion and dismissing Plaintiff’s CPA claim. Subsequently, on January 3, 2007, Plaintiffs filed a two-count Second Amended Class Action Complaint, alleging violation of the SMLL (Count I) and Md. Code Ann. Com. Law § 12-404 (Count II). On July 5, 2007, the Court dismissed Count II of Plaintiffs’ Second Amended Class Action Complaint. Thus, Count I – Plaintiffs’ SMLL claim – is the sole issue remaining in this action.

Flood Certification Fee	\$5.00	\$5.00	\$5.00
Underwriting Fee	\$395.00	\$495.00	\$395.00
Settlement/Closing Fee	\$125.00	\$200.00	\$295.00
Recording Service Fee	\$0.00	\$0.00	\$45.00
Title Insurance Binder	\$35.00	\$50.00	\$50.00
Document Preparation	\$35.00	\$0.00	\$0.00
Title Insurance	\$300.00	\$25.00	\$35.00
Assignment Fee	\$40.00	\$0.00	\$0.00
Doc Delivery/Express	\$0.00	\$0.00	\$75.00
<i>TOTAL AMOUNT:</i>	<i>\$1995.00</i>	<i>\$841.00</i>	<i>\$1166.00</i>

As the exact same statutory provision – section 12-405 of the SMLL – is at issue in both *Hafford* and *Cabrejas*, the Court will address this alleged violation of the SMLL together in both cases below.

II. STANDARD OF REVIEW

A. Motion to Dismiss

Defendants Equity and Popular in *Hafford* have moved for dismissal of Plaintiffs' Class Action Complaint. A motion to dismiss for failure to state a claim is appropriate under Rule 12(b)(6) where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Labram v. Havel*, 43 F.3d 918, 921 (4th Cir. 1995) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

In determining whether to dismiss a complaint pursuant to Rule 12(b)(6), this Court must view the well-pleaded material allegations in the light most favorable to the plaintiff and accept the factual allegations contained within the plaintiff's complaint as true. *See Chisolm v. TranSouth Finan. Corp.*, 95 F.3d 331, 334 (4th Cir. 1996). The Court, however, is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Nor is the Court "bound to accept [Plaintiff's] conclusory allegations regarding the legal effect of the facts alleged." *United Mine Workers of Am. v. Wellmore Coal Corp.*, 609 F.2d 1083, 1085-86 (4th Cir. 1994). Thus, a complaint may be dismissed as a matter of law if it lacks a cognizable legal theory or if it alleges insufficient facts to support a cognizable legal theory. *See Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984) (citing 2A J. Moore, Moore's Federal Practice ¶ 12.08 at 2271 (2d ed. 1982)).

B. Motion for Summary Judgment

Defendant Accredited in *Cabrejas* has moved for summary judgment. Plaintiffs in *Cabrejas*

have also moved for summary judgment on the issue of liability.⁶ Under the Federal Rules of Civil Procedure, summary judgment is appropriate only if there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986). When ruling on a motion for summary judgment, the court must view the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The moving party discharges its burden by showing an absence of evidence to support the non-moving party's case. *Celotex*, 477 U.S. at 325. When faced with a motion for summary judgment, Rule 56(e) requires the non-moving party "to go beyond the pleadings" and show the existence of a genuine issue for trial, by way of affidavits, deposition testimony, or answers to interrogatories. *Id.* at 324; *see also Matsushita Elec. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). While the evidence of the non-movant is to be believed and all justifiable inferences drawn in his or her favor, a party cannot create a genuine dispute of material fact through mere speculation or compilation of inferences. *See Deans v. CSX Transp., Inc.*, 152 F.3d 326, 330-31 (4th Cir. 1998); *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985).

III. DISCUSSION

A. Certification to the Court of Appeals of Maryland⁷

Plaintiffs in both actions have filed a motion to certify the question of law to the Court of Appeals of Maryland, asking the Court to submit the following question for determination by the Court of Appeals of Maryland:

⁶ For this motion, Plaintiffs adopt and incorporate Plaintiffs' Memorandum in Support of Plaintiffs' Response in Opposition to Defendant Accredited's Motion for Summary Judgment.

⁷ These motions are virtually identical, where Plaintiffs in both actions ask the Court to certify to the Court of Appeals the last legal issue remaining unresolved in both cases.

Does C.L. § 12-405 limit lender compensation to only a single loan origination fee and finder's fee, or may a lender collect any number of separately labeled closing fees, costs and charges as long as the total amount of such fees, costs and charges, loan origination and finder's fees, if any, are less than 10% of the net proceeds of the loan?

Plaintiffs move for certification pursuant to the Maryland Uniform Certification of Questions of Law Act, which provides: "The Court of Appeals of this State may answer a question of law certified to it by a court of the United States or by an appellate court of another state or of a tribe, if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision, or statute of this State." Md. Code Ann., Cts. & Jud. Proc. § 12-603. It is well established that the decision to certify a question to the Court of Appeals of Maryland is not obligatory and "rests in the sound discretion of the federal court." *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974); *Boyster v. Comm'r of Internal Revenue Serv.*, 668 F.2d 1382, 1385 (4th Cir. 1981) (noting that the court has discretion "as to whether to employ the Maryland certification procedure"). In exercising such discretion, federal courts may decide not to certify a question to a state court where the federal court can reach a "reasoned and principled conclusion." See *Simpson v. Duke Energy Corp.*, No. 98-1906, 1999 U.S. App. LEXIS 21553, at *9 (4th Cir. Sept. 8, 1999) (finding that there was sufficient sources of South Carolina law for [the court] to render a reasoned and principled conclusion); see also 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4248 (3d ed. 2007) (considering whether the court can reach "a principled rather than conjectural conclusion" as a factor in determining whether to exercise the discretion of certification).

Plaintiffs note that the sole remaining legal issue in this action is a matter of first impression of Maryland law without controlling precedent. While the Court recognizes that this question is indeed one of first impression, the Court also notes, as Defendants correctly point out, that this

District has routinely resolved questions of first impression.⁸ Where there is no case law directly on point, this Court must attempt to rule on the question “as the state court would do if confronted with the same fact pattern.” *Roe v. Doe*, 28 F.3d 404, 407 (4th Cir. 1994). The Court believes that Plaintiffs’ claim under C.L. § 12-405 presents a straightforward question to be decided by the Court. While the Court must engage in statutory interpretation to resolve the dispute between the parties, the Court believes that it is capable of interpreting the statute as the Court of Appeals of Maryland would if presented with this same issue, and is able to reach a “reasoned and principled” decision. Thus, the Court, in exercising its discretion, will deny Plaintiffs’ motion to certify and will rule accordingly on the question presented before the Court.

B. Interpreting Section 12-405 of the SMLL

Plaintiffs⁹ allege that Defendants Equity and Accredited (“Defendants”)¹⁰ charged and collected excessive and illegal fees and expenses in connection with the closing of their secondary mortgage loans in violation of section 12-405 of the Secondary Mortgage Loan Law, Md. Code Ann., Com. Law II¹¹ at § 12-405 (“SMLL”). This Court must now decide whether C.L. § 12-405 limits lender compensation to only a single loan origination fee and finder’s fee, or whether a lender is permitted to collect a variety of separately labeled closing fees, costs, and charges as long as the aggregate amount of such fees, costs, and charges are less than 10% of the net proceeds of the loan.

⁸ To support their argument, Defendants cite, among other cases, *Eccles v. Nat’l Semiconductor Corp.*, 10 F. Supp. 2d 514 (D. Md. 1998) (determining as a matter of first impression the standard for good cause as set forth in Md. Rule 2-507); *Zachair, Ltd. V. Driggs*, 965 F. Supp. 741, 752 (D. Md. 1997) (interpreting scope of Md. Rule of Professional Conduct 4.2 as a matter of first impression in Maryland); *Davidson v. Sinai Hosp. of Baltimore, Inc.*, 462 F. Supp. 778, 779 (D. Md. 1978) (deciding question of first impression under Maryland statute – the Maryland Health Care Malpractice Act).

⁹ For the purposes of this discussion, the Court will refer to the *Hafford* Plaintiffs and *Cabrejas* Plaintiffs collectively as “Plaintiffs.”

¹⁰ For the purposes of this discussion, the Court will refer to the *Hafford* Defendant and *Cabrejas* Defendant collectively as “Defendants.”

¹¹ “C.L.” shall hereinafter refer to the Commercial Law II of the Maryland Annotated Code.

This issue is one of first impression for this Court, as no Maryland court has yet interpreted § 12-405 in the context of the fee violation alleged in Plaintiffs' Complaints.

Section 12-405 of the SMLL reads, in pertinent part:

- (a)(1) A lender may collect a loan origination fee for making a loan under this subtitle only as provided in this section.
- (2) The aggregate amount of the loan origination fee imposed by a lender under this section when combined with any finder's fee imposed by a mortgage broker under § 12-804 of this article may not exceed the greater of:
 - (I) \$500 or 10 percent of the net proceeds of a commercial loan of \$75,000 or less made under this subtitle; or
 - (ii) \$250 or 10 percent of the net proceeds of any other loan made under this subtitle.

Md. Code Ann., Com. Law II § 12-405(a)(1)-(2).

Here, both parties argue two different interpretations of this statutory provision. Plaintiffs argue that the SMLL limits lenders' compensation for secondary mortgage loans to a single origination fee, and thus, Defendants violated the SMLL when it collected other excessive fees. Defendants, on the other hand, argue that Plaintiffs' reading of the SMLL is too narrow, and that the SMLL permits Defendants to charge and collect a variety of fees related to the origination of the loan, provided that the aggregate amount of such fees does not exceed the ten percent statutory maximum.¹²

While no Maryland court has ever decided this issue, this issue was framed by Judge Smalkin of this Court in *Miller v. Pac. Shore Funding*, 224 F. Supp. 2d 977 (D. Md. 2002). In *Miller*, Judge Smalkin recognized that section 12-405 of the SMLL was subject to two interpretations. Judge Smalkin's first interpretation, which Plaintiffs adopt, is that the lender's own

¹² The parties do not dispute that Plaintiffs were not charged fees in excess of the ten percent cap of the net loan amount as authorized by the SMLL.

labels matter, such that the only authorized lender fee is a single “loan origination fee.” Any and all other charges by the lender, regardless of their amounts, “violate the SMLL *in toto*.” *Miller*, 224 F. Supp. 2d at 993. However, the second interpretation, which Defendants adopt, is that lenders may charge (and so denominate) all the fees they so wish, “so long as they arise from the origination of the loan and do not, in sum, exceed 10% of the net proceeds of the credit extended. All would, in aggregate, constitute a valid, statutory ‘loan origination fee.’” *Id.* at 993. The Court must now decide between these two interpretations.

I.

In determining how to interpret C.L. § 12-405, the Court must note that the primary goal and cardinal rule of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” *Degren v. State*, 352 Md. 400, 417, 722 A.2d 887, 895 (Md. 1999); *see also Manor Care of Am., Inc. v. Property & Cas. Ins. Guar. Corp.*, 185 Fed. Appx. 308, 310 (4th Cir. 2006). The Court must first look to the language of the statute itself to determine the legislative intent. *Degren*, 722 A.2d at 895. Courts generally do not look beyond the statute’s words if they are “plain and free from ambiguity, and express a definite and simple meaning.” *Id.*; *see also In re Carnegie Int’l Corp. Secs. Litig.*, 107 F. Supp. 2d 676, 679 (D. Md. 2000) (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997), for the proposition that “the Court’s inquiry could stop based on the plain language of the statute”).

However, when the statutory language is ambiguous, courts consider “not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives and purpose of the enactment.” *Tucker v. Fireman’s Fund Ins. Co.*, 308 Md. 69, 75, 517 A.2d 730, 732 (Md. 1986). Courts may consider the pertinent legislative history, and other “external manifestations” or “persuasive evidence.” *Kaczorowski v. Baltimore*, 309 Md. 505, 515, 525 A.2d

628, 632 (Md. 1987). Courts may also consider related statutes and “other material that fairly bears on the . . . fundamental issue of legislative purpose or goal.” *Gov’t Employees Ins. Co. v. Ins. Comm’r*, 332 Md. 124, 132, 630 A.2d 713, 714 (Md. 1993). It is important to note that, in case of ambiguity, the Court must not interpret statutes in a manner that “avoid[s] illogical and unreasonable results that defy common sense.” *Marsheck v. Bd. of Trs. of Fire & Police Employees’ Retirement Sys. of City of Baltimore*, 358 Md. 393, 403, 749 A.2d 774, 778 (Md. 2000); *see also Manor Care of Am., Inc.*, 185 Fed. Appx. at 310 (4th Cir. 2006) (same).

There is no dispute as to whether section 12-405 of the SMLL allows lenders to charge a loan origination fee. The dispute in this case, however, lies specifically with the language in section 12-405(a)(2) – “[t]he aggregate amount of the loan origination fee imposed by a lender under this section when combined with any finder’s fee imposed . . . may not exceed the greater of” While Defendants argue that “aggregate amount” refers to an aggregate amount of loan origination fees (i.e., multiple loan origination fees), Plaintiffs, instead, assert that “aggregate amount” entails the total resulting from the addition of a single loan origination fee with a finder’s fee – not multiple fees as argued by Defendants. As Judge Smalkin in *Miller* recognized two possible interpretations of this section, this Court also finds – beginning with the statute’s plain language – that the word “aggregate,” as used in the statute, is plainly susceptible of more than one meaning and, thus, therein lies an ambiguity. Therefore, the Court must look beyond the plain language of the statute to ascertain the intent of the Maryland General Assembly.

The General Assembly created a task force to examine the mortgage lending business to address the issues involved in mortgage lending reform, including “the cap on secondary mortgage fees.” *See* Md. Fisc. Note, 1998 Sess., H.B. 202. Based on the task force’s recommendations, the General Assembly established a bill that “alters the regulation of the mortgage lending business by

restricting to 10, the total points mortgage brokers and mortgage lenders may charge on secondary mortgages . . . ” and adopted a “10-point combined cap on the amount that brokers and lenders may charge for a secondary mortgage.” *Id.* Moreover, in explaining the purpose of the amendment to section 12-405(a)(2), the General Assembly noted that the amendment was to “alter[] the manner in which certain points, loan origination fees, commissions, finder’s fees, or similar charges may be allocated between a mortgage broker and a lender or credit grantor in certain loan transactions and establish[] an aggregate percentage cap on the amount of such charges” 1998 Md. ALS 760.¹³ Given this legislative purpose, it appears to the Court that the General Assembly, when enacting section 12-405, was focused on the total amount of fees charged and intended to limit a borrower’s cost for obtaining a secondary mortgage loan to 10% of the net proceeds of the loan.

Finding that the legislature’s main objective was to establish a statutory cap, the Court must now consider the meaning of the language in section 12-405 in light of the purpose to determine whether the lender may charge a variety of fees related to the origination of the loan, provided that the aggregate amount of such fees does not exceed the 10% statutory maximum, or whether mortgage lenders are only permitted to charge a single fee, denominated “loan origination fee.”

Although the term “loan origination fee” appears in singular form in section 12-405, the statute does not define “loan origination fee” nor does it specify whether this fee should be a single fee or includes a combination of fees. Although the *Miller* court did not decide the issue currently before the Court, it referenced “loan origination fee” in a way that suggests that the fee, as it is used in the statute, is not limited to a single fee, noting that “the SMLL has authorized lenders to change and collect an *aggregate* ‘loan origination fee’ of no more than 10% of the ‘net proceeds’ of the

¹³ Notwithstanding the legislative history as cited by both parties, Plaintiffs suggest that the statutory purpose of the SMLL is to enable prospective borrowers to easily compare the true cost of available loan products. Based on the Court’s reading of the statute, particularly in the context of the legislative history, the Court does not believe that such intent is reflected by the General Assembly.

loan.” *Miller*, 224 F. Supp. 2d at 991 (emphasis added). Although not defined by Maryland statute, other definitions also suggest that the term “loan origination fee” does not necessarily denote a single fee and instead means fees associated with the cost of originating the loan. For example, Fannie Mae, a housing loan industry leader, defines “loan origination fee” as a fee that “covers the administrative costs of processing the loan.”¹⁴ The Department of Housing and Urban Development (“HUD”) also defines the “loan origination” fee as a fee that “covers the lender’s administrative costs in processing the loan” and is “[o]ften expressed as a percentage of the loan.”¹⁵ HUD also defines “origination” of a loan as “the process or preparing, submitting, and evaluating a loan application” and “generally includes a credit check, verification of employment, and a property appraisal.”¹⁶

Defendants maintain, and Plaintiffs do not dispute, that the aggregate amount of fees charged by Defendants in connection with the origination of Plaintiffs’ loans, i.e. the administrative costs incurred in originating the loan, did not exceed the statutory cap of 10% of the net loan proceeds. In fact, Plaintiffs in both actions before the Court were charged well below that amount.¹⁷ Despite not being charged in excess of the statutory maximum, Plaintiffs argue that Defendants violated the SMLL by charging multiple fees in connection with the origination of their loans and

¹⁴ See Fannie Mae Online Mortgage Glossary, available at <http://www.mortgagecontent.net/content/fanniemae/FullGlossary/GlossaryL.html> (also defining “loan origination” as “the process by which a lender makes a loan which may include taking a loan application, processing and underwriting the application, and closing the loan”).

¹⁵ See HUD-1 Settlement Statement, Line 801.

¹⁶ See HUD Glossary, available at www.hud.gov/offices/hsg/sfh/buying/glossary.cfm; see also *Nilsen v. Long Beach Mortg. Co.*, No. 56322-0-1, 2006 WL 2469141, at *8 (Wash. Ct. App. August 28, 2006) (determining that the loan origination fee includes underwriting fees charged in preparing, processing, and evaluating the loan).

¹⁷ In connection with her \$80,110.70 secondary mortgage loan, Hafford paid \$2083.96 in origination fees – only 2.6 percent of the net loan proceeds. Plaintiff Booze received a loan with a principal amount of \$35,700.00 and the combined fees charged in association with the origination of the loan were \$1,166.00 – only 3.6% of the net loan proceeds. Plaintiffs Cabrejas received a loan with a principal amount of \$99,400.00 and paid \$1,995.00 in fees associated with the origination of the loan – only 2.2% of the net loan proceeds.

by separately disclosing fees not denominated “loan origination fee.” Therefore, Plaintiffs ask this Court to interpret section 12-405 as limiting the loan origination fee to a single fee.

While Plaintiffs have a reasonable view of the statute, the Court, however, cannot agree with their narrow and technical interpretation.¹⁸ Rather than concentrating on how fees are itemized or separately charged, the Court believes that the General Assembly was more focused on the total amount of fees charged and intended to limit a borrower’s cost for obtaining a secondary mortgage loan to 10% of the net proceeds of the loan. Given this purpose, the Court is persuaded by Defendants’ argument that the SMLL was not intended to prevent lenders from charging a loan origination fee that, when the itemized components are aggregated, is far below the statutory cap, as it is in this case. Also, considering the purpose of the statute and common meanings of the term “loan origination fee” and construing the language of the statute in a manner that “avoid[s] illogical and unreasonable results that defy common sense,” the Court finds that Defendants’ interpretation of section 12-405 is the most sensible interpretation. *See Marsheck*, 749 A.2d at 778; *see also Whiting-Turner Contractor Co. v. Fitzpatrick*, 366 Md. 295, 302, 783 A.2d 667, 670 (Md. 2001) (“A statute is to be given reasonable interpretation, not one that is illogical or incompatible with common sense.”). Moreover, the Court does not find such an interpretation to be inconsistent with or a compromise of the spirit, intent, and integrity of the SMLL.

During oral arguments before the Court, Plaintiffs also suggested that in order to avoid charging more than one loan origination fee, a lender could opt to absorb or cover the cost of the other fees commonly charged in originating the loan or charge borrowers more interest instead of charging the other fees. The Court cannot accept such a suggestion. Plaintiffs’ interpretation of the statute would potentially result in catastrophe and confusion in the mortgage lending industry

¹⁸ The Court also notes that Plaintiffs’ interpretation appear to be one of form versus substance.

because it would cause the lending community to be pigeon-holed and restricted from charging fees that are routinely charged in the origination of loans or for administrative costs of processing a loan. As a result, if Plaintiffs were to prevail, lenders would be prohibited from outsourcing parts of the origination process to third party service providers, who provide necessary services including, but not limited to, title examinations and flood certifications. There is nothing in the statute that suggests, and nothing has been presented to convince this Court, that the Maryland General Assembly intended to restrict the commonly accepted lending practices. The Court does not agree that Plaintiffs' narrow and very technical interpretation of "loan origination fee," in the context of its usage in section 12-405, was necessarily intended by the General Assembly in view of the unreasonable consequences that would more than likely result from such a limited interpretation. *See Patterson Park Pub. Charter Sch. v. Balt. Teachers Union, AFT Local 340, AFL-CIO*, 399 Md. 174, 198, 923 A.2d 60, 74 (Md. 2007) (holding that "whenever possible, an interpretation should be given to the statutory provisions which does not lead to absurd consequences"); *see also Md. Div. of Labor & Indus. v. Triangle Gen. Contrs., Inc.*, 366 Md. 407, 425, 784 A.2d 534, 544 (Md. 2001) ("Principles of statutory construction confirm that [the Court] may 'consider the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.'").

2.

In addition to the SMLL in Maryland, lenders are also required to adhere to certain federal laws governing lending practices. As Defendants note, one of these such laws – the Real Estate Settlement Procedure Act ("RESPA") – requires lenders to "conspicuously and clearly itemize all charges imposed on the borrower." 12 U.S.C. § 2603. Defendants argue that their interpretation of the SMLL – that lenders could charge (and so denominate) all the fees they so wish, so long as

they arise from the origination of the loan and do not, in sum, exceed 10% of the net proceeds of the credit extended – is consistent with RESPA, 12 U.S.C. § 2601, *et seq.*

RESPA was enacted to, among other things, “insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process.” 12 U.S.C. § 2601. Under RESPA, a uniform disclosure, commonly called the HUD-1 Settlement Statement, must be used in real estate transactions.¹⁹ While RESPA requires the separate, itemized disclosure of certain components of loan fees, it does not regulate how fees are charged.

Defendants argue that they did precisely what RESPA mandates and itemized all of the costs charged in connection with the origination of Plaintiffs’ loans. Defendants assert that they disclosed this itemized list on the HUD-1 Settlement Statement and that it chose not to lump all the fees together simply to designate them collectively as a “loan origination fee.” Defendant Accredited in *Cabrejas* also notes that Plaintiffs in that action paid a single lump sum amount and the fees were merely listed separately, pursuant to RESPA. Defendants argue that if Plaintiffs’ interpretation of the SMLL were to prevail, the SMLL would require lenders to lump all of the closing/origination costs together and label these costs on the HUD-1 Settlement Statement as a single “loan origination fee,” instead of having an itemized list clearly detailing what fees could be charged to the borrower.

Plaintiffs, however, argue that Defendants ignore the fact that they are limited to charging a single loan origination fee under section 12-405 of the SMLL and are now seeking to use RESPA to excuse their violation of section 12-405. The Court disagrees with Plaintiffs’ contention, as the Court finds that Defendants are permitted to read the statutes in conjunction with each other where both statutes relate to a similar subject matter: namely, in this case, fees associated with mortgage

¹⁹ HUD is the agency charged with interpreting and enforcing RESPA.

loans. *See Maryland-National Capital Park & Planning Comm’n v. Anderson*, 395 Md. 172, 183, 909 A.2d 694, 700 (Md. 2006) (“[w]here statutes relate to the same subject matter, and are not inconsistent with each other, they should be construed together and harmonized where consistent with their general object and scope.”); *see also Maryland State Police v. Warwick Supply & Equip. Co.*, 330 Md. 474, 484, 624 A.2d 1238, 1242-43 (Md. 1993) (discussing how “courts strongly favor a harmonious interpretation” where two statutes purport to deal with the same subject matter).

In considering the language and purpose of section 12-405 and taking into account the itemized disclosures requirement, the Court, reading these provisions together, finds that the Defendants did not violate the SMLL when they charged and disclosed fees related to the origination of Plaintiffs’ loans, whose aggregate amount did not exceed the 10% statutory cap. If the Court were to adopt Plaintiffs’ interpretation, lenders across the State of Maryland would be allowed to lump together the fees associated with the administrative costs and origination of the loan and label those fees as a single loan origination fee. The Court has some reservations about this interpretation as the Court is concerned that it will result in borrowers not knowing exactly what fees are being charged.²⁰ To accept Plaintiffs’ argument, as Defendants contend, would defeat the very purpose for which Congress enacted RESPA – to ensure consumers are provided with greater information regarding the nature and costs of the settlement process. *See* 12 U.S.C. § 2601(a). The Court is also concerned that Plaintiffs’ interpretation of § 12-405 will likely result in lenders refusing to make such disclosures, even if requested by borrowers, due to the fear of violating the SMLL. Such an interpretation would be inconsistent with RESPA, which requires lenders to “conspicuously and clearly itemize all charges imposed on the borrower.” 12 U.S.C. § 2603.

²⁰ As Defendants correctly point out, the SMLL contains no disclosure requirement regarding the cost of loan origination, nor does the statute provide a vehicle whereby a lender may disclose how the loan origination fee is actually charged. RESPA, however, provides such a vehicle, allowing consumers an opportunity to be informed about every cost charged in connection with the origination of their loans.

The Court cannot construe section 12-405 in a manner that would unreasonably and illogically require Defendants to lump together all of the fees, denote those fees as a single “loan origination fee,” and to rob borrowers of the protection of being informed of the exact costs involved. Therefore, considering the purpose of the statute, common meanings of the term “loan origination fee,” and the interplay between the SMLL and RESPA (both of which the lenders are bound to comply with), and construing the language of the statute in light of the canons of statutory construction, the Court disagrees with Plaintiffs’ narrow interpretation of section 12-405 and finds that Defendants have not violated the statute. Accordingly, the Court adopts an interpretation of section 12-405 that allows lenders to charge an aggregate loan origination fee – meaning a variety of fees arising from the origination of the loan – so long as the fees do not exceed the statutory maximum of 10% of the net proceeds.

CONCLUSION

It is clear to this Court that the Maryland General Assembly, when enacting C.L. § 12-405, was concerned with limiting a borrower’s cost for obtaining a secondary mortgage loan to 10% of the net proceeds of the loan – not restricting lenders to charging only one loan origination fee. Such an interpretation, if either held or allowed by this Court, would be an unintended departure from what this Court believes the General Assembly desired. The Court also expresses reservations about Plaintiffs’ interpretation, where the Court finds minimal, if hardly any, harm to Plaintiffs in this action.

Moreover, the Court notes that such a narrow interpretation would cause a chilling effect on the industry by opening the floodgates of litigation whenever a fee not denominated as a “loan origination fee” is charged, despite the harm, or lack thereof, caused to a borrower. While stricter regulations of lending practices may eventually be necessary given recent market difficulties, this

Court is of the belief that such regulatory decisions properly rest within the wisdom and province of the General Assembly. The Court's role is merely to interpret the statute before it, as the Court has done in light of the language of the statute, the purpose of the statute, common meanings of the term "loan origination fee," the interplay between the SMLL and RESPA, and the well-established canons of statutory construction. Thus, the Court, in deciding that Defendants have not violated the SMLL, finds that its interpretation is consistent with the spirit and intent of the SMLL and maintains the integrity of the Maryland mortgage lending industry.

For all these reasons, the Court cannot adopt Plaintiffs' narrow interpretation of section 12-405. Accordingly, the Court must GRANT Defendant Equity's Motion to Dismiss, GRANT Defendant Accredited Motion for Summary Judgment, and DENY the *Cabrejas* Plaintiffs' Motion for Summary Judgment. An Order consistent with this Opinion will follow.

March 31, 2008

Date

/ s /Alexander Williams, Jr.
United States District Judge