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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BARBARA L. SCHRAMM, an individual; STEVEN L. WEINSTEIN, an individual, individually and on behalf of all others similarly situated, Plaintiffs - Appellants, v. J.P. MORGAN CHASE BANK, N.A., a banking corporation; CHASE HOME FINANCE, LLC, a limited liability company, Defendants - Appellees.	No. 14-56284 D.C. No. 2:09-cv-09442-JAK-FFM MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Submitted July 7, 2016[**]
Pasadena, California

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: VANASKIE,[***] MURGUIA, and WATFORD, Circuit Judges.

Barbara Schramm and Steven Weinstein (collectively, "Schramm") appeal from the district court's entry of judgment in favor of JPMorgan Chase Bank, N.A. ("Chase") following a bench trial on Schramm's class action claim under the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200. We have jurisdiction under 28 U.S.C. § 1291, and we affirm the judgment of the district court.

On appeal, Schramm argues that Chase's mortgage disclosures were "unlawful" for purposes of the UCL because they failed to comport with the Federal Reserve Board's Staff Interpretation of Regulation Z, which the Federal Reserve Board promulgated to implement the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601–1667f. This argument was waived, as Schramm never clearly made it before the district court. *See In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir. 1989). While "[a]n argument is typically elaborated more articulately, with more extensive authorities, on appeal than in the less focused and frequently more time pressured environment of the trial court," *Puerta v. United States*, 121 F.3d 1338, 1341–42 (9th Cir. 1997), Schramm's reliance on the staff interpretation

[***] The Honorable Thomas I. Vanaskie, United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

is more than just an additional citation. Rather, it is an entirely new theory of liability of which the district court was never put on notice. *See Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469 (2000).

Even if the argument were not waived, the Federal Reserve Board's Staff Interpretation controls only when TILA or Regulation Z are ambiguous, which Schramm does not argue is the case here. *See Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 560 (1980); *Chase Bank USA, N.A. v. McCoy*, 562 U.S. 195, 203 (2011).

AFFIRMED.