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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FREDA TANUVASA,)	Case No. CV 09-02795 DDP (AGRx)
)	
Plaintiff,)	Order Granting Motion to Dismiss
)	
v.)	[Motion filed on June 17, 2009]
)	
FEDERAL DEPOSIT INSURANCE)	
CORPORATION, ("FDIC"))	
Successor to Washington)	
Mutual Savings bank)	
("WaMu"), JP. MORGAN CHASE)	
BANK, NA ("Chase"),)	
purchaser of WaMu from FDIC,)	
)	
Defendants.)	
)	

This matter comes before the Court on defendant J.P Morgan Chase's ("Chase") motion to dismiss for failure to state a claim. After reviewing the materials submitted by the parties, the Court grants the motion with respect to plaintiff's federal law claims.

The Court grants plaintiff leave to amend her complaint with respect to her Truth in Lending Act damages claim. If she fails to amend the complaint such that it states a federal claim on which relief can be granted, the Court will likely decline to exercise supplemental jurisdiction over the pendant state law claims. See

1 28 U.S.C. § 1367(c). Plaintiff must file an amended complaint
2 within twenty (20) days of the date of this Order.

3 **I. Background**

4 Pro se plaintiff Freda Tanuvasa obtained a \$669,755 mortgage
5 loan in connection with the purchase of real property located at
6 13236 Rutgers Avenue in Downey, California. (Compl. ¶ 7.) The
7 loan was secured by a Deed of Trust that was recorded with the Los
8 Angeles County Recorder's Office on December 11, 2006. (Id.) The
9 Deed of Trust identifies defendant Washington Mutual Bank ("WaMu")
10 as the lender, and the California Reconveyance Company as the
11 trustee. Chase acquired WaMu's banking operations from the Federal
12 Deposit Insurance Corporation ("FDIC") on September 25, 2008.
13 (Request for Judicial Notice ("RJN") Ex. 1.)¹

14 Plaintiff alleges that at the time of purchase, both she and
15 the lender believed the property was worth more than \$700,000.
16 (Compl. ¶ 45.) She asserts that, as of April 2009, the property
17 was worth less than \$350,000. (Compl. ¶ 46.) At some point,
18 plaintiff defaulted on the loan and lost her home in a foreclosure
19 action. (Compl. ¶ 26.) Chase, after acquiring title to the
20 property in the foreclosure sale, has moved to evict her. Id.

21 In her complaint, plaintiff contends that WaMu, the original
22 lender, failed to make material loan disclosures in accordance with

23
24 ¹ Chase asks the Court to take judicial notice of the
25 Chase-FDIC purchase agreement. The document is available for
26 public review on the FDIC's website, and plaintiff quotes it at
27 length in her complaint. The Court concludes that the purchase
28 agreement is a matter of public record, provided by a government
agency for public review, and as such, it is judicially noticeable.
See See NRDC v. Kempthorne, 539 F. Supp. 2d 1155, 1166-67 (E.D.
Cal. 2008)(taking judicial notice of documents from the website of
the United States Bureau of Reclamation).

1 the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, and
2 the Home Owner Equity Protection Act ("HOEPA"), 15 U.S.C. § 1639 *et*
3 *seq.* She argues, for example, that WaMu did not inform her of her
4 right to rescind, calculate the annual percentage rate of interest
5 on the loan, or disclose the direct and indirect fees associated
6 with the transaction. Compl. ¶¶ 11-13. She brought the present
7 action seeking damages and declaratory and injunctive relief on May
8 15, 2009.

9 **II. Legal Standard**

10 A. Motion to Dismiss under Rule 12(b)(6)

11 Pursuant to Federal Rule of Procedure Rule 12(b)(6), a
12 complaint is subject to dismissal when the plaintiff's allegations
13 fail to state a claim upon which relief can be granted.² When
14 considering a Rule 12(b)(6) motion, courts accept the plaintiff's
15 allegations of material fact as true, and construe the complaint in
16 the light most favorable to the non-moving party. Cahill v.
17 Liberty Mut. Ins. Co., 80 F.3d 336, 337-338 (9th Cir. 1996).

18 In Ashcroft v. Iqbal, 129 S.Ct. 1937, 1950 (2009), the Supreme
19 Court explained that a court considering a 12(b)(6) motion should
20 first "identify[] pleadings that, because they are no more than
21 conclusions, are not entitled to the assumption of truth." Next,
22 the court should identify the complaint's "well-pleaded factual
23 allegations, . . . assume their veracity and then determine whether
24 they plausibly give rise to an entitlement to relief." Id.

25

26 ² As a general rule, *pro se* pleadings are to be liberally
27 construed, and courts must give the claims of *pro se* litigants fair
28 and meaningful consideration. See Haines v. Kerner, 404 U.S. 519
(1972). *Pro se* plaintiffs are not, however, exempt from the
requirement of stating a claim upon which relief may be granted.

1 **III. Discussion**

2 **A. Chase's Successor Liability**

3 Chase contends that, pursuant to the FDIC-Chase purchase
4 agreement, it did not assume "any liabilities for tortious or other
5 conduct" arising from WaMu's lending activity. (Reply Br. at 1.)
6 Because Chase raised the successor liability argument for the first
7 time in its reply brief, the Court declines to consider it. See
8 Delgadillo v. Woodford, 527 F.3d 919, 930 n. 4 (9th Cir. 2008).

9 Accordingly, for the purposes of the present motion, the Court
10 concludes that the FDIC-Chase purchase agreement does not preclude
11 plaintiff's claims against Chase as a matter of law.

12 **B. TILA**

13 TILA and its implementing regulations require lenders to make
14 certain disclosures in connection with consumer loans. TILA's
15 purpose is to "protect consumers' choice through full disclosure
16 and to guard against the divergent and at times fraudulent
17 practices stemming from uninformed use of credit." King v.
18 California, 784 F.2d 910, 915 (9th Cir. 1986).

19 **1. Damages**

20 Plaintiff contends that defendant's alleged TILA violations
21 entitle her to statutory damages.

22 TILA provides that an "action [for damages] . . . may be
23 brought in any United States district court, or in any other court
24 of competent jurisdiction, within one year from the date of the
25 occurrence of the violation." 15 U.S.C. § 1640(e). The Ninth
26 Circuit has held that the one-year window for filing a TILA damages
27 claim generally "runs from the date of the consummation of the
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1 transaction." King v. State of Cal., 784 F.3d 910, 915 (9th Cir.
2 1986).

3 TILA's statute of limitations may, however, be subject to
4 equitable tolling. The doctrine of equitable tolling suspends the
5 applicable limitations period "until the borrower discovers or had
6 reasonable opportunity to discover the fraud or nondisclosures that
7 form the basis of the TILA action." Cervantes v. City of San
8 Diego, 5 F.3d 1273, 1277 (9th Cir. 1993). Courts must consider the
9 applicability of equitable tolling whenever a complaint, liberally
10 construed, alleges facts showing the "potential applicability of
11 the equitable tolling doctrine."

12 Here, the Court can discern from the face of the complaint
13 that TILA's one-year statute of limitations has run. Plaintiff
14 obtained the loan at issue in this case in December 2006. She
15 filed her complaint in this action on May 15, 2009. Therefore,
16 unless equitable tolling applies, TILA's statute of limitations
17 bars her claim for damages.

18 Plaintiff does not argue that equitable tolling applies, and
19 the Court finds no basis in her complaint for concluding that it
20 should. The complaint does not indicate when plaintiff discovered
21 the alleged TILA violation, and it does not plead facts suggesting
22 that defendant took steps to prevent her from discovering the
23 alleged nondisclosures. The Court thus grants Chase's motion to
24 dismiss plaintiff's TILA damages claim, but grants plaintiff leave
25 to amend her complaint to include facts relevant to the
26 applicability of equitable tolling.

27 2. Rescission

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1 TILA gives a borrower a right to rescind any credit
2 transaction involving a security interest in the borrower's home if
3 the lender fails to make the required disclosures. 15 U.S.C. §
4 1635.³ The right of rescission, however, "does not apply to []
5 residential mortgage transaction[s]." Id. § 1635(e)(1). 15 U.S.C.
6 § 1602(w) defines the phrase "residential mortgage transaction" as
7 "a transaction in which a mortgage, deed of trust, purchase money
8 security interest arising under an installment sales contract, or
9 equivalent consensual security interest is created or retained
10 against the consumer's dwelling to finance the acquisition or
11 initial construction of such dwelling."

12 It is clear from the facts set forth in the complaint that the
13 loan plaintiff obtained was a "residential mortgage transaction"
14 within the meaning of 15 U.S.C. § 1635(e)(1). Plaintiff does not
15 allege that the loan at issue was used for any reason other than to
16 finance the acquisition of her home. Accordingly, the Court
17 dismisses Plaintiff's TILA rescission claim with prejudice.

18 **B. HOEPA**

19 Congress enacted HOEPA, which amended TILA in certain
20 respects, to "combat predatory lending." In re First Alliance
21 Mortg. Co., 471 F.3d 977, 984 n. 1 (9th Cir. 2006). For loans that
22 fall within the scope of HOEPA, the Act requires, in relevant part,
23 that lenders make certain warnings and disclosures at least three
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26 ³ Unlike plaintiff's damages claim, any right to rescission
27 under § 1635 has a three-year limitations period. Beach v. Ocwen
28 Federal Bank, 523 U.S. 410, 415-18 (1998). Accordingly,
plaintiff's rescission claim is not time barred.

1 business days prior to the consummation of a HOEPA transaction.

2 See 15 U.S.C. § 1639(a)-(b)(1).

3 First, the Court notes that HOEPA is simply a component of
4 TILA, and thus, it is governed by the same statute of limitations.
5 See In re Cmty. Bank of Northern Va., 418 F.3d 277, 304-05 (3d Cir.
6 2005) (noting that there is a "one-year statute of limitations on
7 affirmative TILA and HOEPA claims"). For the reasons discussed
8 above with respect to plaintiff's TILA damages claim, her HOEPA
9 damages claim is also untimely.

10 Plaintiff also fails to plead facts suggesting that HOEPA
11 applies to the mortgage loan at issue in this case. The statute
12 provides that "[a] mortgage referred to in this subsection means a
13 consumer credit transaction that is secured by the consumer's
14 principal dwelling, other than a residential mortgage transaction,
15 a reverse mortgage transaction, or a transaction under an open end
16 credit plan" 15 U.S.C. § 1602(aa)(1).

17 As discussed above, plaintiff does not allege that she
18 obtained the mortgage loan at issue in this case for some purpose
19 other financing the purchase of her home. Accordingly, the Court
20 concludes that the loan is a "residential mortgage transaction"
21 within the meaning of 15 U.S.C. § 1602(w), and as such, it is
22 excluded from HOEPA's reach. Plaintiff's HOEPA claim is dismissed
23 with prejudice.

24 **IV. Conclusion**

25 For the reasons set forth above, the Court dismisses
26 plaintiff's federal law claims against Chase. With respect to her
27 TILA damages claim, Plaintiff may amend her complaint to state
28 facts relevant to the applicability of equitable tolling. She must

1 do so within twenty (20) days of the date of this Order.⁴ If
2 plaintiff fails to state a colorable claim under federal law, this
3 Court will likely decline to exercise supplemental jurisdiction
4 over the remaining state law claims.

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6 IT IS SO ORDERED.

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9 Dated: September 23, 2009



DEAN D. PREGERSON

United States District Judge

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28 ⁴ If Plaintiff does not timely file an amended complaint,
the TILA damages claim will be dismissed with prejudice.