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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANCISCO VICTORIA,

Plaintiff,

v.

JPMORGAN CHASE BANK;
WASHINGTON MUTUAL BANK;
and DOES 1 through 100,
inclusive.

Defendants.

NO. CIV. S-09-2059 LKK/KJM

O R D E R

_____/

This case concerns the foreclosure on plaintiff's home. Plaintiff's Complaint names two defendants and enumerates four causes of action. Defendant JPMorgan Chase Bank, N.A. ("Defendant" or "JPMorgan") moves to dismiss all claims against it. For the reasons stated below, the motion to dismiss is granted in part.

I. BACKGROUND

Defendant JPMorgan Chase filed a motion to dismiss on August 3, 2009, after removing the case to federal court on July 24, 2009.

1 The motion was heard on September 28, 2009.

2 **A. Initial Loan**

3 On or around October 11, 2006, plaintiff Francisco Victoria
4 ("Plaintiff" or "Victoria") negotiated a home loan with agents or
5 employees of Defendant Washington Mutual Bank ("WAMU").¹ Plaintiff
6 claims he was induced to enter the loan agreement, yet fails to
7 describe any facts in his complaint concerning the content of the
8 alleged inducement. This loan was primarily negotiated in Spanish.
9 Nonetheless, all loan documents, including those signed by
10 Victoria, were written in English. Plaintiff, however, has not
11 alleged any discrepancies between the loan he negotiated in Spanish
12 and the loan agreements he signed on or about October 11, 2006.

13 Victoria's loans closed on or about October 11, 2006.² The

14
15 ¹ Defendant's filings in connection with this motion have
16 included numerous exhibits. A court may properly consider evidence
17 that is subject to judicial notice under Fed. R. Evid. 201 on a
18 motion to dismiss. Exhibits 1, 2, 3, 4, 5, 6, 7, and 8 to
19 Defendant's Request for Judicial Notice ("Def. RFJN") are all
20 publicly recorded documents as to which judicial notice is proper.
21 Respectively, these documents are the Deed of Trust, No. 2006-
22 214742; Deed of Trust, No. 2006-214743; Notice of Default and
23 Election to Sell Under Deed of Trust, No. 2008-191142; Substitution
24 of Trustee, No. 2009-012225; Substitution of Trustee, No. 2009-
25 028185; Notice of Trustee's Sale, No. 2009-041080; Assignment of
26 Deed of Trust, No. 2009-072863; and Trustee's Deed Upon Sale, 2009-
091718. Judicial notice is also proper with respect to Exhibit 9,
the Purchase and Assumption Agreement between the Federal Deposit
Insurance Corporation ("FDIC") as Receiver of Washington Mutual
Bank and JPMorgan Chase Bank, N.A., because it is "capable of
accurate and ready determination by resort to sources whose
accuracy cannot reasonably be questioned," Fed. Rule Evid. 201, in
that it is available for public review on the FDIC's website.

² Victoria obtained two separate loans, one for \$520,000.00
and the other for \$65,000.00. Both loans apparently were signed and
recorded on the same date, and identify the same parties for each
transaction.

1 loans were each secured by a deed of trust. Both deeds identified
2 United Financial Mortgage Corporation as the lender, and Old
3 Republic Title Company as trustee. Neither is a party to this suit.

4 Plaintiff also alleges that WAMU did not provide him with
5 adequate notice of his right to cancel the loan transaction and
6 other, unidentified material disclosures at the origination of his
7 loans.

8 On or about September 25, 2008, JPMorgan Chase acquired
9 certain assets and liabilities of WAMU, including WAMU's interest
10 in Victoria's loans.³ JPMorgan Chase acquired these assets through
11 a Purchase and Assumption Agreement with the Federal Deposit
12 Insurance Corporation ("FDIC"), acting as the receiver of WAMU.

13 **B. Foreclosure**

14 On December 5, 2008, Quality Loan Service Corp. ("QLSP"), on
15 behalf of Defendant WAMU, filed a notice of default on one of
16 Victoria's loans and deed of trust in San Joaquin County.⁴

17 On or about February 18, 2009, plaintiff alleges he, through
18 counsel, requested in writing that JPMorgan Chase inform Victoria
19 of several items related to his home loans. These documents
20 include: the promissory note; a copy of the recorded deed or deeds
21 of trust; the unpaid balance of his loan; the current fixed or

22
23 ³ It is unclear whether JPMorgan Chase acquired both of
24 Victoria's loans. However, JPMorgan Chase admits that it acquired
25 the loan of \$520,000.00, whose foreclosure is at issue in this
26 case.

⁴ It is unclear when JPMorgan Chase became the owner of
plaintiff's loan in the Complaint and judicially noticed documents.

1 variable rate of interest; the end term of the loan; the date
2 through which his real estate taxes and assessments were paid; and
3 whether the loans may be transferred to another borrower. Sometime
4 before April 1, 2009, Plaintiff also requested that JPMorgan Chase
5 provide it with a beneficiary statement. Victoria alleges that
6 JPMorgan Chase never responded to his requests.

7 Subsequently, on March 12, 2009, QLSP sent Victoria a notice
8 of trustee's sale, scheduled for April 1, 2009. On, June 10, 2009,
9 QLSP filed a trustee's deed upon sale for Victoria's home.

10 **II. STANDARD FOR A FED. R. CIV. P. 12(b)(6) MOTION TO DISMISS**

11 In order to survive a motion to dismiss for failure to state
12 a claim, plaintiffs must allege "enough facts to state a claim to
13 relief that is plausible on its face." Bell Atlantic Corp. v.
14 Twombly, 550 U.S. 544, 569 (2007). While a complaint need not plead
15 "detailed factual allegations," the factual allegations it does
16 include "must be enough to raise a right to relief above the
17 speculative level." Id. at 555.

18 The Supreme Court recently held that Federal Rule of Civil
19 Procedure 8(a)(2) requires a "showing" that the plaintiff is
20 entitled to relief, "rather than a blanket assertion" of
21 entitlement to relief. Id. at 555 n.3. Though such assertions may
22 provide a defendant with the requisite "fair notice" of the nature
23 of a plaintiff's claim, the Court opined that only factual
24 allegations can clarify the "grounds" on which that claim rests.
25 Id. "The pleading must contain something more . . . than . . . a
26 statement of facts that merely creates a suspicion [of] a legally

1 cognizable right of action." Id. at 555, quoting 5 Wright & Miller,
2 Federal Practice and Procedure, § 1216, pp. 235-36 (3d ed. 2004).⁵

3 On a motion to dismiss, the allegations of the complaint must
4 be accepted as true. See Cruz v. Beto, 405 U.S. 319, 322 (1972).
5 The court is bound to give the plaintiff the benefit of every
6 reasonable inference to be drawn from the "well-pleaded"
7 allegations of the complaint. See Retail Clerks Int'l Ass'n v.
8 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). In general, the
9 complaint is construed favorably to the pleader. See Scheuer v.
10 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by
11 Harlow v. Fitzgerald, 457 U.S. 800 (1982). Nevertheless, the court
12 does not accept as true unreasonable inferences or conclusory legal
13 allegations cast in the form of factual allegations. W. Mining
14 Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

15 **III. ANALYSIS**

16 The present motion concerns five claims⁶ against JPMorgan
17 Chase: (1) fraud; (2) invalid contract because of Cal. Civ. Code
18 § 1632; (3) violation of Truth In Lending Act ("TILA"); (4)
19 violation of Real Estate Settlement Procedures Act ("RESPA"); and
20 (5) injunctive relief.

21
22 ⁵ The holding in Twombly explicitly abrogates the well
23 established holding in Conley v. Gibson that, "a complaint should
24 not be dismissed for failure to state a claim unless it appears
beyond doubt that the plaintiff can prove no set of facts in
support of his claim which would entitle him to relief." 355 U.S.
41, 45-46 (1957); Twombly, 550 U.S. at 560.

25 ⁶ Plaintiff pled four overlapping causes of action. Many of
26 these causes of action, however, contained multiple, distinct
claims. For clarity, this court will separately consider each
claim.

1 **A. JPMorgan Chase's Liability for Pre-September 25, 2008 Acts or**
2 **Omissions**

3 Defendant makes two arguments concerning whether it can be
4 liable for acts or omissions in the origination of plaintiff's loan
5 and in the foreclosure process prior to September 25, 2008: (1)
6 JPMorgan Chase is not successor to WAMU's liabilities incurred
7 before September 25, 2008; and (2) alternatively, even if JPMorgan
8 Chase were liable, WAMU was not the original lender, and therefore
9 did not commit the allegedly illegal acts and omissions. With
10 respect to the first argument, because defendant only sufficiently
11 argued this issue in its reply brief, the court will not decide
12 whether JPMorgan Chase is liable for these liabilities at this
13 time. Rather, parties consent to an extended briefing schedule with
14 respect to the issue of successor liability alone as detailed at
15 the end of this order.

16 Assuming for purposes of this order that JPMorgan Chase is
17 liable for WAMU's liabilities incurred before September 25, 2008,
18 its argument in the alternative is that WAMU is not the original
19 lender and, therefore cannot be held liable for acts or omissions
20 in the origination of plaintiff's loan. That contention cannot be
21 decided on the pleadings. The only evidence JPMorgan Chase presents
22 in support of this argument is the judicially notice deed of trust
23 for Victoria's foreclosed loan. The deed lists United Financial
24 Mortgage Corporation as th lender. While deeds of trust constitute
25 evidence of the identity of the originating lender, they alone do
26 not establish that WAMU was not the lender. Based upon this court's

1 experience with similar cases, the court has learned that often the
2 identity of the originating lender is obscured in the originating
3 loan documents, and thus the deed of trust is not conclusive
4 evidence that WAMU did not actually originate Victoria's loan.
5 Accordingly, the court must take plaintiff's allegation that WAMU
6 originated the loan as true, and therefore, plaintiff is not barred
7 from making claims against JPMorgan Chase for the actions and
8 omissions of WAMU in the loan origination process.

9 **B. Fraud Claim**

10 JPMorgan Chase argues that plaintiff has failed to adequately
11 allege the substantive elements of a claim for fraud in the
12 inducement⁷ under California law or to meet the pleading standard
13 imposed by Fed. R. Civ. P. 9(b). The elements of a claim for fraud
14 under California law are: (1) misrepresentation (a false
15 representation, concealment or nondisclosure), (2) knowledge of
16 falsity, (3) intent to defraud (to induce reliance), (4)
17 justifiable reliance, and (5) resulting damage. Agosta v. Astor,
18 120 Cal. App. 4th 596, 603 (2004). Federal Rule of Civil Procedure
19 9(b) provides that "In alleging fraud or mistake, a party must
20 state with particularity the circumstances constituting fraud or
21 mistake. Malice, intent, knowledge, and other conditions of a

22
23 ⁷ Plaintiff also includes various allegations concerning his
24 requests for documents and information about his loan shortly
25 before his home was foreclosed in his cause of action for fraud.
26 These allegations do not appear to support a claim of fraud. If
plaintiff chooses to file an amended complaint, he may allege a
claim for fraud concerning the provision of said documents and
information, but he must separately allege the facts supporting
fraud in his interactions with defendants shortly before his home
loan was foreclosed.

1 person's mind may be alleged generally." A pleading meets the
2 particularity requirement of Rule 9(b) "if it identifies the
3 circumstances constituting fraud so that a defendant can prepare
4 an adequate answer from the allegations." Moore v. Kayport Package
5 Express, 885 F.2d 531, 540 (9th Cir. 1989).

6 Victoria's allegations supporting his claim for fraud in the
7 inducement are the following: (1) Victoria was induced to enter a
8 loan agreement with WAMU (¶ 11); (2) Victoria negotiated the loan
9 primarily in Spanish (¶ 13); (3) Victoria entered a contract with
10 WAMU for a home loan (¶ 12); (4) the loan agreement and all other
11 loan documentation were written in English (¶¶ 12-13); and (5) on
12 April 1, 2009, JPMorgan Chase foreclosed Victoria's home loan, and
13 Victoria now faces eviction (¶ 19).

14 Plaintiff did not allege that WAMU made any misrepresentations
15 in the origination of the loan. Accordingly, Plaintiff also did not
16 allege that WAMU had knowledge of unidentified misrepresentations
17 or had intended to defraud Victoria. Similarly, Plaintiff did not
18 allege that he justifiably relied upon such unidentified
19 misrepresentations. Plaintiff did, however, allege that because of
20 JPMorgan Chase's alleged fraud, Victoria has experienced the damage
21 of foreclosure and impending eviction. They refer to no specific
22 conduct, and give defendants absolutely no indication as to what
23 conduct, if any, underlies the fraud claims. Thus, these
24 allegations fail to meet the specificity required by Fed. R. Civ.
25 P. 9(b).

26 Accordingly, the motion to dismiss plaintiff's fraud claim

1 is granted.

2 **C. Contract Validity under Cal. Civ. Code § 1632.**

3 Plaintiff alleges a claim for violation of Cal. Civ. Code §
4 1632. This section requires "any person engaged in a trade or
5 business who negotiates primarily in Spanish . . . , orally or in
6 writing, in the course of entering [several types of contracts to]
7 deliver to the other party to the contract or agreement and prior
8 to the execution thereof, a translation of the contract or
9 agreement in the language in which the contract or agreement was
10 negotiated." Cal. Civ. Code. § 1632(b). JPMorgan Chase argues that
11 this claim should be dismissed because § 1632(b)(2) specifically
12 excludes loans secured by real property. Defendant, however,
13 overlooks the exception to § 1632(b)(2) in § 1632(b)(4). This
14 section states that notwithstanding the exclusion of loans secured
15 by real property, the statute applies to "a loan or extension of
16 credit for use primarily for personal, family or household purposes
17 where the loan or extension of credit is subject to the provision
18 of Article 7 (commencing with Section 10240) of Chapter 3 of Part
19 I of Division 4 of the Business and Professions Code." Cal. Civ.
20 Code § 1632(b)(4). Section 10240 applies to certain real estate
21 loans secured by real property that are negotiated exclusively by
22 a real estate broker. Cal. Bus. & Prof. Code § 10240.⁸

23

24 ⁸ While no California courts have considered whether Cal. Civ.
25 Code § 1632 applies to home loans, federal district courts
26 throughout California have interpreted the § 1634(b)(4) exception
to apply where plaintiff alleges both that the loan's primary use
was for personal, family, or household purposes, and that the loan
was negotiated exclusively by a real estate broker. See, e.g.,

1 Here, Victoria has alleged that he is a Spanish speaker and
2 primarily negotiated his home loan in Spanish. Complaint ¶¶ 12-13,
3 25. Victoria further alleges WAMU is a real estate broker under
4 Cal. Bus. & Prof. Code § 10240. Complaint ¶ 26. Additionally, while
5 Victoria does not explicitly allege that his loan was primarily for
6 personal, family, or household uses, the multiple references in
7 Victoria's complaint to plaintiff's home loan, and the fact that
8 plaintiff alleges that he faces eviction, satisfy the court at this
9 time that the loan meets this requirement. Accordingly, Victoria
10 has alleged that his loan falls within the exception stated in Cal.
11 Civ. Code 1632(b)(4). Thus, JPMorgan Chase's motion to dismiss
12 Plaintiff's claim under Cal. Civ. Code § 1632 is denied.

13 **D. TILA**

14 Plaintiff brings Truth-In-Lending-Act ("TILA") claims for
15 damages and for rescission. JPMorgan Chase argues that the claim
16 for damages is barred by the statute of limitations, and that the
17 rescission claim should be dismissed because plaintiff has not

18
19 Ibarra v. Plaza Home Mortgage, No. 08-CV-01707-H (JMA), 2009 WL
20 2901637, at *5 (S.D. Cal. Sept. 4, 2009); Ozuna v. Home Capital
21 Funding, No. 08cv2367-IEG-AJB, 2009 WL 2496804, at *4 (S.D. Cal.
22 Aug. 13, 2009); Aguero v. Mortgageit, Inc., No. 1:09-CV-0640 OWW
23 SMS, 2009 WL 2486311, at *2 (E.D. Cal. Aug. 12, 2009); Delino v.
24 Platinum Cmty. Bank, No. 09-CV-00288-H (AJB), 2009 WL 2366513, at
25 *5-6 (S.D. Cal. July 30, 2009); Ortiz v. Accredited Home Lenders,
26 Inc., No. 09 CV 0461 JM (CAB), 2009 WL 2058784, at *6-7 (S.D. Cal.
July 13, 2009); Alvara v. Aurora Loan Servs., Inc., No. C-09-1512
SC, 2009 WL 1689640, at *3-4 (N.D. Cal. June 16, 2009); Mamerto v.
Deutsche Bank Nat'l Trust Co., No. 08-CV-00589-H (JMA), 2009 WL
1582911, at *8 (S.D. Cal. June 4, 2009) ; Marcelos v. Dominguez,
No C 08-00056 WHA, 2008 WL 1820683, at *8 (N.D. Cal. Apr. 21,
2008); Gonzalez v. Ameriquet Mortgage Co., No. C 03-00405 JSW, at
*7-8 (N.D. Cal. Mar. 1, 2004); Ruiz v. Decision One Mortgage Co.,
No. C06-02530 HRL, 2006 WL 2067072, at *4-5 (N.D. Cal. July 25,
2006).

1 alleged sufficient facts to support a TILA claim against it.

2 **1. Damages Claim**

3 **a. Statute of Limitations**

4 TILA provides a one-year statute of limitations for claims for
5 civil damages. 15 U.S.C. § 1640(e). Here, plaintiff's TILA claim
6 arises solely out of failure to make required disclosures at the
7 time the loan was entered into, on or around October 11, 2006.
8 Complaint ¶ 11. Thus, the limitations period began to run at that
9 time, King v. California, 784 F.2d 910, 914 (9th Cir. 1986), and
10 would normally have expired in October of 2007. However, TILA's
11 limitations period for civil damages may be subjected to equitable
12 tolling, King, 784 F.2d at 915. Here, plaintiff requests that the
13 court equitably toll the statute of limitations because he is a
14 Spanish speaker, who negotiated his loan primarily in Spanish, but
15 only received loan documents in English. Because Victoria was
16 unable to read the documents, he required more time to discover
17 potential TILA violations contained within them.

18 The standard for a motion to dismiss based on a statute of
19 limitations that has run is that it "may be granted only if the
20 assertions of the complaint, read with the required liberality,
21 would not permit the plaintiff to prove that the statute was
22 tolled." Supermail Cargo, Inc. v. United States, 68 F.3d 1204, 1206
23 (9th Cir. 1995). Upon such a liberal reading of plaintiff's
24 complaint, the court finds that whether equitable tolling applies
25 here requires the court to determine when Victoria had a reasonable
26 opportunity to discover the TILA violations. Such a determination

1 cannot be resolved on the pleadings.⁹ Thus, Plaintiff has stated
2 a claim for equitable tolling of the statute of limitations under
3 TILA.

4 **b. Sufficiency of Claim**

5 Defendant further argues that plaintiff did not adequately
6 plead that JPMorgan Chase violated TILA or Regulation Z, which
7 implements TILA. 15 U.S.C. § 1635; 12 C.F.R. § 226.23(a)(2). The
8 defendant only argues that it could not have violated TILA because
9 it was not the original lender. As discussed supra, § A, the court
10 cannot decide at this stage in the litigation whether JPMorgan
11 Chase is liable for the origination of plaintiff's loan. It makes
12 no other arguments concerning the insufficiency of Victoria's
13 claim. Thus, JPMorgan's motion to dismiss Victoria's TILA claim for
14 damages must be denied.

15 **2. Rescission Claim**

16 _____JPMorgan Chase further argues that plaintiff's claim for
17 rescission under TILA should be dismissed for two related reasons:
18 (1) Victoria cannot provide tender, and thereby comply with
19 rescission, and (2) Victoria never made an offer to repay the
20 amounts received in his home loan. Each argument will be addressed
21 in turn.

22 **a. Ability of Plaintiff to Provide Tender**

23 JPMorgan Chase interprets case law permitting courts to
24 _____

25 ⁹ Recently, the Southern District of California reached the
26 same conclusion under virtually identical facts. Pelayo v. Home
Capital Funding, No. 08-CV-2030 IEG (POR), 2009 WL 1459419, at *5
(S.D. Cal. May 22, 2009).

1 require mortgagor-plaintiffs to provide proof of their ability to
2 repay loan proceeds if rescission were to be granted under TILA,
3 as a requirement that mortgagor-plaintiffs must first provide such
4 proof, and thereby argues that Victoria's claim for rescission
5 under TILA is insufficient because he did not provide such proof
6 in his complaint. See Yamamoto v. Bank of New York, 329 F.3d 1167,
7 1173 (9th Cir. 2003) ("[T]here is no reason why a court that may
8 alter the sequence of procedures after deciding that rescission is
9 warranted, may not do so before deciding that rescission is
10 warranted when it finds that, assuming grounds for rescission
11 exist, rescission still could not be enforced because the borrower
12 cannot comply with the borrower's rescission obligations no matter
13 what."). Accordingly, while courts may require plaintiffs to
14 provide proof of their ability to repay loan proceeds to maintain
15 a cause of action for rescission, it is not necessary that a
16 plaintiff plead allegations of his ability to repay the loan when
17 making a claim under TILA. Moreover, determination of a party's
18 ability to repay a loan is a question of fact, which cannot be
19 determined in a motion to dismiss. See Hernandez v. Hilltop
20 Financial Mortgage, Inc., 622 F. Supp. 2d 842, 849 n5 (N.D. Cal.
21 2007). Thus, Victoria need not plead his ability to repay his home
22 loan in order to sufficiently plead a claim for rescission under
23 TILA.

24 **b. Plaintiff's Failure to Offer Repayment**

25 Defendant also argues that Victoria failed to state a claim
26 for rescission because he "failed to offer repayment or tender

1 repayment in the Complaint." Apparently, JPMorgan Chase contends
2 that in order to assert a claim for rescission under TILA, a
3 plaintiff must simultaneously repay the lender or make an offer to
4 repay the lender. In response, Victoria argues that TILA does not
5 set forth when tender must be made for adequate notice under the
6 statute and, further, that Victoria could not possibly provide
7 tender because JPMorgan Chase failed to respond to Victoria's
8 request for the amount due on his loan. While these arguments may
9 be relevant at a later stage of litigation, they fail to address
10 whether plaintiff's claim fails as a matter of law. Specifically,
11 Defendant does not provide any authority to support its argument
12 that a plaintiff must repay or make an offer to repay a loan in his
13 complaint. Rather, upon review of TILA and Regulation Z, "no
14 language [can be found that] requires the consumer to tender or
15 make an offer to tender the loan proceeds in his notice of
16 rescission to the creditor." Hernandez, 622 F. Supp. 2d at 848. As
17 such, defendant has not identified any deficiencies in Victoria's
18 complaint, and thus, its motion to dismiss Victoria's claim for
19 Rescission under TILA is denied.

20 **E. RESPA Claim**

21 JPMorgan Chase argues that Plaintiff's claim for violations
22 of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C.
23 § 2605(e) is inadequately pled. Plaintiff alleges violations of
24 RESPA both in JPMorgan Chase's failure to respond to his Qualified
25 Written Request ("QWR") and to provide disclosures during the
26 origination of his loan. The specific facts alleged by Victoria are

1 the following: (1) On or about October 11, 2006, Victoria
2 negotiated and accepted a home loan with WAMU. Despite negotiations
3 occurring primarily in Spanish, Victoria was only provided
4 documents in English. These documents did not include required
5 disclosures under RESPA. (Complaint ¶¶ 11-13, 22); (2) On or about
6 February 2009, Victoria requested in writing that JPMorgan Chase
7 produce various documents and information about his home loan.
8 Defendant never produced the documents. (Complaint ¶¶ 14-15); (3)
9 After this first request, but before April 2009, Victoria requested
10 JPMorgan Chase provide a beneficiary statement to Victoria.
11 Defendant did not produce the statement within 21 days of the
12 request. (Complaint ¶¶ 9, 16-17).

13 Defendant argues that because it was not the lender for the
14 origination of the loan, that it cannot be liable for any alleged
15 violations of RESPA that occurred in origination. As discussed
16 supra, § A, the court cannot decide as a matter of law that
17 JPMorgan Chase is not liable for any actions or omissions in the
18 loan origination process. Thus, plaintiff has stated a claim that
19 JPMorgan Chase is liable for failing to provide disclosures during
20 loan origination.

21 JPMorgan Chase continues to argue that Victoria did not state
22 a claim that it violated RESPA by failing to respond to his QWRs
23 because Victoria did not allege when he made his QWRs. Apparently,
24 defendant contends that these requests may have been made before
25 September 25, 2008, and consequently, JPMorgan Chase is not liable.
26 However, plaintiff's complaint alleges that his QWRs were made

1 between February and April of 2009. Because JPMorgan Chase admits
2 liability for actions after September 25, 2008, and plaintiff
3 alleges he made QWRs in 2009, JPMorgan Chase is liable for any
4 RESPA violations for failure to respond to plaintiff's QWRs. Thus,
5 defendant's motion to dismiss plaintiff's RESPA claim is denied.

6 **F. Preliminary Injunction**

7 The only motion on the docket is a motion to dismiss.
8 However, plaintiff's complaint, filed in state court on June 24,
9 2009, requested a preliminary injunction preventing JPMorgan Chase
10 from evicting Victoria from his home. Nothing indicates whether any
11 proceedings on this matter were conducted prior to removal on July
12 24, 2009. In federal court, a party must file a motion to request
13 a preliminary injunction – inclusion in a cause of action for a
14 complaint is not sufficient. Fed. Rule of Civ. 65. Thus, the court
15 does not consider the merits of a preliminary injunction in this
16 order, and JPMorgan Chase's motion to dismiss the plaintiff's cause
17 of action for preliminary injunction is granted.

18 **IV. CONCLUSION**

19 For the reasons stated above, the court GRANTS IN PART
20 Defendants' motion to dismiss the Complaint, Doc. No. 1.

21 The court DISMISSES WITHOUT PREJUDICE the following claims as
22 to defendant JPMorgan Chase:

- 23 1. Plaintiff's first cause of action, for fraud.
- 24 2. Plaintiff's fourth cause of action, for preliminary
25 injunction.

26 The court does NOT grant plaintiff leave to amend his

1 complaint until after it reaches a decision in the outstanding
2 motion.

3 The court DENIES defendant's motion as to the following
4 claims:


- 5 1. Plaintiff's first claim in his second cause of action,¹⁰
6 under TILA, insofar as this claim seeks civil damages.
- 7 2. Plaintiff's second claim in his second cause of action,
8 under RESPA.
- 9 3. Plaintiff's third claim in his second cause of action,
10 for violation of California Civ. Code. § 1632.
- 11 4. Plaintiff's third claim, under TILA, insofar as this
12 claim seeks rescission.

13 The court sets forth the following schedule for briefing on
14 whether JPMorgan Chase is liable for acts or omissions of WAMU
15 occurring before September 25, 2008:

- 16 1. Plaintiff SHALL submit either an opposition or a
17 statement of non opposition by November 30, 2009, unless
18 the matter has settled before that time.
- 19 2. Defendant's reply brief, if any, SHALL be submitted no
20 later than December 15, 2009.

21 IT IS SO ORDERED.

22 DATED: October 2, 2009.

23 
24 LAWRENCE K. KARLTON
25 SENIOR JUDGE
26 UNITED STATES DISTRICT COURT

26 ¹⁰ If plaintiff chooses to file an amended complaint, the court requests that he separate each claim in his second cause of action into separate causes of action.