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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

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On October 2, 2009, this court granted in part defendant JPMorgan Chase Bank, N.A.'s ("Defendant" or "JPMorgan") motion to dismiss. The court, however, did not decide whether plaintiff had stated a claim against JPMorgan for actions taken by defendant Washington Mutual Bank ("WAMU") prior to September 25, 2008, the date JPMorgan acquired some assets, including plaintiff's loan, and some liabilities from WAMU. Specifically, JPMorgan only sufficiently raised in its reply brief its argument that when it

1 acquired certain assets and liabilities of WAMU from the Federal
2 Deposit Insurance Corporation ("FDIC"), it did not assume liability
3 for claims made by borrowers for violations taken by WAMU of state
4 or federal laws relating to the loan application process. For this
5 reason, the court set forth a schedule for supplemental briefing
6 on whether JPMorgan can be liable for actions by WAMU prior to
7 September 25, 2008. Plaintiff timely filed an opposition to
8 JPMorgan's arguments concerning this issue in its reply brief to
9 the original motion, and defendant timely filed a reply to this
10 opposition. For the reasons stated below, the court concludes that
11 plaintiff cannot state a claim against JPMorgan for actions
12 allegedly taken by WAMU prior to September 25, 2008. Accordingly,
13 the court dismisses plaintiff's claim for civil damages under the
14 Truth in Lending Act ("TILA") and plaintiff's claim under RESPA for
15 failure to provide disclosures at the origination of his home
16 loan.¹ Plaintiff, however, is granted leave of twenty (20) days to
17 amend his complaint.

18 I. BACKGROUND

19 On September 25, 2008, the Office of Thrift Supervision
20 ("OTS") appointed the FDIC as Receiver of WAMU. Exhibit 2 to
21 Defendant's Sur-Reply.² On the same day, the FDIC entered into a

22 ¹ In the court's October 2, 2009 order, the court dismissed without
23 prejudice plaintiff's cause of action for fraud and his cause of
24 action for a preliminary injunction.

25 ² The court takes judicial notice of Exhibit 1 and Exhibit 2 of
26 defendant's sur-reply. A court may properly consider evidence that
is subject to judicial notice under Fed. R. Evid. 201 on a motion
to dismiss. Judicial notice is proper with respect to Exhibit 1,
the Purchase and Assumption Agreement, and Exhibit 2, the order by

1 purchase and assumption agreement with JPMorgan. Exhibit 1 to
2 Defendant's Sur-Reply. JPMorgan purchased assets of WAMU,
3 including plaintiff's mortgage. However, JPMorgan did not assume
4 all liabilities of WAMU. In particular, section 2.5 of the
5 purchase and assumption agreement states that,

6 Notwithstanding anything to the contrary in this
7 Agreement, any liability associated with borrower
8 claims for payment of or liability to any borrower for
9 monetary relief, or that provide for any other form of
10 relief to any borrower, whether or not such liability
11 is reduced to judgment, liquidated or unliquidated,
12 fixed or contingent, matured or unmatured, disputed or
13 undisputed, legal or equitable, judicial or extra-
14 judicial, secured or unsecured, whether asserted
15 affirmatively or defensively, related in any way to
16 any loan or commitment to lend made by [WAMU] prior to
17 failure, or to any loan made by a third party in
18 connection with a loan which is or as held by [WAMU],
19 or otherwise arising in connection with [WAMU]'s
20 lending or loan purchase activities are specifically
21 not assumed by [JPMorgan].

22 Exhibit 2 to Defendant's Sur-Reply.

23 Apparently, unaware of the limited liabilities assumed by
24 JPMorgan, on June 24, 2009, plaintiff filed a complaint against
25 JPMorgan arising out of actions taken by WAMU prior to September
26 25, 2008 as well as actions taken by WAMU and JPMorgan after
JPMorgan acquired plaintiff's loan.

II. ANALYSIS

Plaintiff makes three arguments as to why JPMorgan may be
liable for actions taken by WAMU prior to September 25, 2008,

OTS directing the FDIC as Receiver for WAMU, because they are
"capable of accurate and ready determination by resort to sources
whose accuracy cannot reasonable be questioned."

1 and therefore, why the court should not dismiss causes of action
2 against JPMorgan for these actions. As now explained, each of
3 these arguments fails.

4 The evidence presented by defendant as to the liabilities
5 it assumed is insufficient to dismiss the case and therefore,
6 plaintiff argues that the court should not accept the judicially
7 noticed documents as true. As explained in this court's October
8 2, 2009 order, a court may consider evidence that is subject to
9 judicial notice under Fed. R. Evid. 201 on a motion to dismiss.
10 Judicial notice of the purchase and assumption agreement is
11 proper because it is "capable of accurate and ready
12 determination by resort to sources whose accuracy cannot
13 reasonably be questioned," Fed. Rule Evid. 201, in that it is
14 available for public review on the FDIC's website. Plaintiff
15 does not identify any reasons why the accuracy of the purchase
16 and assumption agreement can reasonably be questioned³ nor does
17 he make any argument that JPMorgan can be liable to a borrower
18 for actions taken by WAMU before September 25, 2008. Thus,
19 JPMorgan cannot be held liable for pre-September 25, 2008

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22 ³ Plaintiff seems to rely on the fact that defendant only sought
23 judicial notice of the table of contents to the purchase and
24 assumption agreement in its motion to dismiss. Defendant
25 subsequently sought judicial notice of the entire agreement in its
26 sur-reply. Plaintiff, nonetheless, cites to the website for the
purchase and assumption agreement in his supplemental brief on the
successor liability issue. Plaintiff, thereby, cannot make a good
faith argument that he was not aware of the terms of the purchase
and assumption agreement.

1 actions by WAMU, and establishing that fact, judicial notice of
2 the purchase and assumption agreement is proper.

3 Second, plaintiff argues that dismissal before discovery
4 would prejudice him. The argument does not lie. Plaintiff is
5 still entitled to discovery on post-September 25, 2009 actions
6 by WAMU and JPMorgan, which are the only claims to which he may
7 be entitled to relief. Therefore, plaintiff is not prejudiced by
8 dismissal.

9 Third, plaintiff argues that defendant should be liable for
10 its predecessors's bad acts. In support of this argument,
11 plaintiff cites to policy concerns of unfairness. Apparently
12 plaintiff worries that if JPMorgan is not liable for the actions
13 of WAMU prior to purchase, then no one is liable for allegedly
14 illegal actions. This argument is without merit because
15 plaintiff can seek relief from the FDIC, as Receiver for WAMU,
16 for these allegedly illegal actions. Consequently, plaintiff
17 cannot avoid dismissal on this policy ground.

18 **III. CONCLUSION**

19 For the foregoing reasons, the court GRANTS JPMorgan's
20 motion to dismiss as to liabilities incurred by WAMU prior to
21 September 25, 2008.

22 In addition to the causes of action dismissed in the
23 court's October 2, 2009 order, the court DISMISSES the following
24 claims as to defendant JPMorgan:

25 1. Plaintiff's first claim in his second cause of action,
26 under TILA, insofar as this claim seeks civil damages for

1 failures to provide disclosures at loan origination.

2 2. Plaintiff's second claim in his second cause of action
3 under RESPA, insofar as this claim seeks relief for failures to
4 provide disclosures at loan origination.

5 IT IS SO ORDERED.

6 DATED: December 28, 2009.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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