

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JPMORGAN CHASE BANK, N.A., a
National Banking Association,

Plaintiff,

v.

SIERRA PACIFIC MORTGAGE COMPANY,
INC., a/k/a SIERRA PACIFIC
MORTGAGE CO., INC., a/k/a SIERRA
PACIFIC MTG. CO., INC.,

Defendant.

No. 2:13-cv-01397-JAM-KJN

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

This matter is before the Court on Defendant Sierra Pacific Mortgage Company, Inc.'s ("Defendant") Motion to Dismiss and in the alternative Motion for a More Definite Statement (Doc. #15) in relation to Plaintiff JPMorgan Chase Bank, N.A.'s ("Plaintiff") Complaint (Doc. #1).¹ Plaintiff filed an Opposition (Doc. #16) and Defendant filed an amended Reply (Doc.

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for October 23, 2013.

1 #19).

2 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

3 The Complaint states three causes of action against
4 Defendant: (1) breach of contract (breaches of representations
5 and/or warranties), (2) breach of contract (obligation to
6 repurchase loans), and (3) indemnity or in the alternative
7 specific performance. The following factual summary is derived
8 from Plaintiff's complaint.

9 Plaintiff is a national banking association organized under
10 the laws of the United States. Comp. ¶ 1. Defendant is a
11 California corporation doing business as a residential finance
12 lender and mortgage banker. ¶ 2. In May 1996, the parties
13 entered into a written Correspondent Origination and Sales
14 Agreement - Closed Loan Purchases ("Correspondent Agreement")
15 governing the duties and obligations of each party with respect
16 to the origination, sale and transfer of residential mortgage
17 loans by Defendant to Plaintiff. ¶ 5.

18 The Correspondent Agreement required all loans submitted by
19 Defendant to comply with the Chase Correspondent Manual. ¶ 6.
20 Pursuant to the agreement, Defendant represented and warranted
21 that all loans sold to Plaintiff: (1) complied with certain
22 regulations, requirements and standards; (2) were fully
23 insurable; (3) did not include facts or circumstances that could
24 reasonably result in investors regarding the loans as
25 unacceptable investments, cause the loan to become delinquent or
26 adversely affect the marketability of the loan; (4) contained no
27 representations or warranties containing any untrue statements of
28 material fact; and (5) the appraisal provided an accurate

1 estimate of the bona fide market value of the property. ¶ 7;
2 Exh. A (Correspondent Agreement) § 4.2.

3 The Correspondent Agreement provides that Defendant is
4 obligated to repurchase a loan (or property) in the event of
5 certain circumstances, including the following: (1) existence of
6 an incurable breach or representation or warranty or Defendant's
7 failure to cure any curable defect; (2) failure to provide
8 required documentation or timely satisfy other requirements of
9 the agreement; (3) Plaintiff's repurchase of any loan from a
10 third party buyer due to defects existing prior to or
11 contemporaneous with Plaintiff's purchase; or (4) the loan or
12 credit file contained fraudulent documents. Comp. ¶ 8 & Exh. A.
13 §§ 5.1, 5.2. Defendant also agreed to indemnify Plaintiff
14 against "any and all losses, damages, fines, costs or expenses of
15 any nature, including loss of marketability and attorney's fees
16 and costs, resulting from breach of any representation or
17 warranty, covenant or agreement, made by" Defendant. Id. Exh. A
18 § 5.4.

19 The parties also executed a number of addenda that became
20 part of the Correspondent Agreement. Comp. ¶ 5. The
21 Correspondent Agreement further provides that the agreement and
22 its interpretation will be governed by New Jersey law. ¶ 10;
23 Exh. A § 7.8.

24 The Complaint points to eighteen specific loans out of the
25 thousands transferred from Defendant to Plaintiff. Comp. Exh. B;
26 Opp. at p. 4. Plaintiff alleges that Defendant breached a number
27 of provisions in the Correspondent Agreement with regards to
28 these identified loans.

1 In the first cause of action, Plaintiff alleges the loans
2 numbered 1-6, 10, 11 and 14 (as indicated in Exh. B) failed to
3 comply with the terms and conditions of the Correspondent
4 Agreement and Manual in that Defendant failed to cure and/or
5 events subsequent to their origination triggered obligations
6 Defendant did not meet, all in breach of the Correspondent
7 Agreement. Comp. ¶ 15. Plaintiff identifies these defects in
8 Exhibit B to the Complaint. ¶ 16. Despite notice, Defendant has
9 failed and refused to repurchase the loans or otherwise cure the
10 claims regarding them, resulting in damages to Plaintiff. ¶¶ 17-
11 20.

12 In the second cause of action, Plaintiff alleges that it
13 received demands from its investors for Plaintiff to repurchase
14 each of the loans in Exhibit B or to indemnify them from loss.
15 ¶ 23. In turn, Plaintiff demanded that Defendant repurchase the
16 loans or indemnify Plaintiff pursuant to the terms of the
17 Correspondent Agreement. ¶ 24. Defendant breached the agreement
18 by refusing or failing to so comply, resulting in damages to
19 Plaintiff. ¶¶ 26-27.

20 In the third cause of action, Plaintiff alleges that
21 Defendant failed to indemnify Plaintiff pursuant to the agreement
22 for "loss, damages, fines, costs or expenses, including loss of
23 marketability and attorneys' fees and costs" suffered as a result
24 of the loans failing to conform to the representations and
25 warranties made by Defendant in relation to the eighteen loans
26 identified in Exhibit B. ¶¶ 29-34. Plaintiff makes an
27 alternative request for specific performance regarding those
28 loans identified in Exhibit B where foreclosures have not yet

1 occurred and/or where the real property underlying the loans has
2 not been sold to third parties. Plaintiff alleges that due to
3 the "unique and specific nature of mortgage loans" it has no
4 adequate remedy at law and the Court should order Defendant to
5 perform its repurchase obligations pursuant to the Correspondent
6 Agreement. ¶¶ 37, 43.

8 II. OPINION

9 A. Legal Standard

10 A party may move to dismiss an action for failure to state a
11 claim upon which relief can be granted pursuant to Federal Rule
12 of Civil Procedure 12(b)(6). To survive a motion to dismiss a
13 plaintiff must plead "enough facts to state a claim to relief
14 that is plausible on its face." Bell Atlantic Corp. v. Twombly,
15 556 U.S. 662, 570 (2007). In considering a motion to dismiss, a
16 district court must accept all the allegations in the complaint
17 as true and draw all reasonable inferences in favor of the
18 plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974),
19 overruled on other grounds by Davis v. Scherer, 468 U.S. 183
20 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972).

21 "First, to be entitled to the presumption of truth,
22 allegations in a complaint or counterclaim may not simply recite
23 the elements of a cause of action, but must sufficiently allege
24 underlying facts to give fair notice and enable the opposing
25 party to defend itself effectively." Starr v. Baca, 652 F.3d
26 1202, 1216 (9th Cir. 2011), cert. denied, 132 S. Ct. 2101, 182 L.
27 Ed. 2d 882 (U.S. 2012). "Second, the factual allegations that
28 are taken as true must plausibly suggest an entitlement to

1 relief, such that it is not unfair to require the opposing party
2 to be subjected to the expense of discovery and continued
3 litigation." Id. Assertions that are mere "legal conclusions"
4 are therefore not entitled to the presumption of truth. Ashcroft
5 v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at
6 555). Dismissal is appropriate when a plaintiff fails to state a
7 claim supportable by a cognizable legal theory. Balistreri v.
8 Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

9 Upon granting a motion to dismiss for failure to state a
10 claim, a court has discretion to allow leave to amend the
11 complaint pursuant to Federal Rule of Civil Procedure 15(a).
12 "Dismissal with prejudice and without leave to amend is not
13 appropriate unless it is clear . . . that the complaint could not
14 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon,
15 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

16 B. Discussion

17 Defendant contends Plaintiff's claims should be dismissed
18 pursuant to F. R. Civ. P. 12(b)(6) because the complaint
19 contains only legal conclusions unsupported by factual
20 allegations. MTD at p. 10. It further argues that an addendum
21 to the Correspondent Agreement undermines Plaintiff's entire
22 complaint because the subsequently executed rider changes the
23 terms upon which the loans were transferred. Id. at pp. 14-15.

24 In the alternative, or if the Court grants leave to amend,
25 Defendant moves the Court to order Plaintiff to submit a more
26 definite statement that complies with the Federal Rules of Civil
27 Procedure. MTD at pp. 15-17.

28

1 1. Breach of Contract Claims

2 To establish a breach of contract under New Jersey law, a
3 plaintiff must show that "the parties entered into a valid
4 contract, that the defendant failed to perform his obligations
5 under the contract and that the plaintiff sustained damages as a
6 result." Murphy v. Implicito, 392 N.J. Super. 245, 265 (N.J.
7 Super. Ct. App. Div. 2007).

8 In the Complaint, Plaintiff alleges that the parties
9 entered into a contract, namely the Correspondent Agreement,
10 which was attached to the Complaint. In its breach of contract
11 claims in the first and second causes of action, Plaintiff
12 alleges that Defendant failed to meet its obligations under the
13 identified contract with respect to certain loans transferred
14 under the contract, constituting a breach. Exhibit B
15 specifically identifies the loans from which the claims arise,
16 the alleged defects, breaches and/or the ground for repurchase
17 or make whole demand. It also includes the date upon which
18 Plaintiff repurchased the loans from investors or was forced to
19 "makewhole" the investor. Exhibit B provides the date upon
20 which it made its final demand to Defendant to comply with its
21 obligations under the Correspondent Agreement. Plaintiff
22 further alleges damages resulting from Defendant's failure to
23 perform its obligations under the agreement.

24 The Court finds that the Complaint sufficiently alleges the
25 underlying facts supporting its breach of contract claims. See
26 Starr v. Baca, 652 F.3d at 1216. Defendant has fair notice of
27 the precise loans and the grounds from which the claims arise.
28 These factual allegations plausibly suggest that Plaintiff is

1 entitled to some relief. Id.

2 Defendant's reliance on Roberts v. UBS AG, No. CV F 12-0724
3 LJO SKO, 2013 WL 1499341, at *19-20 (E.D. Cal. 2013) is
4 misplaced. There the court dismissed breach of contract claims
5 on the ground that they were "vague and conclusory." Id.
6 However, here, Plaintiff identifies "verbatim" the provisions of
7 the Correspondent Agreement at issue and attached the agreement
8 to the complaint. The plaintiff in Roberts did no such thing,
9 leading the court to dismiss the claims. Id. The Roberts case
10 is entirely distinguishable.

11 Although Defendant argues in its Reply that it "needs more
12 information" regarding the loans at issue, it does not
13 specifically state that it cannot identify which loans are being
14 referenced in Exhibit B. Reply at p. 10. Therefore, the Court
15 assumes the detail provided therein is sufficient to put
16 Defendant on notice of the loans from which Plaintiff's claims
17 arise.

18 Defendant also argues the rider attached and incorporated
19 into the Correspondent Agreement altered its obligations with
20 respect to certain loans. MTD at pp. 14-15. This and other
21 potential defenses identified by Defendant may ultimately
22 absolve Defendant of liability. However, at this stage in the
23 litigation, the Court takes the allegations as true and draws
24 all reasonable inferences in favor of Plaintiff. The agreement
25 and claims as pleaded state a plausible entitlement to relief
26 sufficient for Plaintiff to have met its burden.

27 Accordingly, the Court hereby denies Defendant's Motion to
28 Dismiss the breach of contract claims.

1 2. Third Cause of Action

2 Under New Jersey law, indemnity contracts are interpreted in
3 accordance with the rules governing the construction of contracts
4 generally. Ramos v. Browning Ferris Indus. of S. Jersey, Inc.,
5 103 N.J. 177, 191 (1986).

6 The Complaint alleges the Correspondent Agreement provided
7 for Defendant to indemnify Plaintiff in certain circumstances
8 against specific losses. Comp. ¶ 29. It further alleges that
9 those specific losses have been suffered and that Defendant has
10 failed to indemnify Plaintiff after notice. ¶ 32. The
11 Complaint alleges that, as a result, it has incurred damages.
12 ¶ 34.

13 The Court finds that Plaintiff has met its burden at this
14 stage of the litigation and has sufficiently pleaded the third
15 cause of action. Accordingly, the Court denies Defendant's
16 Motion to Dismiss the third cause of action.

17 3. Motion for a More Definite Statement

18 Defendant contends the Court should order Plaintiff to
19 submit a more definite statement pursuant to Fed. R. Civ. P.
20 12(e) so that the Complaint complies with Rules 9(g) and 10(b).
21 MTD at pp. 15-17. Rule 12(e) provides: "A party may move for a
22 more definite statement of a pleading to which a responsive
23 pleading is allowed but which is so vague or ambiguous that the
24 party cannot reasonably prepare a response."

25 a. Special Damages

26 Defendant argues that Plaintiff's request for "losses,
27 damages, fines, costs or expenses of any nature, including loss
28 of marketability" are special damages requiring Plaintiff to

1 specifically state them. MTD at p. 16; F. R. Civ. P. 9(g).

2 Regarding a breach of contract claim, although both special
3 and general damages must be the natural and proximate
4 consequence of the alleged breach, "general damages are such as
5 inevitably follow, while special damages are such as may, or may
6 not, follow." City and County of San Francisco v. Tutor-Saliba
7 Corp., No. C 02-5286 CW, 2005 WL 645389, at *17-18 (N.D. Cal.
8 2005). General damages are those that the law implies from the
9 alleged contractual breach. Id.

10 The Correspondent Agreement specifically provides that
11 Defendant will indemnify Plaintiff in the event of a breach
12 against the very damages sought. Therefore, these damages are a
13 direct and foreseeable result upon the occurrence of a breach.
14 Accordingly, the Court denies Defendant's motion for a more
15 definite statement with respect to the damages sought. However,
16 if at a later stage of this litigation, it is determined that
17 Plaintiff does in fact seek special damages, the Court may deny
18 them. Tutor-Saliba Corp., 2005 WL 645389, at *18.

19 b. Rule 10(b)

20 Defendant contends that Plaintiff has combined claims
21 arising from eighteen distinct loans into three causes of
22 action. MTD at pp. 16-17. It argues that the "shotgun"
23 pleading results in confusion as Plaintiff is "all over the map
24 in terms of which of its three 'claims' apply to which loans."
25 Defendant requests the Court to order Plaintiff to state each
26 claim founded on a separate transaction or occurrence in a
27 separate count.

28 Rule 10(b) provides that "each claim founded on a separate

1 transaction or occurrence . . . must be stated in a separate
2 count or defense," but only if doing so "would promote clarity."
3 "Shotgun pleadings are pleadings that overwhelm defendants with
4 an unclear mass of allegations and make it difficult or
5 impossible for defendants to make informed responses to the
6 plaintiff's allegations. They are unacceptable." Sollberger
7 v. Wachovia Securities, LLC, No. SACV 09-0766 AG (ANx), 2010 WL
8 2674456, at *4 (C.D. Cal. 2010).

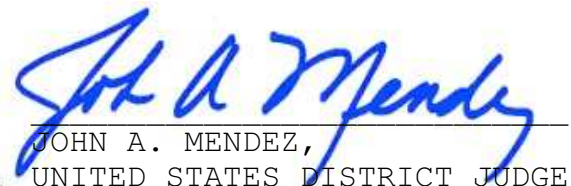
9 Each of the claims is based on a single contract, the
10 Correspondent Agreement, which involves only the parties to this
11 action. Despite Defendant's contention that Plaintiff is "all
12 over the map" in identifying which claims apply to which loans,
13 each cause of action specifically identifies which of the loans
14 listed in Exhibit B that particular claim arises from. Comp.
15 ¶¶ 12, 23, 30. The Court finds that requiring Plaintiff to
16 separately list identical claims to multiple loans under the
17 same agreement would not promote clarity; rather, it would
18 simply be redundant. Accordingly, the Court denies Defendant's
19 motion for a more definite statement.

20
21 III. ORDER

22 For the reasons set forth above, the Court DENIES
23 Defendant's Motion to Dismiss in its entirety.

24 IT IS SO ORDERED.

25 Dated: December 10, 2013

26 
JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE