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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER SINGH and ANSUIYA SINGH,

No. C-09-2771 MMC

Plaintiffs,

**ORDER GRANTING DEFENDANT  
JPMORGAN'S MOTION TO DISMISS;  
VACATING HEARING; DENYING AS  
MOOT DEFENDANT'S MOTION TO  
APPEAR BY TELEPHONE**

v.

WASHINGTON MUTUAL BANK, a  
Washington corporation, f/k/a  
WASHINGTON MUTUAL BANK, FA; J.P.  
MORGAN CHASE BANK, a New York  
corporation, as successor in interest to  
WASHINGTON MUTUAL BANK, FA  
successor to WASHINGTON MUTUAL  
HOME LOANS; and DOES 1-100, inclusive,  
Defendants.

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Before the Court is defendant JPMorgan Chase Bank, N.A.'s Motion to Dismiss plaintiffs' Third Amended Complaint ("TAC"). Plaintiffs have filed opposition,<sup>1</sup> to which defendant has replied.<sup>2</sup> Having read and considered the papers filed in support of and in

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<sup>1</sup> Although plaintiffs' opposition was filed March 2, 2010 and thus was untimely, see Civ. L.R. 7-3(a) (providing "[a]ny opposition to a motion must be served and filed not less than 21 days before the hearing date"), the Court, in its discretion, has considered such opposition.

<sup>2</sup> Defendant did not provide the Court with a chambers copy of its reply. Although the Court has exercised its discretion to consider such filing, defendant, for future reference, is reminded of the following provision in the Court's Standing Orders: "In all cases that have been assigned to the Electronic Case Filing Program, the parties are required to provide for use in chambers one paper copy of each document that is filed

1 opposition to the motion, the Court finds the matter appropriate for decision on the parties'  
2 written submissions, hereby VACATES the hearing set for March 19, 2010,<sup>3</sup> and rules as  
3 follows.

4 Plaintiffs allege seven Causes of Action in the TAC. By the instant motion defendant  
5 seeks dismissal of the Seventh Cause of Action ("Accounting"). "A cause of action for an  
6 accounting requires a showing [1] that a relationship exists between the plaintiff and  
7 defendant that requires an accounting, and [2] that some balance is due the plaintiff that  
8 can only be ascertained by an accounting." See Teselle v. McLoughlin, 173 Cal.App.4th  
9 156, 179 (2009). Here, the TAC fails to allege a balance is due either plaintiff. Rather,  
10 plaintiffs allege "[t]he amount of money, if any, still owed to defendants, and any of them, is  
11 unknown to plaintiffs and cannot be determined without an accounting." (See TAC ¶ 81)  
12 (emphasis added). Under such circumstances, plaintiffs fail to state a claim for an  
13 accounting, and the relief sought by plaintiffs in their Seventh Cause of Action is more  
14 appropriately pursued under plaintiffs' Third Cause of Action ("Violation of RESPA"). (See  
15 TAC ¶¶ 39, 65, 66); see also 12 U.S.C. § 2605(e) (imposing duties on loan servicers to  
16 respond to borrower inquiries).

17 Accordingly, defendant's motion to dismiss plaintiffs' Seventh Cause of Action is  
18 hereby GRANTED and plaintiffs' Seventh Cause of Action is hereby dismissed without  
19 leave to amend.

20 **IT IS SO ORDERED.**

21  
22 Dated: March 15, 2010

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MAXINE M. CHESNEY  
United States District Judge

25 \_\_\_\_\_  
26 electronically. The paper copy of each such document shall be delivered no later than  
27 noon on the day after the document is filed electronically. The paper copy shall be marked  
28 'Chambers Copy' and shall be delivered to the Clerk's Office in an envelope clearly marked  
with the judge's name, case number, and 'E-Filing Chambers Copy.'"

<sup>3</sup> In light of such finding, defendant's Motion to Appear by Telephone at the Motion to  
Dismiss is hereby DENIED as moot. Additionally, for future reference, the parties are  
informed the Court does not conduct contested hearings by telephone.