

1 **** E-filed November 17, 2009 ****

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7 NOT FOR CITATION

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 AKBAR ABDOLLAHI and PARVIN
ABDOLLAHI, individuals,

No. C09-00743 HRL

12 Plaintiffs,

**ORDER GRANTING DEFENDANT
JPMORGAN'S (1) MOTION TO
DISMISS AND (2) REQUEST FOR
JUDICIAL NOTICE**

13 v.

14 WASHINGTON MUTUAL, FA; WEST
COAST FINANCIAL CORPORATION, a
15 California corporation; JP MORGAN
CHASE, a New York corporation; and
16 DOES 1–100, inclusive,

[Re: Docket Nos. 28, 29]

17 Defendants.

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19 Plaintiffs Akbar and Parvin Abdollahi purchased a home in Los Altos, California in
20 November 2006 using an adjustable-rate mortgage (“ARM Note”) from Washington Mutual Bank
21 (“Washington Mutual”). West Coast Financial Corporation (“West Coast”) acted as the broker for
22 the loan. The loan was secured by a deed of trust on the property with Washington Mutual as the
23 beneficiary. In 2008, defendant JPMorgan Chase Bank, N.A. (“JPMorgan”) acquired certain
24 Washington Mutual assets and liabilities from the Federal Deposit Insurance Corporation,
25 including—apparently—the Abdollahis’ note and deed of trust. Plaintiffs later tried to refinance
26 their loan, but were unsuccessful. The Abdollahis then instituted this lawsuit in 2009.

27 Defendant JPMorgan, for itself and as the acquirer of certain Washington Mutual assets and
28 liabilities, now moves to dismiss plaintiffs’ First Amended Complaint (“FAC”) for failure to state a

1 claim upon which relief may be granted. The Abdollahis failed to file any opposition to the motion
2 or a statement of non-opposition, and they also failed to appear at the hearing. Upon consideration
3 of the matter, the court GRANTS the motion.¹

4 **PROCEDURAL HISTORY**

5 In February 2009, the Abdollahis sued Washington Mutual, West Coast,² and JPMorgan,
6 pleading twelve claims for relief based on federal and state law. JPMorgan moved to dismiss the
7 complaint. (Docket No. 11.) Although plaintiffs opposed the motion, they did not appear at the
8 motion hearing. This court granted JPMorgan's motion on June 15, 2009 with leave to amend
9 within ten days. (Docket No. 21.)

10 After plaintiffs failed to meet this deadline, the court ordered them on July 24, 2009 to show
11 cause why it should not dismiss the complaint for failure to prosecute. (Docket No. 22.) On the
12 show cause deadline, plaintiff's counsel responded that he had "miscalendared" the date to file the
13 amended complaint. (Docket No. 23.) The court then ordered plaintiffs to file their amended
14 complaint as a separate docket entry by August 13, 2009. (Docket No. 25.) Plaintiffs missed this
15 deadline as well, and did not file their First Amended Complaint ("FAC") until August 26, 2009.
16 (Docket No. 27.) However, they neglected to file any of the exhibits listed in the FAC and further
17 failed to file them even after the court ordered them to do so by October 14, 2009.

18 **LEGAL STANDARD**

19 On motion, a court may dismiss a complaint for failure to state a claim. Fed. R. Civ. P.
20 12(b)(6). The federal rules require that a complaint include a "short and plain statement" showing
21 the plaintiff is entitled to relief. Fed. R. Civ. P. 8(a)(2). The statement must "raise a right to relief
22 above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Yet only
23 plausible claims for relief will survive a motion to dismiss. *Ashcroft v. Iqbal*, --- U.S. ----, 129 S.
24 Ct. 1937, 1950 (2009). A claim is plausible if its factual content "allows the court to draw the

25 ¹ Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, all parties who have appeared in this action
26 have expressly consented that all proceedings may be heard and finally adjudicated by the
27 undersigned. Defendants who have not been served are not deemed "parties" to the action within
the rules requiring consent to magistrate judge jurisdiction. See *Neals v. Norwood*, 59 F.3d 530, 532
(5th Cir. 1995); see also *United States v. Real Prop.*, 135 F.3d 1312, 1317 (9th Cir. 1998).

28 ² Plaintiffs never served West Coast with the complaint. See Fed. R. Civ. P. 4(m) (allowing 120
days for service).

1 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 1949. A
2 plaintiff does not have to provide detailed facts, but the pleading must include “more than an
3 unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 1950. Therefore, simply
4 tracking statutory language or raising general allegations of discrimination is insufficient to properly
5 raise a claim for relief. *Twombly*, 550 U.S. at 555.

6 DISCUSSION

7 A. Request for Judicial Notice

8 As an initial matter, JPMorgan requests that this court take judicial notice of documents filed
9 with the Santa Clara County Recorder’s office describing the Abdollahis’ deed of trust and
10 associated riders. (Docket No. 29.) “A court may take judicial notice of ‘matters of public record’
11 without converting a motion to dismiss into a motion for summary judgment,” as long as the facts
12 are not subject to reasonable dispute. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001);
13 *see also* Fed. R. Evid. 201(b). These documents, as reproduced from the Recorder’s office, are not
14 subject to reasonable dispute, and the court grants JPMorgan’s request.

15 B. Federal Claims

16 The FAC includes ten federal and state claims, including two federal claims that were not
17 present in the original complaint. The court will first address the Abdollahis’ federal claims.

18 1. Claim 1: Truth in Lending Act (“TILA”), 15 U.S.C. § 1601

19 The Abdollahis allege that Washington Mutual and JPMorgan violated TILA because they
20 “failed to disclose the true cost of plaintiffs’ ARM Note in a clear, conspicuous, and accurate
21 manner.” (FAC ¶ 36.) They claim that the ARM Note and the Truth in Lending Disclosure
22 Statement (“TILDS”) that they received when they obtained their loan had contradictory “yearly
23 rate” disclosures—6.625% on the ARM Note and 7.16529% on the TILDS. (FAC ¶ 28.) JPMorgan
24 counters that the claim fails because the suit was brought after the statute of limitations.³

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26 ³ JPMorgan also asserts it is not liable for any wrongdoing by Washington Mutual because it was
27 not the originating lender on the Abdollahis’ mortgage. However, the Abdollahis allege that
28 JPMorgan voluntarily assumed Washington Mutual’s liabilities in 2008 and is its successor in
interest. Because a purchaser can assume the seller’s liabilities where “there is an express or
implied agreement of assumption,” *see Ray v. Alad Corp.*, 19 Cal. 3d 22, 28 (1977), the court will
assume for the purposes of this motion that JPMorgan could be liable for the federal violations
alleged in the FAC.

1 The statute of limitations for actions brought under TILA is “one year from the occurrence
2 of the violation.” 15 U.S.C. § 1640(e). It is possible for this statute of limitations to equitably toll
3 “until the borrower discovers or had reasonable opportunity to discover the fraud or
4 nondisclosures.” *King v. California*, 487 F.2d 910, 915 (9th Cir. 1986). Yet the general nature of
5 the transaction, along with disclosure statements and payment schedules, can place plaintiffs “on
6 notice of the possible existence of a claim.” *Kay v. Wells Fargo Bank*, 247 F.R.D. 572, 578 (N.D.
7 Cal. 2007).

8 The Abdollahis received the mortgage at issue in November 2006, but did not file suit until
9 more than two years later, in February 2009. Nevertheless, the Abdollahis assert that the statute of
10 limitations was tolled “due to defendants’ fraudulent concealment of operative facts” and because
11 they could not have reasonably discovered the violations as they “are not familiar with, and have no
12 expertise with, mortgage transactions.” (FAC ¶ 2.) However, at the time of their mortgage, they
13 received a prominently labeled “Fixed/Adjustable Rate Rider” that provided the “initial fixed
14 interest rate”—6.625%—and how that rate would change over time. (Request for Judicial Notice
15 Ex. 1.) Both plaintiffs initialed each page of this rider and signed the final page. (*Id.*) This
16 disclosure document placed plaintiffs on notice of a possible claim, especially if the “initial fixed
17 interest rate” was not the same as the “yearly rate” that appeared on the TILDS.⁴ Furthermore, the
18 Abdollahis plead no facts to support their allegation of fraudulent concealment and do not allege any
19 other action that could have tolled TILA’s statute of limitations. Consequently, they fail to state a
20 TILA claim.

21 **2. Claim 2: Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2601**

22 Plaintiffs’ second claim alleges that Washington Mutual and JPMorgan violated RESPA
23 because they failed to provide the Abdollahis with a “Good Faith Estimate” or an “HUD-1
24 Settlement Statement.” (FAC ¶¶ 41–42.) Although plaintiffs do not identify which sections of
25 RESPA apply to these allegations, it appears that they fall under sections 2603 and 2604. 12 U.S.C.
26 § 2603 (uniform settlement statement); § 2604(c) (good faith estimate). However, RESPA does not

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28 ⁴ The court notes that the annual percentage rate (“APR”) that appears in a TILDS usually is not the same as the interest rate that appears on the associated mortgage note because the APR considers costs such as finance charges and mortgage insurance. *See* 12 C.F.R. § 226.22 & app. J.

1 provide for a private right of action for violations of either section. *See* § 2614 (noting that actions
2 may be brought in federal court for violations of sections 2605, 2607, and 2608); *Bloom v. Martin*,
3 865 F. Supp. 1377, 1384–85 (N.D. Cal. 1994), *aff’d on other grounds*, 77 F.3d 318 (9th Cir. 1996)
4 (no private right of action for § 2603); *Collins v. FMHA-USDA*, 105 F.3d 1366, 1368 (11th Cir.
5 1997) (no private right of action for § 2604).

6 The Abdollahis also allege that Washington Mutual and JPMorgan violated RESPA when
7 they paid West Coast an excessive yield-spread premium. Plaintiffs allege that this payment was
8 “based on costs and fees that were not reasonably related to the services performed” by West Coast.
9 (FAC ¶ 44.) This allegation appears to be a claim under § 2607. § 2607(a)–(b). JPMorgan again
10 argues that this claim is beyond the applicable one-year statute of limitations because the Abdollahis
11 received their mortgage in November 2006. 12 U.S.C. § 2614. The Abdollahis do not plead any
12 facts concerning equitable tolling that are specific to this claim; instead, they rely on the same
13 conclusory statements that they used for their TILA claim. (*See* FAC ¶ 2.) As a result, plaintiffs
14 have failed to assert any equitable tolling and in turn, have failed to state a RESPA claim.

15 **3. Claims 3 and 4: Federal Discrimination Claims**

16 Claims three and four allege violations of two federal discrimination statutes: 42 U.S.C.
17 § 3605 (Fair Housing Act) and 15 U.S.C. § 1691 (Equal Credit Opportunity Act). The Abdollahis
18 allege that even though they were “objectively qualified,” the defendants refused to refinance their
19 mortgage on account of their Muslim religion and/or because of their Persian ethnicity. (FAC ¶¶ 50,
20 55.) Yet just as with their original complaint that alleged the same discrimination under different
21 federal statutes, the FAC utterly fails to plead any facts that plausibly suggest that defendants
22 discriminated in any way against the Abdollahis in their attempt to refinance their mortgage.
23 Plaintiffs do not indicate when they tried to refinance their mortgage, how they were “objectively
24 qualified” to refinance, or what defendants did to suggest that any denial was based on
25 impermissible discrimination. Indeed, plaintiffs offer nothing more than conclusory statements that
26 cannot survive a motion to dismiss.⁵

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28 ⁵ Even the plaintiffs themselves plead a more likely reason for any such denials: that their “principal
loan balance [has] increase[d], thereby limiting plaintiffs’ ability to obtain alternative home loan
financing.” (FAC ¶ 33.)

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C 09-00743 Notice will be electronically mailed to:

John M. Sorich	jsorich@adorno.com
Sung-Min Christopher Yoo	cyoo@adorno.com, vdelgado@asands.com
Timothy Douglas Thurman	tim.thurman@trinlaw.com
Tuyet Thi Tran	ttran@adorno.com

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