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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 DAVID J. CALIXTO,

9 Plaintiff,

10 v.

11 JPMORGAN CHASE BANK NATIONAL  
ASSOCIATION, *et al.*,

12 Defendants.  
13

No. C13-1153RSL

ORDER GRANTING  
JPMORGAN'S MOTION TO  
DISMISS

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15 This matter comes before the Court on "JPMorgan Chase Bank N.A.'s Motion to  
16 Dismiss Complaint." Dkt. # 10. In the context of a motion to dismiss, the Court's review is  
17 generally limited to the contents of the complaint. Campanelli v. Bockrath, 100 F.3d 1476, 1479  
18 (9th Cir. 1996). Nevertheless, Ninth Circuit authority allows the Court to consider documents  
19 referenced extensively in the complaint, documents that form the basis of plaintiff's claim, and  
20 matters of judicial notice when determining whether the allegations of the complaint state a  
21 claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6). United States v. Ritchie,  
22 342 F.3d 903, 908-09 (9th Cir. 2003). Because the loan documents, bankruptcy court records,  
23 and property records fall within one or more of these categories, the allegations of the complaint  
24 and the contents of those records will be accepted as true for purposes of this motion and  
25 construed in the light most favorable to plaintiff. LSO, Ltd. v. Stroh, 205 F.3d 1146, 1150 n.2  
26 (9th Cir. 2000). Defendant has not, however, shown that evidence and factual allegations

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1 regarding the completion date of various construction tasks are an integral part of plaintiff's  
2 complaint or are matters of public record. The Court declines to convert defendant's motion into  
3 a motion for summary judgment and has therefore not considered matters that are outside the  
4 pleadings.

5 The question for the Court on a motion to dismiss is whether the facts in the  
6 complaint and judicially-noticed documents sufficiently state a "plausible" ground for relief.  
7 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Although a complaint need not provide  
8 detailed factual allegations, it must offer "more than labels and conclusions" and contain more  
9 than a "formulaic recitation of the elements of a cause of action." Twombly, 550 U.S. at 555. If  
10 the complaint fails to state a cognizable legal theory or fails to provide sufficient facts to support  
11 a claim, dismissal is appropriate. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534  
12 (9th Cir. 1984).

13 Having reviewed the memoranda, declarations, and exhibits submitted by the  
14 parties, the Court finds as follows:

### 15 **BACKGROUND**

16 In November 2007, plaintiff borrowed \$1,257,150 from defendant's predecessor,  
17 Washington Mutual Bank, in order to purchase property, construct a residence, and retire any  
18 existing loans. The proceeds of the loan were to be paid out in installments, but each advance  
19 was contingent on plaintiff satisfying a long list of conditions as set forth in the loan agreement.  
20 Plaintiff alleges that defendant, without reasonable explanation, "denied plaintiff[] access to the  
21 loan midway into construction." Dkt. # 1 at ¶ 2.5 and ¶ 3.1. Without the loan proceeds, plaintiff  
22 was forced to use his personal funds to complete construction, defaulted on the loan, and  
23 received a Notice of Trustee's Sale scheduled for June 21, 2013. Plaintiff asserts a breach of  
24 contract claim and requests an award of damages "if the Trustee Sale is held on June 21st 2013"  
25 and a preliminary injunction postponing the Trustee Sale "until all issues are resolved."  
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1 **DISCUSSION**

2 To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
3 accepted as true, to state a claim to relief that is plausible on its face. A claim is  
4 facially plausible when the plaintiff pleads factual content that allows the court to  
5 draw the reasonable inference that the defendant is liable for the misconduct  
6 alleged. Plausibility requires pleading facts, as opposed to conclusory allegations  
7 or the formulaic recitation of elements of a cause of action, and must rise above the  
8 mere conceivability or possibility of unlawful conduct that entitles the pleader to  
9 relief. Factual allegations must be enough to raise a right to relief above the  
speculative level. Where a complaint pleads facts that are merely consistent with a  
defendant’s liability, it stops short of the line between possibility and plausibility  
of entitlement to relief. Nor is it enough that the complaint is factually neutral;  
rather, it must be factually suggestive.

10 Somers v. Apple, Inc., 72 F.3d 953, 959-60 (9th Cir. 2013) (internal quotation marks and  
11 citations omitted). Plaintiff’s complaint does not raise a plausible inference that defendant  
12 breached the residential construction loan agreement. While it is clear that defendant agreed to  
13 advance amounts up to \$1,257,150 as construction progressed, the obligation to do so was  
14 triggered only if a number of conditions precedent were satisfied. Plaintiff does not state that an  
15 advance was due under the agreement at the time his request was made, does not identify a  
16 specific provision of the contract that was breached, does not allege that the conditions precedent  
17 were satisfied, and does not allege that he had fully complied with his own obligations at the  
18 time defendant denied his request for a subsequent advance. The mere fact that defendant  
19 refused to make a subsequent advance “at some point” does not raise an inference of  
20 wrongdoing: pursuant to the terms of the agreement, a refusal would be justified under a vast  
21 array of circumstances. While it is possible that the refusal was wrongful, plaintiff certainly has  
22 not alleged facts from which his entitlement to relief could be considered plausible. His breach  
23 of contract claim is not adequately pled under Twombly.

24 Having failed to allege facts in support of his breach of contract claim, there is no  
25 basis for injunctive relief or an award of damages.  
26

1 **CONCLUSION**

2 For all of the foregoing reasons, JPMorgan's motion to dismiss is GRANTED.  
3 Although all claims against JPMorgan are dismissed, this action continues as to Northwest  
4 Trustee Services, Inc. In this context, leave to amend will not be blindly granted. If plaintiff  
5 believes he can, consistent with his Rule 11 obligations, amend the complaint to remedy the  
6 pleading and legal deficiencies identified above, he may file a motion to amend and attach a  
7 proposed pleading for the Court's consideration.

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9 DATED this 3<sup>rd</sup> day of January, 2014.

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12 Robert S. Lasnik  
13 United States District Judge  
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