Appeal No. 19-15899

In The United States Court of Appeals For The Ninth Circuit

Susan McShannock, et al,
Plaintiff- Appellee,
v.
JP Morgan Chase Bank NA,
Defendant- Appellant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
Case No. 3:18-cv-01873-EMC HON. EDWARD M. CHEN

APPELLEES SUPPLEMENTAL EXCERPTS OF RECORD

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SUSAN MCSHANNOCK, et al.,

Plaintiffs,

v.

JP MORGAN CHASE BANK N.A.,

Defendant.

Case No. 18-cv-01873-EMC

ORDER FOR SUPPLEMENTAL BRIEFING ON DEFENDANT'S MOTION TO DISMISS

Docket No. 38

Defendant has moved to dismiss this case, in part based on the argument that Plaintiffs' claims under Section 2954.8(a) of the California Civil Code are preempted by the Home Owners' Loan Act ("HOLA"). Having considered the briefing and argument on the motion, the Court hereby orders the parties to submit supplemental briefing addressing the following two questions.

(1) Whether there is legislative history indicating that Congress, in enacting HOLA, contemplated that HOLA-governed mortgage loans originating with federal savings associations would be resold on the secondary market.

(2) Whether HOLA-governed mortgage loans were in fact resold at the time HOLA was enacted in 1933, and if so, how common the practice was.

The supplemental briefs shall be filed within two weeks of the date of this order, and each party's brief shall not exceed 5 pages.

IT IS SO ORDERED.

Dated: September 11, 2018

EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California

be pursuant to --

THE COURT: So the critical thing here is that the mortgage agreement has the "unless," which essentially incorporates by reference, in a way, statutory law. And if statutory law requires interest, then the security instrument requires interest?

MR. JAFFE: And, in fact, the statute -- the Deed of Trust here says it will comply with applicable federal and state law.

THE COURT: Well, I guess what I'm reading from is probably the note, then.

MR. JAFFE: Pardon me?

THE COURT: It's the note; not the Deed of Trust?

MR. JAFFE: The Deed of Trust has a provision that it will comply with applicable law.

THE COURT: What I just read from, I think, is from the note --

MR. JAFFE: Okay.

THE COURT: -- is my guess. I don't know.

All right. Let me get the response on that.

So what's wrong with that argument; that pursuant to the Security Agreement, if you're doing something that's contrary to the Security Agreement -- I mean, the action or not pursuant to the agreement -- if, in fact, the Agreement says, *Well, you've got to do what the applicable law says* -- statutory

law --

MR. POWELL: Yeah. That's a really fine line I've never heard of before.

What we're looking at are the actions taken pursuant to the security instrument; that, if escrow is set up pursuant to the security instrument, any obligation -- right or wrong -- to pay interest on the escrow account is all pursuant to the Security Agreement. We're doing this because of the Security Agreement.

This is exactly the issue that the District Court, Judge Freeman, ruled on in *Giotta*. And the Judge held that any action taken pursuant to the authority of the Deed of Trust, which would be all of these actions -- setting up the escrow -- whatever obligations we have in the escrow are covered.

The Ninth Circuit affirmed that decision. And that's really the state of the law right now. Although it is an unpublished decision, and so it's not binding authority, that's what the Ninth Circuiting thinking.

THE COURT: Well, but what does it mean? What does it mean: Actions pursuant to this instrument?

MR. POWELL: Right. That is setting up the escrow, which is what the security interests --

THE COURT: Well, is it setting up the escrow; or is it setting up the escrow and the act of paying or not paying interest?

MR. POWELL: Yeah. That's all pursuant to the Security Agreement. That's why we're doing it.

THE COURT: Well, but "pursuant to" seems to mean, you know, you're doing it consistent with the Security Agreement. So if you're doing something consistent with the Security Agreement, then you're kind of protected if you get a notice to cure. If you do something that's not consistent with the Security Agreement, then you don't get the benefit of the notice to cure.

MR. POWELL: That makes no sense, because then you're saying that if you breach Security Agreement, you're not entitled to notice and cure.

The point of notice and cure is you've done something wrong. You're being told you've done something wrong.

THE COURT: No, no, no. You could do something pursuant to the Security Agreement, and it would not be in breach of the Security Agreement, but it's in breach of something else. You've done exactly what the Security Agreement told you to do -- collect the money; don't pay interest -- and yet it ends up you're in trouble because, you know, California law, or federal law, or somebody requires interest.

So that's different from the second clause that says "if you breach the Agreement."

So you can do something pursuant to the Agreement, and you

get the protection.

If you don't do it pursuant to -- i.e., consistent with -- then you don't get the protection.

And they argue, *Well, it is not consistent with the Security Agreement, because it says you've got to comply with applicable law.*

MR. POWELL: Yeah. I've never heard of this argument before. There's no authority for this argument anywhere.

What the Courts look at are: What actions are you doing? And do those actions stem from your rights under the Security Agreement?

So here, it pretty clearly is setting up these escrow accounts. And all our obligations under the escrow are pursuant to the Security Agreement.

THE COURT: All right. Let's get to, then, the preëmption question, which is the other gorilla that's in the room here.

And knowing that I have ruled one way previously in 2012, it does seem to me that some case law has developed now which, you know, you can go one of several ways. You know. You can say that any loan that originates from a HOLA-covered entity -- a federal savings bank -- continues with the same characterizations and incidents.

Or you could say that once the bank is bought out, and the loan is transferred to a national bank, HOLA doesn't apply

anymore.

Or you can split, in terms of conduct that occurred while under a HOLA, and conduct that occurred post transfer, and would be covered by the National Banking Act, but not HOLA, which seems to be the trend, and -- I will concede -- as a logical appeal to that.

So what's wrong with that?

MR. POWELL: Well, I understand a couple of cases call it a trend; especially the minority cases that are trying to justify the decision that they're rendering; but factually that's just not correct. And if you look at our Reply Brief, there are plenty of recent cases which hold that HOLA applies; sticks with the loans throughout the life of a loan. So it's not like in 2014 there was a sea shift, and everything changed, and suddenly the minority view is like the majority view of the last four years.

And, in fact, in our Reply Brief, in the last three years there are nine cases where the Judges have applied HOLA throughout the life the loan, which is more cases than plaintiffs cite for the minority view.

In this Court, alone, ten different decisions in the Northern District of California have held that HOLA applies throughout the life the loan; and that's from nine different Judges in this Court. And all those Judges and all of those decisions can't be wrong.

If you look at those minority decisions, what they're really looking at is tortious conduct on the part of the successor entry. And they're trying to hide behind HOLA, so that they can get away with their tort. Their activity there is actually wrongful, in itself.

So most of those -- it's some problem with a loan modification that needs leads to a wrongful foreclosure or an imminent wrongful foreclosure, or there's an intentional misrepresentation.

I would question whether those are preëmpted to begin with, but that situation is completely different from what we have here.

And if Your Honor is trying to decide, *Do I go with the majority*, which is the vast majority of cases, *or do I follow those few recent cases and ignore the other majority cases that have come out?*, in this situation Chase purchased a loan in 2008 through the FDIC, through the Washington Mutual loans.

The Purchase and Sale Agreements, we pointed out in our papers, provides that Chase will pay the interest on amounts deposited with it at the same rate that Washington Mutual was paying. And that's because everyone knew at the time that these loans were purchased that HOLA applied throughout the life of the loan. And these 2014 cases going forward did not exist. And that's what Chase based its purchase price on, was: The obligations were all going to remain the same; that these

were HOLA loans. And that's what continued throughout the years, and continues to this day.

The first case that plaintiffs cite is 2014 -- again, a minority decision; not the majority -- and a few others through the last four years; but still the majority is the majority. And the majority is still the majority by the same amount. It's not like the margin is diminishing.

But Chase relied on HOLA; rightfully so. The OTS Opinion supported it, as we pointed out in our brief. All of the cases supported it, as we point out in our brief. All of the Circuit decisions to look at this issue supported it. And so that's what it did.

So this is a situation where you really need to apply the majority rule, because there's no independent tort; there's nothing Chase did that was wrong. It was applying the law that existed at the time; the law that exists now. It didn't do anything independently wrongful; didn't wrongfully foreclose on anybody; didn't misrepresent anything. It's just applying the contractual terms, as it understood it, as the FDIC understood it, as all of the Courts at the time understood it, as the vast majority of the Courts understand it now.

So if you're trying to choose between minority and majority, this is a clear-cut case for: Keep things the same. This is what everyone understood. This is what we bought.

A decade later, you can't change the terms on everybody,

which is what they're asking you to do.

THE COURT: Well, in a sense it boils down to what you might consider looking at the reliance interests. And you're saying there's a reliance interest on the part of Chase, which bought these loans; and therefore when you talk about the secondary market for these things, you want commercial stability, and predictability, et cetera, et cetera.

On the other hand, there's no reliance interest on the part of the borrower, because when they borrowed under the HOLA regime, there was no reasonable expectation of interest, et cetera, et cetera.

MR. POWELL: That's a better way of putting what I was trying to say. Yes, Your Honor.

I also want to point out, though, it's not true that the minority does this great analysis, and the majority just ignores the minority.

I don't know if this came through on our Reply, but there were a number of cases where the minority view was analyzed and rejected. And these are all recent; post 2014. That's when the minority started. I'll just list them, in case you want to look at them.

THE COURT: Well, if they're in your Reply --

MR. POWELL: I don't know that we set it this way. So, for the Record, *Kenery*, *Hayes*, *Metzger*, *Heagler*, *Jakstis*, *Poyorena*, and *Rodriguez* all look at the minority view, and

rejected it. And these are all within the last four years.

THE COURT: All right. I'll give you a chance to respond.

MR. JAFFE: Thank you, Your Honor.

MR. RAM: I don't think it's simply a matter of counting all cases, and say saying, "Well, there are *X* cases on this side, and *Y* cases on the other." I think the Court is smarter than that. And --

THE COURT: You give me more credit than is due, probably, in that regard.

MR. RAM: Well, I think the Court can look particularly at the well-reasoned decisions in the Northern District in *Penermon*, in *Pimentel*, that we laid out in our Opposition. And in *Penermon*, which was in 2014, we had really for the first time an analysis of this issue in some depth by Judge Westmore.

And I'm not going to read the whole case to Your Honor, but she goes through the history of HOLA in some depth. And then she says, you know, recently courts have questioned the logic of allowing the successor to assert preëmption for its own conduct, when it's not a savings bank.

And then she says, you know, it doesn't make sense that preëmption can be some sort of asset that's bargained, sold, or transferred.

And then she looks at the OTS Opinion that Chase makes a

dismissed in its entirety.

B. HOLA Preempts Plaintiffs' Claims.

Plaintiffs' claims are subject to dismissal because they are all preempted under HOLA. Plaintiffs do not meaningfully contest that HOLA preemption, if applicable to Chase, bars their claims. Nor could they. HOLA and OTS's implementing regulations expressly preempt all "state laws purporting to impose requirements regarding . . . [e]scrow accounts." 12 C.F.R. § 560.2(b)(6). If the type of law in question is listed in 12 C.F.R. § 560.2(b), as is the case here, "the analysis will end there; the law is preempted." *Campidoglio LLC v. Wells Fargo & Co.*, 870 F.3d 963, 971 (9th Cir. 2017).[2]

Plaintiffs' sole rejoinder is that HOLA preemption does not apply to successor national banks—like Chase—that acquire thrift-originated loans. As Chase demonstrated in its Motion, there is a split of authority on this issue among district courts within this circuit, and the Ninth Circuit has not weighed in on the issue. *See* Mot. at 12 n.13. However, the vast majority of district courts to consider the issue have confirmed that HOLA preemption applies for the life of the loan, even if that loan is later acquired by a successor entity that would not otherwise qualify for HOLA preemption. Indeed, Chase cited ten separate opinions within the Northern District of California alone, authored by nine different district court judges, all of whom concluded that HOLA preemption applies under these circumstances. Ignoring these authorities, none of which has been overturned on appeal or otherwise superseded, Plaintiffs argue that this is "not the current law of this circuit," Opp. at 7, citing a handful of cases from other districts and this one. Plaintiffs selectively overlook that the Northern District has considered the very arguments that Plaintiffs make against applying HOLA preemption and has declined to adopt Plaintiffs' approach. *See, e.g.*, *Kenery v. Wells Fargo, N.A.*, No. 5:13-cv-2411-EJD, 2014 WL 129262, at

[2] Plaintiffs argue that "*Campidoglio* says nothing about *whether* HOLA preemption applies at all," Opp. at 11, but *Campidoglio* sets forth the analytical framework that district courts must use to determine whether HOLA preemption applies. Plaintiffs do not argue that, under that framework, HOLA preemption would not bar their claims.

*4 (N.D. Cal. Jan. 14, 2014) (Davila, J.) (considering but declining to follow minority view because "the Court is not convinced . . . that its prior determinations are in error.").

The view expressed by Plaintiffs remains a distinctly minority one, and the cases Chase cited articulating the majority view are not "outdated district court decisions," as Plaintiffs suggest. Opp. at 11. Contrary to Plaintiffs' assertion that the law within this circuit has changed in the last four years, many district courts still reject the minority view and have continued, instead, to apply HOLA preemption to successor entities for post-acquisition conduct. *See, e.g.*, *Jakstis v. Wells Fargo Bank, N.A.*, No. 8:17-cv-01437-DOC (JDEx), 2018 WL 2144195, at *3 (C.D. Cal. Apr. 23, 2018) (dismissing complaint based on HOLA preemption because "the preemptive power of HOLA attaches to a loan, and continues with that loan throughout its lifetime"); *Rodriguez v. Wells Fargo Bank, N.A.*, No. 2:16-cv-00232-MCE-AC, 2018 WL 1392872, at *4 (E.D. Cal. Mar. 20, 2018) (applying HOLA preemption because the "loan originated with Wells Fargo's predecessor-in-interest, WSB, which was an FSB" and "HOLA preemption attaches to the loan and travels with the loan in the event of a merger or acquisition, ultimately protecting any successor to the FSB"); *Heagler v. Wells Fargo Bank, N.A.*, No. 2:16-cv-01963-MCE-KJN, 2017 WL 1213370, at *4 (E.D. Cal. Mar. 31, 2017) (noting split of authority, but granting motion to dismiss claims based on post-acquisition conduct because "HOLA preemption attaches to the loan"); *Chavez v. Wells Fargo Bank, N.A.*, No. CV 16-1402 PA (PLAx), 2016 U.S. Dist. LEXIS 86850, at *12-13 (C.D. Cal. July 5, 2016) (recognizing that "some courts have concluded that HOLA preemption does not apply to successor lenders," but holding that "the better reasoned approach . . . is that HOLA preemption follows the loan"); *Panno v. Wells Fargo Bank, N.A.*, No. SA CV 16-0118-DOC (KESx), 2016 WL 7495834, at *4 (C.D. Cal. Apr. 1, 2016) (dismissing claim because "HOLA preemption analysis applies even after the FSB merges into a national bank, as long as the mortgage originated with an FSB"); *Ramirez v. Wells Fargo Bank, N.A.*, CV 15-08909-BRO (JPRx), 2016 WL 7448136, at *4 (C.D. Cal. Feb. 1, 2016) (dismissing claims for post-acquisition conduct with prejudice based on HOLA preemption because "successors in interest, such as Defendant in this case, may properly assert preemption under the HOLA even if the successor entity is not a federally chartered

savings institution"); *Romero v. Wells Fargo Bank, N.A.*, No. LA CV15-04707 JAK (JEMx), 2015 WL 12781210, at *4 (C.D. Cal. Dec. 22, 2015) (holding that "HOLA preemption applies to the conduct of successors to federal savings associations in servicing a loan that originated with a federal savings association") (citing *Metzger v. Wells Fargo Bank, N.A.*, No. LA CV14-00526 JAK, 2014 WL 1689278, at *3-4 (C.D. Cal. Apr. 28, 2014)); *Campos v. Wells Fargo Bank, N.A.*, No. EDCV 15-1200 JVS (DTBx), 2015 WL 5145520, at *5 (C.D. Cal. Aug. 31, 2015) ("[A] majority of district court cases have concluded that HOLA preemption continues to apply to conduct related to loans originated by a federally-chartered savings association even after those banks are merged into national banking associations."); *Hayes v. Wells Fargo Bank, N.A.*, No. 13cv1707 L(BLM), 2014 WL 3014906, at *4 (S.D. Cal. July 3, 2014) (dismissing complaint because HOLA preemption applied to post-acquisition conduct). Both before 2014 and since, therefore, most courts have confirmed that HOLA preemption applies under these circumstances.

For the reasons articulated in Chase's Motion, most of which Plaintiffs do not even address, the majority viewpoint expressed in these decisions is correct. As Chase explained, courts have recognized that "the marketability of a mortgage in the secondary market is critical to a savings and loan, for it thereby can sell mortgages to obtain funds to make additional home loans." *Romero*, 2015 WL 12781210, at *4 (quoting *Akopyan v. Wells Fargo Home Mortg., Inc.*, 215 Cal. App. 4th 120, 142 (2013)). Therefore, "the rationale for applying preemption to the assignees of federal thrifts is to allow the thrifts themselves greater freedom from state interference." *Id.* Plaintiffs, and the minority decisions they cite, do not address this consideration or explain why it should not weigh in favor of the continued applicability of HOLA preemption to successor entities.

Chase also explained why this rationale applies with particular force where, as here, the loans were acquired by a national bank through an FDIC-arranged purchase and assumption. In these circumstances, a purchasing bank may be less inclined to participate in these important transactions if it cannot be assured that the preemption regime applicable to the failed bank will

carry forward. Plaintiffs likewise do not address this consideration or explain why the Court should adopt a policy that risks preventing these important transactions.

Plaintiffs take issue with Chase's reliance on 1985 and 2003 OTS Opinion Letters, and contend that these letters do not stand for the proposition that national banks may raise HOLA preemption as a defense to claims based on the post-merger conduct of a national bank. Courts adopting the majority view have continued to find that those letters strongly support application of HOLA preemption to post-acquisition conduct. *See, e.g., Hayes*, 2014 WL 3014906, at *4; *Metzger*, 2014 WL 1689278, at *3. This view is confirmed by the language of the letters, which focuses on the *loans* at issue, not the lender. *See* FHLBB Op. General Counsel, 1985 FHLBB LEXIS 178, at *5 (Aug. 13, 1985) ("It is our opinion that such preemption would exist regardless of whether the *loans* in question are sold by the federal association to a third party . . . ." (emphasis added)); OTS Opinion Letter P-2003-5, 2003 WL 24040104, at *4 n.18 (July 22, 2003) (describing the 1985 Opinion Letter as holding that "state law requiring the payment of interest on escrow accounts is preempted for *loans* originated by federal savings associations regardless of whether the *loans* are later sold to an entity other than a federal savings association" (emphasis added)).

This view is consistent with basic tenets of contract law, which hold that a contract is valid when made and does not become invalid when transferred. It is also consistent with the view of preemption that Congress expressed when it passed the Dodd-Frank Act. *See* Mot. at 14; *McCauley v. Home Loan Inv. Bank, F.S.B.*, 710 F.3d 551, 554 n.2 (4th Cir. 2013) ("Congress did not direct [] retroactive application in the Dodd-Frank Act. Because 12 C.F.R. 560.2 was in effect when the loan contract was entered into, it governs here.").[3] Plaintiffs' Opposition does

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[3] The Court's recent *Smith* decision also discussed HOLA preemption, though that discussion did not form the basis for its ultimate decision to dismiss the complaint. In *Smith*, the Court incorrectly presumed that implementation of Dodd-Frank on July 21, 2011, prevents application of HOLA preemption to events occurring after that date. *Smith*, No. 18-cv-02350-WHA (ECF 34) (N.D. Cal. Aug. 21, 2018). Numerous courts, however, have confirmed that Dodd-Frank is not retroactive and have applied HOLA preemption to conduct occurring after Dodd-Frank went into effect. *See, e.g., Rodriguez*, 2018 WL 1392872, at *3 ("Dodd-Frank . . . does not apply retroactively to affect any contract entered into before the date on which the Act was enacted

not discuss these considerations or explain why they do not support continued application of HOLA preemption.

National banks like Chase have relied on prior court orders, agency opinions, and congressional directives in understanding that preemption regimes follow the loan, not the lender. In addition to constituting the applicable law, this view is undergirded by important policy considerations. HOLA preemption attached to Plaintiffs' loans at the time they were originated; as such, that preemption continues to apply to the loans today.

C. Alternatively, A Stay Pending Resolution Of *Lusnak* Is Warranted.

If the Court declines to dismiss this case based on any of the grounds discussed above and believes that NBA preemption is relevant to its decision on this motion, the Court should grant a stay pending the resolution of *Lusnak*. Plaintiffs do not contest that *Lusnak* may significantly impact the issues in and outcome of this case. They oppose the requested stay on other grounds, arguing that a stay undermines judicial economy and would prejudice them due to the risk of fading memories and dissipating evidence. *See* Opp. at 13-14. These arguments lack merit.

First, a stay would not undermine judicial economy. Bank of America has already filed its petition for certiorari in *Lusnak*, so any stay pending the outcome of that petition will be brief. If the petition is denied, then the stay will soon be lifted, and litigation can continue. If the petition is granted, then this case should be stayed pending the outcome of that appeal, as even Plaintiffs appear to concede that *Lusnak* may have a significant impact on the legal issues and outcome in this case. Namely, if the Supreme Court reverses or alters the Ninth Circuit's holding, then its decision may provide Chase with an independent defense to Plaintiffs' claims.

Second, Plaintiffs' claims of prejudice are insubstantial. As alleged in the Complaint, the core of Plaintiffs' claim implicates a straightforward question of law: whether Chase was

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. . . . Because Plaintiff obtained his loan in 2006—long before Dodd Frank—field preemption under HOLA applies."); *Deschaine v. IndyMac Mortg. Servs.*, No. CIV. 2:13-1991 WBS CKD, 2014 WL 281112, at *9 (E.D. Cal. Jan. 23, 2014) (applying HOLA preemption to post-Dodd-Frank conduct), *aff'd*, 617 F. App'x 690 (9th Cir. 2015).

B. Plaintiffs' Claims Are Preempted By HOLA.

Congress intended HOLA to erect a broad, preemptive federal regulatory scheme for national savings banks. Enacted in response to the Great Depression when a record number of home loans were in default, HOLA "empowered the regulatory body, which became the OTS, to authorize the creation of federal savings and loan associations, to regulate them, and, by its regulations, to preempt conflicting state law." *Campidoglio LLC v. Wells Fargo & Co.*, 870 F.3d 963, 971 (9th Cir. 2017). The OTS recognized that field preemption was necessary "to enable federal savings associations to conduct their operations in accordance with best practices (by efficiently delivering low-cost credit to the public free from undue regulatory duplication and burden)," 12 C.F.R. § 560.2(a), and courts have recognized the OTS's interest in "consistent, nationwide regulations affecting lending practices," *Flagg v. Yonkers Sav. & Loan Ass'n, FA*, 396 F.3d 178, 183 (2d Cir. 2005). As recently as this year, and even after the passage of the Dodd-Frank Act, the Ninth Circuit recognized the uniquely broad preemptive effect of HOLA with respect to pre-2010 contracts, including as compared to other national banking regulation schemes. *See Lusnak*, 883 F.3d at 1196 ("Unlike the OTS, the OCC does not enjoy field preemption over the regulation of national banks.").

The importance of a uniform scheme of federal regulation was clear in 2008, when Chase purchased WaMu's assets from the FDIC and acquired Plaintiffs' loans. At that time, this country was experiencing the worst recession it has seen since the passage of HOLA. For healthy banks such as Chase to agree to urgent FDIC-arranged purchases and assumptions of failed thrifts—often overnight—they needed assurances that the preemption regime applicable to the failed bank would carry forward. Without such assurances, banks would have been less inclined to participate in these critical transactions, which would have further exacerbated the banking crisis. Here, where the broad preemptive regime continues to be the relevant law for pre-2010 contracts such as Plaintiffs', and nothing in Plaintiffs' Deeds of Trust suggests the parties agreed to a different arrangement, the obligations on the purchased loans should not suddenly change simply because a national bank, rather than a thrift, agreed to take on the obligations of a failed thrift.

Complaint nowhere mentions this correspondence, much less alleges that it complies with the Deeds of Trust.

1. HOLA Expressly Preempts Plaintiffs' State Law Claims Relating To Escrow Accounts.

Plaintiffs allege that Chase's failure to pay interest on Plaintiffs' mortgage escrow accounts violates the UCL because it contravenes California Civil Code § 2954.8 and 15 U.S.C. § 1639d(g) and because it constitutes an unfair practice.[8]

The Ninth Circuit recently confirmed that 15 U.S.C. § 1639d(g) cannot serve as the basis for UCL claims like Plaintiffs' where, as here, the "escrow account was not a federally mandated account 'subject to' section 1639d at the time it was created because it was established before that section took effect in 2013." *Lusnak*, 883 F.3d at 1197.[9] Consequently, Plaintiffs' claims both depend on the presumption that California Civil Code § 2954.8, which requires certain lenders to pay interest on mortgage escrow account balances, applies to Plaintiffs' mortgages. *See* Compl. ¶ 1. Application of that statute to Plaintiffs' mortgages, which were originated by WaMu—a federal savings bank—is preempted by HOLA, codified at 12 U.S.C. §§ 1461-1468, and its implementing regulations.

HOLA granted the OTS "broad authority" to "promulgat[e] . . . regulations superseding state law." *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 162 (1982) (referring to the authority of the Federal Home Loan Bank Board (the "FHLBB"), the OTS's predecessor). In 1996, the OTS exercised that authority by issuing regulations that explicitly "occupie[d] the entire field of

[8] Notably, nothing in the Deeds of Trust required Chase to pay interest on the escrow accounts. To the contrary, the Deeds of Trust specifically provide that, "[u]nless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay [Plaintiffs] any interest or earnings on the funds." Compl. ¶ 6 (quoting Deed of Trust). The Deeds of Trust define "Applicable Law" as "all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions." RJN, Exhs. A-F at p. 2. Plaintiffs have not alleged the existence of any separate agreements requiring Chase to pay interest and, as detailed below, Applicable Law does not require such payment by Chase.

[9] Plaintiffs' insinuation that HUD Handbook 4330.1 requires national banks to pay interest is incorrect. *See* Compl. ¶¶ 4, 36. As an initial matter, the Handbook has no legal force. *In re Mortgage Escrow Deposit Litig.*, MDL No. 899, 1995 WL 59238, at *3 (N.D. Ill. Feb. 9, 1995) ("HUD has not promulgated the Handbook such as to give it the force of law."); *see also Rank v. Nimmo*, 677 F.2d 692, 698-99 (9th Cir. 1982) ("[N]umerous decisions of other courts . . . have held agency handbooks . . . [are] unenforceable."). More to the point, the Handbook actually undermines Plaintiffs' position because it states elsewhere that "HUD regulations neither forbid nor require that escrow accounts earn interest." HUD Handbook 4330.1, Rev-5, § 2-5(C). In fact, the HUD Handbook reflects the Department of Housing and Urban Development's longstanding position that it lacks "legal authority to require payment of interest on escrow accounts." HUD, Real Estate Settlement Procedures Act (Regulation X): Escrow Accounting Procedures, 59 Fed. Reg. 53890, 53891 (Oct. 26, 1994).

lending regulation for federal savings associations." 12 C.F.R. § 560.2(a) ("OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations."). This "explicit full field preemption" represents "the pinnacle of federal preemption" and is "a preemption approach so pervasive that Congress must have intended to leave *no room* for the states to supplement it." *Aguayo v. U.S. Bank*, 653 F.3d 912, 921 (9th Cir. 2011) (citations omitted).

The Ninth Circuit follows "a three-step process prescribed by the OTS for analyzing whether a state law is preempted under this regulation. [T]he first step will be to determine whether the type of law in question is listed in paragraph (b) [of 12 C.F.R. § 560.2]. If so, the analysis will end there; the law is preempted." *Campidoglio*, 870 F.3d at 971 (alteration in original) (quoting *Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001, 1005 (9th Cir. 2008)). Relevant here, 12 C.F.R. § 560.2(b)(6) expressly preempts all "state laws purporting to impose requirements regarding . . . [e]scrow accounts." 12 C.F.R. § 560.2(b)(6).

While the Ninth Circuit has not directly addressed whether claims predicated on allegations regarding escrow accounts are preempted by HOLA, other courts have uniformly ruled in favor of preemption. In *Flagg*, the Second Circuit considered whether HOLA preempts claims under a New York statute that, like California Civil Code § 2954.8, required lenders to pay two percent interest on escrow account balances. 396 F.3d at 181-82 (citing N.Y. Gen. Oblig. Law § 5-601). The court concluded that the "preemptive exercise of federal authority by the Office of Thrift Supervision" through 12 C.F.R. § 560.2(b)(6) "freed Yonkers, as a federal savings association, from any obligation to pay interest on mortgage escrow accounts under New York law." *Id.* at 182. In reaching this conclusion, the court looked to the plain language of 12 C.F.R. § 560.2(b)(6), which "removed all legal obligations that federal savings associations may have to pay interest on mortgage escrow accounts, 'allowing such matters to be governed by the loan contract.'" *Id.* (quoting 48 Fed. Reg. 23032.01, 23039 (May 23, 1983)).

The court considered, and rejected, the appellants' argument that the OTS exceeded its authority in promulgating regulations preempting such claims through an arbitrary exercise of power. To the contrary, the court concluded that the OTS's decision "to relieve institutions of any legal duty

to pay interest on escrow funds while preserving the possibility that individual institutions and their clients may negotiate provision of some interest, provides a consistent nationwide playing field while giving individual institutions a level of flexibility." *Id.* at 184. Indeed, the court noted that the particular contract at issue "specifically provides an opportunity for mortgagees of Yonkers to negotiate, by separate agreement, payment of interest on escrow accounts" and that the plaintiffs "do not appear to have attempted to negotiate interest terms on their escrow account." *Id*. at 185. Here, Plaintiffs' Deeds of Trust similarly allow for a separate agreement that the lender will pay interest on the escrow account, *see* Compl. ¶ 6 (quoting Deed of Trust), and Plaintiffs have not alleged that they attempted to negotiate interest terms on their escrow accounts.

The court similarly rejected the appellants' argument that a provision in the mortgage stating that the contract was governed by "federal law and the law that applies in the place where the Property is located" incorporated New York law, "therefore requiring that Yonkers pay interest to the Flaggs under the contract." *Flagg*, 396 F.3d at 186. The court observed that general choice of law provisions cannot overcome a specific contractual provision to the contrary stating that interest shall not be paid on escrow accounts. *Id.* ("The contract specifically states that Yonkers will not pay interest on the account unless required by law. Since, per HOLA and OTS regulations, Yonkers is not required by law to pay interest, the contract does not commit Yonkers to pay interest to the Flaggs on this mortgage escrow account.").[10]

In a recent case from within this Circuit, *Hayes v. Wells Fargo Bank, N.A.*, the district court similarly concluded that claims relating to the alleged mishandling of escrow accounts were subject to HOLA preemption. No. 13-cv-1707 L(BLM), 2014 WL 3014906 (S.D. Cal. July 3, 2014).[11] In

[10] The OTS similarly concluded in an opinion letter that a "reference in [a] mortgage loan document to the law of the place the property is located . . . , together with a reference to federal law, is insufficient to establish a contractual agreement to pay interest on escrow funds" because a "reference to federal law and state law in the same provision of the mortgage document includes the preemptive effect of federal law." OTS Opinion Letter, P-2003-7, 2003 WL 24040106, at *2 (Oct. 6, 2003). The Deeds of Trust at issue here contain similar language. RJN, Exhs. A-F § 16 ("This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located"). As both the OTS and the Second Circuit have made clear, this provision does not mean that Chase was bound by California law. To the contrary, it incorporates the preemptive effect of federal law.

[11] Notably, and as discussed more fully below, the court rejected the argument that Wells Fargo could not assert HOLA preemption as a national bank successor-in-interest. The court instead concluded that, because the loan originated with "a federal savings association, and [Wells Fargo] is successor-

Hayes, the plaintiff alleged that Wells Fargo improperly computed escrow payments intentionally to cause borrowers to "accumulate large negative balances, be charged late fees and penalties, and/or face foreclosure proceedings." *Id.* at *5. The court held that 12 C.F.R. § 560.2(b)(6) was "specifically applicable" and that the plaintiff's "claims fit within § 560.2(b)(6) because [Wells Fargo's] alleged misconduct was made in connection with Hayes's escrow account." *Id.* The court therefore dismissed the plaintiff's UCL claim with prejudice. *Id.* at *6. The rulings of other courts, considering similar regulations, support the results in *Flagg* and *Hayes*. *See, e.g.*, *First Fed. Sav. & Loan Ass'n of Boston v. Greenwald*, 591 F.2d 417, 425 (1st Cir. 1979) (concluding that state laws that required lenders to pay interest on escrow accounts were preempted by regulations promulgated by the FHLBB).

Here, as in *Flagg* and *Hayes*, both of Plaintiffs' UCL claims are based on allegations regarding Plaintiffs' escrow accounts. The law that forms the basis of these claims, California Civil Code § 2954.8, implicates a category of preempted state law listed in 12 C.F.R. § 560.2(b)(6); the analysis "end[s] there; the law is preempted" and Plaintiffs' claims fail as a matter of law. *Campidoglio*, 870 F.3d at 971. Nor is the Ninth Circuit's recent decision in *Lusnak* to the contrary. Quite the opposite, the Ninth Circuit explicitly acknowledged that preemption of California Civil Code § 2954.8 likely *would* occur if the lender in that case had been governed by HOLA. *Lusnak*, 883 F.3d at 1196 & n.9.

2. Plaintiffs' Mortgages, Which A Federal Savings Bank Originated, Are Governed By HOLA.

Plaintiffs' mortgages are subject to HOLA because WaMu, a federal savings bank, originated the loans. "Whether, and to what extent, HOLA applies to claims against a national bank when that bank has acquired a loan executed by a federal savings association is an open question" in the Ninth Circuit. *Campidoglio*, 870 F.3d at 970-71. However, most district courts in this Circuit agree that HOLA preemption "attaches to a loan, and continues with that loan throughout its lifetime," even if the loan is transferred to a bank not covered by HOLA. *Poyorena v. Wells Fargo Bank, N.A.*, No. 14-cv-683 GAF, 2014 U.S. Dist. LEXIS 49319, at *16 (C.D. Cal. Apr. 3, 2014).[12]

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in-interest to [that savings association], HOLA preemption applies to the alleged misconduct of [Wells Fargo]." *Hayes*, 2014 WL 3014906, at *4.

[12] To the extent Plaintiffs seek to hold Chase liable for any alleged wrongdoing of its predecessor in interest, WaMu, any such claims are barred by Plaintiffs' failure to allege exhaustion of the

This Court, on numerous occasions, has confirmed that loans that originated with a federal savings bank continue to be subject to HOLA preemption after those loans are acquired by a national bank. *See, e.g.*, *Nguyen v. JP Morgan Chase Bank N.A.*, No. 12-cv-04183, 2013 WL 2146606, at *6 (N.D. Cal. May 15, 2013) (Grewal, M.J.) (Because plaintiff's mortgage "loan originated with WaMu, a federally-chartered savings bank, organized and operating under HOLA . . . HOLA preempts all conduct relating to the loan"); *Appling v. Wachovia Mortg., FSB*, 745 F. Supp. 2d 961, 971 (N.D. Cal. 2010) (Koh, J.) ("[A]lthough Wells Fargo itself is not subject to HOLA and OTS regulations, this action is nonetheless governed by HOLA because Plaintiff's loan originated with a federal savings bank and was therefore subject to the requirements set forth in HOLA and OTS regulations."); *DeLeon v. Wells Fargo Bank, N.A.*, 729 F. Supp. 2d 1119, 1126 (N.D. Cal. 2010) (Fogel, J.) ("Wells Fargo notes that at the time the loan was made . . . World Savings Bank, FSB was a federally chartered savings bank organized and operating under HOLA and observes correctly that the same preemption analysis would apply to any alleged conduct after . . . the lender merged into a national banking association."); *Pratap v. Wells Fargo Bank, N.A.*, No. 12-cv-06378-MEJ, 2013 WL 5487474, at *4 (N.D. Cal. Oct. 1, 2013) (James, M.J.) ("[T]he fact that World Savings subsequently became Wachovia and later merged into Wells Fargo, which is not a federal savings bank, does not render HOLA inapplicable where, as here, the loan originated with a federal savings bank."); *Marquez v. Wells Fargo Bank, N.A.*, No. 13-cv-2819-PJH, 2013 WL 5141689, at *4 (N.D. Cal. Sept. 13, 2013) (Hamilton, J.) ("Numerous district courts have held that successors in interest may properly assert preemption under HOLA even if the successor entity is not a federally chartered savings."); *Castillo v. Wachovia Mortg.*, No. 12-cv-0101-EMC, 2012 WL 1213296, at *4 (N.D. Cal. Apr. 11, 2012) (Chen, J.) ("The fact that World Savings Bank subsequently became Wachovia and later merged into Wells Fargo (which is not a federal savings bank), does not render HOLA inapplicable where, as here, the loan originated with a federal savings bank."); *Sato v. Wachovia Mortg., FSB*, No. 5:11-cv-00810-EJD, 2011 WL 2784567, at *5 (N.D. Cal. July 13, 2011) (Davila, J.) ("Although Wachovia was subsequently acquired by a national banking association, namely Wells Fargo Bank, N.A., district

administrative process under FIRREA. *See Rundgren v. Washington Mut. Bank, FA*, 760 F.3d 1056 (9th Cir. 2014) (affirming dismissal of claims based on lack of jurisdiction because plaintiffs had not exhausted the FDIC claims process against WaMu).

courts have held that HOLA preemption applies to all conduct relating to the loan . . . . [and t]his court agrees with the conclusions of its predecessors"); *Haggarty v. Wells Fargo Bank, N.A.*, No. 10-cv-02416-CRB, 2011 WL 445183, at *4 (N.D. Cal. Feb. 2, 2011) (Breyer, J.) ("HOLA does apply because Plaintiffs' loan originator was a federal savings bank . . . This is true even though the conduct at issue occurred after Wells Fargo merged with Wachovia."); *Lopez v. Wachovia Mortg.*, No. 10-cv-01645-WHA, 2010 WL 2836823, at *2 (N.D. Cal. July 19, 2010) (Alsup, J.) ("[A]lthough Wells Fargo is a federally chartered national bank under the National Bank Act, the instant action is governed by HOLA because the loan originated with WSB").[13]

This Court and others within this Circuit have applied this analysis specifically to loans originated by WaMu and later acquired by Chase (like Plaintiffs'), and confirmed that HOLA preemption applies to claims against Chase relating to such loans. *See, e.g.*, *Nguyen*, 2013 WL 2146606, at *6 ("[B]ecause the loan originated with WaMu, a federally-chartered savings bank, organized and operating under HOLA, courts have held that HOLA preempts all conduct relating to the loan."); *Rodriguez*, 809 F. Supp. 2d at 1295 n.1 ("Although Defendants themselves are not federally chartered savings banks, HOLA still applies because Washington Mutual was a federally chartered savings bank at the time the loan was originated.").

There is good reason to apply HOLA preemption to loans later acquired by non-thrift banks. Doing so provides continuity and certainty that increases the marketability of thrift-originated loans on the secondary market. Courts have recognized that "the marketability of a mortgage in the secondary market is critical to a savings and loan, for it thereby can sell mortgages to obtain funds to

[13] Other district courts within this Circuit agree. *See, e.g., Osorio v. Wachovia Mortg., FSB*, No. 12-cv-663-IEG, 2012 WL 1610110, at *3 (S.D. Cal. May 8, 2012) ("Because Plaintiff's loan originated with World Savings Bank, FSB, which was a federal savings bank, Plaintiff's action is governed by HOLA."); *Rodriguez v. JP Morgan Chase & Co.*, 809 F. Supp. 2d 1291, 1295 n.1 (S.D. Cal. 2011) ("Although Defendants themselves are not federally chartered savings banks, HOLA still applies because Washington Mutual was a federally chartered savings bank at the time the loan was originated."). In fact, "the majority of cases have concluded that HOLA preemption continues to apply to conduct related to loans originated by a federal savings bank even after those banks are merged into national banking associations." *Harris v. Wells Fargo Bank N.A.*, No. 5:16-cv-00645-CAS, 2016 WL 3410161, at *8 (C.D. Cal. June 15, 2016) (internal quotations omitted). While some courts have declined to follow these authorities, *see, e.g., Gerber v. Wells Fargo Bank, N.A.*, No. CV-11-01083-PHX, 2012 WL 413997 (D. Ariz. Feb. 9, 2012), they are distinctly in the minority. *Cf. Kenery v. Wells Fargo, N.A.*, No. 5:13-cv-2411-EJD, 2014 WL 129262, at *4 (N.D. Cal. Jan. 14, 2014) (Davila, J.) (considering but declining to follow minority view articulated in *Gerber* because "the Court is not convinced . . . that its prior determinations are in error").

make additional home loans." *Romero v. Wells Fargo Bank, N.A.*, No. LA CV15-04707 JAK, 2015 WL 12781210, at *4 (C.D. Cal. Dec. 22, 2015) (quoting *Akopyan v. Wells Fargo Home Mortg., Inc.*, 215 Cal. App. 4th 120, 142 (2013)). Accordingly, "the rationale for applying preemption to the assignees of federal thrifts is to allow the thrifts themselves greater freedom from state interference." *Id.*

This rationale obtains with particular force where, as here, the loans were acquired by a national bank through an FDIC-arranged purchase and assumption. As courts routinely have recognized, when the FDIC arranges the purchase of a failed bank, it "need[s] . . . to rely on the books and records of the failed bank in assessing its potential liability under a purchase and assumption vis-a-vis a liquidation." *FDIC v. Jenkins*, 888 F.2d 1537, 1544 (11th Cir. 1989). Similarly, the purchasing bank must be able to take stock—often "overnight," *id.*—of the exposure it is accruing upon its assumption of the failed bank's liabilities. If the purchasing bank cannot be assured that the preemption regime applicable to the failed bank will carry forward, banks may be less inclined to participate in these critical transactions. Accordingly, continued application of HOLA preemption to Plaintiffs' mortgages is consistent with the contractual terms upon which Chase acquired the loans from the FDIC (as receiver for WaMu). The P&A Agreement expressly provides that Chase shall apply the "same terms as agreed to by the Failed Bank [*i.e.*, WaMu] as existed as of Bank Closing" in determining whether to pay interest on escrow accounts. RJN, Exh. G §§ 2.2, 5.2. HOLA preemption informs the "applicable law" incorporated into the "terms" of the Deeds of Trust, and this P&A Agreement provision confirms that those terms should have the same meaning following Chase's acquisition of the loan. Failure to apply HOLA preemption consistently in construing the terms of those loans would contravene the conditions upon which Chase acquired them.

Moreover, at the time Plaintiffs' Deeds of Trust were executed in 2005-2007, the law was clear that HOLA preemption continues to apply after a non-thrift acquires a loan. The FHLBB, the predecessor to the OTS, explained that "state laws or regulations which would impose upon federal associations obligations to pay interest on escrow accounts other than those provided for in their loan contracts are preempted," and that "such preemption would exist regardless of whether the loans in question are sold by the federal association to a third party, are being serviced by a third party, or

whether the escrow deposits are held at a federal association while the loans have been sold in the secondary market." FHLBB Op. General Counsel, 1985 FHLBB LEXIS 178, at *4, 5 (Aug. 13, 1985). The OTS reiterated this approach in 2003 when it reaffirmed the "general principle that loan terms should not change simply because an originator entitled to federal preemption may sell or assign a loan to an investor that is not entitled to federal preemption." OTS Opinion Letter, P-2003-5, 2003 WL 24040104, at *4 n.18 (July 22, 2003). The OTS advised that if state laws were applied to the management and servicing of loans originated by federal savings associations after the loans are sold or assigned to other entities, such laws "might interfere with the ability of federal savings associations to sell mortgages that they originate under a uniform federal system." *Id*. Courts have heeded that advice. *See, e.g.*, *Metzger v. Wells Fargo Bank, N.A.*, No. LA CV14-00526 JAK, 2014 WL 1689278, at *3-4 (C.D. Cal. Apr. 28, 2014) (relying on 2003 OTS Opinion Letter in finding that HOLA preemption applied to successor bank).

In passing the Dodd-Frank Act, Congress evinced a similar view of preemption as continuing to apply to a contract entered into by a federally regulated institution, based on the preemption regime under which the contract was adopted, regardless of Congress's amendments to that regime. Thus, even when Congress modified the HOLA preemption regime in the Act, Congress simultaneously made clear that it did not intend to affect the applicable law governing contracts like Plaintiffs', which were entered into on or before July 21, 2010. Section 5553 of the Dodd-Frank Act, which refers to "the applicability of State law under Federal banking law to any contract entered into on or before July 21, 2010," focuses the preemption analysis on the preemption regime in effect at the time of the contract. 12 U.S.C. § 5553; *see also Campidoglio*, 870 F.3d at 971-72 (applying pre-Dodd-Frank case law to determine whether a state law is preempted by HOLA); *McCauley v. Home Loan Inv. Bank, F.S.B.*, 710 F.3d 551, 554 n.2 (4th Cir. 2013) ("Congress did not direct [] retroactive application in the Dodd-Frank Act. Because 12 C.F.R. § 560.2 was in effect when the loan contract was entered into, it governs here."); *Molosky v. Wash. Mut., Inc.*, 664 F.3d 109, 113 n.1 (6th Cir. 2011) (same); *Meyer v. One West Bank, F.S.B.*, 91 F. Supp. 3d 1177, 1180-81 (C.D. Cal. 2015) ("The Dodd-Frank Act is not, however, retroactive. Contracts formed before the Act's effective date are, therefore, subject to the preemption rules applicable at the time of formation.").

Finally, basic tenets of contract law support continued application of HOLA preemption principles to a purchased loan. Fundamental contract law holds that a contract that is valid when made does not become invalid when transferred. *See, e.g.*, *Nichols v. Fearson*, 32 U.S. 103, 106 (1833) ("Yet the rule of law is everywhere acknowledged, that a contract free from usury in its inception, shall not be invalidated by any subsequent usurious transactions upon it."). An assignee's contractual rights and protections are coterminous with those of the assignor. *Olvera v. Blitt & Gaines, P.C.*, 431 F.3d 285, 289 (7th Cir. 2005) ("But once assignors were authorized to charge interest, the common law kicked in and gave the assignees the same right, because the common law puts the assignee in the assignor's shoes, whatever the shoe size."); *Fed. Deposit Ins. Corp. v. Lattimore Land Corp.*, 656 F.2d 139, 148-49 (5th Cir. 1981) ("The non-usurious character of a note should not change when the note changes hands.").

This Court, like others within this Circuit, has repeatedly held that HOLA preemption pertains to loans originated by a thrift (like WaMu) that are later acquired by a national bank (like Chase). There is no reason for the Court to depart from its prior rulings or abandon the ample justifications for those prior decisions. Policies of certainty and continuity, as reflected in legislation like Dodd-Frank and in fundamental tenets of contract law, support that conclusion. As such, because HOLA preemption attached to Plaintiffs' loans at the time they were originated, that preemption continues to apply to the loans today.

C. Alternatively, The Court Should Stay This Case Pending Resolution of *Lusnak*.

If the Court does not find that Plaintiffs' failure to allege compliance with the notice and cure provisions in the Deeds of Trust or HOLA preemption warrants dismissal, the Court should stay this case pending resolution of *Lusnak*.

In *Lusnak*, the Ninth Circuit reversed the decision of the district court and held that NBA preemption does not bar state law claims predicated on California Civil Code § 2954.8(a), including claims for UCL violations like the ones Plaintiffs bring here. 883 F.3d at 1197. Bank of America moved the Ninth Circuit for rehearing *en banc* on April 13, 2018. *See En Banc* Petition, *Lusnak v. Bank of America, N.A.*, No. 14-56755 (9th Cir. Apr. 13, 2018), ECF 40. In addition, the OCC submitted an amicus brief in support of Bank of America's petition for rehearing *en banc*, stating that

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:18-cv-01873-EMC

McShannock v. JP Morgan Chase Bank N.A.
Assigned to: Judge Edward M. Chen
Case in other court: USCA, 19-15899
Cause: 28:1330 Breach of Contract

Date Filed: 03/27/2018
Jury Demand: Plaintiff
Nature of Suit: 150 Contract: Recovery/Enforcement
Jurisdiction: Diversity

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Date Filed	#	Docket Text
03/27/2018	1	COMPLAINT against JP Morgan Chase Bank N.A.(Filing Fee $400, receipt number 0971-12222951) Filed by Susan McShannock. (Attachments: # 1 Civil Cover Sheet, # 2 Declaration)(Jaffe, Harold) (Filed on 3/27/2018)Modified on 3/27/2018 (cfeS, COURT STAFF). Note: Payment Information added (Entered: 03/27/2018)
03/27/2018	2	Proposed Summons. (Jaffe, Harold) (Filed on 3/27/2018) (Entered: 03/27/2018)
03/27/2018	3	Case assigned to Magistrate Judge Maria-Elena James. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit *E-Filing A New Civil Case* at http://cand.uscourts.gov/ecf/caseopening. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 4/10/2018. (cfeS, COURT STAFF) (Filed on 3/27/2018) (Entered: 03/27/2018)
03/27/2018	4	**Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 6/21/2018. Initial Case Management Conference set for 6/28/2018 10:00 AM. (hdjS, COURT STAFF) (Filed on 3/27/2018) (Entered: 03/28/2018)**
03/28/2018	5	Summons Issued as to JP Morgan Chase Bank N.A. (hdjS, COURT STAFF) (Filed on 3/28/2018) (Entered: 03/28/2018)
04/04/2018	6	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Susan McShannock.. (Jaffe, Harold) (Filed on 4/4/2018) (Entered: 04/04/2018)
04/17/2018	7	CERTIFICATE OF SERVICE by Susan McShannock re 1 Complaint, (Jaffe, Harold) (Filed on 4/17/2018) (Entered: 04/17/2018)
04/17/2018	8	Rule 7.1 Disclosures by JP Morgan Chase Bank N.A. (Gershen, Alexander) (Filed on 4/17/2018) (Entered: 04/17/2018)
04/17/2018	9	MOTION for Extension of Time to File Response/Reply as to 1 Complaint, filed by JP Morgan Chase Bank N.A.. (Attachments: # 1 Declaration Alexander J. Gershen, # 2 Proposed Order)(Gershen, Alexander) (Filed on 4/17/2018) (Entered: 04/17/2018)
04/18/2018		This filing will not be processed by the clerks office.Please re-file this document in its entirety and when prompted, enter all association of persons, firms, partnerships, corporations, or other entities that have a financial interest or could be substantially affected by the outcome of the proceeding Re: 8 Certificate of Interested Entities filed by JP Morgan Chase Bank N.A. (hdjS, COURT STAFF) (Filed on 4/18/2018) (Entered: 04/18/2018)
04/18/2018	10	Rule 7.1 Disclosures by JP Morgan Chase Bank N.A. identifying Other Affiliate JPMorgan Chase & Co for JP Morgan Chase Bank N.A.. (Gershen, Alexander) (Filed on

		4/18/2018) (Entered: 04/18/2018)
04/18/2018	11	OPPOSITION/RESPONSE (re 9 MOTION for Extension of Time to File Response/Reply as to 1 Complaint,) filed bySusan McShannock. (Attachments: # 1 Proposed Order)(Jaffe, Harold) (Filed on 4/18/2018) (Entered: 04/18/2018)
04/18/2018	12	Certificate of Interested Entities by Susan McShannock identifying Corporate Parent Susan McShannock for Susan McShannock. *(Disclosure of Non-Party Interested Entities or Persons)* (Jaffe, Harold) (Filed on 4/18/2018) (Entered: 04/18/2018)
04/18/2018	13	**ORDER by Judge Maria-Elena James granting 9 Motion for Extension of Time to File Response/Reply. Chase shall respond to the 1 Complaint no later than May 21, 2018. (mejlc2S, COURT STAFF) (Filed on 4/18/2018) (Entered: 04/18/2018)**
04/23/2018	14	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by JP Morgan Chase Bank N.A... (Gershen, Alexander) (Filed on 4/23/2018) (Entered: 04/23/2018)
04/23/2018	15	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. *This is a text only docket entry; there is no document associated with this notice.* (rmm2S, COURT STAFF) (Filed on 4/23/2018) (Entered: 04/23/2018)
04/24/2018	16	**ORDER REASSIGNING CASE. Case Reassigned to Judge Richard Seeborg. Magistrate Judge Maria-Elena James no longer assigned to the case. This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and http://cand.uscourts.gov/cameras. Signed by Executive Committee on 4/24/18. (Attachments: # 1 Notice of Eligibility for Video Recording) (as, COURT STAFF) (Filed on 4/24/2018) (Entered: 04/24/2018)**
04/24/2018	17	**ORDER OF RECUSAL. Signed by Judge Richard Seeborg on 4/24/18. (cl, COURT STAFF) (Filed on 4/24/2018) (Entered: 04/24/2018)**
04/24/2018	18	**ORDER REASSIGNING CASE. Case Reassigned to Judge Edward M. Chen. Judge Richard Seeborg no longer assigned to the case. This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and http://cand.uscourts.gov/cameras. Signed by Executive Committee on 4/24/18. (Attachments: # 1 Notice of Eligibility for Video Recording)(as, COURT STAFF) (Filed on 4/24/2018) (Entered: 04/24/2018)**
05/11/2018	19	MOTION to Relate Case *Pursuant to Civil L.R. 3-12* filed by Monica Chandler. (Attachments: # 1 Certificate/Proof of Service)(Ram, Michael) (Filed on 5/11/2018) (Entered: 05/11/2018)
05/14/2018	20	REPLY in Support (re 19 MOTION to Consider Whether Cases Should be Related *Pursuant to Civil L.R. 3-12*) filed by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 5/14/2018) Modified on 5/15/2018 (slhS, COURT STAFF). (Entered: 05/14/2018)
05/15/2018	21	RESPONSE (re 19 MOTION to Relate Case *Pursuant to Civil L.R. 3-12*) filed by Susan McShannock. (Jaffe, Harold) (Filed on 5/15/2018) Modified on 5/16/2018 (slhS, COURT

		STAFF). (Entered: 05/15/2018)
05/16/2018	22	**ORDER by Judge Edward M. Chen granting 19 Motion to Relate Case. (bpfS, COURT STAFF) (Filed on 5/16/2018) (Entered: 05/16/2018)**
05/16/2018	23	**CASE MANAGEMENT SCHEDULING ORDER: Initial Case Management Conference set for 6/28/2018 09:30 AM in San Francisco, Courtroom 05, 17th Floor. Case Management Statement due by 6/21/2018. Signed by Judge Edward M. Chen on 5/16/18. (bpfS, COURT STAFF) (Filed on 5/16/2018) (Entered: 05/16/2018)**
05/17/2018	24	NOTICE of Appearance by Benjamin Jefferson Sitter (Sitter, Benjamin) (Filed on 5/17/2018) (Entered: 05/17/2018)
05/17/2018	25	CERTIFICATE OF SERVICE by Susan McShannock *of Standing Orders and Case Management Order in Reassigned Case* (Jaffe, Harold) (Filed on 5/17/2018) (Entered: 05/17/2018)
05/21/2018	26	MOTION to Dismiss *Plaintiffs Complaint Pursuant to F.R.C.P. 12(B)(6); Memorandum of Points and Authorities* filed by JP Morgan Chase Bank N.A.. Motion Hearing set for 6/28/2018 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Responses due by 6/4/2018. Replies due by 6/11/2018. (Attachments: # 1 Request for Judicial Notice, # 2 Proposed Order)(Powell, David) (Filed on 5/21/2018) (Entered: 05/21/2018)
05/25/2018	27	CLERK'S NOTICE. Initial Case Management Conference reset for 6/28/2018 at 1:30 PM (instead of 9:30 a.m.) in San Francisco, Courtroom 05, 17th Floor. Case Management Statement due by 6/21/2018. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (bpfS, COURT STAFF) (Filed on 5/25/2018) (Entered: 05/25/2018)
05/30/2018	28	NOTICE of Change of Address by Harold Mitchell Jaffe (Jaffe, Harold) (Filed on 5/30/2018) (Entered: 05/30/2018)
05/31/2018	29	CLERK'S NOTICE Initial Case Management Conference reset for 6/28/2018 at 1:30 PM instead of 9:30 a.m. in San Francisco, Courtroom 05, 17th Floor. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (bpfS, COURT STAFF) (Filed on 5/31/2018) (Entered: 05/31/2018)
06/01/2018	30	ADMINISTRATIVE MOTION NOTICE OF RELATED CASE AND ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL L.R. 3-12 filed by Lowell Smith. Responses due by 6/5/2018. (Fredman, Peter) (Filed on 6/1/2018) (Entered: 06/01/2018)
06/04/2018	31	STIPULATION WITH PROPOSED ORDER *Consolidating Cases for all Purposes and Permitting Filing of Consolidated Complaint* filed by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 6/4/2018) (Entered: 06/04/2018)
06/04/2018	32	OPPOSITION/RESPONSE (re 26 MOTION to Dismiss *Plaintiffs Complaint Pursuant to F.R.C.P. 12(B)(6)*) filed bySusan McShannock. (Attachments: # 1 Proposed Order)(Jaffe, Harold) (Filed on 6/4/2018) (Entered: 06/04/2018)
06/05/2018	33	**STIPULATION WITH PROPOSED ORDER *Consolidating Cases for all Purposes and Permitting Filing of Consolidated Complaint* filed by JPMorgan Chase Bank, N.A. Case Management Statement due by 8/30/2018. Initial Case Management Conference reset from 6/28/2018 to 9/6/2018 09:30 AM in San Francisco, Courtroom 05, 17th Floor. Signed by Judge Edward M. Chen on 6/5/18. (bpfS, COURT STAFF) (Filed on 6/5/2018) (Entered: 06/05/2018)**
06/05/2018	34	Statement of Non-Opposition re 30 ADMINISTRATIVE MOTION NOTICE OF

		RELATED CASE AND ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL L.R. 3-12 filed byFlagstar Bank, FSB. (Related document(s) 30) (Powell, David) (Filed on 6/5/2018) (Entered: 06/05/2018)
06/05/2018		Create case association: C18-1873 EMC and C18-2735 EMC are consolidated. All future filings shall be filed under C18-1873 EMC. (slhS, COURT STAFF) (Filed on 6/5/2018) (Entered: 06/07/2018)
06/07/2018	35	Statement of Non-Opposition re 30 ADMINISTRATIVE MOTION NOTICE OF RELATED CASE AND ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL L.R. 3-12 filed by Monica Chandler, Susan McShannock. (Ram, Michael) (Filed on 6/7/2018) Modified on 6/8/2018 (slhS, COURT STAFF). (Entered: 06/07/2018)
06/12/2018	36	**ORDER by Judge Edward M. Chen denying 30 Administrative Motion to relate case.C18-2350 WHA is not related to this case. (bpfS, COURT STAFF) (Filed on 6/12/2018) (Entered: 06/12/2018)**
06/29/2018	37	CONSOLIDATED CLASS ACTION COMPLAINT against JP Morgan Chase Bank N.A.. Filed by Susan McShannock, Monica Chandler, Mohamed Meky (Jaffe, Harold) (Filed on 6/29/2018) Modified on 7/2/2018 (slhS, COURT STAFF). (Entered: 06/29/2018)
08/02/2018	38	MOTION to Dismiss *Plaintiffs Consolidated Class Action Complaint Pursuant to F.R.C.P. 12(B)(6), Or, Alternatively, to Stay* filed by JP Morgan Chase Bank N.A.. Motion Hearing set for 9/6/2018 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Responses due by 8/16/2018. Replies due by 8/23/2018. (Attachments: # 1 Request for Judicial Notice, # 2 Exhibit A-G ISO RJN, # 3 Proposed Order)(Powell, David) (Filed on 8/2/2018) (Entered: 08/02/2018)
08/13/2018	39	CLERK'S NOTICE Initial Case Management Conference reset from 9:30 a.m. to 1:30 p.m. on 9/6/2018 in San Francisco, Courtroom 05, 17th Floor. Joint CMC statement due 8/30/2018. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (bpfS, COURT STAFF) (Filed on 8/13/2018) (Entered: 08/13/2018)
08/16/2018	40	OPPOSITION/RESPONSE (re 38 MOTION to Dismiss *Plaintiffs Consolidated Class Action Complaint Pursuant to F.R.C.P. 12(B)(6), Or, Alternatively, to Stay*) filed byMonica Chandler, Susan McShannock, Mohamed Meky. (Ram, Michael) (Filed on 8/16/2018) (Entered: 08/16/2018)
08/17/2018	41	OPPOSITION/RESPONSE (re 38 MOTION to Dismiss *Plaintiffs Consolidated Class Action Complaint Pursuant to F.R.C.P. 12(B)(6), Or, Alternatively, to Stay*) *CORRECTION OF DOCKET # 40* filed byMonica Chandler, Susan McShannock, Mohamed Meky. (Ram, Michael) (Filed on 8/17/2018) (Entered: 08/17/2018)
08/21/2018	42	ADR Clerk's Notice re: Non-Compliance with Court Order (ewh, COURT STAFF) (Filed on 8/21/2018) (Entered: 08/21/2018)
08/23/2018	43	REPLY in Support (re 38 MOTION to Dismiss *Plaintiffs Consolidated Class Action Complaint Pursuant to F.R.C.P. 12(B)(6), Or, Alternatively, to Stay*) filed by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 8/23/2018) Modified on 8/24/2018 (slhS, COURT STAFF). (Entered: 08/23/2018)
08/28/2018	44	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options *ADR Certification by Parties and Counsel* (Gershen, Alexander) (Filed on 8/28/2018) (Entered: 08/28/2018)
08/29/2018	45	STIPULATION and Proposed Order selecting Private ADR by Monica Chandler, Susan McShannock, Mohamed Meky filed by Monica Chandler, Susan McShannock, Mohamed

		Meky. (Ram, Michael) (Filed on 8/29/2018) (Entered: 08/29/2018)
08/30/2018	46	JOINT CASE MANAGEMENT STATEMENT filed by Monica Chandler, Mohamed Meky. (Ram, Michael) (Filed on 8/30/2018) (Entered: 08/30/2018)
09/06/2018	47	**Minute Entry for proceedings held before Judge Edward M. Chen:** **Motion Hearing held on 9/6/2018 re 38 MOTION to Dismiss *Plaintiffs Consolidated Class Action Complaint Pursuant to F.R.C.P. 12(B)(6), Or, Alternatively, to Stay* filed by JP Morgan Chase Bank N.A. Motion taken under submission. Case Management Statement due by 11/1/2018. Initial Case Management Conference set for 11/8/2018 10:30 AM in San Francisco, Courtroom 05, 17th Floor.** **Total Time in Court: 25 Minutes.** **Court Reporter: Lydia Zinn.** **Plaintiff Attorneys: Michael Ram, Susan Brown, Harold Jaffe.** **Defendant Attorney: David Powell.** **Attachment: Minute Order.** **(afmS, COURT STAFF) (Date Filed: 9/6/2018) (Entered: 09/07/2018)**
09/11/2018	48	**ORDER for Supplemental Briefing re 38 MOTION to Dismiss *Plaintiffs' Consolidated Class Action Complaint Pursuant to F.R.C.P. 12(B)(6), Or, Alternatively, to Stay* filed by JP Morgan Chase Bank N.A. (emclc1, COURT STAFF) (Filed on 9/11/2018) (Entered: 09/11/2018)**
09/13/2018	49	TRANSCRIPT ORDER for proceedings held on September 6, 2018 before Judge Edward M. Chen by JP Morgan Chase Bank N.A., for Court Reporter Lydia Zinn. (Powell, David) (Filed on 9/13/2018) (Entered: 09/13/2018)
09/13/2018	50	Transcript of Proceedings held on 9/6/2018, before Judge Edward M. Chen. Court Reporter/Transcriber Lydia Zinn, telephone number (415) 531-6587. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 49 Transcript Order) Redacted Transcript Deadline set for 10/15/2018. Release of Transcript Restriction set for 12/12/2018. (Related documents(s) 49) (Zinn, Lydia) (Filed on 9/13/2018) (Entered: 09/13/2018)
09/24/2018	51	**CLERK'S NOTICE: Due to the unavailability of the Court, Initial Case Management Conference is advanced from 11/8/2018 to 11/5/2018 11:30 AM in San Francisco, Courtroom 05, 17th Floor. Joint CMC Statement due date remains unchanged. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (afmS, COURT STAFF) (Filed on 9/24/2018) (Entered: 09/24/2018)**
09/25/2018	52	Supplemental Brief re 38 MOTION to Dismiss *Plaintiffs Consolidated Class Action Complaint Pursuant to F.R.C.P. 12(B)(6), Or, Alternatively, to Stay* filed by JP Morgan Chase Bank N.A.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N)(Related document(s) 38) (Powell, David) (Filed on 9/25/2018) Modified on 9/26/2018 (slhS, COURT STAFF). (Entered: 09/25/2018)
09/25/2018	53	Supplemental Brief re 40 Opposition/Response to Motion, *to Dismiss Plaintiffs' Consolidated Class Action Complaint* filed byMonica Chandler, Susan McShannock,

		Mohamed Meky. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Related document(s) 40) (Ram, Michael) (Filed on 9/25/2018) (Entered: 09/25/2018)
10/22/2018	54	**Order as Modified by Judge Edward M. Chen granting 45 Stipulation selecting Private ADR.(afmS, COURT STAFF) (Filed on 10/22/2018) (Entered: 10/22/2018)**
10/29/2018	55	JOINT CASE MANAGEMENT STATEMENT filed by Monica Chandler, Mohamed Meky. (Ram, Michael) (Filed on 10/29/2018) (Entered: 10/29/2018)
11/04/2018	56	**CLERK'S NOTICE: The Further case management conference set for Monday, 11/5/2018, is VACATED and RESCHEDULED for 1/31/2019 10:30 AM in San Francisco, Courtroom 05, 17th Floor. Case Management Statement due by 1/24/2019.** ***(This is a text-only entry generated by the court. There is no document associated with this entry.)*** **(afmS, COURT STAFF) (Filed on 11/4/2018) (Entered: 11/04/2018)**
11/20/2018	57	***Erroneous Entry - Please refer to document 58 *** ADMINISTRATIVE MOTION leave to file statement of recent decision filed by Monica Chandler, Susan McShannock, Mohamed Meky. Responses due by 11/26/2018. (Brown, Susan) (Filed on 11/20/2018) Modified on 11/21/2018 (slhS, COURT STAFF). (Entered: 11/20/2018)
11/20/2018	58	ADMINISTRATIVE MOTION leave to file statement of recent decision filed by Monica Chandler, Susan McShannock, Mohamed Meky. Responses due by 11/26/2018. (Brown, Susan) (Filed on 11/20/2018) (Entered: 11/20/2018)
12/07/2018	59	**ORDER by Judge Edward M. Chen denying 38 Motion to Dismiss. (emclc1, COURT STAFF) (Filed on 12/7/2018) (Entered: 12/07/2018)**
12/07/2018	60	**Order by Judge Edward M. Chen granting 58 Administrative Motion for leave to file statement of recent decision.(afmS, COURT STAFF) (Filed on 12/7/2018) (Entered: 12/07/2018)**
12/18/2018	61	*Joint Stipulation To Extend JPMorgan Chase Bank, N.A.S Time To Respond To re 37 Consolidated Complaint* filed by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 12/18/2018) (Entered: 12/18/2018)
12/21/2018	62	**ORDER granting 61 Stipulation to Extend JPMorgan Chase Bank, N.A's Time to Respond to the Consolidated Complaint filed by JP Morgan Chase Bank N.A.. Signed by Judge Edward M. Chen on 12/21/2018. (afmS, COURT STAFF) (Filed on 12/21/2018) (Entered: 12/21/2018)**
12/24/2018	63	MOTION to Certify Interlocutory Appeal [28 U.S.C. § 1292(b)] filed by JP Morgan Chase Bank N.A.. Motion Hearing set for 2/7/2019 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Responses due by 1/7/2019. Replies due by 1/14/2019. (Attachments: # 1 Proposed Order)(Powell, David) (Filed on 12/24/2018) Modified on 12/24/2018 (afmS, COURT STAFF). (Entered: 12/24/2018)
12/24/2018	64	MOTION to Stay All *Proceedings Pending Resolution of Chases Request For Interlocutory Review* filed by JP Morgan Chase Bank N.A.. Motion Hearing set for 2/7/2019 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Responses due by 1/7/2019. Replies due by 1/14/2019. (Attachments: # 1 Proposed Order)(Powell, David) (Filed on 12/24/2018) (Entered: 12/24/2018)
12/24/2018		Set/Reset Deadlines as to 63 MOTION to Certify Interlocutory Appeal [28 U.S.C. § 1292(b)] . Motion Hearing set for 2/7/2019 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. (afmS, COURT STAFF) (Filed on 12/24/2018) (Entered: 12/24/2018)

01/07/2019	65	MOTION for leave to appear in Pro Hac Vice *for Michael J. Pacelli* (Filing fee $ 310, receipt number 0971-12980194.) filed by Monica Chandler, Mohamed Meky. (Attachments: # 1 Certificate of Good Standing for Michael J. Pacelli)(Pacelli, Michael) (Filed on 1/7/2019) (Entered: 01/07/2019)
01/07/2019	66	OPPOSITION/RESPONSE (re 63 MOTION to Certify Interlocutory Appeal [28 U.S.C. § 1292(b)]) filed byMonica Chandler, Susan McShannock, Mohamed Meky. (Ram, Michael) (Filed on 1/7/2019) (Entered: 01/07/2019)
01/07/2019	67	OPPOSITION/RESPONSE (re 64 MOTION to Stay *Proceedings Pending Resolution of Chases Request For Interlocutory Review*) filed byMonica Chandler, Susan McShannock, Mohamed Meky. (Ram, Michael) (Filed on 1/7/2019) (Entered: 01/07/2019)
01/08/2019	68	**Order by Judge Edward M. Chen granting 65 Motion for Pro Hac Vice.(afmS, COURT STAFF) (Filed on 1/8/2019) (Entered: 01/08/2019)**
01/14/2019	69	ANSWER*and Affirmative Defenses* to 37 Consolidated Class Action Complaint by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 1/14/2019) Modified on 1/16/2019 (slhS, COURT STAFF). (Entered: 01/14/2019)
01/14/2019	70	REPLY (re 63 MOTION to Certify Interlocutory Appeal [28 U.S.C. § 1292(b)]) *Defendant JPMorgan Chase Bank, N.A.s Reply Memorandum Of Points And Authorities In Support Of Its Motion To Certify Interlocutory Appeal 28 U.S.C. § 1292(B)]* filed byJP Morgan Chase Bank N.A.. (Powell, David) (Filed on 1/14/2019) (Entered: 01/14/2019)
01/14/2019	71	REPLY in Support (re 64 MOTION to Stay *Proceedings Pending Resolution of Chases Request For Interlocutory Review*) *Defendant JPMorgan Chase Bank, N.A.S Reply In Support Of Its Motion to Stay All Proceedings Pending Resolution of Chases Request for Interlocutory Review* filed by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 1/14/2019) Modified on 1/16/2019 (slhS, COURT STAFF). (Entered: 01/14/2019)
01/17/2019	72	**CLERK'S NOTICE: Due to the Court's unavailability, the Further Case Management Conference set for 1/31/2019 is vacated and rescheduled for 2/7/2019 01:30 PM in San Francisco, Courtroom 05, 17th Floor. Joint Case Management Statement due by 1/31/2019. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (afmS, COURT STAFF) (Filed on 1/17/2019) (Entered: 01/17/2019)**
01/29/2019	73	**CLERK'S NOTICE: Due to the Court's unavailability, hearing re: 64 MOTION to Stay *Proceedings Pending Resolution of Chases Request For Interlocutory Review*, 63 MOTION to Certify Interlocutory Appeal [28 U.S.C. § 1292(b)] and Further Case Management Conference set for 2/7/2019 vacated and RESCHEDULED to be heard 2/8/2019 at 10:00 AM in San Francisco, Courtroom 05, 17th Floor. Briefing remains unchanged. *(This is a text-only entry generated by the court. There is no document associated with this entry.)*(afmS, COURT STAFF) (Filed on 1/29/2019) (Entered: 01/29/2019)**
02/01/2019	74	JOINT CASE MANAGEMENT STATEMENT filed by Monica Chandler, Susan McShannock, Mohamed Meky. (Ram, Michael) (Filed on 2/1/2019) (Entered: 02/01/2019)
02/01/2019	75	STIPULATION WITH PROPOSED ORDER re 64 MOTION to Stay *Proceedings Pending Resolution of Chases Request For Interlocutory Review*, 63 MOTION to Certify Interlocutory Appeal [28 U.S.C. § 1292(b)] , Set Motion and Deadlines/Hearings No NEF, *Joint Stipulation And [Proposed] Order To Continue The Hearings On JPMorgan Chase Bank, N.A.S Motion To Certify Interlocutory Appeal And Motion To Stay All Proceedings And Corresponding Case Management Conference* filed by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 2/1/2019) (Entered: 02/01/2019)

02/01/2019	76	STIPULATION WITH PROPOSED ORDER *Permitting the Filing of Plaintiffs' First Amended Consolidated Class Action Complaint* filed by Monica Chandler, Susan McShannock, Mohamed Meky. (Ram, Michael) (Filed on 2/1/2019) (Entered: 02/01/2019)
02/04/2019	77	**Order by Judge Edward M. Chen granting 75 Joint Stipulation to Continue the Hearings on JPMorgan Chase Bank, N.A.'s 63 Motion to Certify Interlocutory Appeal and 64 Motion to Stay All Proceedings and Corresponding Case Management Conference, as Modified. Hearing re: 63 and 64 and further case management conference rescheduled from 2/8/2019 to 2/21/2019 at 1:30 p.m.(afmS, COURT STAFF) (Filed on 2/4/2019) (Entered: 02/04/2019)**
02/04/2019		Set/Reset Deadlines as to 64 MOTION to Stay *Proceedings Pending Resolution of Chases Request For Interlocutory Review*, 63 MOTION to Certify Interlocutory Appeal [28 U.S.C. § 1292(b)] ., Set Deadlines/Hearings: Motion Hearing reset for 2/21/2019 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Case Management Statement due by 2/14/2019. Further Case Management Conference set for 2/21/2019 01:30 PM in San Francisco, Courtroom 05, 17th Floor. (afmS, COURT STAFF) (Filed on 2/4/2019) (Entered: 02/04/2019)
02/04/2019	78	**Order by Judge Edward M. Chen granting 76 Stipulation Permitting the Filing of Plaintiffs' First Amended Consolidated Class Action Complaint.(afmS, COURT STAFF) (Filed on 2/4/2019) (Entered: 02/04/2019)**
02/04/2019	79	FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT against JP Morgan Chase Bank N.A.. Filed by Susan McShannock, Monica Chandler, Mohamed Meky. (Ram, Michael) (Filed on 2/4/2019) Modified on 2/5/2019 (slhS, COURT STAFF). (Entered: 02/04/2019)
02/07/2019	80	STIPULATION WITH PROPOSED ORDER *Permitting the Filing An Answer to Plaintiffs' First Amended Consolidated Class Action Complaint* filed by Monica Chandler, Susan McShannock, Mohamed Meky. (Ram, Michael) (Filed on 2/7/2019) (Entered: 02/07/2019)
02/17/2019	81	**Order by Judge Edward M. Chen granting 80 Stipulation Permitting the Filing an Answer to Plaintiffs' First Amended Consolidated Class Action Complaint. Answer due within 14 days of the filing of the amended consolidated complaint.(afmS, COURT STAFF) (Filed on 2/17/2019) (Entered: 02/17/2019)**
02/18/2019	82	ANSWER to 79 Amended Consolidated Class Action Complaint by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 2/18/2019) Modified on 2/19/2019 (slhS, COURT STAFF). (Entered: 02/18/2019)
02/21/2019	83	TRANSCRIPT ORDER for proceedings held on 02/21/2019 before Judge Edward M. Chen by JP Morgan Chase Bank N.A., for Court Reporter Belle Ball. (Powell, David) (Filed on 2/21/2019) Modified on 2/22/2019 to correct court reporter name (notewarelS, COURT STAFF). (Entered: 02/21/2019)
02/21/2019	85	**Minute Entry for proceedings held before Judge Edward M. Chen:** **Motion Hearing held on 2/21/2019 re 64 MOTION to Stay *Proceedings Pending Resolution of Chases Request For Interlocutory Review* filed by JP Morgan Chase Bank N.A., 63 MOTION to Certify Interlocutory Appeal [28 U.S.C. § 1292(b)] filed by JP Morgan Chase Bank N.A. ; Further Case Management Conference held on 2/21/2019. Joint Status Report due by 5/23/2019. Further Status Conference set for 5/30/2019 10:30 AM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. See pdf image for further detail.**

		Total Time in Court: 34 Minutes. **Court Reporter: Belle Ball.** **Plaintiff Attorneys: Michael Ram, Michael Pacelli, Harold Jaffe.** **Defendant Attorneys: David Powell, Alexander Gershen.** **Attachment: Minute Order.** **(afmS, COURT STAFF) (Date Filed: 2/21/2019) (Entered: 02/25/2019)**
02/22/2019	84	TRANSCRIPT ORDER for proceedings held on 02/21/2019 before Judge Edward M. Chen by Monica Chandler, Susan McShannock, Mohamed Meky, for Court Reporter Belle Ball. (Ram, Michael) (Filed on 2/22/2019) Modified on 2/24/2019: Corrected reporter's name. (rjdS, COURT STAFF). (Entered: 02/22/2019)
02/27/2019	86	Transcript of Proceedings held on February 21, 2019, before Judge Edward M. Chen. Court Reporter Belle Ball, CSR, CRR, RDR, telephone number (415)373-2529, belle_ball@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 83 Transcript Order, 84 Transcript Order,) Release of Transcript Restriction set for 5/28/2019. (Related documents(s) 83 , 84) (ballbb15S, COURT STAFF) (Filed on 2/27/2019) (Entered: 02/27/2019)
02/27/2019	87	**ORDER by Judge Edward M. Chen Granting in Part and Denying in Part 63 Defendant's Motion to Certify Order for Interlocutory Appeal, and Granting 64 Defendant's Motion to Stay Proceedings. (emcsec, COURT STAFF) (Filed on 2/27/2019) (Entered: 02/27/2019)**
03/13/2019	88	STATUS REPORT *Joint Submission to Court re Meet and Confer and Discovery* by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 3/13/2019) (Entered: 03/13/2019)
03/13/2019	89	USCA Case Number 19-80030 re Petition for Permission to Appeal under 1292(b). (slhS, COURT STAFF) (Filed on 3/13/2019) (Entered: 03/13/2019)
04/19/2019	90	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-13274996.) filed by Monica Chandler, Susan McShannock, Mohamed Meky. (Attachments: # 1 Certificate of Good Standing)(Strauss, Samuel) (Filed on 4/19/2019) (Entered: 04/19/2019)
04/22/2019	91	**ORDER by Judge Edward M. Chen granting 90 Motion for Pro Hac Vice. (afmS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)**
04/26/2019	92	ORDER of USCA granting the petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) as to 89 USCA Case Number (slhS, COURT STAFF) (Filed on 4/26/2019) (Entered: 04/26/2019)
05/06/2019	93	USCA Appeal Fees received; $ 505, receipt number 34611142132 re 89 USCA Case Number. (slhS, COURT STAFF) (Filed on 5/6/2019) (Entered: 05/06/2019)
05/21/2019	94	Transcript Designation Form for proceedings held on 9/6/18 and 2/21/19 before Judge Edward M. Chen, (Powell, David) (Filed on 5/21/2019) (Entered: 05/21/2019)
05/22/2019	95	**CLERK'S NOTICE: Pursuant to status of appeal, Status Conference set for 5/30/2019 is vacated and rescheduled for 8/22/2019 10:30 AM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Joint Case Management Statement due by 8/15/2019.** ***(This is a text-only entry generated by the court. There is***

		no document associated with this entry.) **(afmS, COURT STAFF) (Filed on 5/22/2019) (Entered: 05/22/2019)**
05/22/2019	96	USCA Case Number 19-15899 re 89 USCA Case Number. (slhS, COURT STAFF) (Filed on 5/22/2019) (Entered: 05/22/2019)
08/12/2019	97	CASE MANAGEMENT STATEMENT *Joint Case Management Statement* filed by JP Morgan Chase Bank N.A.. (Powell, David) (Filed on 8/12/2019) (Entered: 08/12/2019)
08/12/2019	98	**CLERK'S NOTICE: Status Conference set for 8/22/2019 is vacated and Further Case Management Conference rescheduled for 10/17/2019 10:30 AM in San Francisco, Courtroom 05, 17th Floor. Joint Case Management Statement due by 10/10/2019.** ***(This is a text-only entry generated by the court. There is no document associated with this entry.)*** **(afmS, COURT STAFF) (Filed on 8/12/2019) (Entered: 08/12/2019)**

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2019 I electronically filed the foregoing with the Clerk and the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 7, 2019 By: *s/ Glenn A Danas*

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Dated: October 7, 2019

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