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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KAVEH KHAIST,  
Plaintiff,  
  
vs.  
  
WASHINGTON MUTUAL BANK; JP  
MORGAN BANK; CALIFORNIA  
RECONVEYANCE COMPANY, and DOES  
1 through 10, inclusive  
  
Defendants.

**CASE NO: 10-CV-2168-IEG (JMA)**

**ORDER DENYING PLAINTIFF'S  
MOTION FOR A PRELIMINARY  
INJUNCTION**

[Doc. Nos. 1 & 4]

Presently before the Court is Plaintiff's motion for a preliminary injunction. Doc. Nos. 1 & 4. Plaintiff requests that the Court enjoin Defendants from foreclosing upon and selling his home. For the reasons stated herein, the Court DENIES the motion.

**BACKGROUND**

The factual background of this case, as described in Plaintiff's Verified Complaint, is fully set forth in the Court's October 26, 2010, order and will not be repeated herein.

On October 18, 2010, Plaintiff, proceeding *pro se*, filed a complaint against Defendants Washington Mutual Bank ("WaMu"), JPMorgan Chase Bank, N.A., ("Chase" or "JPM Chase"), and California Reconveyance Company ("CRC"), within which Plaintiff also requested a temporary restraining order and a preliminary injunction. The Court heard oral argument in

1 support of a temporary restraining on October 25, 2010. Defendants did not appear for that  
2 hearing or file an opposition to Plaintiff’s motion.

3 The Court issued a temporary restraining order on October 26, 2010, enjoining  
4 Defendants from foreclosing upon and selling Plaintiff’s home. The Court initially scheduled the  
5 hearing on Plaintiff’s motion for a preliminary injunction for November 10, 2010, but continued  
6 the hearing upon Defendants’ request to December 3, 2010.

7 Defendants filed an opposition to Plaintiff’s motion for a preliminary injunction on  
8 November 22, 2010. Doc. No. 20. On November 29, 2010, Plaintiff filed a notice of  
9 substitution of attorney, naming Ahren A. Tiller as counsel, and a reply in support of his motion  
10 for a preliminary injunction. Doc. Nos. 21 & 22. The Court heard oral argument on December  
11 3, 2010.

### 12 LEGAL STANDARD

13 In determining whether to grant a temporary restraining order or preliminary injunction,  
14 the Court applies the preliminary injunction standard articulated in Winter v. Natural Resources  
15 Defense Council, Inc., --- U.S. ---, 129 S. Ct. 365 (2008). A party seeking a preliminary  
16 injunction must demonstrate: (1) the likelihood of success on the merits; (2) the likelihood of  
17 irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his  
18 favor; and (4) that an injunction is in the public interest. Id. at 374. Injunctive relief is “an  
19 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled  
20 to such relief.” Id. at 375-76.

### 21 DISCUSSION

22 The Court issued a temporary restraining order based on two of Plaintiff’s claims—  
23 violations of California’s Unfair Competition Law (“UCL”) and promissory estoppel—both of  
24 which stem from allegations of wrongdoing by WaMu. Chase argues that it is not a proper  
25 defendant for any claims arising from the actions of WaMu or its representatives. Plaintiff has  
26 not alleged that Defendant CRC may face liability for WaMu’s actions. For the reasons  
27 discussed below, the Court finds that Plaintiff has not sufficiently shown that he has brought his  
28 claims against the proper defendants.

1 On September 25, 2008, the Office of Thrift Supervision closed WaMu and appointed the  
2 FDIC as receiver. Defs.' Opp'n, at 4; see also Rosenfeld v. JPMorgan Chase Bank, N.A., --- F.  
3 Supp. 2d ---, 2010 WL 3155808, at \*1 (N.D. Cal. 2010). On the same date, Chase entered into a  
4 Purchase & Assumption Agreement ("P&A Agreement") with the FDIC, under which Chase  
5 assumed ownership and control of certain of WaMu's assets and liabilities.<sup>1</sup> Defs.' Opp'n, Ex. 5  
6 (the P&A Agreement). Pursuant to the P&A Agreement, Chase acquired WaMu's interest in  
7 Plaintiff's loans.

8 Section 2.5 of the P&A Agreement expressly insulates Chase from "any liability  
9 associated with borrower claims for payment of or liability to any borrower for monetary relief,  
10 or that provide for any other form of relief to any borrower."<sup>2</sup> Thus, the FDIC, not Chase, is the  
11 proper successor-in-interest for "borrower claims." E.g., Caravantes v. Cal. Reconveyance Co.,  
12 No. 10-CV-1407-IEG (AJB), 2010 WL 4055560, at \*3 (S.D. Cal. Oct. 14, 2010); Rosenfeld v.  
13 JPMorgan Chase Bank, N.A., ---F. Supp. 2d---, 2010 WL 3155808, at \*3-4 (N.D. Cal. 2010);  
14 Jarvis v. JP Morgan Chase Bank, N.A., No. CV 10-4184-GHK (FMOx), 2010 WL 2927276, at  
15 \*2 (C.D. Cal. Jul. 23, 2010). Under Section 2.1 of the P&A Agreement, however, Chase  
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18 <sup>1</sup> The Court takes judicial notice of the P & A Agreement between JPMorgan Chase and  
19 the FDIC, attached as Exhibit 5 to Defendants' opposition, because this agreement is a matter of  
20 public record whose accuracy cannot reasonably be questioned. See FED. R. EVID. 201(a); Lee v.  
21 City of Los Angeles, 250 F.3d 668, 689-90 (9th Cir. 2001); see also FDIC,  
[http://www.fdic.gov/about/freedom/Washington\\_Mutual\\_P\\_and\\_A.pdf](http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf) (a copy of the P&A  
22 Agreement available online).

23 <sup>2</sup> Section 2.5, entitled "Borrower Claims," provides:

24 Notwithstanding anything to the contrary in this Agreement, any liability  
25 associated with borrower claims for payment of or liability to any borrower for  
26 monetary relief, or that provide for any other form of relief to any borrower,  
27 whether or not such liability is reduced to judgment, liquidated or unliquidated,  
28 fixed or contingent, matured or unmatured, disputed or undisputed, legal or  
equitable, judicial or extra-judicial, secured or unsecured, whether asserted  
affirmatively or defensively, related in any way to any loan or commitment to lend  
made by the Failed Bank prior to failure, or to any loan made by a third party in  
connection with a loan which is or was held by the Failed Bank, or otherwise  
arising in connection with the Failed Bank's lending or loan purchase activities are  
specifically not assumed by the Assuming Bank.

1 “specifically assumes all mortgage *servicing* rights and obligations of [WaMu].”<sup>3</sup> P&A  
2 Agreement § 2.1 (emphasis added).

3 Plaintiff has alleged, and Chase conceded in open court, that Chase’s only interest in  
4 Plaintiff’s loan is that of its servicer. Plaintiff thus urges the Court to find that the mortgage  
5 servicing “obligations” contemplated under Section 2.1 include liability for claims stemming  
6 from alleged wrongdoing by WaMu.

7 Whether Chase may face liability for WaMu’s actions as a loan servicer remains  
8 somewhat unsettled. However, under circumstances similar to those in this case, other federal  
9 courts have characterized claims like Plaintiff’s as “borrowers’ claims” and held that Section 2.5  
10 of the P&A Agreement bars claims against Chase. See, e.g., Rosenfeld, 2010 WL 3155808, at  
11 \*4; Dubois v. WaMu, No. 09-2176 (RJL), 2010 U.S. Dist. LEXIS 91855, at \*6-7 (D.D.C. Sept.  
12 3, 2010) (holding, in a case where Chase assumed from WaMu an interest as servicer of the  
13 plaintiff’s loan, that the P&A Agreement bars the plaintiff’s claims against Chase for WaMu’s  
14 alleged malfeasance); Cassese v. Wash. Mut. Bank, 2:05-cv-02724-ADS-ARL, slip op. at 6  
15 (E.D.N.Y. Dec. 22, 2008) (finding that Section 2.5 insulates Chase from liability for claims that  
16 WaMu, *inter alia*, imposed unlawful fees and penalties in its capacity as *servicer* of plaintiffs’  
17 mortgage loans).

18 Furthermore, the cases upon which Plaintiff relies do not directly support Plaintiff’s  
19 construction of the P&A Agreement.

20 In Punzalan v. FDIC, the plaintiffs attempted to avoid dismissal of their claims *against*  
21 *the FDIC* for failure to exhaust administrative remedies before filing suit in federal court. See  
22 633 F. Supp. 2d 406, 414 (W.D. Tex. 2009). Plaintiffs attempted to argue that Chase assumed

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23 <sup>3</sup> Section 2.1 of the P&A Agreement, entitled “Liabilities Assumed by Assuming Bank,”  
24 provides:

25 Subject to Sections 2.5 and 4.8, the Assuming Bank expressly assumes at Book  
26 Value (subject to adjustment pursuant to Article VIII) and agrees to pay, perform, and  
27 discharge, all of the liabilities of the Failed Bank which are reflected on the Books and  
28 Records of the Failed Bank as of Bank Closing, including the Assumed Deposits and all  
liabilities associated with any and all employee benefit plans, except as listed on the  
attached Schedule 2.1, and as otherwise provided in this Agreement (such liabilities  
referred to as “Liabilities Assumed”). Notwithstanding Section 4.8, the Assuming Bank  
specifically assumes all mortgage servicing rights and obligations of the Failed Bank.

1 liability for their lawsuit under Section 2.1 of the P&A Agreement. The court dismissed  
2 plaintiffs' claims against the FDIC, and expressly refused to take a "position on the proper  
3 construal of the P&A Agreement, or the question of whether Chase Bank has indeed assumed the  
4 [plaintiffs'] claims." Id. at 414 n.5.

5 In Biggins v. Wells Fargo, the court held that plaintiffs' claims fell under Section 2.5 and  
6 dismissed all claims against Chase, without leave to amend. 266 F.R.D. 399, 414-15 (N.D. Cal.  
7 2009). The court also noted that, though plaintiffs asserted that Chase was liable as a servicer of  
8 their loans, plaintiffs' claims stemmed from the origination of the loans and none of the plaintiffs  
9 had alleged that Chase serviced their loans. Id. at 415. Thus, the court did reach the issue of  
10 whether Chase may face liability for WaMu's misdeeds as a servicer of home loans.

11 The court, in Allen v. United Fin. Mortg. Corp., dismissed all fraud related claims against  
12 Chase and other defendants because the plaintiffs had failed to plead with particularity. 660 F.  
13 Supp. 2d 1089, 1096 (N.D. Cal. 2009). The court did not make any finding related to Chase's  
14 potential liability as WaMu's successor-in-interest. Instead, the court simply stated that it would  
15 "welcome further briefing on the issue." Id. at 1096 n.7. The court noted that, under the P&A  
16 Agreement, it appeared Chase had assumed all of WaMu's "mortgaging servicing rights and  
17 obligations," but it did not discuss the nature or scope of those obligations. Id. Furthermore, in a  
18 subsequent order, the Allen court interpreted Section 2.1 to permit claims against Chase that  
19 arose from *Chase's* actions as servicer of the plaintiff's loans, which occurred *after* the P&A  
20 Agreement took effect on September 25, 2008. See Allen v. United Fin. Mortg. Corp., No. 09-  
21 2507 SC, 2010 WL 1135787, at \*3-4 (N.D. Cal. Mar. 22, 2010) [hereinafter Allen II]. Allen II  
22 did not hold that the P&A Agreement permits Chase to face liability for WaMu's misdeeds as a  
23 loan servicer before the P&A Agreement took effect.

24 Plaintiff has failed to sufficiently show that his UCL and promissory estoppel claims are  
25 properly brought against Chase as a successor-in-interest to WaMu. Because it appears that  
26 Chase is not the proper defendant, the Court finds that Plaintiff has failed to demonstrate a  
27 likelihood of success on the merits. As a result, the Court need not address the remaining prongs  
28 of the standard for issuing a preliminary injunction. Plaintiff's motion is DENIED.

**CONCLUSION**

For the reasons stated above, the Court **DENIES** Plaintiff's motion for a preliminary injunction.

**IT IS SO ORDERED.**

**DATED:** 12/9/2010

  
IRMA E. GONZALEZ, Chief Judge  
United States District Court