

STATE OF MAINE  
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT  
Location: Portland  
Docket No.: BCD-CV-14-61

ALEC T. SABINA and EMMA L. )  
SABINA, on behalf of themselves and all )  
others similarly situated )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JP MORGAN CHASE BANK, N.A., )  
 )  
Defendant. )

**ORDER ON DEFENDANT'S MOTION  
TO DISMISS AND MOTION TO STRIKE  
CLASS ALLEGATIONS**

**I. INTRODUCTION**

Before the Court is Defendant's JP Morgan Chase Bank, N.A. ("JP Morgan Chase") Motion to Dismiss Plaintiffs' Complaint for failure to state a claim for relief under Rule 12(b)(6) of the Maine Rules of Civil Procedure. In addition, Defendant argues that the class allegations should be stricken as they fail to plead a class-wide claim, and also because the class as defined in the pleadings is a prohibited fail-safe class.

**II. ANALYSIS**

The Court on April 6, 2015 denied motions to dismiss in two other related cases, *Alec T. Sabina and Emma L. Sabina v. Wells Fargo Home Mortgage*, CV-BCD-14-26, and *Jonathan A. Quebbeman v. Bank of America, N.A.* BCD-CV-15-01. In those cases the Court determined that the allegations made in both complaints, which are in pertinent part identical with those made here, were adequate to survive a motion to dismiss brought under Rule 12(b)(6), but the Court did order the Plaintiffs in those cases to provide more specificity. After considering the arguments presented in this matter, the Court finds no

reason to depart from the analysis applied in the two aforementioned cases or to come to a different conclusion with respect to whether the allegations made here are sufficient to survive a motion to dismiss under Rule 12(b)(6).<sup>1</sup>

The Defendant in this case makes other arguments, which is that the Plaintiffs' class allegations should be stricken as they fail to plead a class-wide claim and also that they impermissibly plead a prohibited fail-safe class.

With respect to both these arguments, the Court will deny the motion to strike the class allegations without prejudice. After reviewing the cases referred to by the parties and finding no controlling case in Maine which requires that this issue be resolved at this stage, the Court concludes that any argument regarding whether this case should proceed as a class action should be made as part of any motion made by the Plaintiff for certification of the class. The Court would note that the Defendant has raised a legitimate issue as to whether the class as defined in the current complaint constitutes a fail-safe class, and believes that this issue is a live one for all the cases referred to above, as well as the case of *Nickerson v. TD Bank, N.A.*, BCD-CV-14-64.

### III. CONCLUSION

The entry will be:

1). The Defendant's Motion to Dismiss the Plaintiffs' Complaint for failure to state a claim is DENIED. Plaintiffs have 14 days from the date of this Order to provide more specificity as to any facts that they have in their possession as to whether the Registry of Deeds returned the mortgage release to JP Morgan Chase, and if so when; and

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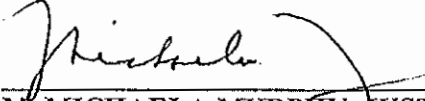
<sup>1</sup> The complaints in these cases contain the identical allegation with regard to the alleged violation, which is that the lender in question failed to comply with Section 551 of Title 33 M.R.S.A. namely that the lender failed to mail to the mortgagor by first class mail a recorded mortgage release within 30 days of when the lender received it back from the registry of deeds.

to provide more specificity as to any facts that they have in their possession as to when Wells Fargo mailed the original mortgage release, or when (or if) Plaintiffs ever received it.

2). The Motion to Strike class allegations is DENIED WITHOUT PREJUDICE. Defendant may re-argue the issues regarding whether this case should proceed as a class action, and as to whether the class as defined is a fail-safe class, when the Plaintiffs file, if they do, a Motion for Certification.

This Order may be noted on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

4/13/15  
DATE

  
M. MICHAELA MURPHY, JUSTICE  
BUSINESS AND CONSUMER COURT

Entered on the Docket: 4/13/15  
Copies sent via Mail  Electronically