

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:18-cv-00794

M. REZA SALAMI, Ph.D., P.E.,  
  
Plaintiff,  
  
vs.  
  
JPMORGAN CHASE BANK N.A.,  
  
Defendant.

**DEFENDANT’S OBJECTION TO  
MEMORANDUM OPINION AND  
RECOMMENDATION**

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b), Defendant JPMorgan Chase Bank, N.A. (“Chase”) respectfully objects to the portion of Magistrate Judge Joe L. Webster’s Memorandum Opinion and Recommendation (“M&R”) recommending that Chase’s Motion to Dismiss be denied as to Plaintiff M. Reza Salami’s purported claim for violation of the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”).<sup>1</sup>

**STANDARD OF REVIEW**

If a party objects to a magistrate judge’s proposed findings or recommendations, a district court judge “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); *accord* Fed. R. Civ. P. 72(b)(3). The district court judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the

---

<sup>1</sup> Chase does not object to the remainder of the M&R.

magistrate judge.” 28 U.S.C. § 636(b)(1)(C); *accord* Fed. R. Civ. P. 72(b)(3). A district court need not conduct a de novo review of portions of a magistrate judge’s proposed findings or recommendations to which no objection is made, “but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note), *cert. denied*, 546 U.S. 1091 (2006).

## ARGUMENT

### **I. Plaintiff fails to state a claim for violation of the UDTPA.**

To state a claim under the UDTPA, a plaintiff must show: “(1) that [the defendant] committed an unfair or deceptive trade practice; (2) the action in question was in or affecting commerce; and (3) the act proximately caused injury to [the plaintiff].” *Bob Timberlake Collection, Inc. v. Edwards*, 176 N.C. App. 33, 41, 626 S.E.2d 315, 322, *disc. review denied*, 360 N.C. 531, 633 S.E.2d 674 (2006). “Whether an act or practice is unfair or deceptive is a question of law for the court.” *DiFrega v. Pugliese*, 164 N.C. App. 499, 507, 596 S.E.2d 456, 462 (2004). An act or practice is considered unfair if it is “immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.” *Bob Timberlake Collection, Inc.*, 176 N.C. App. at 41, 626 S.E.2d at 322–23. “An act or practice is deceptive if it has the capacity or tendency to deceive.” *Id.* at 41, 626 S.E.2d at 323. “[I]t is well established that a mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under” the UDTPA unless “substantial

aggravating circumstances” are shown. *Computer Decisions, Inc. v. Rouse Office Mgmt.*, 124 N.C. App. 383, 390, 477 S.E.2d 262, 266 (1996), *disc. review denied*, 345 N.C. 340, 483 S.E.2d 163 (1997).

As noted in the M&R, “the Complaint centers on the non-issuance of a loan modification as the basis of many purported claims.” M&R 14–15, ECF No. 24. But, the M&R discounts this reality by adding that the Complaint also alleges that Chase’s “*communications* about the mortgage . . . w[ere] unlawful in a variety of ways.” M&R 15. The alleged “*communications* about the mortgage” cited in the M&R, however, all, in fact, involve communications about Plaintiff’s request for a loan modification. Specifically, the Complaint alleges that Chase “approved plaintiff [for a] loan [m]odification . . . on December 19, 2015,” but Chase “sent the approved document to [the] wrong address,” later “changed its decision and requested the Plaintiff to send the new completed forms and supporting documents,” and then denied Plaintiff’s request for a loan modification in July 2018 because Chase was not “able to verify the Plaintiff incomes [sic] even though the Plaintiff sent them the official incomes [sic] document.” Compl. 4. Chase’s alleged communications are insufficient to support a UDTPA claim. North Carolina courts have held that neither allegations related to a servicer’s handling of a request for loan modification nor alleged communications surrounding such a request rise to the level of unfair or deceptive trade practices or acts actionable under the UDTPA.

In *Pearsall v. Select Portfolio Servicing, Inc.*, No. 7:15-CV-106-FL, 2015 WL 9223076 (E.D.N.C. Dec. 17, 2015), the plaintiffs alleged that, after they submitted

applications for a loan modification, the defendant servicer told the plaintiffs that it “‘needed additional proof of new income information added to file’ and that the file was ‘qualified for . . . a loan modification.’” *Id.* at \*1 (alteration in original). The plaintiffs alleged that they submitted the requested information to the defendant, but the defendant later stated that it did not receive the information and continuously gave the plaintiffs contradicting information as to the status of the loan modification review as well as information that gave the plaintiffs reason to believe that their loan would be modified. *Id.* The court held that “[w]hile plaintiffs allege delays and requests for information that frustrated the loan modification process, such conduct does not include egregious or aggravating circumstances that would bring these allegations into the realm of unfair or deceptive trade practices.” *Id.* at \*4.

Similarly, in *Cabrera v. Bank of America, N.A.*, No. 5:11-CV-563-FL, 2013 WL 551697 (E.D.N.C. Feb. 12, 2013), the plaintiffs alleged that the defendant had “‘played a ‘shell game’ with the Plaintiff[s]’ lives and with their Property, switching representatives throughout the matter, routinely demanding documentation already in its files . . . and exhibited all manner of dishonest dealing.” *Id.* at \*5. Nevertheless, the court held that “[w]hile this conduct frustrated the loan modification process, derailing the [short-sale] closing that [the plaintiffs] had hoped for, it is not egregious or aggravating circumstances that would bring these allegations into the realm of unfair or deceptive trade practices.” *Id.*; see also *McLean v. Bank of Am., N.A.*, No. COA16-97, 2016 WL 6440500, at \*6 (N.C. Ct. App. Nov. 1, 2016) (“[B]ecause BANA had no contractual duty to negotiate after a

default event, plaintiff's allegations that BANA's communications with plaintiff through letters discussing foreclosure alternatives, BANA's acceptance of plaintiff's loan modification applications, and the delay in BANA's responses to those applications amounted to an unfair or deceptive acts fails."); *Johnson v. J.P. Morgan Chase Nat'l Corp. Servs., Inc.*, No. 3:13-CV-678-MOC-DSC, 2014 WL 4384023, at \*4 (W.D.N.C. Aug. 5, 2014) ("Plaintiff alleges that Defendants invited him to apply for a loan modification but then denied his application. These allegations do not rise to the level of egregious behavior required to successfully plead a UDTPA claim."), *adopted by* 2014 WL 4384024 (W.D.N.C. Sept. 3, 2014); *Thompson v. Bank of Am., N.A.*, No. COA15-20, 2015 WL 4620432, at \*4-5 (N.C. Ct. App.) (determining that the plaintiff's allegations that "defendants 'constantly misled and lied' to him regarding his attempts to modify his loan" were insufficient to support a UDTPA claim), *disc. review denied*, 368 N.C. 430, 778 S.E.2d 431 (2015); *In re Rutledge*, 510 B.R. 491, 509 (Bankr. M.D.N.C. 2014) (holding that "instances of poor communication between servicer and borrower" do not give rise to a UDTPA claim).

Here, Chase's alleged conduct and communications mirror allegations of conduct and communications relating to the handling of request for a loan modification that North Carolina courts have repeatedly found do not rise to the level of egregious behavior required to successfully plead a UDTPA claim. Therefore, Plaintiff has failed to allege any actionable unfair or deceptive trade practices or acts by Chase.

Moreover, even if Chase's alleged conduct and communications were somehow wrongful, Chase's alleged conduct and communications did not proximately cause Plaintiff to sustain any actual injury. "[A] necessary element for a claim under [the UDTPA] is that the unfair or deceptive act or practice proximately caused actual injury to the claimant." *Melton v. Family First Mortg. Corp.*, 156 N.C. App. 129, 135, 576 S.E.2d 365, 370, *aff'd per curiam*, 357 N.C. 573, 597 S.E.2d 672 (2003). A proximate cause is "a cause which in the natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff's injuries and without which the injuries would not have occurred." *Strates Shows, Inc. v. Amusements of Am., Inc.*, 184 N.C. App. 455, 462, 646 S.E.2d 418, 424 (2007) (affirming dismissal of UDTPA claim, even though the plaintiff showed that a defendant had engaged in illegal conduct, because the plaintiff could not show that "it suffered any actual injury as a result of the illegal conduct.").

Plaintiff claims that he was unable to obtain a loan modification as a result of Chase's alleged conduct. Specifically, Plaintiff asserts that Chase denied Plaintiff's request for a loan modification in July 2018 because Chase was not "able to verify the Plaintiff incomes [sic] even though the Plaintiff sent them the official incomes [sic] document." Compl. 4. The Complaint, however, does not allege facts showing that Plaintiff would have otherwise received a loan modification if Chase had verified Plaintiff's income. That is, Plaintiff fails to establish that, but for Chase's alleged conduct, Plaintiff would have obtained a loan modification. Because Plaintiff fails to plead facts showing that Chase

proximately caused him to sustain an actual injury, his purported UDTPA claim should be dismissed.

### **CONCLUSION**

For the foregoing reasons, the Court should reject the portion of the M&R recommending denial of Chase's Motion to Dismiss as to Plaintiff's purported UDTPA claim and dismiss all of Plaintiff's purported claims with prejudice.

This, the 3<sup>rd</sup> day of July, 2019.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Donald R. Pocock

Donald R. Pocock  
N.C. State Bar No. 29393  
380 Knollwood Street, Suite 530  
Winston-Salem, North Carolina 27103  
Telephone: (336) 774-3300  
Facsimile: (336) 774-3376  
E-Mail: donald.pocock@nelsonmullins.com

Ramona F. Ortega  
N.C. State Bar No. 46013  
301 South College Street, Suite 2300  
Charlotte, North Carolina 28202  
Telephone: (704) 417-3000  
Facsimile: (704) 377-4814  
E-Mail: mona.ortega@nelsonmullins.com

*Attorneys for Defendant JPMorgan Chase Bank,  
N.A.*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.3**

Pursuant to Local Rule 7.3(d), the undersigned certifies that, according to the word count feature in Microsoft Word, the foregoing objection—excluding the case caption and certificates of counsel—contains no more than 6,250 words.

This, the 3<sup>rd</sup> day of July, 2019.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Donald R. Pocock

Donald R. Pocock  
N.C. State Bar No. 29393  
380 Knollwood Street, Suite 530  
Winston-Salem, North Carolina 27103  
Telephone: (336) 774-3300  
Facsimile: (336) 774-3376  
E-Mail: donald.pocock@nelsonmullins.com

Ramona F. Ortega  
N.C. State Bar No. 46013  
301 South College Street, Suite 2300  
Charlotte, North Carolina 28202  
Telephone: (704) 417-3000  
Facsimile: (704) 377-4814  
E-Mail: mona.ortega@nelsonmullins.com

*Attorneys for Defendant JPMorgan Chase Bank,  
N.A.*



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was duly served when a copy of the same was deposited into the United States Mail, first-class postage prepaid, addressed as follows:

M. Reza Salami  
5204 Hayward Drive  
Greensboro, North Carolina 27406

This, the 3<sup>rd</sup> day of July, 2019.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Donald R. Pocock \_\_\_\_\_  
Donald R. Pocock  
N.C. State Bar No. 29393  
380 Knollwood Street, Suite 530  
Winston-Salem, North Carolina 27103  
Telephone: (336) 774-3300  
Facsimile: (336) 774-3376  
E-Mail: donald.pocock@nelsonmullins.com

Ramona F. Ortega  
N.C. State Bar No. 46013  
301 South College Street, Suite 2300  
Charlotte, North Carolina 28202  
Telephone: (704) 417-3000  
Facsimile: (704) 377-4814  
E-Mail: mona.ortega@nelsonmullins.com

*Attorneys for Defendant JPMorgan Chase Bank,  
N.A.*