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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 15-8239-JGB-KKx**	Date	September 20, 2016
Title	***Jamie Beechum et al. v. Navient Solutions, Inc. et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order GRANTING Defendants' Motion to Dismiss WITHOUT LEAVE TO AMEND (Doc. No. 23) and DISMISSING Plaintiffs' First Amended Complaint WITH PREJUDICE (IN CHAMBERS)

Before the Court is a Motion to Dismiss Plaintiffs' First Amended Complaint brought by Defendants Navient Solutions, Inc. ("Navient Solutions"), Navient Credit Finance Corporation ("NCFC"), VL Funding LLC, Bank of New York Mellon Trust Company, N.A., and SLM Private Credit Student Loan Trust 2005-A (collectively "Defendants"). ("Motion," Doc. No. 23.) After considering the papers submitted in support of and in opposition to the Motion and the arguments of counsel, the Court GRANTS Defendants' Motion to Dismiss WITHOUT LEAVE TO AMEND. This action is DISMISSED WITH PREJUDICE.

I. BACKGROUND

On October 21, 2015, Jamie Beechum, Monica Hervey, Jeannie Hart filed a Class Action Complaint against Navient Solutions, Inc. (Doc. No. 1.)

On March 1, 2016, Jamie Beechum and Monica Hervey (hereinafter "Plaintiffs") filed the operative First Amended Complaint ("FAC") against Defendants. (Doc. No. 20.) The FAC is based on allegations Plaintiffs have been illegally charged usurious interest rates on their private student loans, in violation of California law. (Id.)

On March 30, 2016, Defendants filed the instant Motion to Dismiss the FAC. (Doc. No. 23.) In support, Defendants filed a Request for Judicial Notice ("RJN"), a declaration by their

counsel Ashley Simonsen, and three accompanying exhibits.[1] (Doc. No. 24, 25.) On April 29, 2016, Plaintiffs filed an Opposition and an accompanying exhibit. (Doc. No. 28, 28-1.) On May 13, 2016, Defendants filed a Reply. (Doc. No. 30.)

On June 20, 2016, the Court held a hearing on Defendants' Motion and considered the arguments of counsel. (Doc. No. 32.)

II. ALLEGATIONS IN THE FAC

A. General Allegations

Plaintiffs obtained private student loans in 2003 and 2004 using loans application that identified Stillwater National Bank and Trust Company ("Stillwater"), a national bank, as the "lender." (FAC ¶¶ 4, 12-13.) Plaintiffs allege the "actual lenders" of their loans were the Student Loan Marketing Association ("SLMA"), or subsidiaries of the SLM Corporation ("SLM Corp"). (Id. ¶ 5.) Plaintiffs allege "[t]he SLMA and the SLM Corp. subsidiaries originated, underwrote, funded and bore the risk of loss as to the[ir] loans under a confidential agreement, the ExportSS[] Agreement, between the SLMA and Stillwater." (Id. ¶ 6.) "The ExportSS[] Agreement provided that Stillwater was required to sell the loans to the SLMA at cost within 90 days of being funded."[2] (Id.) This arrangement "enabled the SLMA and the SLM Corp. subsidiaries to make high-interest private credit loans to students such as Plaintiffs . . . attending for-profit schools without the scrutiny of any bank regulatory body, and without the market restraints faced by regulated lenders." (Id. ¶ 7.) Pursuant to the ExportSS Agreement, the SLMA and SLM Corp. subsidiaries made thousands of loans to California borrowers using Stillwater as the nominal lender. (Id. ¶ 8.)

Plaintiffs' loans are currently serviced by either an SLMA or an SLM Corp. subsidiary or defendant Navient Solutions. (Id. ¶ 9.) Plaintiffs allege Navient Solutions has been illegally charging and collecting interest from them at a rate greater than 10%. (Id. ¶ 15.) Plaintiffs' loans were originally assigned to SLMA or an SLM Corp. subsidiary after their disbursement and were subsequently sold to various other parties. (Id. ¶¶ 87-94.) Defendant SLM Private Credit Student Loan Trust 2005-A[3] is the current nominal owner of Beechum's loan, defendant VL Funding, LLC is the current nominal owner of one of Hervey's loans, and defendant NCFC is the current nominal owner of two of Hervey's loans. (Id. ¶¶ 16-17, 20-21, 22-23.) Each of these defendants are receiving interest payments from Navient Solutions charged at a rate greater than 10%. (Id.)

[1] The Court does not rely on any of these exhibits when disposing of Defendants' Motion and thus DENIES Defendants' Request for Judicial Notice as MOOT.

[2] A copy of the ExportSS Agreement is attached as an exhibit to the FAC. (See FAC, Ex. A.)

[3] Plaintiffs allege defendant Bank of New York Mellon Trust Company, N.A. "carries out the business of the 2005-A Trust, and it may sue or be sued on behalf of the 2005-A Trust." (FAC ¶ 19.)

B. The ExportSS Agreement

The SLMA was created pursuant to federal statute and chartered by the federal government as a government sponsored enterprise ("GSE"). (Id. ¶ 33.) In or about 1994, Congress required the SLMA to transition to a wholly private company no later than September 30, 2008. (Id. ¶ 34.) As part of the transition, various segments and subsidiaries of the SLMA were acquired by the SLM Corp., which continued the SLMA's operations during the transition period and after the SLMA's dissolution. (Id. ¶ 35.)

In an effort to circumvent federal restrictions on its ability to originate loans and state usury laws, the "SLMA, and the SLM Corp. and its wholly-owned subsidiaries, circumvented the law by entering into forward purchase agreements with so-called lender partners, to make it appear that the lender was a national bank." (Id. ¶¶ 36-37.) One of these purchase agreements was the SLMA's ExportSS Agreement with Stillwater. (Id. ¶ 38.)

The ExportSS Agreement became effective on July 1, 2002. (Id. ¶ 39.) Under the ExportSS Agreement, "the SLMA would originate, underwrite, market and fund [certain private student] loans for which Stillwater would be identified as the lender, and which the SLMA would then purchase from Stillwater." (Id. ¶ 41.) The ExportSS Agreement "included a commitment by the SLMA to purchase a specified dollar volume of loans within a set period of time." (Id. ¶ 42.) The ExportSS Agreement encompassed certain "Eligible Private Loans" and included Plaintiffs' private student loans. (Id. ¶ 43.) "The SLMA committed to funding and purchasing at least $120,000,000.00 in Eligible Private Loans during the initial commitment period, July 1, 2002 to June 30, 2005, an amount that was subsequently substantially increased." (Id. ¶ 44.)

Plaintiffs allege that these loans "were funded from a bank account maintained by the SLMA," and that Stillwater was "required to provide the SLMA with a power of attorney which, among other things, authorized the SLMA to debit a Stillwater account in order to fund all loan disbursements and other payments." (Id. ¶ 46.) The SLMA was responsible for disbursing loan funds. (Id.) Stillwater sold and the SLMA purchased 100% of the Eligible Private Loans within 90 days of disbursement. (Id. ¶ 47.) The ExportSS Agreement "specified the loans would be sold to the SLMA for principal, plus accrued interest, and less the amount paid or payable to insure the loans." (Id. ¶ 48.)

Plaintiffs allege the SLMA was effectively the "actual lender" of the loans in a number of ways. First, "Stillwater did not have any risk of loss with respect to the loans because . . . the SLMA provided the funds for the loans and agreed in advance to purchase the loans from Stillwater." (Id. ¶ 50.) Moreover, "[t]he SLMA controlled all aspects of marketing loans to student borrowers, and required Stillwater to 'print, package and distribute . . . Application Materials in forms acceptable to [the SLMA],' based on 'a design template for such materials' provided by the SLMA." (Id. ¶ 51.) Stillwater was not allowed to alter the content or description of these application materials without the SLMA's express written consent. (Id.) Stillwater's role was to add its "name, state, logo and OE number," to the applications, which made it appear as if Stillwater was the lender. (Id.) In addition, the SLMA "set the terms of the Private Loans; controlled the schools at which the loans could be made; determined which students would be approved for loans and for what amounts; and determined the interest rate on a borrower's loan based on proprietary credit criteria established by the SLMA." (Id. ¶ 52.)

In 2004, the SLMA was dissolved and merged into the SLM Corp. (Id. ¶ 53.) At this time, the ExportSS Agreement was amended, and the SLMA's role was assigned to two wholly-

owned subsidiaries of the SLM Corp., the SLM Education Credit and Finance Corporation and Sallie Mae, Inc. (Id.)

C. Claims

Based on the foregoing factual allegations, Plaintiffs assert five state law claims: (1) unlawful and unfair business practices in violation of the California Unfair Competition Law ("UCL"); (2) usury in violation of Article XV, Section 1, of the California Constitution; (3) violation of California's Usury Law (i.e. Cal. Civ. Code § 1916-1); (4) claim for money had and received; and (5) conversion. (Id. ¶¶ 114-163.) Plaintiffs' claim for money had and received and for conversion and violation of the UCL are all predicated on Plaintiffs' theory that Defendants have violated California's usury prohibition. (Id. ¶¶ 127-133, 151-163.) Plaintiffs seek restitution, compensatory and statutory damages, and injunctive relief. (Id. at 27-28.) Plaintiffs also seek to represent a putative class of individuals residing in California who obtained student loans and were similarly charged usurious interest rates. (Id. ¶ 104.)

III. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) allows a party to bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) is read in conjunction with Rule 8(a), which requires only a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); Conley v. Gibson, 355 U.S. 41, 47 (1957) (holding that the Federal Rules require that a plaintiff provide "'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests") (quoting Fed. R. Civ. P. 8(a)(2)); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint—as well as any reasonable inferences to be drawn from them—as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

Surviving a motion to dismiss requires a plaintiff to allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 697 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556). The Ninth Circuit has clarified that (1) a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and (2) "the factual allegations that are taken as true must plausibly

suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Although the scope of review is limited to the contents of the complaint, the Court may also consider exhibits submitted with the complaint, Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990), and "take judicial notice of matters of public record outside the pleadings," Mir v. Little Co. of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

IV. DISCUSSION

Defendants argue the FAC's claims should be dismissed because: (1) Plaintiffs' loans are exempt from California's usury prohibition; and (2) Plaintiffs' claims are preempted by the National Bank Act. (Mot. at 7-28.) Because the Court finds Plaintiffs' loans are exempt from California's usury prohibition, the Court does not reach the question of whether Plaintiffs' claims are preempted by the National Bank Act. The Court assesses the parties' contentions below.

A. Applicable Law

Plaintiffs' usury claims are based on Article XV § 1 of the California Constitution, which provides that interest charged on an obligation in excess of 10% is usurious and therefore cannot be collected.[4] "Generally, the California Constitution sets a maximum annual interest rate of seven percent on loans and forbearances, but allows parties by written contract to set the interest rate at up to 10 percent . . . ." WRI Opportunity Loans II LLC v. Cooper, 154 Cal. App. 4th 525, 533 (2007). The essential elements of a claim of usury are that: (1) the transaction must be a loan or forbearance; (2) the interest to be paid must exceed the statutory maximum; (3) the loan and interest must be absolutely repayable by the borrower; and (4) the lender must have a willful intent to enter into a usurious transaction. Id. "The intent sufficient to support the judgment of usury does not require a conscious attempt, with knowledge of the law, to evade it. The conscious and voluntary taking of more than the legal rate of interest constitutes usury and the only intent necessary on the part of the lender is to take the amount of interest which he receives; if that amount is more than the law allows, the offense is complete." Ghirardo v. Antonioli, 8

[4] Plaintiffs also cite the California "Usury Law," Cal. Civ. Code § 1916-1, and claim Defendants violated both this statutory provision and the California Constitution. The Usury Law was approved by California voters as an initiative measure in 1918 prior to the adoption of the usury prohibition in the California Constitution. See Penziner v. West American Finance Co., 10 Cal. 2d 160, 174 (1937). The constitutional provisions supersede any conflicting language in the Usury Law. Barnes v. Hartman, 246 Cal. App. 2d 215, 220 (1966) ("Insofar as it established or created different language from that in the Usury Law, the Constitutional provision is supreme and controlling."). Hence, the Court looks to the controlling language of the California Constitution when assessing Plaintiffs' usury claims.

Cal. 4th 791, 798 (1994), as modified on denial of reh'g (Feb. 2, 1995) (internal citations, quotation marks, and alterations omitted).

"It is a question of fact as to whether a particular transaction is or is not usurious." Janisse v. Winston Inv. Co., 154 Cal. App. 2d 580, 582 (1957). "Where the form of the transaction makes it appear to be non-usurious, it is for the trier of the fact to determine whether the intent of the contracting parties was that disclosed by the form adopted, or whether such form was a mere sham and subterfuge to cover up a usurious transaction." Id. The Court must "pierce the veil of any plan designed to evade the usury law and in doing so . . . disregard the form and consider the substance." Milana v. Credit Disc. Co., 27 Cal. 2d 335, 340 (1945).

The usury prohibition is subject to numerous exemptions. WRI Opportunity Loans II LLC, 154 Cal. App. 4th at 533. In particular, the California Constitution exempts from the usury prohibition loans made by "any bank created and operating under and pursuant to any laws of this State or of the United States of America." Cal. Const. art. XV, § 1. "[W]hen a loan meets the requirements for a statutory exemption to the usury law, courts will not look beyond those requirements to determine whether the underlying transaction . . . betrays an intent to evade the usury law." WRI Opportunity Loans II LLC, 154 Cal. App. 4th at 536; see also Jones v. Wells Fargo Bank, 112 Cal. App. 4th 1527, 1539 (2003) (ignoring allegations that transactions were a "sham" designed to evade the usury law where loans fit within exemption).

B. The Parties' Contentions

Defendants argue Plaintiffs' usury claims should be dismissed because Plaintiffs' loans fall within the California Constitution's exemption for loans made by banks. (Mot. at 7-14.) Defendants note that the FAC itself alleges Plaintiffs' loans were originally issued by Stillwater – a bank. (Id. at 8.) Moreover, Defendants ask that the Court reject any argument by Plaintiffs that the SLMA (a non-banking entity not exempt from the usury prohibition) should be considered the actual "lender" of Plaintiffs' loans. (Id.) Defendants argue that although the SLMA contracted with Stillwater to purchase the loans after they were issued and was involved in their issuance and disbursement, this does render it the actual "lender" for purposes of the exemption from the usury prohibition. (Id. at 8-11.) In addition, Defendants contend that under California law, the Court cannot consider whether the SLMA intended to circumvent the usury prohibition through its agreement with Stillwater when determining whether Plaintiffs' loans are exempted from the prohibition. (Id. at 11-13.)

Plaintiffs respond that the Court must "look to the substance of the transaction rather than to its form" when assessing whether a loan falls into the exemption from California's usury prohibition. (Opp. at 7.) Moreover, Plaintiffs argue that the SLMA's intent is relevant to whether Plaintiffs' loans are exempt from the usury prohibition and cite a number of purportedly supporting authorities. (Id. at 9-11.) Hence, Plaintiffs contend that although Stillwater was the lender of Plaintiffs' loans "in form," the FAC sufficiently alleges that the SLMA was for practical purposes the actual lender and that the SLMA intended to skirt the usury prohibition through its agreement to purchase the loans from Stillwater.[5] (Id. at 12.) Consequently,

[5] In support of these allegations, Plaintiffs cite a 2011 draft report by the Office of Sallie Mae Oversight ("OSMO") of the U.S. Department of the Treasury. (FAC ¶¶ 65-67, Ex. C.) The

Plaintiffs argue their loans do not fall under the exemption from the usury prohibition for loans issued by banks.[6] (Id.)

C. Analysis

Plaintiffs' claims are subject to dismissal because, even assuming the allegations in the FAC are true, Plaintiffs' loans fall under the California Constitution's exemption for loans issued by banks.[7] The FAC alleges Plaintiffs' loans were issued by Stillwater – a bank. (FAC ¶ 4.) Although Plaintiffs argue the exemption does not apply to their loans because their "lender" was effectively the SLMA, they do not cite any authority supporting this proposition. Plaintiffs cite a number of cases for the proposition that the Court "looks to substance over form to assess

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draft report found that the SLMA "in substance, was originating certain private loans" because Stillwater and other banks "did not take long-term possession of the notes signed by . . . student borrowers nor did they assume the credit risk associated with the notes." (Id., Ex. C at 15.) It is unclear from the record whether a final draft of the report was adopted by OSMO or published. In any case, the Court finds the report irrelevant to whether it may look to the substance of Plaintiffs' loan transactions when assessing whether they are exempted from the usury prohibition.

[6] At the hearing on Defendants' Motion, Plaintiffs' counsel represented that the FAC alleges the SLMA – not Stillwater – provided the funds loaned to Plaintiffs. Hence, Plaintiffs' counsel argued Plaintiffs' loans additionally could not fall under the exemption for loans issued by banks because the source of the loans was not Stillwater.

However, the FAC does not expressly allege that the SLMA was the source of these funds. Moreover, the copy of the ExportSS Agreement attached to the FAC indicates the funds were supplied by Stillwater. The ExportSS Agreement stated the SLMA would disburse loan funds from an account belonging to Stillwater. (See FAC, Ex. A at 5 (stating, in reference to Stillwater, that funds would be debited by the SLMA from "your account . . . to fund all loan disbursements and other payments . . . .").) Moreover, in the ExportSS Agreement, the SLMA explicitly promised Stillwater that it would "advance funds on your behalf if sufficient funds are not in your bank account on the day we attempt to draw from your account" and that Stillwater agreed "to repay the entire amount of such advances . . . ." (Id. at 8.) Hence, even if the FAC alleges that the SLMA was the source of the funds, the Court need not accept such allegations as true because the ExportSS Agreement's language contradicts them. See Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 588 (9th Cir. 2008) (holding courts "need not accept as true allegations contradicting documents that are referenced in the complaint").

[7] Plaintiffs' claims for money had and received, conversion, and violation of the UCL are all predicated on their claims that Defendants have violated California's usury prohibition. Because the Court finds Plaintiffs' loans are exempted from the usury prohibition, the Court concludes Plaintiffs' remaining claims for money had and received, conversion, and violation of the UCL are subject to dismissal.

whether a loan, that on its face appears non-usurious, is in fact usurious."[8] (Opp. at 6.) Plaintiffs argue these decisions permit the Court to look at the "substance" of the SLMA's agreement with Stillwater and the SLMA's intent in order to determine whether Plaintiffs' loans are exempted from the usury prohibition. (Id. at 7.) However, the cases cited by Plaintiffs only hold that a court may consider the "substance" of a transaction over its "form" and the parties' intent when assessing whether a transaction satisfies the elements of usury or falls under a common law exemption to the usury prohibition – *not* when assessing whether the transaction or a party to the transaction fall under a constitutional or statutory exemption from the usury prohibition. See WRI Opportunity Loans II, LLC, 154 Cal. App. 4th at 536 (holding courts "look to the substance rather than to the form of the transaction" when assessing applicability of common law interest contingency exception to usury prohibition) (internal quotation marks omitted); Jones, 112 Cal. App. 4th at 1537-38 (noting a court must "look beyond the surface of the transaction to its substance" specifically when "determining whether a transaction is a loan or forbearance subject to the usury law, or some other sort of transaction that is not subject to that law"); West Pico Furniture Co. v. Pacific Finance Loans, 2 Cal. 3d 594, 603 (1970) (noting "the trier of fact must look to the substance of the transaction rather than to its form" when assessing "whether a particular transaction is a usurious loan or a sale"); Glaire v. La Lanne-Paris Health Spa, Inc., 12 Cal. 3d 915, 927 (1974) (holding substance of transaction showed charged interest rate was usurious); see also Ghirardo v. Antonioli, 8 Cal. 4th 791, 798 (1994), as modified on denial of reh'g (Feb. 2, 1995) (inquiring into substance of a transaction to determine whether it was a loan or forbearance); Boerner v. Colwell Co., 21 Cal. 3d 37, 52 (1978) (inquiring into substance of a

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[8] The parties discuss Ubaldi v. SLM Corp., 852 F. Supp. 2d 1190, 1198 (N.D. Cal. 2012), in connection with Defendants' argument that Plaintiffs' claims are preempted by the National Bank Act. (Mot. at 22-23; Opp. at 18-20.) In Ubaldi, a plaintiff filed a putative class action lawsuit against the SLM Corp. based on allegations similar to those at issue here: namely, that Stillwater issued a student loan to the plaintiff, but that the SLM Corp. was the "de facto lender." Ubaldi, 852 F. Supp. 2d at 1192. The plaintiff in Ubaldi asserted various claims under California law relating to the loans, but did not assert claims under California's usury prohibition. The SLM Corp. moved to dismiss the plaintiff's pleading, contending the plaintiff's loan was issued by Stillwater – a national bank – and that the plaintiff's claims relating to the loan were consequently preempted by the National Bank Act. Id. at 1193. The plaintiff responded that her loan was not "made" by Stillwater for purposes of the National Bank Act because the SLM Corp. was the "actual" lender. Id. at 1194-95. The Ubaldi court denied the SLM Corp.'s motion as to this issue, noting that "neither party offer[ed] persuasive authority as to whether [the National Bank Act] expressly preempts state law claims against a loan servicer that is alleged to have actually 'made' the loan, rather than the bank named on the loan documents." Id. at 1203. Given the absence of clear precedent as to this point and the parties' "factual dispute over the identity of the actual lender," the Ubaldi court denied the motion to dismiss. Id.

Given that the Ubaldi decision did not involve the California usury prohibition and instead largely concerned preemption under the National Bank Act, the Court finds it irrelevant to whether Plaintiffs state a claim under the usury prohibition.

transaction to determine whether it involved "bona fide credit sales" or "usurious loans").[9] In short, Plaintiffs do not cite and the Court cannot find any authority holding that the applicability of a statutory or constitutional exemption to the usury provision is a question of fact and is based on the "substance" of a transaction.

Moreover, two California appellate decisions hold that the Court must look only to the face of a transaction when assessing whether it falls under a statutory exemption from the usury prohibition and not look to the intent of the parties.[10] See Jones, 112 Cal. App. 4th at 1537-38 (noting "cases where intent to evade the usury law is an issue typically involve situations where the lender claims a transaction is not a loan at all" and that "Defendants' intent [wa]s irrelevant" where "agreement fit within a legally authorized exception to the general usury law"); WRI

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[9] The parties discuss at length the California Supreme Court's decision in Boerner v. Colwell Co., 21 Cal. 3d 37, 52 (1978). (Mot. at 9-11; Opp. at 8-9.) In Boerner, Colwell Company ("Colwell"), a mortgage banking firm, agreed in advance to buy installment contracts for the construction of vacation homes between various builders and homebuyers. 21 Cal. 3d at 41-42, 50, 53. Colwell first developed and supplied the builders with form application materials, which were filled out and returned to Colwell. Id. at 42. In addition, Colwell advised the builder of the "finance charge rate" to be paid by the homebuyers to Colwell if it purchased the contract. Id. at 41. Colwell then performed a credit check and, if the results were "acceptable to it," provided funds for construction of the homes and then took immediate assignment of the contracts. Id. at 41-42, 50-51 (emphasis omitted). The buyers were required to pay Colwell both the contract price and the finance charge in monthly installments. Id. at 42. The buyers sued for usury, contending Colwell's role in their transaction "rendered it a 'lender' of money within the meaning of the usury laws." Id. at 50-51. The buyers contended that "the transactions here in question – viewed from the standpoint of substance rather than form – must . . . be held to be usurious loans." Id. at 47. The California Supreme Court rejected this argument, holding that the substance of the transactions showed Colwell's financing of the contracts did not constitute a "loan" subject to the usury prohibition and was instead a "bona fide credit sale." Id. at 52-53. Among other considerations, the court noted that the finance charges were "clearly stated," and the parties' dealings were "in good faith." Id. at 52.

The Court finds Boerner irrelevant to the question at hand. Boerner addressed whether the transactions at issue met the elements of usury (i.e. whether they were loans). As with the other cases cited by Plaintiffs, Boerner suggested that this is a question of fact, such that courts must look to the substance of the transaction and the intent of the parties. Boerner did not, however, address whether a court must look to substance or intent when addressing a statutory or constitutional exemption to the usury prohibition.

[10] Plaintiffs cite dictum from Sondeno v. Union Commerce Bank, 71 Cal. App. 3d 391, 396 (1977), addressing a hypothetical situation where an entity exempt from the usury prohibition acts as a lender of a loan in order to permit a non-exempt entity to avoid the usury prohibition. In Sondeno, the court held it would be "reasonable to assume" that courts would find "the benefits derived from the transaction by the non-exempt lender to be usurious." Id. No California court has cited or discussed such language. The Court finds this language unpersuasive, especially given more recent decisions by California courts governing whether courts may look to the substance of a transaction when assessing the applicability of a statutory exemption from the usury prohibition.

Opportunity Loans II LLC, 154 Cal. App. 4th at 536 (noting that "when a loan meets the requirements for a statutory exemption to the usury law, courts will not look beyond those requirements").

In Jones, the California Court of Appeal considered a plaintiff's claim that a shared loan appreciation agreement made to his partnership by Wells Fargo Bank ("Wells Fargo") was usurious. 112 Cal. App. 4th at 1532. In opposition, Wells Fargo invoked a California statute exempting from the usury prohibition loans by national banks authorized to engage in the trust business who acted in their fiduciary duty. Id. at 1535. The plaintiff did not dispute the exemption's applicability and instead argued the loan was nonetheless usurious despite the exemption because Wells Fargo "intended to violate the usury law" and that Wells Fargo's usurious intent rendered the loan agreement a "sham" shared appreciation loan. Id. at 1537-38. The California Court of Appeal rejected this argument. Id. The court noted that "[i]n determining whether a transaction is a loan or forbearance subject to the usury law, or some other sort of transaction that is not subject to that law, a court must look beyond the surface of the transaction to its substance." Id. However, the court held, "cases where intent to evade the usury law is an issue typically involve situations where the lender claims a transaction is not a loan at all." Id. at 1538. Because there was no dispute that the transaction at issue was a loan agreement or that the loan "fit within a legally authorized exception to the general usury law," the court concluded the loan was exempt from the usury prohibition. Id. The court explicitly stated Wells Fargo's intent was "irrelevant" to the exemption question. Id. The court also noted the loan would fall under a separate statutory exemption for shared appreciation loans. Id. at 1538-39. As to this point, the court distinguished Ghirardo – one of the cases Plaintiffs rely upon for the proposition that the parties' intent must be considered here. Id. at 1539. The court noted that while the "intent to evade the usury law" was considered in cases like Ghirardo, it had no application to "loans or forbearances covered by modern statutory exemptions that remove the need for evasion." Id.

Similarly, in WRI Opportunity Loans II LLC, two plaintiffs claimed a loan provided to a limited liability company they owned was usurious. 154 Cal. App. 4th at 530-31. The lender claimed the loan fell within the statutory exemption from the usury prohibition for shared appreciation loans. Id. at 531. When addressing the applicability of the exemption, the California Court of Appeal re-affirmed the decision in Jones, holding "that when a loan meets the requirements for a statutory exemption to the usury law, courts will not look beyond those requirements to determine whether the underlying transaction . . . betrays an intent to evade the usury law." Id. at 536. The court reasoned that "the function of statutory exemptions generally is to curtail this kind of inquiry into the underlying transaction." Id. at 540.

Plaintiffs attempt to distinguish Jones and WRI Opportunity Loans II LLC, arguing "both cases pertain to exempt transactions (shared appreciation loans)." (Opp. at 11 n.5.) Plaintiffs argue that, "[i]n contrast, when the exemption belongs to an entity in what otherwise would be a usurious transaction, the intent of the parties is critical."[11] (Id. at 7.) The Court rejects this argument. As an initial matter, Plaintiffs cite no authority supporting the proposition that the Court's inquiry into a transaction subject to a usury exemption differs based on whether the exemption pertains to the character of the transaction or to that of a party to the transaction.

[11] Plaintiffs briefly cite Ghirardo in support of this proposition, but Ghirardo contains no mention of the distinction Plaintiffs raise and Plaintiffs do not explain its relevance.

Moreover, Plaintiffs mischaracterize the holding in Jones: in Jones, the California Court of Appeal concluded a statutory exemption for certain national banks – similar to that at issue here – obviated the need for further inquiry into the intent of the parties. See 112 Cal. App. 4th at 1538. Jones indicates that the intent of the parties is irrelevant whether a usury exemption pertains to a category of lenders or to particular types of transactions. See id.

In sum, all of the cases cited in support of Plaintiffs' contentions are inapposite because they do not concern statutory or constitutional exemptions to the usury prohibition. Moreover, Jones and WRI Opportunity Loans II LLC indicate the Court must look solely to the face of a transaction to determine whether an exemption applies. The Court therefore finds Jones and WRI Opportunity Loans II LLC controlling. The Court finds Jones particularly on-point because it addressed a statutory exemption for certain national banks comparable to the constitutional exemption at issue here. See 112 Cal. App. 4th at 1538. The Court consequently looks only to the face of the transactions at issue when assessing whether Plaintiffs' loans are exempted from the usury prohibition. Here, the FAC alleges Plaintiffs' loans were issued by a bank. (FAC ¶ 4.) Hence, the Court concludes the loans are exempted from California's usury prohibition.[12]

Accordingly, the Court GRANTS Defendants' Motion to Dismiss insofar as it contends Plaintiffs' loans are exempted from California's usury prohibition.

D. Leave to Amend

Federal Rule of Civil Procedure 15 provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). A district court, however, may in its discretion deny leave to amend "due to undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." Leadsinger, Inc. v. BMG Music Publ'g, 512 F.3d 522, 532 (9th Cir. 2008) (internal citation and quotation marks omitted).

Here, amendment of Plaintiffs' pleading would be futile. As set forth above, the Court finds Plaintiffs fail to state a claim for usury because their loans are exempt from California's usury prohibition as a matter of law. Further amendments would not cure this deficiency. Accordingly, the Court DISMISSES Plaintiffs' claims against Defendants WITHOUT LEAVE TO AMEND.

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[12] The Court also notes this result is in accord with public policy considerations. The rationale underlying the constitutional exemption for banks is to allow "the assignment or sale by banks of their commercial property to a secondary market." Strike v. Trans-W. Disc. Corp., 92 Cal. App. 3d 735, 745 (Ct. App. 1979). Holding non-exempt entities who purchase loans from banks to usury requirements would interfere with this objective and would render non-exempt entities less inclined to purchase such loans.

V. CONCLUSION

For the reasons stated above, the Court GRANTS Defendants' Motion to Dismiss Plaintiffs' FAC. Leave to amend is DENIED. This action is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.