

# SULLIVAN & CROMWELL LLP

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September 22, 2014

Via FedEx

Federal Deposit Insurance Corporation,  
Receiver of Washington Mutual Bank, Henderson, Nevada,  
1601 Bryan Street, Suite 1701,  
Dallas, Texas 75201.

Attention: Regional Counsel (Litigation Branch) &  
Deputy Director (DRR - Field Operations Branch)

Re: Indemnification Obligations

Dear Sirs:

We refer to the Purchase and Assumption Agreement Whole Bank, dated as of September 25, 2008 (the "Agreement") by and among the Federal Deposit Insurance Corporation in its corporate capacity ("FDIC Corporate") and as receiver ("FDIC Receiver" and, together with FDIC Corporate, "FDIC") and JPMorgan Chase Bank, N.A. (together with its subsidiaries and affiliates, "JPMC") relating to the resolution of Washington Mutual Bank, Henderson, Nevada ("WMB"). This letter supplements our prior indemnification notices and provides you with written notice of additional matters for which JPMC is entitled to indemnification under Section 12.1 of the Agreement.

The additional matter that gives rise to JPMC's indemnity rights is *Atkins-Payne v. Alterman et al.*, 1:14-cv-04066-ENV-CLP, filed in E.D.N.Y on June 29, 2014 and dismissed *sua sponte* without prejudice on September 5, 2014, with a grant of leave to amend to cure deficiencies within thirty days. Enclosed for your convenience is a copy of the complaint in this action, as well as the Memorandum and Order, dated September 5, 2014.

In [redacted] complaint, *pro se* plaintiff [redacted] ("Plaintiff"), named as defendants, *inter alia*, "Dime Savings Bank," "Washington Mutual Bank F/K/A," "Washington Mutual Bank FA" and "JPMorgan Chase Bank," and claimed that the address for each of the aforementioned entities is "c/o Jimie Diamond [sic], Chief Executive Officer for JPMorgan Chase Bank." (Compl. at 2-3.) Although not explicitly alleged in the complaint, Dime Savings Bank ("Dime") was acquired by WMB in 2002. Plaintiff alleged, *inter alia*, that two individual defendants fraudulently cashed checks made payable to Plaintiff at Washington Mutual and Chase

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and/or withdrew funds from Plaintiffs Washington Mutual and/or Chase account(s) beginning in 2001 (prior to both WMB's acquisition of Dime in 2002 and WMB's closure in 2008). (Compl. at 8-10.) Plaintiff also alleged that in 2000 (also prior to both the acquisition and subsequent closure of Dime), another individual defendant, who was a Dime employee, along with others, induced [REDACTED] to open a Dime business checking account and five personal checking accounts as part of a scheme "to defraud [REDACTED] and [REDACTED] entire family out of [their] Social Security Disability Income checks that [REDACTED] was payee for and all of [REDACTED] business checks that went direct deposit," and alleged that "[REDACTED] money was all stolen from the Dime Savings Bank." (Compl. at 7-8.) As mentioned above, the Court, apparently *sua sponte*, dismissed the complaint without prejudice on September 5, 2014 for "fail[ure] to state a claim that would confer jurisdiction" on the Court (Order at 5), and "fail[ure] to comply with the dictates of Federal Rule of Civil Procedure 8" by "nam[ing] over 80 defendants, but fail[ing] to provide facts connecting each of these defendants to a violation of plaintiffs federal rights." (*Id.*) The Court also granted Plaintiff "leave to cure these deficiencies, if [REDACTED] can, by amending [REDACTED] complaint within 30 days~. '[or by] us[ing] this grant of leave to pursue [REDACTED] grievances in the form of state law claims in a state court of general jurisdiction." (*Id.* at 6.)

Although JPMC has not been served with the complaint in this action, we recently became aware of its commencement and subsequent dismissal, as well as the grant of leave to amend within thirty days. As such, JPMC is hereby notifying you that, should Plaintiff amend [REDACTED] complaint or otherwise "pursue her grievances ... in a state court" or any other jurisdiction, any liabilities JPMC may incur in connection with these claims to the extent that such liabilities derive from the actions or inactions of Washington Mutual Bank, Washington Mutual Bank, F.A., and/or Dime, including the costs and expenses incurred in defending against the claims to this extent, are subject to indemnification by the FDIC pursuant to Section 12.1 of the Agreement. We understand the FDIC Receiver consents to our defending and, if we deem it to be prudent, settling such claims to this extent. As you know, and as the FDIC has acknowledged in court, if the FDIC disclaims responsibility for any liabilities that may arise in connection with these actions and instead asserts that Section 12 of the Agreement does not apply to any such liabilities, then the FDIC may not purport to exercise its rights to direct the defense of these actions or determine whether to settle them.

JPMC is not aware of any claim filed by Plaintiff in the FDIC receivership by the December 30, 2008 claims bar date, as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1821(d)(3) (13) ("FIRREA"). As you know, if Plaintiff did not file a claim in the FDIC receivership by the claims bar date, then any claim [REDACTED] may seek to assert against either the FDIC or JPMC based on conduct by WMB or its subsidiaries prior to the receivership is statutorily barred for failure to exhaust the administrative claims process mandated by FIRREA. FIRREA's statutory bar would apply equally to any unexhausted claims that Plaintiff might assert against either the FDIC or JPMC. If your records show that Plaintiff did not file timely proofs of claims, we request that you immediately inform [REDACTED] that any claims against either the FDIC or JPMC are barred, just as you have informed certain taxing authorities in recent correspondence that their claims are barred.

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In the event Plaintiff did submit a timely claim in the WMB receivership (we would appreciate receiving copies if any were filed), we note that at the time of WMB's closure, its books and records showed no such liabilities. (If you disagree, please identify where on WMB's books and records such liabilities were reflected.) As you know, the liabilities assumed by JPMC were limited to those on WMB's "Books and Records," with a "Book Value," when WMB was closed. JPMC did not assume any WMB liabilities that did not have a book value on WMB's books and records at the time WMB was placed into receivership, nor did it assume, for those liabilities on WMB's books and records, liability for any amounts in excess of such book value. Thus, any liability for conduct that precedes WMB's closure remains with the FDIC.

As you are aware from previous correspondence notifying you of the FDIC's indemnification obligations in other matters, the matters identified in this letter are not intended to be exhaustive or to constitute a statement that no other facts have or may come to our attention that could result in claims for which indemnification is provided, and we reserve the right to supplement this notice as additional facts or circumstances may arise.



(Enclosures)

cc: Lawrence N. Chanen  
Annette C. Rizzi  
Joanna Jagoda  
Jenni Spiritis  
(JPMorgan Chase Bank, N.A.)  
(Via Email without enclosures)

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