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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SVETLANA TYSHKEVICH,
Plaintiff,
v.
WELLS FARGO BANK, N.A., etc.; et al.,
Defendants.

No. 2:15-cv-2010 JAM AC (PS)

ORDER

Plaintiff is proceeding in this action in pro per. The matter was referred to a United States Magistrate Judge by Local Rule 302(c)(21).

On January 15, 2016, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 41. Plaintiff has filed objections to the findings and recommendations. ECF No. 42.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 15, 2016 (ECF No. 41), are adopted

1 in full;

2 2. Defendants' motions to dismiss (ECF Nos. 27, 29, 33), are GRANTED IN PART and
3 DENIED IN PART, as follows:

4 3. In regard to the motions of defendants Wells Fargo Bank, N.A., and Bank of New
5 York Mellon ("BoNY"), to dismiss the Truth in Lending Act ("TILA") claim for untimeliness:

6 a. Such motions are GRANTED, without prejudice. The dismissal is being made
7 without prejudice in order to permit plaintiff an opportunity to amend her complaint to cure the
8 timeliness defect, if she can truthfully do so, as set forth below.

9 b. Plaintiff is granted 30 days to file a motion before the magistrate judge for
10 leave to amend her complaint. The motion to amend the complaint must comply with the court's
11 Local Rules, including Local Rule 137(c) (requiring plaintiff to attach a copy of the proposed
12 amended complaint to the motion). Plaintiff is required to include in her motion – separately
13 from the proposed amended complaint itself – separate paragraphs setting forth the timeliness
14 facts she is adding to the amended complaint.

15 4. All defendants' motions to dismiss the Federal Debt Collection Practices Act
16 ("FDCPA") claims for failure to state a claim predicated upon the alleged TILA rescission, is
17 GRANTED without prejudice.

18 5. BoNY's motion to dismiss the FDCPA claims, on the grounds that it is not a "debt
19 collector," is GRANTED without prejudice.

20 6. Consideration of the state claims is DEFERRED until the status of plaintiff's federal
21 claims is resolved. See 28 U.S.C. § 1367(c)(3) (court may decline to exercise supplemental
22 jurisdiction of state claim if all federal claims are dismissed).

23 7. All other grounds for dismissing the TILA or FDCPA claims are overruled.

24 DATED: March 23, 2016

25 /s/ John A. Mendez

26 United States District Court Judge

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