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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NORMA J. and JESSE N. PUGH,

Plaintiff,

v.

WELLS FARGO BANK, N.A.; THE
BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK AS
TRUSTEE FOR WORLD SAVINGS
REMIC 24, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2006-24 TRUST,

Defendants.

No. 2:13-cv-01617-GEB-DAD

ORDER

Defendant Wells Fargo Bank, N.A. ("Wells Fargo") moves under Federal Rule of Civil Procedure ("Rule") 12(b)(6) for dismissal of all claims alleged against it in Plaintiffs' Verified Complaint. Plaintiffs allege claims against Wells Fargo under California law and under the federal Fair Debt Collection Practice Act ("FDCPA").

I. JURISDICTION

Subject matter jurisdiction is examined since a federal court has a "duty" to ensure it has subject matter jurisdiction over an action. United Investors Life Ins. Co. v. Waddell & Reed

1 Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that “the
2 district court had a duty to establish subject matter
3 jurisdiction . . . sua sponte, whether the parties raised the
4 issue or not”). Plaintiffs assert subject matter jurisdiction is
5 premised on diversity of citizenship. (Verified Compl.
6 (“Compl.”), ECF No. 2, ¶ 4.) Specifically, Plaintiffs aver they
7 “reside, and are domiciled, in California” (Id. ¶ 1); Defendant
8 Bank of New York Mellon “is incorporated in the State of
9 Delaware” and “its main offices” are “located” in New York (Id.
10 ¶ 3); and Defendant Wells Fargo’s “main office [is] located in
11 Sioux Falls, South Dakota as designated in its Articles of
12 Association.” (Id. ¶ 2.)

13 However, complete diversity does not exist between
14 Plaintiffs and all Defendants because this Court has previously
15 determined that Wells Fargo Bank, N.A. is “a citizen of
16 California as well as a citizen of South Dakota.” Gosal v. Wells
17 Fargo Bank, N.A., No. 2:12-cv-02024-GEB-CKD, 2012 WL 4961696, at
18 *2 (E.D. Cal. Oct. 15, 2012) (quoting Taheny v. Wells Fargo Bank,
19 N.A., 878 F. Supp. 2d 1093, 1109 (E.D. Cal. 2012) (relying on Am.
20 Sur. Co. v. Bank of Cal., 133 F.2d 160, 162 (9th Cir. 1943)).
21 Therefore, subject matter jurisdiction is not premised on
22 diversity jurisdiction.

23 However, “in determining the existence of subject
24 matter jurisdiction, a federal court is not limited to the
25 jurisdictional statutes identified in the complaint. If facts
26 giving the court jurisdiction are set forth in the complaint, the
27 provision conferring jurisdiction need not be specifically
28 pleaded.” K2 Am. Corp. v. Roland Oil & Gas, LLC, 653 F.3d 1024,

1 1027 (9th Cir. 2011) (citation omitted) (internal quotation marks
2 omitted). Plaintiffs' claims under the FDCPA confer federal-
3 question subject matter jurisdiction, and therefore 28 U.S.C.
4 § 1367 provides supplemental jurisdiction over Plaintiffs state
5 claims. The portion of the motion challenging Plaintiffs' FDCPA
6 claims will thus be decided first.

7 **II. LEGAL STANDARD**

8 Decision on Defendant's Rule 12(b)(6) dismissal motion
9 requires determination of "whether the complaint's factual
10 allegations, together with all reasonable inferences, state a
11 plausible claim for relief." United States ex rel. Cafasso v.
12 Gen. Dynamics C4 Sys., 637 F.3d 1047, 1054 (9th Cir. 2011)
13 (citing Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)). "A claim
14 has facial plausibility when the plaintiff pleads factual content
15 that allows the court to draw the reasonable inference that the
16 defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
17 at 678 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556
18 (2007)).

19 When determining the sufficiency of a claim, "[w]e
20 accept factual allegations in the complaint as true and construe
21 the pleadings in the light most favorable to the non-moving
22 party[; however, this tenet does not apply to] . . . legal
23 conclusions . . . cast in the form of factual allegations." Fayer
24 v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (citation omitted)
25 (internal quotation marks omitted). "Therefore, conclusory
26 allegations of law and unwarranted inferences are insufficient to
27 defeat a motion to dismiss." Id. (citation omitted) (internal
28 quotation marks omitted); see also Iqbal, 556 U.S. at 678

1 (stating “[a] pleading that offers ‘labels and conclusions’ or ‘a
2 formulaic recitation of the elements of a cause of action will
3 not do’” (quoting Twombly, 550 U.S. at 555)).

4 **III. FACTUAL AVERMENTS**

5 Plaintiffs’ averments in the Complaint germane to their
6 FDCPA claims are the following. “On July 13, 2006, Plaintiffs
7 executed a Deed of Trust and Adjustable Rate Note ‘Pick-A-Payment
8 Loan.’” (Compl. ¶ 5.) “The original lender and loan servicer was
9 World Savings Bank FSB and the trustee was Golden West Savings
10 Association Service Company.” (Id.)

11 “Golden West Financial Corporation was the parent
12 company of World Savings Bank, FSB,” the original lender and
13 servicer. (Id. ¶ 6.) “On or about May 6, 2007, Wachovia Bank
14 acquired Golden West Financial.” (Id.) “After Wells Fargo Bank,
15 N.A. acquired Wachovia in 2008, Wells Fargo Home Mortgage, a
16 division of Wells Fargo, assumed the role of servicer of
17 Plaintiffs’ loan.” (Id. ¶ 7.)

18 Plaintiffs assert that Wells Fargo violated 28 U.S.C.
19 § 1692e of the FDCPA, which prohibits false or misleading
20 representations, and § 1692f of the FDCPA, which prohibits unfair
21 practices, because letters “sent by Wells Fargo” and
22 “identif[ing] Wells Fargo Home Mortgage” “contain false
23 representations of [Well’s Fargo’s] standing to pursue
24 foreclosure activity against Plaintiffs and to collect mortgage
25 payments and associated fees and costs from them.” (Id. ¶ 37.)

26 **IV. DISCUSSION**

27 **A. Fair Debt Collection Practices Act**

28 Wells Fargo argues, inter alia, that Plaintiffs’ FDCPA

1 claims should be dismissed with prejudice "because Wells Fargo is
2 not a 'debt collector' within the meaning of the FDCPA." (Wells
3 Fargo's Notice Mot. & Mot. Dismiss Compl., 15:17-18, ECF No. 7.)

4 Section 1692e prescribes: "A debt collector may not use
5 any false, deceptive, or misleading representation or means in
6 connection with the collection of any debt." Section 1692f
7 prescribes: "A debt collector may not use unfair or
8 unconscionable means to collect or attempt to collect any debt."
9 "Because these prohibitions apply only to 'debt collector[s]' as
10 defined by the FDCPA, the [C]omplaint must 'plead factual content
11 that allows the court to draw the reasonable inference' that
12 Wells Fargo is a debt collector." Schlegel v. Wells Fargo Bank,
13 N.A., 720 F.3d 1204, 1208 (9th Cir. 2013) (quoting Iqbal, 556
14 U.S. at 678).

15 The statutory term "debt collector" "does not include
16 . . . (F) any person collecting or attempting to collect any debt
17 owed or due or asserted to be owed or due another to the extent
18 such activity . . . concerns a debt which was not in default at
19 the time it was obtained by such person." 15 U.S.C. § 1692a(6)
20 (emphasis added).

21 Plaintiffs' averments in their Complaint evince that
22 Wells Fargo obtained Plaintiffs' debt through its acquisition of
23 Plaintiffs' previous debt creditor. Specifically, Plaintiffs aver
24 their "original lender . . . was World Savings Bank FSB." (Compl.
25 ¶ 5.) Plaintiffs further aver:

26 Golden West Financial Corporation was the
27 parent company of World Savings Bank,
28 FSB On or about May 6, 2007, Wachovia
Bank acquired Golden West Financial. The
integration process, which included World

1 Savings Bank, was completed in mid-2008.
2 Wells Fargo Bank acquired Wachovia in the
3 same year.

4 (Id. ¶ 6.) Plaintiffs' averments concerning Wells Fargo's
5 acquisition of Wachovia establish that Wells Fargo "is not only
6 much like the original creditor, it is the original creditor."
7 Dues v. Capital One, N.A., No. 11-cv-11808, 2011 WL 3799762, at
8 *4 (E.D. Mich. Aug. 8, 2011) (internal quotation marks omitted).
9 Therefore, Wells Fargo obtained Plaintiffs' debt when World
10 Savings Bank, "its predecessor in interest," "obtained the debt."
11 Esquivel v. Bank of Am., N.A., No 12-cv-02502-GEB-KJN, 2013 WL
12 682925, at *2 (E.D. Cal. Feb. 21, 2013) (citing Meyer v.
13 Citimortgage, Inc., No. 11-13432, 2012 WL 511995, at *7
14 ("[Defendant] is the successor by merger to . . . the originating
15 lender and mortgagee, and therefore it is impossible for the loan
16 to have been in default at the time [defendant] received its
17 interest.")); see also Brown v. Morris, 243 Fed. App'x 31, 34-35
18 (5th Cir. 2007) (holding that since defendant mortgage company
19 acquired plaintiff's loan "through its merger with [plaintiff's]
20 previous mortgage company," defendant "did not 'obtain'
[plaintiff's] mortgage while it was in default").

21 The averments in Plaintiffs' Complaint evince that
22 Wells Fargo is not a "debt collector" as Plaintiffs assert.
23 Therefore, Plaintiffs' claims averred under the FDCPA will be
24 dismissed. However, since Wells Fargo seeks dismissal of these
25 claims with prejudice, the issue remains whether Plaintiffs
26 should be provided leave to amend any dismissed FDCPA claim. The
27 averments in Plaintiffs' Complaint and the arguments in
28 Plaintiffs' opposition brief reveal that providing Plaintiffs

1 with leave to amend their claims alleged against Wells Fargo
2 under the FDCPA would be futile. Therefore, Plaintiffs' claims
3 alleged against Wells Fargo under the FDCPA are dismissed with
4 prejudice. See Bonin v. Calcedon, 59 F.3d 815, 845 (9th Cir.
5 1995) ("Futility of amendment can, by itself, justify the denial
6 of . . . leave to amend.").

7 **B. Supplemental Jurisdiction Over State Claims**

8 Since Plaintiffs' federal claims have been dismissed
9 with prejudice, the Court may sua sponte decide whether to
10 continue exercising supplemental jurisdiction over Plaintiffs'
11 state claims. 28 U.S.C. § 1367(c). Under 28 U.S.C. § 1367(c)(3),
12 a district court "may decline to exercise supplemental
13 jurisdiction over [state] claim[s]" when "the district court has
14 dismissed all claims over which it has original jurisdiction."
15 "While discretion to decline . . . supplemental jurisdiction over
16 state law claims is triggered by the presence of one of the
17 conditions in § 1367(c), it is informed by the . . . values 'of
18 economy, convenience, fairness, and comity'" as delineated by the
19 Supreme Court in United Mine Workers of Am. v. Gibbs, 383 U.S.
20 715, 726 (1966). Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001
21 (9th Cir. 1997).

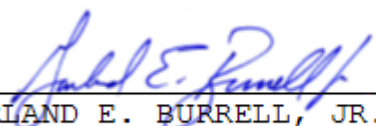
22 Judicial economy does not favor continuing to exercise
23 supplemental jurisdiction, since the investment of judicial
24 energy does not justify retention of jurisdiction over the state
25 claims. See Otto v. Heckler, 802 F.2d 337, 338 (9th Cir. 1986)
26 ("[T]he district court, of course, has the discretion to
27 determine whether its investment of judicial energy justifies
28 retention of jurisdiction or if it should more properly dismiss

1 the claims without prejudice." (citation omitted)). Nor do the
2 comity and fairness factors weigh in favor of exercising
3 supplemental jurisdiction since "[n]eedless decisions of state
4 law should be avoided both as a matter of comity and to promote
5 justice between the parties, by procuring for them a surer-footed
6 reading of applicable law." Gibbs, 383 U.S. at 726; accord
7 Nishimoto v. Federman-Bachrach & Assocs., 903 F.2d 709, 715 (9th
8 Cir. 1990) ("In a case in which all federal law claims are
9 eliminated before trial, the balance of these factors will
10 generally point toward declining to exercise jurisdiction over
11 the remaining state law claims."). Therefore, Plaintiffs' state
12 claims are dismissed under 28 U.S.C. § 1367(c) (3) on the date on
13 which this order is filed.

14 **V. CONCLUSION**

15 For the stated reasons, judgment shall be entered in
16 favor of Defendant Wells Fargo Bank, N.A. on Plaintiffs' claims
17 alleged under the Federal Debt Collection Practices Act.
18 Plaintiffs' state claims are dismissed under 28 U.S.C.
19 § 1367(c) (3).

20 Dated: October 17, 2013

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23 GARLAND E. BURRELL, JR.
24 Senior United States District Judge
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