

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT CHANDLER, AS	)	Case No. 11-03831 SC
REPRESENTATIVE OF THE ESTATE OF	)	
ROSEMARY S. CHANDLER,	)	ORDER GRANTING MOTION FOR
individually and on behalf of	)	LEAVE TO AMEND AND DENYING
all others similarly situated,	)	<u>MOTION TO DISMISS AS MOOT</u>
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A., and	)	
FEDERAL NATIONAL MORTGAGE	)	
ASSOCIATION a/k/a FANNIE MAE,	)	
	)	
Defendants.	)	
	)	

Now before the Court is Plaintiff Robert Chandler's ("Plaintiff") motion for leave to file an amended complaint. ECF No. 59 ("Mot."). The Motion is fully briefed, ECF Nos. 60 ("Opp'n"), 61 ("Reply"), and suitable for determination without oral argument per Civil Local Rule 7-1(b). For the reasons set forth below, the Motion is GRANTED.

Plaintiff brings this putative class action to enforce certain regulations concerning the federal Home Equity Conversion Mortgage ("HECM") program. Plaintiff alleges that Defendants Wells Fargo Bank, N.A. and Federal National Mortgage Association (collectively, "Defendants") violated the regulations by, inter alia, failing to

1 provide borrowers with notice of their rights under the HECM  
2 program. In his original complaint, Plaintiff asserted causes of  
3 action for declaratory relief, breach of contract, and violation of  
4 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code  
5 § 17200, et seq. ECF No. 1 ("Compl.").

6 Defendants moved to dismiss the Complaint, but the Court  
7 deferred ruling on that motion pending the outcome of the parties'  
8 mediation efforts. In June 2013, the parties indicated that they  
9 failed to reach a settlement. ECF No. 57. Before the Court could  
10 take up Defendants' pending motion to dismiss, Plaintiff requested  
11 permission to file a motion for leave to amend the Complaint. The  
12 Court granted Plaintiff's request, and the instant motion followed.

13 Plaintiff's proposed amendments would not add any new causes  
14 of action. Rather the amendments would (1) add additional  
15 background facts concerning guidance issued by the U.S. Department  
16 of Housing and Urban Development subsequent to the filing of the  
17 initial complaint, (2) add additional information about the new  
18 forms of notice used by Defendants, and (3) attempt to clarify the  
19 relationship between the subject mortgage agreements and the  
20 governing federal regulations and statutes. Mot. at 2.

21 Under Federal Rule of Civil Procedure 15(a)(1), a party may  
22 amend its pleading as a matter of course within twenty-one days  
23 after serving it or twenty-one days after the filing of a  
24 responsive pleading or a Rule 12(b), (e), or (f) motion.  
25 Thereafter, "a party may amend its pleading only with the opposing  
26 party's written consent or the court's leave." Fed. R. Civ. P.  
27 15(a)(2). Rule 15(a)(2) provides that courts should "freely give  
28 leave [to amend] when justice so requires," and the Ninth Circuit

1 has stressed Rule 15's policy of favoring amendments. Ascon  
2 Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989).  
3 However, leave need not be granted "where the amendment of the  
4 complaint would cause the opposing party undue prejudice, is sought  
5 in bad faith, constitutes an exercise in futility, or creates undue  
6 delay." Id.

7 Defendants argue that Plaintiff's proposed amendments are  
8 futile. The gravamen of the opposition is that both the Complaint  
9 and the proposed amended complaint fail because the HECM  
10 regulations do not require the notice that Plaintiff contends is  
11 lacking. Thus, Defendants are not just arguing that the proposed  
12 amendments are futile, but also that Plaintiff's entire action  
13 should be dismissed with prejudice.

14 The Court is hesitant to turn a motion for leave to amend into  
15 a motion to dismiss, and thus it declines to reach the merits of  
16 Defendants' substantive arguments. Accordingly, Plaintiff's motion  
17 for leave to amend is GRANTED and Defendants' motion to dismiss is  
18 DENIED as moot. Nothing in this Order should be construed as a  
19 rejection of the substantive arguments raised in Defendants'  
20 opposition to the motion for leave to amend or Defendants' motion  
21 to dismiss. Plaintiff shall file his amended complaint within five  
22 (5) days of the signature date of this Order.

23

24 IT IS SO ORDERED.

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26 Dated: August 1, 2013

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UNITED STATES DISTRICT JUDGE