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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TRACEY HOBBS AND RODNEY HOBBS,

Plaintiffs,

v.

WELLS FARGO BANK N.A., et al.,

Defendants.

No. C 12-4060 RS

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS**

I. INTRODUCTION

Plaintiffs Tracey and Rodney Hobbs brought this action in Alameda Superior Court in an attempt to stop defendant Wells Fargo Bank, N.A. from foreclosing on their home. Exercising their right to amend once without leave of court, the Hobbses filed a First Amended Complaint (“FAC”) focused on claims arising from the origination of their loan, as well as on alleged wrongdoing in processing their request for a loan modification and purported statutory violations in connection with the foreclosure proceedings. Wells Fargo’s motion to dismiss the FAC was granted without leave to amend with respect to all claims involving the origination of the loan, on grounds of preemption under the Home Owners’ Loan Act, 12 U.S.C. § 1461, et seq. (“HOLA”). Other claims were also dismissed for a variety of defects, in some instances with leave to amend, and in others, without. A claim for violation of California Civil Code §2923.5 was allowed to stand, although the

1 a cognizable legal theory” or on “the absence of sufficient facts alleged under a cognizable legal
2 theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). When evaluating
3 such a motion, the court must accept all material allegations in the complaint as true, even if
4 doubtful, and construe them in the light most favorable to the non-moving party. *Twombly*, 550 US
5 at 570). “[C]onclusory allegations of law and unwarranted inferences,” however, “are insufficient to
6 defeat a motion to dismiss for failure to state a claim.” *Epstein v. Wash. Energy Co.*, 83 F.3d 1136,
7 1140 (9th Cir. 1996); *see also Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 US at 555 (“threadbare
8 recitals of the elements of the cause of action, supported by mere conclusory statements,” are not
9 taken as true).

10 IV. DISCUSSION

11 A. *In re Wachovia*

12
13 The SAC is replete with allegations that Wells Fargo’s handling of the Hobbsses’ request for
14 a loan modification violated the terms of the settlement agreement in *In Re Wachovia*. Indeed, the
15 SAC even references ongoing proceedings in that action relating to determining the adequacy of
16 Wells Fargo’s compliance with the agreement. SAC, ¶17, 22. The Hobbsses nonetheless insist that
17 they are not attempting to “enforce” the settlement agreement and have only “pointed out” the
18 alleged breaches as support for their unfair practices and negligence claims.

19 Regardless of the Hobbsses intent in including allegations about *In re Wachovia*, the fact is
20 that they have acknowledged they are class members therein, SAC, ¶83, 84, and their rights are
21 therefore necessarily governed and constrained by the settlement agreement. Jurisdiction over the
22 claims the Hobbsses are making lies within the *In re Wachovia* proceeding. Accordingly, the §17200
23 claim, the negligence claim, and the counts seeking remedies of declaratory relief, quiet title, and an
24 accounting, all must be dismissed without leave to amend, but without prejudice to whatever rights
25 the Hobbsses may have to seek relief in *In re Wachovia*.²

26
27 ² To the extent any of these counts purport to be predicated at least in part on the alleged Civil
28 Code §2923.5 or RESPA violations, that does not support permitting them to go forward as
independent claims. As to §2923.5, the only remedy for a violation of the statute is “a
postponement of the sale before it happens.” *Mabry v. Superior Court*, 185 Cal. App. 4th 208, 235

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IT IS SO ORDERED.

Dated: 2/12/14



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE