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

ANNIE G. WEAVER,
Plaintiff,
v.
WELLS FARGO BANK, N.A.,
Defendant.

Case No. [16-cv-04907-MMC](#)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS; AFFORDING
PLAINTIFF LEAVE TO AMEND;
CONTINUING CASE MANAGEMENT
CONFERENCE**

Re: Dkt. No. 35

Before the Court is the "Motion to Dismiss the First Amended Complaint," filed December 2, 2016, by defendant Wells Fargo Bank, N.A. ("Wells Fargo").¹ Plaintiff Annie G. Weaver ("Weaver") has filed opposition, to which Wells Fargo has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.²

By order filed November 1, 2016, the Court dismissed Weaver's initial complaint in its entirety and granted Weaver leave to amend to allege sufficient facts to support two of her four causes of action. Thereafter, on November 18, 2016, Weaver filed her First Amended Complaint ("FAC"). By the instant motion, Wells Fargo argues Weaver has failed to cure the deficiencies previously identified by the Court. As set forth below, the Court agrees.

In Count I of the FAC, titled "Violation of Cal. Fair Employment and Housing Act,"

¹ The motion is also filed on behalf of Bank of New York Mellon ("BNYM"). The operative complaint, however, includes no claims against BNYM.

² By order filed January 20, 2017, the Court took the matter under submission.

1 Weaver’s claim is based on the theory that, in 2007, “Wells Fargo defendants
2 deliberately, fraudulently and maliciously placed [Weaver], a black woman living in
3 Oakland, in a high-cost subprime loan, precisely because she is a member of a minority
4 group Wells Fargo targeted for subprime ‘ghetto’ loans.” (See FAC ¶ 22.) The Court
5 previously dismissed the claim as pleaded in Weaver’s initial complaint for two reasons:
6 (1) Weaver’s failure to “include any factual allegations to support an exception to the
7 [two-year] statute of limitations, such as equitable tolling” (see Order, filed Nov. 1, 2016,
8 at 2:23-24), and (2) Weaver’s failure to include “facts to support [her] conclusory
9 assertion that . . . placement [into such loan] constituted discrimination” (see id. at 2:19-
10 20).

11 In her FAC, Weaver now alleges she “did not learn that Wells Fargo’s
12 discriminatory actions constituted a violation of her civil rights and property rights until her
13 daughter hired a forensic mortgage loan auditor and lawyer earlier this year.” (See FAC
14 ¶ 33.)³ Without an additional showing, however, such allegations do not suffice to
15 support tolling of the statute of limitations. See, e.g., Fox v. Ethicon Endo-Surgery, Inc.,
16 35 Cal. 4th 797, 807-08 (2005) (holding discovery rule “only delays accrual until the
17 plaintiff has, or should have, inquiry notice of the cause of action”; further holding plaintiff
18 “must specifically plead facts to show . . . the inability to have made earlier discovery
19 despite reasonable diligence”) (internal quotation and citation omitted).

20 Moreover, Weaver has added no new allegations sufficient to support an inference
21 of discrimination. In particular, the new allegations to which she cites (see FAC ¶¶ 26-27)
22 as well as the earlier allegations on which she relies (see id. at 3:6-4:5; id. ¶¶ 22-25) all
23 pertain to Wells Fargo, whereas the lender with whom she alleges she negotiated the
24 subject loan in 2007 was not Wells Fargo, but World Savings Bank FSB, a “predecessor-
25 in-interest” (see id. at 2:2-9; id. ¶¶ 4-7, 24).

27 ³ Weaver’s initial complaint was filed August 25, 2016, and, as noted above, the
28 FAC was filed November 18, 2016.

1 Accordingly, Count I is subject to dismissal.

2 In Count II of the FAC, titled “Violation of Cal. Civil Code Sections 2923.6(c), (d)
3 and (e),” Weaver’s claim is based on the theory that “Wells Fargo sold [her] home in
4 foreclosure” while her “application for a loan modification was pending.” (See FAC ¶ 37.)
5 The Court previously dismissed the claim as pleaded in Weaver’s initial complaint, for the
6 reason that Weaver had failed to allege that she had submitted a “complete application
7 for a first lien loan modification” prior to the foreclosure. (See Order, filed Nov. 1, 2016,
8 at 3:13-15.) In her FAC, Weaver now alleges her “complete loan modification package
9 was under review” at the time of foreclosure. (See FAC ¶ 37). Without more, Weaver’s
10 addition of the conclusory term “complete” is insufficient. See Cal. Civ. Code § 2923.6(h)
11 (providing application is “deemed ‘complete’ when a borrower has supplied the mortgage
12 servicer with all documents required by the mortgage servicer within the reasonable
13 timeframes specified by the mortgage servicer”); Ashcroft v. Iqbal, 556 U.S. 662, 678-79
14 (2009) (holding complaint subject to dismissal where it lacks “sufficient factual matter” to
15 support its “legal conclusions”).

16 In her opposition, Weaver makes reference to various supporting facts,
17 specifically, that “Wells Fargo had not denied her . . . application on the ground of
18 incompleteness or for any other reason,” had not “asked [her] for additional information at
19 the time of the sale,” and had postponed “scheduled foreclosure sales . . . four times
20 while the review of her application was pending.” (See Opp. at 8:11-14.) Those facts,
21 however, do not appear in the FAC.

22 Accordingly, Count II is subject to dismissal.

23 Although Wells Fargo seeks dismissal without leave to amend, the Court will again
24 afford Weaver an opportunity to amend to cure, if she can do so, the deficiencies noted
25 above. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 701 (9th Cir. 1990) (holding
26 leave to amend “should be granted if it appears at all possible that the plaintiff can correct
27 the defect”) (internal quotation and citation omitted).

28 //

1 **CONCLUSION**

2 For the reasons stated above, defendants' motion to dismiss is hereby GRANTED,
3 and Counts I and II are hereby DISMISSED with leave to amend. Should Weaver wish to
4 file a Second Amended Complaint, she shall file such pleading no later than March 13,
5 2017.

6 In light of the above, the Case Management Conference is hereby CONTINUED
7 from March 3, 2017, to April 21, 2017, at 10:30 a.m. A Joint Case Management
8 Statement shall be filed no later than April 14, 2017.

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10 **IT IS SO ORDERED.**

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12 Dated: February 24, 2017

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14 MAXINE M. CHESNEY
15 United States District Judge

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United States District Court
Northern District of California