

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ESTELL DAVIS,

Plaintiff,

No. C 10-0489 PJH

v.

**ORDER GRANTING MOTION TO
DISMISS IN PART AND DENYING
IT IN PART, AND DENYING MOTION
TO STRIKE**

WELLS FARGO BANK, NATIONAL
ASSOCIATION, TRUSTEE, AS
TRUSTEE FOR SERIES HBV 2007-3,
et al.,

Defendants.

The motion of defendants Wells Fargo Bank, N.A. ("WFB") and GMAC Mortgage LLC ("GMAC") to dismiss the claims asserted against them in the second amended complaint and to strike the prayer for attorney's fees and punitive damages came on for hearing before this court on November 17, 2010. Plaintiff Estell Davis appeared by her counsel Robert A. Spanner, and WFB and GMAC appeared by their counsel Mary Kate Sullivan. Having read the parties' papers and carefully considered their arguments, and good cause appearing, the court hereby GRANTS the motion to dismiss in part and DENIES it in part, and DENIES the motion to strike, as follows and for the reasons stated at the hearing.

1. The motion to dismiss the first cause of action under the Truth in Lending Act ("TILA") is DENIED.

2. The motion to dismiss the second cause of action under California Business & Professions Code § 17200, based on violation of TILA is DENIED.

3. The motion to dismiss the third cause of action under California Financial Code § 22302 is GRANTED, based on counsel's concession at the hearing that there is no

1 private right of action under § 22302. The dismissal is with prejudice.

2 4. The motion to dismiss the fourth cause of action under Business &
3 Professions Code § 17200, based on a violation of Financial Code § 22302 is GRANTED.
4 The court has reviewed the case cited by plaintiff's counsel at the hearing, and is not
5 persuaded that it is responsive to the concerns raised by the court at the hearing. The
6 dismissal is with prejudice.

7 5. The motion to dismiss the fifth cause of action under California Civil Code
8 § 2954.4(b) is GRANTED, pursuant to Civil Code § 2954.4(e), because the entity that made
9 the subject loan, BankUnited FSB, is or was a "finance lender" subject to Division 9
10 (commencing with § 22000) of the Financial Code. The dismissal is with prejudice.

11 6. The motion to strike the prayer for attorney's fees and punitive damages is
12 DENIED.

13
14 **IT IS SO ORDERED.**

15 Dated: November 18, 2010



16 PHYLLIS J. HAMILTON
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28