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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT VAUGHN,

Plaintiff,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, et al.,

Defendants.

CASE NO. 17cv2365-LAB (BLM)

ORDER OF DISMISSAL [Dkt. 3]

About a decade ago, Robert Vaughn borrowed \$245,000 to buy a house. In 2011, Vaughn entered a loan modification agreement with Wells Fargo. Soon after, he defaulted. In 2017, Wells Fargo started foreclosure proceedings. Vaughn sent the Bank two letters asking for documents proving Wells Fargo had standing to foreclose. He says Wells Fargo responded with too little, too late. Vaughn invoked this Court's diversity jurisdiction and filed suit. Wells Fargo moved to dismiss, and Judge Benitez recused.

Vaughn's complaint raises two issues. First, he alleges Wells Fargo's response to his 2017 letters was inadequate. Second, he alleges the 2011 loan modification was defective because it omitted important details, like the proposed interest rate. He says these two miscues entitle him to an injunction halting foreclosure proceedings, money for emotional distress, and punitive damages to punish Wells Fargo. The Court disagrees. Because he's failed to state a claim that entitles him to relief for either issue, Wells Fargo's motion to dismiss is granted. Fed. R. Civ. P. 12(b)(6).

1 **A. Qualified Written Request (2017)**

2 Under the Real Estate Settlement Procedures Act § 2605, servicers like Wells Fargo
3 must respond to qualified written requests, otherwise they're liable to the borrower for any
4 actual damages as a result of not responding. 12 U.S.C. § 2605(e),(f). Vaughn says Wells
5 Fargo violated this section by failing to answer his letters from early 2017 on time and with
6 sufficient information. But the Bank's failure to answer Vaughn's 2017 letters didn't cause
7 him any actual damages. Vaughn's opposition concedes as much: Wells Fargo has now
8 produced the documents he wanted a year ago—none of this paperwork would have
9 changed Wells Fargo's ability to foreclose on him last year.

10 Vaughn maintains he's "incurred court fees." But he can't establish the requisite
11 financial damages for his underlying claim by bringing a lawsuit. "If such were the case,
12 every RESPA suit would inherently have a claim for damages built in." *Lal v. Am. Home*
13 *Servicing, Inc.*, 680 F. Supp. 2d 1218, 1223 (E.D. Cal. 2010). Vaughn also says he "suffered
14 slander" because the Bank notified "credit reporting agencies" about the "illegitimate
15 foreclosure proceedings." But he hasn't explained why the foreclosure is illegitimate, and
16 it's not enough for him to generally allege his credit took a dive—he needs to show a causal
17 connection between the failure to respond to the written request and the harm. *See, e.g.,*
18 *Durland v. Fieldstone Mortg. Co.*, 2011 WL 805924, at *3 (S.D. Cal. Mar. 1, 2011) ("Plaintiff
19 does not allege any causal link between the reduction in his credit rating and [the] failure to
20 adequately respond to his QWRs."). Finally, Vaughn alleges Wells Fargo was unjustly
21 enriched by not providing this information. How so?

22 Vaughn hasn't alleged any plausible allegations that Wells Fargo's failure to answer
23 his written request caused him pecuniary damages. *See, e.g., Molina v. Washington Mutual*
24 *Bank*, 2010 WL 431439, at *7 (S.D. Cal. Jan. 29, 2010). This claim is dismissed.¹

25 _____
26 ¹ The Court agrees with Vaughn that Wells Fargo's arguments about the underlying merger
27 with World Savings Bank, and the statute of limitations starting in 2011, missed the mark.
28 The issue is whether the Bank's failure to respond to Vaughn's letters violated the
requirements under RESPA. His complaint also alluded to an FDCPA claim, but as the Court
reads his pleading, he didn't allege a cause of action under this Act.

1 **B. Loan Modification (2011)**

2 Vaughn's state claims turn on his argument that Wells Fargo's 2011 loan modification
3 failed to include his loan balance, interest rate, and amortization schedule. He's wrong about
4 two of the three: The modification agreement Vaughn filed *does* provide a loan balance
5 (\$246, 604.29) and proposed interest rates (4.7% to 5.875%). The only item missing is a
6 traditional amortization schedule laying out future payments. Vaughn hasn't offered
7 plausible allegations that explain how this missing schedule entitles him to an order
8 preventing Wells Fargo from foreclosing, or to emotional distress damages, six years later.

9 **1. Cal. Civ. Code § 2920.5**

10 Vaughn argues Wells Fargo's failure to include the amortization schedule with the
11 loan modification agreement violated California's Homeowner's Bill of Rights. But the
12 California legislature enacted the Bill in 2013. Vaughn alleges the defective loan
13 modification happened in 2011. Since the Bill doesn't apply retroactively, he can't sue Wells
14 Fargo for failing to comply with a law passed two years after their agreement. See
15 *Sabherwal v. Bank of New York Mellon*, 2013 WL 4833940, at *10 (S.D. Cal. Sept. 10,
16 2013). This claim is dismissed.

17 **2. Fraud**

18 Vaughn also argues the missing amortization schedule amounts to fraud. The Court
19 acknowledges that some courts have allowed fraud claims for omitting details of negative
20 amortization to survive motions to dismiss. See, e.g., *Boschma v. Home Loan Ctr., Inc.*, 198
21 Cal. App. 4th 230 (2011). But here, Vaughn hasn't pled a plausible fraud claim under Rule
22 8 or 9. The closest he gets is saying Wells Fargo entered the loan modification "with the
23 intent to deceive Plaintiff into entering an agreement for which they did not understand the
24 terms." That's not good enough. Among other problems, Vaughn hasn't plausibly alleged
25 justifiable reliance or damages. Stated another way: how did the missing amortization
26 schedule cause him to default on his loan? This claim is dismissed.

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