

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF TEXAS
 SHERMAN DIVISION

KAY VAN HAUEN	§	
	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	CASE NO. 4:12cv344
	§	Judge Clark/Judge Mazzant
WELLS FARGO BANK, N.A., TRUSTEE	§	
FOR OPTION ONE MORTGAGE LOAN	§	
TRUST 2005-4, ASSET-BACKED	§	
CERTIFICATES, SERIES 2005-4, and	§	
MACKIE, WOLF, ZIENTZ & MANN,	§	
P.C., IN THEIR PROFESSIONAL	§	
CAPACITY ONLY	§	
	§	
<i>Defendants.</i>	§	

**ORDER ADOPTING REPORT AND
 RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On August 24, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Wells Fargo Bank, N.A.’s Motion to Dismiss [Doc. #12] be granted. On September 11, 2012, plaintiff filed a “response to the report and recommendation,” which the court will treat as objections [Doc. #28]. On September 18, 2012, defendant filed a response to plaintiff’s objections [Doc. #31].

Defendant’s response first asserts that plaintiff’s response was untimely. Although defendant is correct that plaintiff filed her response one day late, the court will still consider the merits of the response.

A review of plaintiff’s response indicates that she does not agree with the Magistrate Judge’s decision, but plaintiff does not assert any objections to the report. Although the court recognizes that

plaintiff is *pro se*, plaintiff is still required to comply with the rules and orders of the court. The Magistrate Judge's report contained the entire factual allegations of plaintiff's current complaint. Based upon the limited facts alleged by plaintiff, the Magistrate Judge did not err in finding that there was no factual basis for any claim against defendant. In addition, the Magistrate Judge found that plaintiff's case was barred, because her claims against the servicer of her loan had been finally decided in plaintiff's first lawsuit. The Magistrate Judge was correct in finding that the servicer of her loan was acting on behalf of defendant Wells Fargo. Defendant also correctly points out that plaintiff does not challenge the reasoning in the report. An additional amendment of her complaint cannot cure the problems plaintiff has in failing to assert any plausible legal theory.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by plaintiff [Doc. #28], and defendant's response to plaintiff's objections [Doc. #31], this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

It is, therefore, **ORDERED** that defendant Wells Fargo Bank, N.A.'s Motion to Dismiss [Dkt. #12] is **GRANTED**, and plaintiff's claims against this defendant are **DISMISSED** with prejudice.

All relief not previously granted is hereby **DENIED**.

The Clerk is directed to **CLOSE** this civil action.

So **ORDERED** and **SIGNED** this **19** day of **September, 2012**.



Ron Clark, United States District Judge