

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 02/05/2024

TIME: 12:30:00 PM

DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal

CLERK: Valerie Secaur

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: N/A

CASE NO: **37-2020-00020808-CU-BT-CTL** CASE INIT.DATE: 06/18/2020

CASE TITLE: **Stoff vs Wells Fargo Bank NA [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

APPEARANCES

The Court, having taken the above-entitled matter under submission on 1/19/2024 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Stoff v. Wells Fargo Bank N.A., 20-20808

RULING ON SUBMITTED MATTER

The motion for class certification, filed by plaintiff Michael Stoff, is **GRANTED** in part and **DENIED** in part. The Court redefines the class as set forth in this ruling.

Background

In November of 2023, the Court issued a tentative ruling granting in part and denying in part plaintiff Michael Stoff's motion for class certification, subject to plaintiff presenting evidence of the adequacy of the class representative. ROA # 416. Plaintiff filed a declaration and defendant Wells Fargo Bank, N.A. filed a response to the declaration. ROA # 425, 427. Wells Fargo's response discussed issues as to both typicality and adequacy, and so at the hearing on December 15, 2023, the Court continued the motion for class certification and permitted the parties to file supplemental briefs. ROA ## 428 [tentative ruling] and 435 [minute order continuing the motion and setting supplemental briefing].

In late December and early January, the parties filed supplemental briefs to address the issues of typicality and adequacy. ROA # 437, 439. On January 19, 2024, after hearing oral arguments, the Court took the matter under submission. ROA # 440.

The Court incorporates its November 16, 2023 tentative ruling, except as to the portion that discusses adequacy and typicality, which is addressed below.

Discussion

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The party moving for class certification must show, among other things, that the class representative has claims or defenses typical of the class; and that the class representative can adequately represent the class. *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 994. The plaintiff seeking certification has "the burden of proving the adequacy of their representation by a member of the putative class." *Id.* at 998.

As indicated by the prior tentative rulings, the Court had concerns as to whether plaintiff established adequacy and typicality because it was not clear that plaintiff's account was "current." ROA # 428, 440. The Court considered, in particular, the arguments at the most recent hearing. As a result, the class is redefined as "All mortgagees with a mortgage in California whose accounts were current, who received a CARES Act forbearance on or after March 27, 2020 and whose account was reported as 'in forbearance' (or something similar) by Defendant to a consumer reporting agency." Third Amend Compl. ("TAC") ¶ 73; ROA # 416.

Here, the evidence shows plaintiff did not make his mortgage payment on the due date of April 1, 2020. Mark Imm Decl. ISO Opp. to Class Cert Mtn. [ROA # 402] ¶ 7, Ex. A. This by itself, however, does not necessarily mean that plaintiff's account was not "current" for purposes of class certification.

The allegations in the third amended complaint assert the defendant was obligated to report a mortgage as "current" to consumer reporting agencies if a loan were "current" at the time of forbearance. TAC ¶ 3. Defendant's PMQ witness agreed that for 0-29 days late, "[f]rom a credit reporting perspective, the guidance from the industry is do not report them as late until Day 30." P's Supp. Brief at p.5, citing PMQ Depo. [ROA # 234, Ex. A] at pp.109-110, 112. Defendant's expert also stated that "at all times since the loan was originated, Wells Fargo furnished Account Status code 11, which properly identifies the current condition of the Stoff loan as 'Current' and 'in good standing.'" P's Supp. Brief at fn. 6, citing John Ulzheimer Decl. ISO MSJ [ROA # 228 at p.140] ¶ 13. Plaintiff thus has shown Stoff was "current" for purposes of establishing his adequacy as a class member and that his claims are typical of the class.

Insofar as defendant argues plaintiff's account was not "current" within the meaning of the actual status of his account versus "current" for credit reporting purposes, this argument is not compelling. The inquiry here centers upon the class definition, which is based on the claims plaintiff alleges in the TAC regarding alleged violations of the California Consumer Credit Reporting Agencies Act. Defendant also argued that the evidence presented in support of and/or in opposition to the summary judgment is not before the Court on this record. The Court can and does take judicial notice of the records in this case. Evid. Code § 452(d). Lastly, the Court notes it considered the additional arguments defendant raised regarding typicality and adequacy, and did not find them compelling.

Conclusion

For the reasons stated, plaintiff's motion for class certification is **GRANTED** in part and **DENIED** in part.

The class is redefined as "All mortgagees with a mortgage in California whose accounts were current, who received a CARES Act forbearance on or after March 27, 2020 and whose account was reported as 'in forbearance' (or something similar) by Defendant to a consumer reporting agency."

The minute order is the order of the Court.

The Clerk to serve notice.



Judge Katherine Bacal