

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 09/07/2023

TIME: 11:12:00 AM

DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal

CLERK: Calvin Beutler

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

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 7/21/2023 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The motion of Defendant Wells Fargo Bank N.A. ("Wells Fargo") for summary judgment is **DENIED**.

The hearing on the motion for class certification is reset for October 13, 2023 at 1:30 and the status conference continued to the same date and time.

I. Preliminary Matters

All reply papers are due at least five court days before a scheduled hearing. CCP § 1005(b). Thus, the Court declines to consider the untimely reply declaration of Kenny Cummer [ROA # 307].

Wells Fargo filed a reply separate statement. "There is no provision in the statute for this." *Nazir v. United Airlines* (2009) 178 Cal.App.4th 243, 252; see also Cal. R. Ct., rule 3.1350 (listing the documents for summary judgment motions). The Court also declines to consider Wells Fargo's reply separate statement.

Neither party complied with the requirement that efiled exhibits must include electronic bookmarks with hyperlinks to the first page of each exhibit. Cal. R. Ct., rule 3.1110(f)(4); see also San Diego Superior Court's efilings requirements. Given that both sides included declarations in their exhibits, it was extremely difficult for the Court to locate this information. See ROA ## 228, 274. The Court could simply disregard this impermissibly filed material.

The Court need only rule on those objections it deems material to its disposition of the motion. CCP § 437c(q). These are as follows:

- Defendant's foundation objections to paragraphs 32-33 of the declaration of Evan Hendricks [filed as part of ROA # 274] are sustained. The objections to this declaration are otherwise overruled.

-
- Plaintiff's objections to the declaration of Mark Imm [filed as part of ROA # 228] are overruled.
 - Plaintiff's Objection Nos. 24 through 38 are overruled as failing to comply with the Rules of Court. Cal. R. Ct., rule 3.1354(b).

Documents simply cited in Plaintiff's separate statement and not otherwise submitted are not considered. Judicial notice was not requested (see Cal. R. Ct., rule 3.1113(l)) and there appears to be no other basis to consider the evidence. Thus, the Court need not rule on the objections to that evidence.

The parties filed responses to objections. There is no provision for responses to objections. See Cal. R. Ct., rules 3.1352 and 3.1354. Finally, at the hearing, the parties agreed the Court could consider the documents lodged by Plaintiff, subject to Wells Fargo's objections, notwithstanding that these documents were purportedly filed under seal and a motion to seal had not yet been heard.

II. Discussion

Motion for Summary Judgment

The Third Amended Complaint ("TAC") alleges a single cause of action by Plaintiff, as an individual and on behalf of a putative class, against Defendant for violation of the Consumer Credit Reporting Agencies Act ("CCRAA"). ROA # 221. Wells Fargo seeks summary judgment on the TAC.

Summary judgment is appropriate when all of the papers show there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. CCP § 437c(c). A defendant who moves for summary judgment has the initial burden of showing each alleged cause of action is without merit. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. If a defendant meets its burden, the burden shifts to the plaintiff to produce evidence to make a *prima facie* showing of the existence of a triable issue of material fact. CCP § 437c(p)(2); *Aguilar, supra*, 25 Cal.4th at 849-851.

Violation of the CCRAA

Under the CCRAA, entities that furnish credit information must abide by certain obligations as set forth in Title 1.6, Chapter 3.5 of the CCRAA. Such obligations include the requirement not to "furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate." Civ. Code § 1785.25(a). Because the CCRAA is substantially based on the Fair Credit Reporting Act ("FCRA"), "judicial interpretation of the federal provisions is persuasive authority and entitled to substantial weight when interpreting the California provisions." *Olson v. Six Rivers Nat'l Bank* (2003) 111 Cal.App.4th 1, 3. Both the CCRAA and FCRA require "maximum possible" accuracy; thus, a report violates these statutes when it is misleading or incomplete, even if it is technically accurate. *Cisneros v. U.D. Registry, Inc.* (1995) 39 Cal.App.4th 548, 579.

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act amended the FCRA to set forth the reporting requirements for loan accommodations granted to borrowers affected by the COVID-19 pandemic. A furnisher who granted an accommodation to a consumer must "report the credit obligation or account as current" unless the account was delinquent before the accommodation. 15 U.S.C. § 1681s-2(a)(1)(F)(ii). An

"accommodation" includes an agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief. *Id.* § 1681s-2(a)(1)(F)(i)(I).

The TAC alleges in April 2020, Plaintiff received a 3-month forbearance on his mortgage from Wells Fargo as a CARES Act accommodation and his mortgage was current at the time he received the forbearance. TAC, ¶¶ 46, 47. The TAC further alleges Wells Fargo violated the CCRAA when Wells Fargo did not simply report Plaintiff's mortgage as "current" during the forbearance period pursuant to the CARES Act, but also changed its reporting of Plaintiff's mortgage as follows:

- Adding special comment code "CP" indicating the mortgage was in forbearance;
- Reporting the "Payment History" of Plaintiff's mortgage as "no information" instead of reporting the payment history as "current;"
- Changing the "Terms Frequency" Code to "D" to indicate payments had been deferred; and
- Adding a "K4 Segment" Code indicating the mortgage payments had been deferred and the next payment was not due for 3 months.

Id., ¶¶ 5, 6, 7, 11, 48. The TAC further alleges by reporting the mortgage as "in forbearance," "deferred," and "not current" instead of continuing to report the mortgage as "current," Wells Fargo materially changed the information it reported to consumer reporting agencies and furnished incomplete or inaccurate information in violation of the CCRAA. *Id.*, ¶ 48.

Wells Fargo argues it is entitled to judgment in its favor because there are no triable issues of material fact, and the information it furnished to the consumer reporting agencies regarding Plaintiff's mortgage was neither inaccurate nor incomplete. Wells Fargo also argues Plaintiff's claim fails because Wells Fargo complied with the requirements of the CARES Act by reporting Plaintiff's account as "current." ROA # 226 [MPA], pp.10:22-11:2 (citing UMF 8-9 and *Mitchell v. Specialized Loan Servicing LLC* (C.D. Cal. 2021) 600 F.Supp.3d 1112, 1117).

Wells Fargo presented evidence Plaintiff received a 3-month forbearance on April 4, 2020. When Wells Fargo next furnished information to consumer reporting agencies on April 23, 2020, Wells Fargo reported Plaintiff's account as current using standardized Metro 2 status code "11," which indicated the account for the mortgage is "current." UMF 6-11. Wells Fargo also reported the account had a \$0 monthly payment and \$0 amount past due. UMF 12. Wells Fargo also presented evidence it accurately reported Plaintiff's mortgage as "in forbearance" and "deferred," because Plaintiff's mortgage was actually in forbearance in April 2020; payments were deferred for three months until July 1, 2020 pursuant to the forbearance; the forbearance was terminated in May 2020; and the only time Wells Fargo reported the mortgage was in forbearance was April 2020. UMF 6-7, 16, 18-19. Wells Fargo reported a "D" in the loan payment history only for the month of April 2020, indicating "No payment history reported/available this month." UMF 17.

Plaintiff does not dispute Wells Fargo's material facts in support of its motion. ROA # 273 [Plaintiff's Separate Statement], pp. 2-9 [responding to each UMF as undisputed except to note Plaintiff applied for and received an "accommodation" pursuant to the CARES Act]. Plaintiff instead argues Wells Fargo's reporting was incomplete, inaccurate, and misleading.

Under basic principles of statutory interpretation, the Court begins by scrutinizing the actual words of the statute, giving them their usual ordinary meaning. *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476. "Where the statute is clear, the 'plain meaning' rule applies. The Legislature is presumed to have meant what it said, and the plain meaning of the language governs." *Berry v. State of California* (1992) 2 Cal.App.4th 688, 691. The "plain meaning" rule, however, does not require courts to automatically adopt the literal meaning of a statutory provision. *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332 ("the 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.").

Here, under the CARES Act, "*the furnisher shall -- (I) report the credit obligation or account as current.*" 15 U.S.C. § 1681s-2(a)(F)(ii)(I) emphasis added. The plain language of the statute shows the furnisher is only required to report the account as "current." *Id.* However, in addition to reporting the account as "current," Wells Fargo also reported a "D" code indicating "no data for the payment history" for the month Plaintiff's loan was in forbearance. UMF 17. By reporting the mortgage as both current and with a code signaling that the loan was in forbearance and with deferred payments, creates a triable issue of fact as to whether, even if technically accurate, the information was misleading or incomplete. Indeed, there could be a logical inference that by including information that the loan was in forbearance and deferred, Wells Fargo actually reported a derogatory status, contradicting its indication that the loan was current. A triable issue exists as to whether Wells Fargo used additional reporting codes as a flag to signal that an account was in forbearance to improperly alert credit users as to which consumers were suffering hardship.

For these reasons Wells Fargo has not met its initial burden to show that the cause of action for violation of the CCRAA is without merit. The burden thus did not shift to plaintiff to demonstrate a triable controversy.

Conclusion

For the reasons stated Wells Fargo's motion for summary judgment is **DENIED**.

Given this ruling, the motion for class certification is reset for hearing

The minute order is the order of the Court.

The Clerk to serve notice.

IT IS SO ORDERED.

The Motion for Class Certification is scheduled for 10/13/2023 at 01:30PM before Judge Katherine Bacal.

Status Conference (Civil) is continued pursuant to Court's motion to 10/13/2023 at 01:30PM before Judge Katherine Bacal.



Judge Katherine Bacal