

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**VERONICA A. WILLIAMS**

**Plaintiffs,**

**v.**

**LITTON LOAN SERVICING; HSBC BANK  
USA, N.A.; GOLDMAN SACHS  
MORTGAGE COMPANY; FREMONT  
HOME LOAN TRUST 2006-C  
MORTGAGE-BACKED CERTIFICATES,  
SERIES 2006-C; OCWEN LOAN  
SERVICING LLC; STERN & EISENBERG,  
PC; AND OCWEN FINANCIAL  
CORPORATION,**

**Defendants.**

**Case No.: 2:16-cv-05301-ES-JAD**

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**MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFF'S MOTION TO ADD COUNT: FALSE INDUCEMENT TO INACTION**

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## I. INTRODUCTION

Presently at issue is Plaintiff's Motion, pursuant to Fed. R. Civ. P. 15(a)(2)<sup>1</sup>, for leave of court to Amend the Complaint (the "Motion"). In her original Complaint, filed on August 25, 2016, Plaintiff purports to asserts claims against Ocwen Litton Loan Servicing, HSBC Bank USA, N.A., Fremont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs (incorrectly pled as Goldman Sachs); Ocwen Loan Servicing LLC (incorrectly pled as Ocwen) and Ocwen Financial Corporation (hereinafter, "Defendants"). Defendants filed a Motion to Dismiss the Complaint on December 20, 2016 on the basis that each count is barred by the *Rooker-Feldman* doctrine, are barred by the applicable statute of limitations, are precluded by *Res Judicata*, and/or are barred by the statute of limitations.

Concerned for the survival of her Complaint, Plaintiff has seeks leave to add an additional count alleging some sort of fraud. However, leave to add this count should be denied because: 1) the Motion fails to attach a copy of the proposed Amended Complaint as required by Rule 7; and (2) fails to satisfy Rule 15(a)(2) as any amendment would be futile.

## II. STANDARD

Leave to amend is liberally given. Fed. R. Civ. P. 15(a)(2). This liberal standard is not, however, boundless. A district court may deny leave to amend on the grounds that amendment would cause undue delay or prejudice, or that amendment would be futile. See *Foman v. Davis*, 371 U.S. 178 (1962); *Oran v. Stafford*, 226 F.3d 275 (3d Cir. 2000). An amendment is futile when "the complaint, as amended, would fail to state a claim upon which relief could be granted." *In re NAHC, Inc. Sec. Litig.*, 306 F.3d 1314, 1332 (3d Cir. 2002).

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<sup>1</sup> Although not specifically referenced by Plaintiff, Defendants are construing Plaintiff's Motion as a Motion for Leave to Amend under Fed. R. Civ. P. 15(a)(2).

### III. ARGUMENT

**A. The Motion Should be Denied because it is Procedurally Defective as Plaintiffs Did Not Attach a Copy of the Proposed Amended Complaint.**

Under L. Civ. R.7.1(f), Plaintiff's were required to "attach to the motion a copy of the proposed pleading or amendments...". Despite the requirement, Plaintiff's filing did not contain a copy of the proposed Amended Complaint.

Courts of the Third Circuit have held that "failure to submit a draft amended complaint is fatal to a request for leave to amend. See *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 252 (3d Cir. 2007) (citing *Ranke v. Sanofi-Synthelabo, Inc.*, 436 F.3d 197, 206 (3d Cir.2006); *Ramsgate Court Townhome Ass'n v. West Chester Borough*, 313 F.3d 157, 161 (3d Cir.2002); *Lake v. Arnold*, 232 F.3d 360, 374 (3d Cir.2000); *Kelly v. Del. River Joint Comm'n*, 187 F.2d 93, 95 (3d Cir.1951)).

Accordingly, because Plaintiff has failed to attach a proposed pleading, the Motion should be denied.

**B. The Motion Should be Denied as Plaintiffs Fail to Satisfy Rule 15(a)(2) for Leave to File an Amended Complaint as Any Amendment Would be Futile.**

Fed. R. Civ. Pro. 15(a)(2) governs the Motion. However, a review of the Rule does not end the inquiry. The U.S. Supreme Court has held that leave to amend should not be granted if there is "an undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (U.S. 1962). Furthermore, in *Dole v. Arco Chemical Co.*, 921 F.2d 484, 487 (3d Cir. 1990) the Third Circuit held that: "The policy favoring liberal amendment of pleadings is not, however, unbounded."

“A proposed amendment is futile if it ‘would fail to state a claim upon which relief could be granted.’” *Garcia v. City of Paterson*, 2012 U.S. Dist. LEXIS 132515 (D.N.J. Sept. 17, 2012) (citing *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000)). In determining futility, “the Court employs the Rule 12(b)(6) motion to dismiss standard.” *Monroe v. City of Hoboken*, 2012 U.S. Dist. LEXIS 50096 (D.N.J. Apr. 10, 2012) (denying leave to amend on grounds of futility because proposed amendment did not state a claim to relief that is plausible on its face).

Any amendment to the claims asserted against Defendants would be futile. Plaintiff alleges that she is seeking to add a count based upon “wrongful or fraudulent inducement by Defendants against Plaintiff to convince Plaintiff to maintain the status quo.” As discussed in Defendants’ Motion to Dismiss, all of Plaintiff’s claims are either barred the *Rooker-Feldman* doctrine, barred by the applicable statute of limitations, are precluded by *Res Judicata*, and barred by the statute of limitations. This amendment does not change that analysis and would therefore be futile.

Plaintiff will not belabor the points made in the pending Motion to Dismiss, but to summarize: On June 12, 2013, Williams filed a complaint in the Superior Court of New Jersey against all of the same defendants in this action. After discovery, Defendants filed for summary judgment on all four claims. Ultimately, after all but one Defendant was granted Summary Judgment, Defendant failed to prosecute her action and the case was dismissed. Plaintiff attempted an appeal with the Appellate Division and to have the matter heard by the Supreme Court of New Jersey, but both efforts failed. This case was then initiated, but due to Plaintiff’s health was administratively dismissed and subsequently re-opened. Thus, Plaintiff’s claim that it has been Defendants who have somehow induced Plaintiff to any sort of inaction is grossly

inconsistent with the procedural history of this litigation. Plaintiff has been very active and as such, Plaintiff's amendment would be futile.

#### IV. CONCLUSION

For these reasons, Defendants respectfully request that the Court deny Plaintiff's Motion for Leave to Amend the Complaint.

Respectfully submitted,

/s/ Stuart I. Seiden

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Dated: February 16, 2018

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 16, 2018, I caused a copy of the foregoing Opposition of Plaintiffs' Motion for Leave to Amend the Complaint to be served upon all counsel of record by operation of the court's CM/ECF system.

/s/ Stuart I. Seiden

Stuart I. Seiden