

**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

**MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

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I. INTRODUCTION

Presently at issue is Plaintiff's second Motion, pursuant to Fed. R. Civ. P. 15(a)(2)¹, 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., Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C; Goldman Sachs Mortgage Company (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 now seeks, without a sufficient basis, leave to add an additional sounding in "False Inducement to Inaction" (Proposed Count VII). However, leave to add this count should be denied because: 1) the proposed Amended Complaint does not comply with Rules 8, 9(b) and 10(b); 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

With the filing of this second Motion for Leave to Amend her Complaint, it appears that Plaintiff is conceding that her first Motion for Leave to Amend the Complaint [Docket Entry 78] was deficient, however it has not been withdrawn or decided to date and remains pending.

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).

III. ARGUMENT

A. The Proposed Amended Complaint Does Not Comply With Rule 8.

Rule 8(a)(2) requires a pleader to include in his or her complaint “a short and plain statement of the claim showing that the pleader is entitled to relief[.]” The proposed Amended Complaint lumps all Defendants together, making bare assertions that all three defendants committed actionable wrongdoing, but including no facts to substantiate such a claim. This manner of pleading does not comply with Rule 8.

Nowhere in the Amended Complaint does it state which defendant did what, when, where, or how to Plaintiff causing the alleged damages. Each and every Count of the Amended Complaint is a generic splattering of allegations lumping all defendants together.

This Court has consistently rejected similar shotgun approaches. *See Boyd v. New Jersey Dep’t of Corrections*, No. 12-6612 (DRD), 2013 U.S. Dist. LEXIS 37645, *16 (D.N.J. March 18, 2013) (complaint is deficient where plaintiffs allege “each of their claims against all eleven Defendants, but failed to set forth specific facts indicating each Defendant’s liability for each claim”); *Lugo-Vazquez v. Grondlosky*, No. 08-986 (JBS), 2010 U.S. Dist. LEXIS 54401, *4-7 (D.N.J. June 2, 2010) (dismissing “largely incomprehensible” complaint where, “[a]mong other problems, it does not allege which defendant, if any, engaged in which complaint”); *Allen v. New Jersey*, No. 09-4502 (MLC), 2009 U.S. Dist. LEXIS 104931, *7 (D.N.J. Nov. 10, 2009) (“while Plaintiff names five separate individual defendants, he fails to identify both the specific prohibited conduct in which each Defendant allegedly engaged as well as how Plaintiff was harmed by same”); *Francis v. Joint Force Headquarters Nat’l Guard*, No. 05-4882 (JBS), 2008 U.S. Dist. LEXIS 80469, *14 (D.N.J. Oct. 7, 2008) (“[i]n light of the total absence of factual

allegations from the Amended Complaint from which the Defendants might divine what each Defendant allegedly did to Plaintiff and how Plaintiff was harmed by such conduct . . . Defendants cannot reasonably prepare a response to the allegations in the Amended Complaint” (citation and quotations omitted)). “Without such specificity Defendants will not know the basis of Plaintiffs’ claims against them and remain unable to respond to those claims.” *Boyd*, 2013 U.S. Dist. LEXIS 37645 at *20. Certainly such conclusory “unadorned, the-defendant-unlawfully-harmed-me accusation[s]” are inadequate under Rule 8(a)(2). *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555 (“a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions”). Leave to amend should be denied because the proposed Amended Complaint does not comply with Rule 8.

B. The Proposed Amended Complaint Does Not Comply with Rule 9(b).

Rule 9(b) requires that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Thus, the “plaintiff alleging fraud [must] state the circumstances of the alleged fraud with sufficient particularity to place the defendant on notice of the ‘precise misconduct with which it is charged.’” *Frederico v. Home Depot*, 507 F.3d 188, 200 (3d Cir. 2007) (quoting *Lum v. Bank of Am.*, 361 F.3d 217, 223-24 (3d Cir. 2004)). Plaintiff is seeking to add Count VII which is based on the allegations that defendants committed some sort of fraud. Therefore, Plaintiff must meet this requirement by pleading “the date, time and place of the alleged fraud or otherwise inject[ing] precision or some measure of substantiation into a fraud allegation.” *Id.* Plaintiff failed to plead the fraud claim with the necessary specificity.

In addition, fraud claims may not “rely upon blanket references to acts or omissions by all of the defendants, for each defendant named in the complaint is entitled to be apprised of the circumstances surrounding the fraudulent conduct with which he individually stands charged.”

ABF Capital Mgmt. v. Askin Capital Mgmt., L.P., 957 F. Supp. 1308, 1318 (S.D.N.Y. 1997).

Plaintiffs fail to meet this standard. As stated above, Plaintiff's Amended Complaint fails to separate out each defendants' actions or inactions throughout the entire pleading. As such, the Motion should be denied.

C. The Proposed New Count of the Amended Complaint Fails to Comply with Rule 10(b).

Plaintiff's Amended Complaint contains no numbered paragraphs in violation of Rule 10(b), which requires that a "party must state its claims or defenses in numbered paragraphs..." On this basis alone, the Motion for Leave to Amend should be denied.

D. 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.

Rule 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, Plaintiff 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 at Plaintiff’s request. Plaintiff now seeks to add a count premised upon a generalized assertion that unspecified defendants caused Plaintiff to not take action. Any 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. As is plainly evident by the docket, Plaintiff has been very active. Therefore, in addition to the fact that the new count is precluded for all of the reasons in the pending Motion to Dismiss, it is also inconsistent with the truth. As such, Plaintiff’s amendment would be futile and the Motion should be denied.

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

By: Brett L. Messinger

Stuart I. Seiden

30 South 17th Street

Philadelphia, Pennsylvania 19103-4196

Telephone: 215.979.1508

blmessinger@duanemorris.com

siseiden@duanemorris.com

*Attorneys for Attorneys for Defendants, Litton
Loan Servicing, HSBC Bank USA, N.A.,
Freemont Home Loan Trust 2006-C
Mortgage-Backed Certificates, Series 2006-C;
Goldman Sachs Mortgage Company
(incorrectly pled as Goldman Sachs); Ocwen
Loan Servicing LLC (incorrectly pled as
Ocwen) and Ocwen Financial Corporation*

Dated: March 19, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 19, 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