

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

FREDERICK BULLOCK, *et al.*

Plaintiffs,

v.

WELLS FARGO BANK, NA, a/k/a
WELLS FARGO HOME MORTGAGE,

Defendant.

Case No. 4:23-cv-00017-SLG

ORDER RE PENDING MOTIONS

Before the Court are numerous pending motions. At Docket 5 is *Wells Fargo's Motion to Dismiss Plaintiffs' Complaint Pursuant to FRCP 12(b)(6)*. Plaintiffs responded in opposition to the motion at Docket 11, in which they also sought leave to amend and supplement their complaint. Defendant Wells Fargo Bank, NA ("Wells Fargo") filed a reply in support of the motion at Docket 12 to which Plaintiffs further responded at Docket 16.¹ For the reasons addressed below, the motion to dismiss at Docket 5 is DENIED without prejudice to Wells Fargo filing a renewed motion to dismiss with respect to Plaintiffs' Amended Complaint filed at Docket 13,

At Docket 6, Defendant Wells Fargo filed *Wells Fargo's Request for Judicial*

¹ The filing of a response to a reply by the non-moving party is improper without leave of the Court and is generally not permitted unless an entirely new argument or evidence was presented in the reply. See District of Alaska Local Civil Rule 7.1.

Notice in Support of Its Motion to Dismiss Plaintiffs' Complaint Pursuant to FRCP 12(b)(6). Plaintiffs did not file a response to the request for judicial notice. Good cause being shown, IT IS ORDERED that the motion is GRANTED and the Court will take judicial notice of the documents filed at Docket 6-1.

At Docket 13, Plaintiffs filed an Amended Complaint. Wells Fargo then filed a *Motion to Strike Plaintiffs' First Amended Complaint Pursuant to FRCP 12(f)* at Docket 14. Plaintiffs filed a response in opposition to the motion at Docket 15 to which Wells Fargo filed a reply at Docket 17.

At Docket 18, Plaintiffs filed a *Motion for Leave to Accept Late Filed Amended Complaint Under Rule 15*. Defendant Wells Fargo responded in opposition to the motion at Docket 20 to which Plaintiffs filed a reply at Docket 21.

With respect to Wells Fargo's motion to strike the Amended Complaint at Docket 14, Rule 15(a)(2) of the Federal Rules of Civil Procedure instructs that a "court should freely give leave [to file an amended complaint] when justice so requires." Granting Wells Fargo the relief it seeks in this motion at this preliminary stage of the litigation on procedural grounds—by denying leave to amend because the self-represented Plaintiffs did not file their Amended Complaint within 21 days after service of the original pleading or with an order of the court or counsel's consent—would likely constitute reversible error.² Accordingly, Wells Fargo's

² See *Foman v. Davis*, 371 U.S. 178, 182 (1962) (holding that the "outright refusal to grant the leave [to amend] without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules"). And while there appears to be considerable merit to Wells Fargo's argument that res judicata entirely precludes this action, the Court declines to address the futility of amendment Case No. 4:23-cv-00017-SLG, *Bullock, et al. v. Wells Fargo, Bank*

motion to strike the Amended Complaint at Docket 14 is DENIED and Plaintiffs' request for leave to amend at Docket 11 and motion to accept the late filed amended complaint at Docket 18 are both GRANTED.

As referenced above, Wells Fargo may file a renewed motion to dismiss that addresses the Amended Complaint; any such motion shall be filed within 14 days of the date of this order, to which Plaintiffs may respond within 14 days thereafter, with Wells Fargo permitted to file an optional reply within seven days thereafter.

IT IS SO ORDERED this 22nd day of December, 2023, at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

when neither party has yet addressed the merits of the Fair Credit Reporting Act claim first raised in Plaintiffs' Amended Complaint.