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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GLENN W. BEVER,

Plaintiff,

v.

CAL-WESTERN RECONVEYANCE
CORP., et al.,

Defendants.

CASE NO. 1:11-cv-01584-AWI-SKO

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S REQUEST
FOR ENTRY OF DEFAULT**

(Docket No. 27)

**ORDER PERMITTING DEFENDANT
CAL-WESTERN RECONVEYANCE
CORP. TO FILE A RESPONSIVE
PLEADING**

On February 6, 2012, Plaintiff Glenn W. Bever ("Plaintiff") filed a Request for Entry of Default as to Defendant Cal-Western Reconveyance Corp. ("Cal-Western"). For the reasons set forth below, Plaintiff's request is DENIED WITHOUT PREJUDICE. Further, Cal-Western may file a responsive pleading within twenty-one (21) days of the issuance of this order.

I. BACKGROUND

On September 20, 2011, Plaintiff, proceeding *pro se*, filed a verified complaint against Defendants Cal-Western, CitiMortgage, Inc. ("CitiMortgage") and Mortgage Electronic Registration Systems, Inc. ("MERS" or, collectively, "Defendants") for quiet title, violation of the Fair Debt Collection Practices Act ("FDCPA"), violation of the Real Estate Settlement Procedures Act ("RESPA"), unjust enrichment, and fraud. (Doc. 1.) Plaintiff also filed a Motion for Temporary Restraining Order, which was denied by the Court on September 23, 2011. (Docs. 2, 10.)

1 Defendants were served with the summons and complaint on September 23, 2012. (Doc. 12.)
2 On October 12, 2011, CitiMortgage and MERS filed a Motion to Dismiss. (Doc. 13.) On October
3 14, 2011, Cal-Western filed a Declaration of Non-Monetary Status pursuant to California Civil Code
4 Section 2324~~l~~. (Doc. 14.)

5 On October 19, 2011, Plaintiff filed a Renewed Motion for Temporary Restraining Order,
6 which was granted by the Court on October 26, 2011. (Docs. 16, 19.) The Court set a hearing date
7 of November 14, 2011, to show cause as to why a Preliminary Injunction should not be granted.
8 (Doc. 19, 5:5-7.) On November 9, 2011, the Court noted that no parties had filed oppositions to the
9 Motion to Dismiss or the Preliminary Injunction and thus vacated the hearing and took the matters
10 under submission. (Doc. 22.) On December 9, 2011, Plaintiff filed a Motion to File Out of Time
11 Response to Defendants' Motion to Dismiss. (Doc. 23.) These matters are currently pending before
12 Chief District Judge Anthony W. Ishii. (Doc. 22.)

13 On February 6, 2012, Plaintiff filed the instant Request for Clerk's Entry of Default against
14 Cal-Western. (Doc. 27.) On February 8, 2012, Cal-Western filed an Objection to Plaintiff's Request
15 for Clerk's Entry of Default, asserting that it had filed a Declaration of Non-Monetary Status
16 pursuant to California Civil Code Section 2324~~l~~ (Doc. 14) and thus was no longer required to
17 participate further in the action.

18 II. DISCUSSION

19 Plaintiff requests that default be entered against Cal-Western pursuant to Federal Rule of
20 Civil Procedure 55(a), contending that Cal-Western has been served in this action but failed to timely
21 respond. Cal-Western objects to Plaintiff's request, contending that it timely responded to Plaintiff's
22 complaint by filing a Declaration of Non-Monetary Status and, since Plaintiff failed to timely object,
23 Cal-Western is no longer required to participate further in the action. *See* Cal. Civ. Code § 2924~~l~~.

24 California Civil Code Section 2924~~l~~ provides that if "a trustee under a deed of trust is named
25 in an action or proceeding in which that deed of trust is the subject, and in the event that the trustee
26 maintains a reasonable belief that it has been named in the action or proceeding solely in its capacity
27 as trustee," then the trustee "may file a declaration of nonmonetary status." Cal. Civ. Code
28 § 2924~~l~~(a). If timely objections are not raised, then "the trustee shall not be required to participate

1 any further in the action or proceeding, shall not be subject to any monetary awards as and for
2 damages, attorneys' fees or costs, shall be required to respond to any discovery requests as a
3 nonparty, and shall be bound by any court order relating to the subject deed of trust that is the subject
4 of the action or proceeding." *Id.* § 2624(d).

5 Here, Cal-Western filed a Declaration of Non-Monetary Status on October 14, 2011.
6 (Doc. 14.) Plaintiff had 15 days from the service of the declaration in which to object to the
7 nonmonetary judgment status of the trustee. Cal. Civ. Code § 2624(c). Plaintiff failed to file any
8 objections.

9 However, there is a question whether Section 2924l can be applied in cases that are originally
10 filed in federal court. As the court noted in *Couture v. Wells Fargo Bank, N.A.*, No.
11 11-CV-1096-IEG (CAB), 2011 WL 3489955 at *3, n. 2 (S.D. Cal. Aug. 9, 2011):

12 District courts in California are divided over whether a trustee may seek status as a
13 nominal party by filing a § 2924l declaration in federal court. *Compare, e.g., Tran*
14 *v. Washington Mut. Bank*, No. Civ. S-09-3277, 2010 WL 520878, at *1 (E.D.Cal.
15 Feb.11, 2010) ("California Civil Code § 2924l is a state procedural rule, and not state
16 substantive law. Accordingly, nonmonetary status may not be granted in federal
17 court.") (citation omitted), *with, e.g., Pinales v. Quality Loan Serv. Corp.*, No.
18 09cv1884 L(AJB), 2010 WL 3749427, at *1 n. 1 (S.D.Cal. Sept. 22, 2010) (treating
19 a defendant as a nominal party after it filed a § 2924l declaration in federal court).

20 *Id.* at *3, n. 2. The court in *Couture* did not have to consider whether a declaration of nonmonetary
21 status was proper for cases filed in federal court, since the case at issue had initially been filed in
22 state court and removed to federal court. *Id.* at *1. The *Couture* court noted that it was "aware of
23 no such disagreement over the treatment of trustees that file § 2924l declarations in state court prior
24 to removal for the purposes of diversity jurisdiction." *Id.* at *3, n. 2.

25 Here, however, Plaintiff filed the action directly in federal court; the case was not removed
26 from state court. (*See* Doc. 1.) As such, the Court must consider whether Cal-Western's filing of
27 a Declaration of Non-Monetary Status in federal court, for a case initiated in federal court, was
28 proper.

The Court is persuaded by the Eastern District case of *Tran*, which considered the
applicability of Section 2924l and found that "the court cannot recognize nonmonetary status of a
defendant without any basis that such status may be recognized in federal courts." 2010 WL 520878

1 at *1. In *Tran*, a trustee filed a Declaration of Non-Monetary Status in federal court in a mortgage
2 and foreclosure action that had originated in federal court. *Id.* Plaintiff raised untimely objections
3 (mistakenly labeled as an opposition) to the defendant's declaration. *Id.* The court noted that the
4 objections were untimely, but held that "the court cannot recognize nonmonetary status of a
5 defendant without any basis that such status may be recognized in federal courts." *Id.* While the
6 court recognized that there were federal courts that had accepted a defendant's nonmonetary status,
7 those cases had initially been filed in state court and removed to federal court. *Id.* The court
8 determined, however, that for cases originally filed directly in federal court, "nonmonetary status
9 may not be granted" because it "appear[ed] . . . that California Civil Code § 2924l is a state
10 procedural rule, and not state substantive law. *See Erie R.R. [Co.] v. Tompkins*, 304 U.S. 64, 58 S.Ct.
11 817, 82 L.Ed. 1188 (1938)." *Id.*

12 In federal court, procedure is governed by federal law. *Erie R.R.*, 304 U.S. 64. "The Federal
13 Rules of Civil Procedure apply irrespective of the source of subject matter jurisdiction, and
14 irrespective of whether the substantive law at issue is state or federal." *Vess v. Ciba-Geigy Corp.*
15 *USA*, 317 F.3d 1097, 1102 (9th Cir.2003) (citing *Hanna v. Plumer*, 380 U.S. 460 (1965)). Where
16 an issue is directly covered by the Federal Rules of Civil Procedure, federal law controls. It is
17 immaterial whether a different result would have been reached in a state court action if state
18 procedural law had been applied. *Vess*, 317 F.3d at 1102; see also *Kearns v. Ford Motor Co.*, 567
19 F.3d 1120, 1125 (9th Cir.2009).

20 Pleadings are controlled by Federal Rule of Civil Procedure 7, which specifies the type of
21 pleadings authorized in federal court. A declaration of nonmonetary status is not a recognized
22 pleading. *See Fed. R. Civ. P. 7(a)*. Further, the Court in *Tran* determined that Section 2924l was
23 a "state procedural rule." *Tran*, 2010 WL 520878 at *1. As such, the filing of a declaration of
24 nonmonetary status is not authorized under the federal rules.

25 The Court notes that there are district court cases that appeared to have allowed a trustee to
26 file a declaration of nonmonetary status under Section 2924l in federal court for cases initially filed
27 in federal court. None of these cases, however, considered the question of whether Section 2924l
28 is a state procedural rule or a substantive law, and thus none of the cases discussed whether the filing

1 of the declaration was appropriate in federal court. In *Pinales*, 2010 WL 3749427, at *1 n. 1, the
2 court noted in a footnote while considering another defendant's motion to dismiss that the trustee had
3 filed a nonmonetary status declaration; the court did not consider whether the declaration was
4 procedurally proper. *Id.* at *1. In *Gomez v. Plaza Home Mortg., Inc.*, No. 09cv2855-L(RBB), 2011
5 WL 940762, at *1 (S.D. Cal. Mar. 17, 2011), the court considered another defendant's motion to
6 dismiss and noted that no timely objections had been raised to the trustee's filing of a declaration of
7 nonmonetary status. While the court indicated that the trustee was "not required to participate any
8 further in this action," the court did not discuss whether the filing of the declaration was proper in
9 federal court. *Id.* In *Pedersen v. Greenpoint Mortg. Funding, Inc.*, No. S-11-0642 KJM EFB, 2011
10 WL 3818560, at *1 (E.D. Cal. Aug. 29, 2011), the court considered arguments concerning the
11 plaintiffs' motion for preliminary injunction and different defendants' motion to dismiss. The court
12 noted that the trustees had filed declarations of nonmonetary status and that plaintiffs had failed to
13 raise a timely objection to the declarations. *Id.* at *23. However, there was no discussion regarding
14 whether the filing of the declarations in federal court was authorized under the Federal Rules.

15 *Tran* appears to be the only case to specifically address and decide the issue of whether the
16 filing is of a declaration of nonmonetary status is appropriate when filed in a case that originated in
17 federal court. 2010 WL 520878 at *1. Although other district court cases noted that the declarations
18 had been filed, no other court has considered whether such a filing is appropriate. Thus, relying on
19 the reasoning in *Tran* that Section 2924l is a California state procedural law, and the fact that
20 pleadings are controlled in federal court under Rule 7, the Court finds in the instant case that Cal-
21 Western's filing of its Declaration of Non-Monetary Status is not a sufficient pleading since this case
22 was initially filed in federal court.

23 However, regarding the instant request by Plaintiff for entry of default against Cal-Western,
24 it is apparent that Cal-Western intended the Declaration of Non-Monetary Status to be a response
25 to Plaintiff's complaint. Cal-Western requested that if the Court determines that it needs to
26 participate in this action, it be permitted to file a further responsive pleading. This request is
27 reasonable, especially in light of the fact that several district courts have allowed the filing of a
28 declaration of nonmonetary status under Section 2924l and have not considered whether such a filing

1 is permissible under the Federal Rules. Further, the court in *Tran* allowed the trustee to file a
2 responsive pleading after determining that the nonmonetary status may not be granted in federal
3 court. *Tran*, 2010 WL 520878 at *2.

4 As such, Plaintiff's request for entry of default is DENIED WITHOUT PREJUDICE to
5 permit Cal-Western to FILE a responsive pleading within twenty-one (21) days of the issuance of
6 this order. Should Cal-Western fail to file a responsive pleading, Plaintiff may file a renewed
7 Request for Entry of Default Judgment.

8 **III. CONCLUSION AND ORDER**

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's Request for Entry of Default is DENIED WITHOUT PREJUDICE; and
11 2. Defendant Cal-Western may FILE a responsive pleading within twenty-one (21) days
12 of the issuance of this order.

13
14 IT IS SO ORDERED.

15 **Dated: February 28, 2012**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE