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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

IVAN CORONADO and TAMMI
CORONADO,

Plaintiffs,

v.

NATIONAL DEFAULT SERVICING
CORPORATION; et al.,

Defendants.

Case No. 1:15-cv-01844-MCE-SKO

**ORDER ON DEFENDANT SELECT
PORTFOLIO SERVICING, INC.’S
MOTION TO COMPEL RESPONSES,
FOR SANCTIONS AGAINST
PLAINTIFFS, AND TO MODIFY THE
COURT’S SCHEDULING ORDER**

(Doc. 13)

I. INTRODUCTION

Plaintiffs Ivan and Tammi Coronado filed suit against various corporate entities involved in the ownership, servicing, and non-judicial foreclosure of their home. (Doc. 1-4 (Complaint).) Defendant Select Portfolio Servicing, Inc. (“SPS”) seek to compel discovery related to Plaintiffs’ allegations “regarding the alleged fraudulently recorded documents, communications related to the Loan, Plaintiffs’ Loan payments, Plaintiffs’ default, non-judicial foreclosure proceedings, Plaintiffs’ alleged damages and other documents and information related to the causes of action asserted in Plaintiffs’ Complaint.” (Doc. 13 (Motion to Compel Responses (“Motion”), p. 5.)

Because this information is necessary for SPS to adequately notice and prepare for Plaintiffs’ depositions and fully prepare its motion for summary judgment, SPS’s motion to compel is GRANTED. The scheduling order will be MODIFIED to allow the parties sufficient time to complete and review non-expert discovery. Finally, SPS’s motion to impose monetary sanctions against Plaintiffs to compensate SPS for its time and expenses in preparing the Motion is GRANTED in part.

1 **II. Background**

2 In September 2006, Plaintiffs obtained a home loan (the “Loan”) from Central Pacific
3 Mortgage Company (“Central”) for \$380,000.00 to purchase real property located at 820 East
4 Ashlan Avenue, Fresno, California 93704 (the “Property”). (Compl., ¶ 21.) In connection with
5 the Loan, Plaintiffs executed a deed of trust (“DOT”) in favor of Mortgage Electronic Registration
6 Systems, Inc. (“MERS”) as nominee for Central and Central’s successors and assigns, securing the
7 promissory note (“Note”) Plaintiffs executed in connection with the purchase of the Property.
8 (*Id.*)

9 On April 8, 2013, MERS recorded an Assignment of the Deed of Trust (“Assignment”),
10 evidencing MERS’s assignment of the DOT to the Bear Stearns Mortgage Funding Trust.¹ After
11 SPS began servicing the Loan, Plaintiffs fell behind on their Loan payments and a Notice of
12 Default and Election to Sell Under Deed of Trust (“NOD”) was recorded on May 13, 2014, with
13 the Fresno County Recorder’s Office. (*Id.*, ¶ 23, 28.) On December 10, 2014, a Notice of
14 Trustee’s Sale (“NOTS”) was recorded with the Fresno County’s Recorder’s Office, evidencing
15 the unpaid principal balance and other charges totaling \$433,244.08. (*Id.*, 33.)

16 On June 1, 2015, Plaintiffs filed the instant Complaint.² Plaintiffs claim that (1)
17 Defendants did not properly account for their Loan payments; (2) Defendants stated incorrect
18 sums due and owing in the NOD and NOTS; (3) Defendants failed to contact them to discuss
19 options to avoid foreclosure prior to recording the NOD; and (4) the chain of title is void because
20 MERS lacked authority to assign the Loan to the Trust and SPS fraudulently executed a
21 substitution of trustee. (*Id.*, ¶¶ 4-6, 23-25, 27-28, 30-32.) Plaintiffs alleged claims for:
22 (1) violation of California Homeowners’ Bill of Rights; (2) violation of California Civil Code
23 section 2923.5; (3) negligence; (4) violation of California Business and Professions Code § 17200
24 *et seq.*; (5) constructive fraud; (6) slander of title; (7) quiet title; (8) declaratory relief; and
25 (9) injunctive relief. (*Id.*, pp. 12-29.)

26
27 ¹ Defendant Bear Stearns Mortgage Funding Trust 2006-AR4, Mortgage Pass Through Certificates, Series 2006-
AR4.

28 ² The Complaint was initially filed in state court. Defendants removed the case to this Court on December 9, 2015.

1 Defendants filed their Answer to the Complaint in state court on June 23, 2015.
2 (Doc. 1-6.) On March 15, 2016, SPS served Interrogatories, Set One, Numbers 1-22
3 (the “Interrogatories”) and Requests for Production of Documents, Set One, Numbers 1-25
4 (the “RFPs”) (collectively, the “Propounded Discovery”) separately upon each of the Plaintiffs.
5 (Doc. 13-1 (Declaration of Kristapor Vartanian), ¶ 2.)³

6 The Propounded Discovery includes various questions and document requests related to
7 Plaintiffs’ allegations regarding the alleged fraudulently recorded documents, communications
8 related to the Loan, Plaintiffs’ Loan payments, Plaintiffs’ default, non-judicial foreclosure
9 proceedings, Plaintiffs’ alleged damages and other documents and information related to the
10 causes of action asserted in Plaintiffs’ Complaint. (*Id.* at Ex. A.) Defendants seek this discovery
11 “so that they may notice each of the Plaintiffs’ depositions in a timely manner and to properly
12 prepare their motion for summary judgment within the required timeframe. Plaintiffs’ responses to
13 the Propounded Discovery were due to SPS by no later than April 19, 2016.” (Doc. 13, p. 2; *see*
14 *also* Vartanian Decl., ¶ 3.)

15 No responses were received by SPS on April 19, 2016. (*Id.*) On May 6, 2016, SPS sent a
16 meet and confer letter to Plaintiffs informing Plaintiffs that all objections to the discovery requests
17 are waived, and attempting to schedule a telephonic conference to discuss the issue. (*Id.* at ¶ 4,
18 Ex. B.) The parties met and conferred by telephone on May 10, 2016, and Plaintiffs agreed to
19 provide complete, verified responses, without objections, to the Propounded Discovery (including
20 all responsive documents), by May 16, 2016. (*Id.* at ¶ 5, Ex. C.)

21 On May 16, 2016, however, Plaintiffs failed to produce any responses to the Propounded
22 Discovery. (*Id.* at ¶ 6.) Though Plaintiffs provided some documents, it is unclear the documents
23 include all responsive documents, because Plaintiffs have not responded in any way to the RFPs.
24 (*Id.*, ¶ 6, n. 2.) Defense counsel emailed Plaintiffs and again informed Plaintiffs of their failure to
25 respond. (*Id.* at ¶ 7, Ex. D.) Plaintiffs responded that “[w]e were hoping to work this out Pro Se,
26 but after further review of the questions . . . [w]e will not be answering” until “we [have]

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28 ³ Defendants also served Requests for Admission on Plaintiffs, which received no responses and are therefore
deemed admitted. (Vartanian Decl., ¶ 4 n. 1.)

1 retain[ed] counsel.” (*Id.*) Plaintiffs still have neither provided any responses to the Propounded
2 Discovery nor contacted Defendants regarding the outstanding discovery.

3 SPS filed the instant motion on June 29, 2016, seeking an order compelling Plaintiffs to
4 respond to the outstanding discovery, imposing sanctions on Plaintiffs, and modifying the
5 scheduling order to allow the completion of non-expert discovery. (Doc. 13.) In lieu of filing an
6 opposition, Plaintiffs filed a notice of change of address on July 6, 2016. (doc. 14.) Out of an
7 abundance of caution, the Court ordered SPS to serve Plaintiffs with another copy of the Motion at
8 their post office box and reset the deadline for Plaintiffs to file their opposition to the Motion, if
9 any. (Doc. 15.) When Plaintiffs failed to file any opposition, pursuant to the Court’s order, the
10 matter was deemed unopposed and submitted on the pleadings and the hearing was vacated.
11 (Doc. 17.) The non-expert discovery motion deadline is currently set for August 15, 2016. (Doc.
12 12.)

13 III. Scope of Discovery and Requests

14 The scope and limitations of discovery are set forth in the Federal Rules of Civil Procedure
15 and Evidence. Rule 26(b) provides:

16 Unless otherwise limited by court order, parties may obtain discovery regarding
17 any nonprivileged matter that is relevant to any party’s claim or defense --
18 including the existence, description, nature, custody, condition, and location of
19 any documents or other tangible things . . . For good cause, the court may order
20 discovery of any matter relevant to the subject matter involved in the accident.
21 Relevant information need not be admissible at the trial if the discovery appears
22 reasonably calculated to lead to the discovery of admissible evidence.

23 Relevant evidence is defined as “evidence having any tendency to make the existence of any fact
24 that is of consequence to the determination of the action more probable or less probable than it
25 would be without the evidence.” Fed. R. Evid. 401. Relevancy is interpreted “broadly to
26 encompass any matter that bears on, or that reasonably could lead to other matter that could bear
27 on any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 427 U.S. 340, 351
28 (1978).

26 A. Interrogatories

27 A party may propound interrogatories relating to any matter that may be inquired to under
28 Rule 26(b). Fed. R. Civ. P. 33(a). A responding party is obligated to respond to the fullest extent

1 possible, and any objections must be stated with specificity. Fed. R. Civ. P. 33(b)(3)-(4). In
2 general, a responding party is not required “to conduct extensive research in order to answer an
3 interrogatory, but a reasonable effort to respond must be made.” *Haney v. Saldana*, 2010 WL
4 3341939, at *3 (E.D. Cal. Aug. 24, 2010) (citing *L.H. v. Schwarzenegger*, 2007 WL 2781132, at
5 *2 (E.D. Cal. Sep. 21, 2007)). The responding party has a duty to supplement a response if he
6 later obtains the information sought or discovers the previous response requires correction. Fed.
7 R. Civ. P. 26(e)(1)(A).

8 **B. Requests for Production of Documents**

9 A party may request documents “in the responding party's possession, custody, or control.”
10 Fed. R. Civ. P. 34(a)(1). Similarly, a party may serve a request “to permit entry onto designated
11 land or other property possessed or controlled by the responding party, so that the requesting party
12 may inspect, measure, survey, photograph, test, or sample the property . . .” Fed. R. Civ. P.
13 34(a)(2). A request is adequate if it describes items with “reasonable particularity”; specifies a
14 reasonable time, place, and manner for the inspection; and specifies the form or forms in which
15 electronic information can be produced. Fed. R. Civ. P. 34(b). Thus, a request is sufficiently clear
16 if it “places the party upon ‘reasonable notice of what is called for and what is not.’” *Kidwiler v.*
17 *Progressive Paloverde Ins. Co.*, 192 F.R.D. 193, 202 (N.D. W. Va. 2000) (quoting *Parsons v.*
18 *Jefferson-Pilot Corp.*, 141 F.R.D. 408, 412 (M.D.N.C. 1992)).

19 The responding party must respond in writing and is obliged to produce all specified
20 relevant and non-privileged documents, tangible things, or electronically stored information in its
21 “possession, custody, or control” on the date specified. Fed. R. Civ. P. 34(a). Actual possession,
22 custody or control is not required. “A party may be ordered to produce a document in the
23 possession of a non-party entity if that party has a legal right to obtain the document or has control
24 over the entity who is in possession of the document.” *Soto v. City of Concord*, 162 F.R.D. 603,
25 620 (N.D. Cal. 1995). Such documents include documents under the control of the party’s
26 attorney. *Meeks v. Parson*, 2009 WL 3303718 (E.D. Cal. Sept. 18, 2009); *Axler v. Scientific*
27 *Ecology Group, Inc.*, 196 F.R.D. 210, 212 (D. Mass. 2000) (a “party must produce otherwise
28 discoverable documents that are in his attorneys’ possession, custody or control”). In the

1 alternative, a party may state an objection to a request, including the reasons. Fed. R. Civ. P.
2 34(b)(2)(A)-(B).

3 If a party “fails to respond that inspection will be permitted -- or fails to permit inspection
4 -- as requested under Rule 34,” the propounding party may make a motion to compel production
5 of the documents. Fed. R. Civ. P. 37(a)(3)(B)(iv). Further, “an evasive or incomplete disclosure,
6 answer, or response must be treated as a failure to disclose, answer or respond.” Fed. R. Civ. P.
7 37(a)(4). A moving party has the burden of demonstrating “actual and substantial prejudice” from
8 the denial of discovery. *Hallet v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

9 Rule 37(a)(5)(A) requires the court to award attorney’s fees in “most circumstances.”
10 *Balla v. Idaho*, 677 F.3d 910, 920 (9th Cir. 2012); *Global Ampersand, LLC v. Crown Eng’g &*
11 *Const., Inc.*, 261 F.R.D. 495, 502 (E.D. Cal. 2009) (noting Rule 37(a)(5) “requires a party to pay
12 attorney’s fees caused by a failure to comply unless the failure was substantially justified or other
13 circumstances make an award of expenses unjust”).

14 IV. DISCUSSION

15 A. Plaintiffs Shall Respond to Defendant’s Propounded Discovery

16 In this action, the disputed discovery requests relate to the allegations of the complaint,
17 seeking evidence and documents to support or refute the allegations of the complaint, the damages
18 sought in the complaint, and the harm allegedly suffered due to Defendants’ alleged acts and
19 omissions. Plaintiffs have not opposed the motion nor offered any reason why the Motion should
20 not be granted. The interrogatories and RFPs seek evidence that is highly probative to SPS’s
21 defense of the case, and SPS is significantly prejudiced by Plaintiffs’ failure to meaningfully
22 respond to its properly served Propounded Discovery.

23 Plaintiffs are therefore ORDERED to respond, without objections, to the Propounded
24 Discovery **by no later than August 26, 2016**. Fed. R. Civ. P. 33(b)(4), 34, 37; *Davis v. Fendler*,
25 650 F.2d 1154, 1160 (9th Cir. 1981) (interrogatories); *Richmark Corp. v. Timber Falling*
26 *Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (requests for production).

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1 **B. Attorney’s Fees Shall Be Awarded Against Plaintiffs**

2 Further, SPS’s request for attorney’s fees incurred in filing the Motion shall be granted.
3 Rule 37(a)(5) requires a party to pay attorney’s fees caused by a failure to comply unless the
4 failure was substantially justified or other circumstances make an award of expenses unjust.
5 *Global Ampersand*, 261 F.R.D. at 502. Here, Plaintiffs have offered no explanation for their
6 failure to respond to SPS’s properly propounded discovery, and attorney’s fees are appropriate.

7 Generally the Ninth Circuit has adopted a lodestar approach for assessing the amount of
8 reasonable attorney's fees. *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992). In the
9 context of fees awarded pursuant to Rule 37(a)(5), the Court looks to the lodestar factors only for
10 guidance when deciding the amount of attorney’s fees arising from the Motion. *Global*
11 *Ampersand*, 261 F.R.D. at 502.

12 The party seeking the award of fees must submit evidence to support the number of hours
13 worked and the rates claimed. *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th
14 Cir.2000). “A district court should exclude from the lodestar amount hours that are not reasonably
15 expended because they are ‘excessive, redundant, or otherwise unnecessary.’” *Id.* (citation
16 omitted). To determine the lodestar, the court may consider the following factors: (1) the time and
17 labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to
18 perform the legal service properly; (4) the preclusion of other employment by the attorney due to
19 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
20 limitations imposed by the client or the circumstances; (8) the amount involved and the results
21 obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the
22 case; (11) the nature and length of the professional relationship with the client; and (12) awards in
23 similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

24 As discussed above, Plaintiffs’ failures and action are not substantially justified and an
25 award of attorney’s fees is appropriate. The Court has examined the declarations and supporting
26 documents submitted by counsel, as well as the factors above. (*See Vartanian Decl.*) The
27 requested amount of \$1,460 would be unjust because it is excessive and unreasonable. In
28 calculating the requested amount, SPS lists the following billable hours at an hourly billing rate of

1 \$365: 2 hours spent by counsel on the Motion and 2 hours anticipated to be spend by counsel
 2 preparing a reply brief and preparing for the hearing. (*Id.*, ¶ 9.) However, because Plaintiffs did
 3 not oppose the Motion, no reply brief was needed and the hearing was vacated. (Doc. 17.)
 4 Accordingly, SPS will be awarded a total of \$730 in compensation for the 2 hours of attorney time
 5 actually expended on preparation of the Motion.

6 **C. The Scheduling Order Shall Be Modified to Accommodate the Completion of Non-
 7 Expert Discovery**

8 SPS asks that the Scheduling Order be modified to allow the completion of non-expert
 9 discovery, due to Plaintiffs’ failure to respond to SPS’s written discovery. The Court finds that
 10 Plaintiffs’ failure to respond to SPS’s Propounded Discovery is good cause for modifying the
 11 schedule. Fed. R. Civ. P. 16(b)(4). Accordingly, the Scheduling Order is amended as follows:

<u><i>Case Management Event:</i></u>	<u><i>Prior-Operative Date- Deadline:</i></u>	<u><i>NEW Date-Deadline:</i></u>
Non-Expert Discovery Deadline	August 15, 2016	October 17, 2016
Expert Disclosures	September 9, 2016	November 4, 2016
Rebuttal-Supplemental Expert Disclosures	October 7, 2016	December 2, 2016
Expert Discovery Deadline	December 6, 2016	December 16, 2016
Non-Dispositive Motion Filing Deadline	October 13, 2016	December 8, 2016
Non-Dispositive Motion Hearing Deadline	November 16, 2016	January 11, 2017
Dispositive Motion (MSJ) Filing Deadline	November 14, 2016	January 13, 2017
Dispositive Motion (MSJ) Hearing Deadline	January 13, 2017	February 13, 2017
Settlement Conference	September 19, 2016 10:30 a.m., Ctrm 9	November 18, 2016 10:00 a.m., Ctrm 6

21 **V. CONCLUSION AND ORDER**

22 Accordingly, IT IS HEREBY ORDERED:

- 23 1. Defendant’s motion to compel discovery is GRANTED;
- 24 2. **By no later than August 26, 2016**, Plaintiffs SHALL produce documents
 25 responsive to Defendant’s Request for Production, Set One, Numbers 1-25, and
 26 shall respond to Interrogatories, Set One, Numbers 1-22, without objections;

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- 3. The Scheduling Order is MODIFIED consistent with this order; and
- 4. Attorney's fees are awarded to Select Portfolio Servicing, Inc., in the amount of \$730.

IT IS SO ORDERED.

Dated: August 1, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE