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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNY R. BECKER, et al.,

Plaintiff,

No. CIV-S-10-2799-LKK-KJN-PS

vs.

WELLS FARGO BANK, NA, INC.,
et al.,

Defendants.

ORDER

On August 22, 2012, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. No objections were filed.

Accordingly, the court presumes that any findings of fact are correct. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

The court has reviewed the applicable legal standards and, good cause appearing, concludes that it is appropriate to adopt the Proposed Findings and Recommendations in full.

Accordingly, IT IS ORDERED that:

1. The Proposed Findings and Recommendations filed August 22, 2012, are ADOPTED;
2. Plaintiff’s motion for leave to amend (Dkt. No. 97) is granted in part and denied in

1 part, and that, specifically, plaintiff is granted leave to pursue the following, narrowed claims
2 alleged in the proposed Third Amended Complaint (Dkt. No. 98):

3 a. Plaintiff's first claim for relief, alleging fraud;

4 b. Plaintiff's second claim for relief, alleging promissory fraud, albeit labeled
5 as a claim for "promissory estoppel [sic]";

6 c. Plaintiff's third claim for relief, alleging violations of the Real Estate
7 Settlement Procedures Act, 12 U.S.C. §§ 2605 et seq.;

8 d. Plaintiff's seventh claim for relief, alleging defamation;

9 e. Plaintiff's eighth claim for relief, alleging negligence and negligent
10 misrepresentation claims only insofar as that combined claim concerns: (i) defendants' alleged
11 representations during the loan modification application process, and (ii) defendants' negligent
12 acts of noticing a trustee's sale of two of plaintiff's properties in violation of the court's
13 preliminary injunction;

14 f. Plaintiff's ninth claim for relief, alleging violations of the Racketeer
15 Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962, based upon allegations of
16 fraudulent statements made in connection with the loan modification process;

17 g. Plaintiff's tenth claim for relief, alleging intentional infliction of
18 emotional distress only insofar as it relates to defendants' violation of the preliminary injunction
19 in this case; and

20 h. Plaintiff's thirteenth claim for relief, alleging violations of California's
21 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq., is permitted to proceed to the
22 extent that plaintiff is granted leave to amend his other claims.

23 3. Plaintiff's motion for leave to amend is denied in all other respects.

24 4. Plaintiff's proposed Third Amended Complaint found at docket entry 98 is deemed
25 the operative complaint, as narrowed above.

26 5. Defendants shall file an answer or other response to plaintiff's Third Amended


1 Complaint within 14 days from the date of this order.

2 6. Defendants' request for the involuntary dismissal of plaintiff's case is denied.

3 7. Defendants' motion to dismiss the Second Amended Complaint (Dkt. No. 71) is
4 denied as moot.

5 DATED: September 18, 2012.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT