

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNL Y R. BECKER, et al.,
Plaintiff,
v.
WELLS FARGO BANK, NA, INC., et al.,
Defendants.

No. 2:10-cv-2799-TLN-KJN PS

ORDER

On December 30, 2014, the magistrate judge filed findings and recommendations (ECF No. 224) 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. On January 13, 2015, Plaintiffs filed objections to the proposed findings and recommendations (ECF No. 225), which have been considered by the Court.

This Court reviews de novo those portions of the proposed findings of fact to which an objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982); see also Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion of the proposed findings of fact to which no objection has been made, the Court assumes its correctness and decides the motions on the applicable law. 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

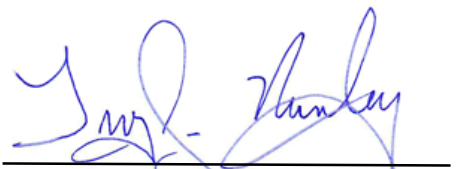
1 Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

2 Plaintiff's objections assert that Cal. Civ. Code § 2924 is preempted by federal law and
3 therefore Defendant cannot enforce provisions of the notes and deeds of trust at issue in this case.
4 (ECF No. 225 at 3–5.) Plaintiff also argues that, in the alternative, a ruling on attorneys' fees
5 should be deferred pending a resolution of Plaintiff's Ninth Circuit appeal under Federal Rule of
6 Civil Procedure ("FRCP") 54. (ECF No. 225 at 5.) Plaintiff's objections fail to make any
7 argument not previously asserted in their opposition to Defendant's motion for attorneys' fees.
8 (Pls.' Opp'n to Mot. for Att'y Fees, ECF No. 220.) This Court has reviewed the findings and
9 recommendations of the magistrate judge and finds that the magistrate judge adequately
10 addressed these issues. Plaintiff fails to prove that all aspects of California's non-judicial
11 foreclosure scheme are preempted by federal law. Moreover, this Court agrees with the
12 magistrate judge that the preemption question has no bearing on claims that are related to the
13 contract between the parties, which serves as the basis for attorneys' fees. Finally, although
14 Plaintiff is correct in noting that the Court has the discretion to withhold judgment on this issue
15 pending Plaintiff's Ninth Circuit appeal, the Court agrees with the magistrate judge's analysis that
16 Plaintiff has failed to provide a compelling reason for doing so.

17 The Court has reviewed the applicable legal standards and, good cause appearing,
18 concludes that it is appropriate to adopt the proposed findings and recommendations in full.
19 Accordingly, IT IS ORDERED that:

- 20 1. The Proposed Findings and Recommendations filed December 30, 2014, are
21 ADOPTED;
22 2. Defendant's motion for attorneys' fees (ECF No. 213) is GRANTED; and
23 3. Defendant is awarded \$146,493.50 in attorneys' fees.

24
25 Dated: February 3, 2015

26
27 
28 Troy L. Nunley
United States District Judge