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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GORDON MCMAHON, an  
individual;

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.;  
SELECT PORTFOLIO SERVICING,  
INC.; and DOES 1 through 10  
inclusive,

Defendants.

No. 2:16-cv-1459-JAM-KJN

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISSOLVE PRELIMINARY  
INJUNCTION**

On August 23, 2016, this Court enjoined Defendant Select Portfolio Servicing ("SPS") from conducting a foreclosure sale of 304 Seawind Drive in Vallejo, California. 8/23/2016 Order, ECF No. 17. SPS now asks the Court to dissolve the injunction. Mot. to Dissolve Prelim. Inj. ("Mot."), ECF No. 47. Plaintiff Gordon McMahon ("McMahon") opposes the motion. Opp'n, ECF No. 60.<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for July 11, 2017.

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I. FACTS AND PROCEDURAL BACKGROUND

McMahon defaulted on his mortgage in 2007. First Amended Complaint ("FAC") ¶ 1, ECF No. 26. McMahon applied for a loan modification several times. FAC ¶ 1. SPS, McMahon's loan servicer, denied McMahon's applications. FAC ¶¶ 60, 61, 70, 81, 86, 99, 101, 103. McMahon sued SPS, alleging six claims, including his first cause of action for violation of the Homeowners Bill of Rights ("HBOR") under California Civil Code Section 2924.12. FAC at 19.

McMahon moved for a preliminary injunction under Section 2924.12 of the HBOR, which states that "[i]f a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of Section . . . 2923.6." Cal. Civ. Code § 2924.12(a)(1). SPS did not oppose the motion. See Adviento Decl. ¶ 4, ECF No. 13. The Court enjoined SPS from proceeding with foreclosure "until there has been compliance with California Civil Code section[s] 2923.6 and 2924.12." 8/23/2016 Order at 1.

On November 25, 2016, McMahon submitted another loan modification application, which SPS denied. FAC ¶¶ 102, 103. SPS then moved to dismiss McMahon's claims. Mot. to Dismiss, ECF No. 30. The Court dismissed McMahon's HBOR claim with prejudice. 4/26/2017 Order at 4-6, 13. McMahon moved the Court to reconsider that ruling, which the Court denied. 8/24/2017 Order at 6, ECF No. 64.

II. OPINION

A district court has 'wide discretion' to dissolve, modify, or reconsider a preliminary injunction based on a change in

1 factual or legal circumstances. A&M Records, Inc. v. Napster,  
2 Inc., 284 F.3d 1091, 1098 (9th Cir. 2002). If a court has issued  
3 an injunction under Section 2924.12(a)(1), the "enjoined entity  
4 may move to dissolve [the] injunction based on a showing that the  
5 material violation has been corrected and remedied." Cal. Civ.  
6 Code § 2924.12(a)(2).

7 A. Change in Legal Circumstances

8 The Court has dismissed with prejudice McMahon's HBOR  
9 claims. 4/26/2017 Order at 4-6, 13. The preliminary injunction  
10 was issued pursuant to Section 2924.12(a)(1) and conditioned  
11 upon SPS's compliance with Section 2923.6. 8/23/2016 Order at  
12 1-2. Because the Court has dismissed with prejudice the claim  
13 under which McMahon moved for the preliminary injunction, the  
14 injunction can no longer stand.

15 B. Remedy of Alleged Violation

16 SPS has also submitted evidence demonstrating that "the  
17 loan modification process has been completed twice during the  
18 pendency of the litigation." Mot. at 6. SPS argues these two  
19 subsequent loan modification reviews complied with 2923.6 and  
20 2924.12, therefore warranting dissolution of the injunction.  
21 Mot. at 5. SPS supports this argument with a declaration and  
22 numerous documents that clearly demonstrate that it has  
23 considered and denied two additional applications from McMahon.  
24 Adelman Decl., ECF No. 47-2.

25 McMahon responds that the Court should not dissolve the  
26 injunction because SPS has not complied with Section  
27 2923.6(f)(2), which requires that a servicer denying a loan  
28 modification "based on investor disallowance" provide "the

1 specific reasons for the investor disallowance." Cal. Civ. Code  
2 § 2923.6(f)(2). SPS responds that McMahon's argument is not  
3 sufficient to show that SPS did not comply with Section 2923.6  
4 because any failure to provide specific reasons for investor  
5 denial was immaterial in light of the many other reasons SPS  
6 denied McMahon's application. Mot. at 6.

7 Under the HBOR, a borrower is entitled to an injunction  
8 only for a "material" violation. Cal. Civ. Code  
9 § 2924.12(a)(1). An HBOR violation is material if "any such  
10 violation prejudiced [the plaintiff's] ability to obtain a loan  
11 modification." Castillo v. Wells Fargo Bank, N.A., No. C-15-  
12 2353 MMC, 2015 WL 13425101, at \*1 (N.D. Cal. Jul. 17, 2015).  
13 McMahon's only argument for materiality is that "based on the  
14 U.S. Treasury online NPV calculator, Plaintiff qualifies for a  
15 HAMP modification." Opp'n at 10. The exhibit that McMahon  
16 cites to support this contention, however, explicitly states  
17 "you *may* be eligible for a HAMP modification" and  
18 "CheckMyNPV.com provides *only an estimate* of a servicer's NPV  
19 evaluation." McMahon Decl., Exh. 6 at 1, ECF 33-2 (emphasis  
20 added). As discussed in the Court's order denying McMahon's  
21 motion for reconsideration, ECF No. 64, McMahon cannot show  
22 materiality by citing to a website that explicitly indicates its  
23 results are an estimate and may differ from the lender's  
24 results.

25 McMahon has no remaining HBOR claims that entitle him to  
26 injunctive relief and SPS has shown that it has materially  
27 complied with the HBOR. The Court therefore grants SPS's motion  
28 and dissolves the preliminary injunction issued on August 23,

1 2016.

2 III. ORDER

3 For the reasons set forth above, the Court GRANTS SPS's  
4 motion to dissolve the August 23, 2016 preliminary injunction.

5 IT IS SO ORDERED.

6 Dated: August 24, 2017

7   
8 JOHN A. MENDEZ,  
9 UNITED STATES DISTRICT JUDGE

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