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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERTA SOHAL, et al.,

Plaintiffs,

No. C 11-01941 JSW

v.

ORDER RE MOTIONS IN LIMINEFEDERAL HOME LOAN MORTGAGE
CORPORATION, et al.,

Defendants.

The Court has considered the parties' motions in limine, the opposition briefs, and relevant legal authority, and it finds that several of the motions in limine can be resolved without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court shall not hear oral argument on any motion in limine that it definitively resolves in this Order, and this Order shall constitute the Court's final ruling on those motions.

The Court also issues its tentative ruling on several motions in limine and the parties shall be prepared to address any questions set forth in this Order at the Final Pretrial Conference. They shall not submit additional briefing on these questions.

Final Rulings on Plaintiffs' Motions in Limine

1. The Court **grants**, as unopposed, the motion to exclude any written evidence of agency not produced in discovery. (Docket No. 119.) However, the Court notes that this ruling shall apply to all parties and all evidence. That is, any evidence requested, but not produced in discovery, shall not be admitted at trial. If any party objects to the admission of evidence on

1 this basis, the objection must be supported with the specific discovery request and the responses
2 thereto.

3 2. The Court **denies** the motion exclude evidence regarding the character of Taj
4 Lockett (Docket No. 122) on the basis that this evidence is relevant to Ms. Lockett's credibility,
5 whether or not she testifies at trial.

6 3. The Court **grants, in part, as unopposed** the motion to preclude the expert
7 testimony of Julia Leah Greenfield (Docket No. 123) and shall exclude any testimony regarding
8 categories 2 through 5 of Ms. Greenfield's report. Any evidence by Ms. Greenfield regarding
9 Ms. Lockett shall be governed by the ruling on Plaintiffs' motion in limine number 2, as set
10 forth above. The Court shall permit testimony on categories 1 and 8, but any such testimony
11 shall be limited to standard industry practices.

12 **Tentative Rulings on Plaintiffs' Motions in Limine**

13 1. To exclude evidence that Plaintiffs' lacked the ability to cure the loan default
14 (Docket No. 120): The Court **tentatively denies** the motion. However, the Court is **tentatively**
15 **inclined** to permit Plaintiffs to explain why they did not cure the alleged default, if Defendants
16 introduce such evidence.

17 2. To exclude unwritten evidence of agency regarding the beneficial interest in the
18 deed of trust (Docket No. 121): The Court **tentatively denies** the motion on the basis that the
19 statute of frauds does not apply, and unwritten evidence would be relevant to whether Wells
20 Fargo was authorized to act as Freddie Mac's agent in a beneficiary capacity.

- 21 a. Plaintiffs refer the Court to Section 66.17 of Freddie Mac's servicing guide. Do
22 Defendants contend that they complied with the second full paragraph of that
23 provision and, if so, is there evidence of such an assignment?

24 **Tentative Rulings on Defendants' Motions**

25 1. To exclude any and all evidence of emotional distress including expert testimony by
26 Brenda Wade and Roger Freed (Docket No. 109): The Court **tentatively grants** this motion.

- 27 a. What is Plaintiffs' response to question 3 of the Order in Advance of Pretrial
28 Conference (Docket No. 144)?

1 b. Courts have held that, where economic injury is involved, ““unless the defendant
2 has assumed a duty to plaintiff in which the emotional condition of the plaintiff
3 is an object, recovery is available only if the emotional distress arises out of the
4 defendant’s breach of some other legal duty and the emotional distress is
5 proximately caused by [breach of the independent duty]. Even then, with rare
6 exceptions, a breach of the duty must threaten physical injury, not simply
7 damage to property or financial interests.” *Ehrlich v. Menzies*, 24 Cal.4th 543,
8 555 (1999) (quoting *Potter v. Firestone Tire & Rubber Co.*, 6 Cal.4th 965, 985
9 (1993); *see also Stoiber v. Honeychuck*, 101 Cal. App. 3d 903 (1980) (noting that
10 landlord had duty to tenant to maintain premises in safe and habitable condition).
11 What evidence can Plaintiffs put forth, if any, to show that Defendants owed
12 them a special duty such that emotional distress damages would be warranted?

13 2. To exclude testimony regarding wrongful foreclosure on theories other than the
14 ones presented in Plaintiffs’ motion for summary judgment (Docket No. 110): The Court
15 **tentatively denies** this motion, but would be inclined to require a limiting instruction that it
16 goes solely to the issue of whether the defendants acted with malice or oppression.

17 3. To exclude testimony regarding Plaintiffs’ business and the nature thereof
18 (Docket No. 111): The Court **tentatively denies** this motion, but would be inclined to require a
19 limiting instruction that it goes solely to the issue of whether the defendants acted with malice
20 or oppression.

21 4. To exclude evidence of the unlawful detainer proceedings (Docket No. 112): The
22 Court tentatively grants this motion.

23 a. Do Defendants contend that Plaintiffs have not asserted a *claim* for unlawful
24 detainer?

25 b. The elements of a tort claim for wrongful eviction are: (1) a plaintiff’s peaceable
26 possession, and (2) the defendant’s forcible entry. *See Spinks v. Equity*
27 *Residential Briarwood Apartments*, 171 Cal. App.4th 1004, 1040. What is
28 Plaintiffs’ best argument that Defendants’ purported knowledge of the nature of

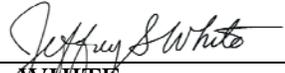
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their business would support the “forcible entry” element of this claim, given that they and their tenants have not been evicted?

c. Are Plaintiffs really contending that the unlawful detainer proceeding amounted to malicious prosecution? *See Bertero v. National General Corp.*, 13 Cal. 3d 43, 50 (1974) (elements of a malicious prosecution claim are: (1) defendant commenced a previous action and pursued it to a legal termination in plaintiff’s favor; (2) defendant brought the action without probable cause; and (3) defendant initiated the action with malice).

IT IS SO ORDERED.

Dated: January 24, 2013



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE