

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 Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VANCAMP SEATA VAI, *et al.*,  
Plaintiffs,

No. C-13-0294 EMC

v.

WELLS FARGO BANK, N.A., *et al.*,  
Defendants.

**ORDER GRANTING IN PART  
DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT; AND  
GRANTING PLAINTIFFS’ RULE 56(D)  
REQUEST**

**(Docket Nos. 49, 53)**

Previously, the Court ordered Plaintiffs to file an amended Rule 56(d) request because their prior request had been deficient (*e.g.*, it failed to identify what discovery Plaintiffs needed to take to oppose Defendants’ motion for summary judgment). *See* Docket No. 52 (Order at 2). Plaintiffs have now filed their amended Rule 56(d) request, and Defendants have filed a response thereto. Having considered the parties’ submissions, the Court hereby rules as follows.

Defendants argue that the Court should deny Plaintiffs’ Rule 56(d) request because the information sought through Plaintiffs’ proposed discovery “‘is almost certainly nonexistent or is the object of pure speculation.’” Reply at 3. While the Court is not without some sympathy for Defendants’ position, it shall not at this time dismiss Wells Fargo. Rather, the Court concludes that Plaintiffs should be allowed to take either a deposition of Michael Dolan or a 30(b)(6) deposition of Wells Fargo in order to test the claims made in the declaration of Mr. Dolan, which was tendered in support of Defendants’ motion for summary judgment. Furthermore, Plaintiffs are permitted to propound document requests on Wells Fargo as requested – *i.e.*, communications and documents

1 from Wells Fargo (or World Savings or Wachovia) to Plaintiffs between September 1, 2010, to July  
2 31, 2012, regarding “preforeclosure contacts or attempted contacts with [P]laintiffs pertaining to  
3 their mortgage loan; that is, any and all contacts related to assessing and exploring alternatives to  
4 foreclosure prior to the recording of a Notice of Default.” Docket No. 53 (Paris Decl. at 3).  
5 Interrogatories, however, shall not be permitted.


6         While the Court, for the foregoing reasons, shall not rule on the summary judgment motion  
7 as to Wells Fargo, it concludes that summary judgment in favor of Golden West is proper at this  
8 time. Although Golden West may have been involved with the issuance of the notice of default, *see*  
9 Dolan Decl., Exs. P-Q (documents reflecting that Cal-Western was not substituted as trustee until  
10 July 30, 2012, *i.e.*, two days after the notice of default was signed and that Cal-Western could have  
11 signed the notice of default as “agent for the trustee”), there is nothing to indicate that Golden West  
12 is the trustee for the deed of trust today. Indeed, it appears undisputed that Cal-Western is the  
13 current trustee. *See* Compl. ¶¶ 7-8. That being the case, even if Plaintiffs were to prevail on their  
14 sole claim for relief pursuant to California Civil Code § 2923.5, the only remedy they could obtain  
15 would be “a simple postponement of the foreclosure sale, nothing more,” *Mabry v. Superior Court*,  
16 185 Cal. App. 4th 208, 214 (2010), and an injunction postponing the foreclosure sale would only  
17 have relevance for Cal-Western as the current trustee (and Wells Fargo as the lender), not Golden  
18 West as the former trustee.

19 ///  
20 ///  
21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1           Accordingly, the Court hereby **GRANTS** in part the motion for summary judgment.  
2 Summary judgment in favor of Golden West is proper. As to Wells Fargo, the Court **DEFERS** a  
3 ruling on the motion for summary judgment. Plaintiffs shall have until **January 15, 2014**, to  
4 complete the discovery permitted above. By January 30, 2014, Plaintiffs shall file their opposition  
5 to Wells Fargo's motion for summary judgment. By February 6, 2014, Wells Fargo shall file its  
6 reply. The December 19, 2013, hearing is **VACATED**. After reviewing the parties' briefs, the  
7 Court shall determine whether a hearing is necessary.

8           IT IS SO ORDERED.

9  
10 Dated: November 26, 2013

11   
12 \_\_\_\_\_  
13 EDWARD M. CHEN  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28