

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBIN PEARSON,
Plaintiff,
v.
GREEN TREE SERVICING, LLC, et al.,
Defendants.

Case No. [14-cv-04524-JSC](#)

**ORDER GRANTING IN PART MOTION
FOR ATTORNEYS' FEES AND COSTS**

Re: Dkt. No. 26

Plaintiff Robin Pearson (“Plaintiff”) brought this action to prevent foreclosure of her home. She sued Defendants Green Tree Servicing, LLC (“Green Tree”), Northwest Trustee Services (“Northwest”), Federal National Mortgage Association (“Fannie Mae”), and Bank of America, N.A. (“BANA”) (together, “Defendants”), all of whom were involved in the servicing of Plaintiff’s mortgage. Plaintiff alleged that Defendants had engaged in conduct that violated the California Homeowners Bill of Rights (“HBOR”), in particular, the provision that prevents “dual tracking”—the processing of loan modification requests and taking steps towards foreclosure at the same time.

On November 21, 2014, the Court dismissed as moot Plaintiff’s complaint on the grounds that Green Tree cured any HBOR violation by filing a Notice of Rescission of the Notice of Default on Plaintiff’s property. *Pearson v. Green Tree Serv’g, LLC*, No. 14-cv-04524-JSC, 2014 WL 6657506, at *1 (N.D. Cal. Nov. 21, 2014).¹ Now pending before the Court is Plaintiff’s

¹ Plaintiff and Defendants Green Tree, Fannie Mae, and BANA consented to the jurisdiction of a magistrate judge. (Dkt. Nos. 4, 10, 14.) Northwest filed a declaration of non-monetary status pursuant to California Civil Code § 29241 while this action was pending in Superior Court; neither Plaintiff nor any other party objected to the filing and Northwest did not participate in the federal court proceedings. Thus, under Section 29241(d) Northwest is a non-party in this action and its consent is not needed. (See Dkt. No. 1 at 33.)

1 motion seeking attorneys' fees and costs from Green Tree. (Dkt. No. 26.) Green Tree opposes
2 Plaintiff's request for fees, arguing that Plaintiff is not eligible for attorneys' fees under the
3 circumstances presented and, to the extent that any fees are appropriate, Plaintiff should only be
4 allowed to recover fees associated with litigating the preliminary injunction in Superior Court.
5 (Dkt. No. 34 at 3.) Having carefully considered the parties' submissions, the Court concludes that
6 oral argument is not necessary, see Civ. L.R. 7-1(b), and GRANTS IN PART and DENIES IN
7 PART Plaintiff's motion for attorneys' fees and costs.

8 BACKGROUND

9 Much of the background of this case was already set forth in the Court's order dismissing
10 the complaint as moot. See Pearson, 2014 WL 6657506, at *2-3. Nonetheless, the Court will
11 reiterate here the procedural history relevant to the instant motion.

12 In August of 2013, Plaintiff filed a complaint in state court against Green Tree alleging a
13 dual-tracking violation of the HBOR by recording a Notice of Default on her property while
14 Plaintiff's application for a loan modification was pending. (Dkt. No. 1.) In September of 2013,
15 the Contra Costa County Superior Court issued a preliminary injunction enjoining the trustee sale
16 pending a resolution of Plaintiff's case on the merits. (Dkt. No. 16 at 6.)² Two months later,
17 counsel for Green Tree informed Plaintiff that Green Tree had recorded a Notice of Rescission of
18 the Notice of Default. (Dkt. No. 7-4.) Meanwhile, the litigation between the parties continued.

19 On September 12, 2014, Plaintiff amended her complaint to add BANA, the primary
20 mortgage servicer, and Fannie Mae, the owner of the loan, as defendants to this action. (Dkt. No.
21 1 at 17.) Defendants subsequently removed the case to federal court on October 9, 2014 based on
22 federal question jurisdiction in light of the addition of Fannie Mae as well as diversity jurisdiction.

23
24 ² Pursuant to Federal Rule of Evidence 201, the Court "may judicially notice a fact that is not
25 subject to reasonable dispute because it: (i) is generally known within the trial court's territorial
26 jurisdiction; or (ii) can be accurately and readily determined from sources whose accuracy cannot
27 reasonably be questioned." Judicial notice is appropriate for matters of public record. *Coto*
28 *Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). Green Tree asks the Court to take
judicial notice of eight documents, which are either documents recorded in the Contra Costa
County Record's Office related to the subject property, or documents publicly filed in the Contra
Costa Superior Court while this case was still pending there. (See Dkt. No. 36.) Given that these
documents are public records, and hearing no objection from Plaintiff, the Court GRANTS Green
Tree's request for judicial notice of these documents.

1 (Dkt. No 1.) BANA filed a motion to dismiss the complaint as moot on the ground that the Notice
2 of Rescission had cured any violation of the HBOR. (Dkt. No. 5.) Green Tree and Fannie Mae
3 later joined that motion. (Dkt. No. 13.)

4 After a hearing, the Court granted the motion and dismissed the complaint as moot, but did
5 so without prejudice to allowing Plaintiff to file a motion for attorneys' fees and costs. Pearson,
6 2014 WL 6657506, at *4.

7 DISCUSSION

8 A. Statutory Eligibility for Attorneys' Fees and Costs

9 Eligibility for an award of attorneys' fees and costs on state law claims is a matter of
10 California law. See *Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995).
11 California follows the so-called "American Rule," which provides that each party in a lawsuit is
12 ordinarily responsible for its own attorneys' fees. *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).
13 Courts may, however, award attorneys' fees when a party has sued under a contract that includes a
14 valid agreement for a fee award to the prevailing party, *First Nationwide Bank v. Summer House*
15 *Joint Venture*, 902 F.2d 1197, 1199 (5th Cir. 1990); *LINC Fin. Corp. v. Onwuteaka*, 129 F.3d 917,
16 924 (7th Cir. 1997), or pursuant to a statute or rule providing for the shifting of fees to the losing
17 party, *United States v. Standard Oil Co. of Cal.*, 603 F.2d 100, 103 (9th Cir. 1979). Here, there is
18 no contractual basis for attorneys' fees. Rather, Plaintiff seeks attorneys' fees and costs pursuant
19 to two separate statutes: the HBOR and Section 1021.5 of the California Code of Civil Procedure.
20 Green Tree contends that neither statute can serve as a basis for the award of fees and costs that
21 Plaintiff requests. The Court will address each statutory basis in turn, then will address separately
22 the scope of allowable recovery.

23 1. Statutory Basis for Attorneys' Fees and Costs

24 During the course of this case, Plaintiff has invoked more than one provision of the HBOR
25 as grounds for her eligibility for attorneys' fees and costs. When Plaintiff conceded that her case
26 was moot, she requested an award of fees and costs pursuant to Section 2924.12(i) (Dkt. No. 22 at
27 3); the Court determined that reasonable fees and costs would be available to Plaintiff as a
28 prevailing party under this subsection. See Pearson, 2014 WL 6657506, at *4. In the instant

1 motion, however, Plaintiff departs from her earlier argument without so much as referencing the
2 change and now seeks fees and costs pursuant to a different provision: subsection (h). (Dkt. No.
3 26 at 3; Dkt. No. 39 at 2.) Green Tree continues to assert that attorneys’ fees are unavailable. As
4 set forth below, the Court concludes that Plaintiff is entitled to reasonable attorneys’ fees and costs
5 under subsection (i) only.

6 a. Section 2924.12(i)

7 The Court has already concluded that Plaintiff is eligible for reasonable attorneys’ fees and
8 costs as a prevailing party. As described in the Court’s order dismissing the complaint, the HBOR
9 provides a cause of action for borrowers to enjoin a material violation of the law’s dual tracking
10 provision, among others. Cal. Civ. Code § 2924.12(a). But the HBOR provides a “safe harbor”
11 for servicers, which states that a servicer “shall not be liable for a violation that it [or a third party]
12 has corrected and remedied prior to the recordation of a trustee’s deed upon sale[.]” Id.
13 § 2924.12(c). In other words, if the servicer takes action to correct the violation before proceeding
14 to foreclosure, no liability results. HBOR further provides, in relevant part, that

15 [a] court may award a prevailing borrower reasonable attorney[s’]
16 fees and costs in an action brought pursuant to this section. A
17 borrower shall be deemed to have prevailed for the purposes of this
subsection if the borrower obtained injunctive relief[.]

18 Id. § 2924.12(i).

19 Plaintiff obtained injunctive relief in the form of a preliminary injunction enjoining
20 foreclosure. Pearson, 2014 WL 6657506, at *4. Thus, under the plain language of the HBOR,
21 which references injunctive relief generally and states no requirement that the relief be permanent,
22 Plaintiff is a prevailing party. The only question is whether the later dismissal of this action
23 effectively reverses Plaintiff’s prevailing-party status. The Court has already determined that such
24 is not the case: based on the purpose of the HBOR—protecting borrowers—and the Ninth
25 Circuit’s direction that a preliminary injunction combined with a moot case can create “prevailing
26 party” status despite the absence of a final judgment when it materially alters the parties’
27 relationship and is based on the Plaintiff’s reasonable likelihood of success on the merits, granting
28 Plaintiff “prevailing borrower” status is appropriate here. Pearson, 2014 WL 6657506, at *4

1 (citing *Higher Taste, Inc. v. City of Tacoma*, 717 F.3d at 712, 717 (9th Cir. 2013) and *Shapiro v.*
2 *Sage Point Lender Servs.*, No. EDCV 14-1591-JGB (KKx), 2014 WL 5419721, at *4 (C.D. Cal.
3 Oct. 24, 2014)); *see also Elder v. Nat’l Conf. of Bar Exam’rs*, No. C 11-00199 SI, 2011 WL
4 4079623, at *1 (N.D. Cal. Sept. 12, 2011) (“Ninth Circuit case law [] holds that a plaintiff who
5 succeeds on a preliminary injunction motion [in an ADA case] . . . is entitled to statutory
6 attorneys[’] fees as a prevailing party even where a plaintiff’s case is eventually dismissed as moot
7 and there is no final determination on the merits.” (citation omitted)). In other words, Plaintiff has
8 obtained preliminary injunctive relief, which the Court explicitly based on Plaintiff’s likelihood of
9 success on the merits. *Pearson*, 2014 WL 6657506, at *4. The injunction forced Green Tree to
10 provide her with the very relief she sought in this action: the termination of foreclosure
11 proceedings against her home. *Id.*³ Under such circumstances, as a matter of law under the plain
12 language of the statute and in accordance with general Ninth Circuit law, Plaintiff has “prevailed”
13 and is therefore eligible for attorneys’ fees.

14 Green Tree’s arguments to the contrary are unpersuasive. First, although the Court already
15 determined that subsection (i) is applicable, Green Tree now cites the same authority that all
16 Defendants included in their motion to dismiss in support of the proposition that the safe harbor
17 provision bars such recovery where a notice of rescission has been filed. (See Dkt. No. 34 at 4
18 (citations omitted).) But the Court already distinguished these cases on the grounds that none
19 involved a notice of rescission filed after a court granted the plaintiff-borrower’s request for
20 injunctive relief. *Pearson*, 2014 WL 6657506, at *4. Green Tree does not offer any argument
21 why, contrary to the Court’s reasoning, these cases are not distinguishable. (See Dkt. No. 34 at 4.)
22 Moreover, Green Tree does not provide a citation to any new case in which a court addressed this
23 specific scenario (see *id.*), and the Court has found none. Accordingly, the Court holds fast to its
24 earlier conclusion that Plaintiff is eligible for reasonable attorneys’ fees and costs pursuant to
25

26 ³ In the order finding Plaintiff eligible for attorneys’ fees and costs as a “prevailing party,” the
27 Court noted that it had not found any case that presents the particular situation at issue here—a
28 motion for attorneys’ fees and costs after the case is mooted by defendant’s rescission of an
improper notice of default following the plaintiff obtaining preliminary injunctive relief. *Pearson*,
2014 WL 6657506, at *4. This remains to be true as of the date of this Order.

1 Section 2924.12(i) of the HBOR.

2 b. Section 2924.12(h)

3 Rather than basing her request for fees on subsection (i), however, Plaintiff instead hinges
4 her motion for attorneys' fees and costs on Section 2924.12(h) of the HBOR. (Dkt. No. 26 at 3;
5 Dkt. No. 34 at 2-4.) This subsection provides that "[t]he rights, remedies, and procedures
6 provided by this section are in addition to and independent of any other rights, remedies, or
7 procedures under any other law. Nothing in this section shall be construed to alter, limit, or negate
8 any other rights, remedies, or procedures provided by law." As the "other rights . . . under
9 [another] law" to serve as the basis for attorneys' fees and costs for the purposes of this
10 subsection, Plaintiff points to Code of Civil Procedure Section 1021.5. (See Dkt. No. 26 at 3.)

11 Section 1021.5, in turn, provides that a court may award attorneys' fees to a successful
12 party in a "private attorney general" action which (a) enforces an important right affecting the
13 public interest, and (b) confers a significant benefit (pecuniary or nonpecuniary) upon the general
14 public or a large class of persons, if (c) the necessity and cost to plaintiff in bringing its private
15 enforcement action outweighs its stake in the action. Cal. Code. Civ. P. § 1021.5; *Woodland Hills*
16 *Residents Ass'n v. City Council*, 23 Cal.3d 917, 934-35 (1979). Notably, plaintiffs typically
17 receive fully compensatory attorneys' fees under Section 1021.5—that is, courts award the entire
18 amount spent regardless of determining whether the amount was "reasonable," the limitation that
19 Section 2924.12(i) requires. See *Serrano v. Unruh*, 32 Cal.3d 621, 632 (1982).

20 The purpose of an award of attorneys' fees pursuant to Section 1021.5 is "to encourage
21 suits that enforce 'common interests of significant societal importance, but which do not involve
22 any individual's financial interest to the extent necessary to encourage private litigation to enforce
23 that right.'" *Satrap v. PG&E*, 42 Cal. App. 4th 72, 78 (1996) (citation omitted). In other words,
24 courts award fees pursuant to this section "when a significant public benefit is conferred through
25 litigation pursued by one whose personal stake is insufficient to otherwise encourage the action[.]"
26 not "as a method for rewarding litigants motivated by their own pecuniary interests who only
27 coincidentally protect the public interest." *Id.*; see also *Flannery v. Cal. Highway Patrol*, 61 Cal.
28 App. 4th 629, 635 (1998) (noting that an award of attorneys' fees pursuant to Section 1021.5 is

1 inappropriate where the primary effect of a lawsuit is to advance or vindicate a plaintiff’s personal
 2 economic interest, even if some incidental public benefit results from the suit). Thus, before
 3 awarding fees under Section 1021.5, “[t]he trial court must determine the significance of the
 4 benefit and the size of the class receiving that benefit by realistically assessing the gains that have
 5 resulted in a particular case.” *Howard v. First Horizon Home Loan Corp.*, No. 12-cv-05735-JST,
 6 2013 WL 6174920, at *8 (N.D. Cal. Nov. 25, 2013). Put another way, “[t]he trial court in its
 7 discretion must realistically assess the litigation and determine, from a practical perspective,
 8 whether or not the action served to vindicate an important right so as to justify an attorney award
 9 fee under section 1021.5.” *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 566 (2004)
 10 (internal quotation marks and citation omitted).

11 The relief that this statute affords is outside of Plaintiff’s reach. Courts have repeatedly
 12 declined to impose Section 1021.5 fees for mortgage foreclosure cases, given that such suits really
 13 arise out of the individual plaintiff’s personal financial stake in the subject property, rather than a
 14 matter of public interest. See, e.g., *Howard*, 2013 WL 6174920, at *8; *Manantan v. Nat’l City*
 15 *Mortg.*, No. C-11-00216 CW, 2011 WL 3267706, at *11 (N.D. Cal. July 28, 2011); *Garcia v.*
 16 *Fidelity Mortg. Co.*, No. C 05-05144 MHP, 2009 WL 1246921, at *3 (N.D. Cal. May 5, 2009);
 17 *Sanders v. Fidelity Mortg. Co.*, No. C 05-04990 MHP, 2009 WL 1246686, at *8 (N.D. Cal. May
 18 5, 2009). The only exception to this rule appears to be when a plaintiff includes a cause of action
 19 under California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, which
 20 specifically provides for Section 1021.5 damages. See *Jackson v. Sturkie*, 255 F. Supp. 2d 1096,
 21 1107-08 (N.D. Cal. 2003) (noting that the court “may award attorney fees to a successful litigant
 22 in a UCL action” under Section 1021.5). Here, Plaintiff has no UCL claim and the Court finds no
 23 basis to depart from the well-reasoned judgment of other courts that have denied Section 1021.5
 24 damages in mortgage foreclosure cases. See *Howard*, 2013 WL 6174920, at *8; *Manantan*, 2011
 25 WL 3267706, at *11; *Garcia*, 2009 WL 1246921, at *3; *Sanders*, 2009 WL 1246686, at *8. Just
 26 as in those cases, any public benefit at issue here is merely incidental to Plaintiff’s personal
 27 interest in preventing the foreclosure of her home. (See Dkt. No. 26 at 3-4.)

28 Plaintiff’s arguments to the contrary are unpersuasive. First, Plaintiff contends that she has

1 met the requirement of showing that this action resulted in a significant public benefit “because
2 the prevention of wrongful foreclosures in California benefits all homeowners as well as plaintiff
3 here.” (Dkt. No. 39 at 5; see also id. at 5 (“[P]revention of wrongful foreclosures is an important
4 right affecting the public interest.”).) But Plaintiff has failed to identify how this action, a
5 challenge to the wrongful foreclosure of Plaintiff’s property in particular, somehow translates into
6 broad protection against wrongful foreclosures more generally. To the extent that this case will
7 deter other servicers from engaging in dual tracking conduct in violation of the HBOR, this result
8 cannot be described as anything but secondary to the desired and actual core effect of this case:
9 preventing the foreclosure of Plaintiff’s property. Indeed, “[c]ourts consider the ‘substantial
10 benefit’ criterion in the context of the outcome of the current litigation, and not on speculative
11 future events” like a possible deterrent effect. *Ctr. for Biological Diversity v. Cnty. of San*
12 *Bernardino*, 185 Cal. App. 4th 866, 895 (2010). The only benefit that “flowed directly and
13 immediately from” this action is the prevention of foreclosure of Plaintiff’s home; any other
14 possible result is too attenuated. Thus, the instant case did not result in a “significant public
15 benefit” for the purposes of Section 1021.5. Given that the statute requires that all three factors
16 (significant public benefit, necessity and financial burden of private enforcement, interest of
17 justice) be present to support an award of attorneys’ fees, the inquiry ends here. See Cal. Code
18 Civ. P. § 1021.5.

19 Because Plaintiff is not eligible for attorneys’ fees and costs under Section 1021.5, that
20 section cannot serve as the triggering statutory basis for attorneys’ fees and costs under Section
21 2924.12(h) of the HBOR. Notably, there is no other statutory basis for an award of attorneys’ fees
22 in this case; in a statutory action such as this one, California law provides that a prevailing party is
23 entitled to recover costs alone, not attorneys’ fees. See Cal. Civ. Code § 1032(b). Accordingly,
24 Plaintiff is entitled to reasonable attorneys’ fees and costs under Section 2924.12(i), not under
25 Section 1021.5.

26 2. Scope of Recoverable Attorneys’ Fees and Costs

27 Having determined that Plaintiff is eligible for reasonable attorneys’ fees and costs under
28 Section 2924.12(i), the Court must address the scope of that recovery. Given the rationale for

1 finding Plaintiff eligible for fees and costs under this section—i.e., the fact that she obtained a
2 preliminary injunction that led to her desired result, rescission of the notice of default—it does not
3 automatically follow that she may recover attorneys’ fees and costs for work done during the
4 entire life of this case, including all litigation that followed after that event, as Plaintiff requests.
5 (See Dkt. No. 26 at 5.) To the contrary, the Court concludes that Plaintiff is eligible for reasonable
6 attorneys’ fees and costs pertaining to work done on this litigation up until she received notice of
7 the recording of the Notice of Rescission, as well as litigation on the instant motion.

8 This is the only interpretation that squares with the maxim that statutes must “be read as a
9 whole[.]” *United States v. Atl. Research Corp.*, 551 U.S. 128, 135 (2007). The HBOR’s safe
10 harbor provision makes clear beyond cavil that a defendant is free from liability once an HBOR
11 violation is cured. Given that Plaintiff’s case was clearly mooted by the safe harbor provision
12 when Green Tree filed the Notice of Rescission—which afforded Plaintiff exactly the relief she
13 sought in the complaint—an award of attorneys’ fees for litigation thereafter would be neither
14 reasonable nor just under subsection (i). Thus, a plain reading of the statute should have led
15 Plaintiff to the inexorable conclusion that her claim for relief was mooted once Green Tree cured
16 its dual tracking violation by filing the Notice of Rescission. Although Green Tree maintains that
17 any recovery should be limited to costs and fees incurred up until the moment of the Notice of
18 Rescission was actually recorded (Dkt. No. 34 at 6-7 (“[I]f the court is inclined to award
19 discretionary fees . . . the fees should only be for the time spent obtaining the injunction[,] which
20 would be through September 10, 2013.”)), such a strict reading gives too short shrift to the
21 realities of litigation. That is, while generally speaking, publicly recording a document gives a
22 party constructive notice, it would be unreasonable to expect Plaintiff to anticipate that the very
23 same entity that was fighting tooth and nail in this action to proceed with foreclosure would
24 simultaneously backtrack by rescinding the notice of default.

25 The Court is not persuaded by Plaintiff’s argument that reading the statute as a whole
26 compels the opposite result. Plaintiff contends that the HBOR’s safe harbor provision is relevant
27 only to the availability of remedies or damages, not to the availability of attorneys’ fees under
28 subsection (i), such that “when the safe harbor provision is triggered, . . . [i]t does not prohibit or

1 reduce a prevailing borrower’s entitlement to attorneys’ fees.” (Dkt. No. 39 at 3; see also *id.* at 2
2 (contending that, even though the case has been mooted, “plaintiff is still eligible for costs and
3 fees because they are separate and distinct from the damages issue in the core action”).) To be
4 sure, attorneys’ fees and damages are two separate awards governed by different subsections of
5 the statute. Compare Cal. Civ. Code § 2924.12(c) (safe harbor provision governing liability), with
6 *id.* § 2924.12(i) (attorneys’ fees provision). But reading the statute as a whole, it cannot be that
7 the legislature intended a borrower to recover attorneys’ fees for work done long after the
8 borrower’s claims have themselves been extinguished.

9 Plaintiff’s other arguments that fees for post-rescission litigation are appropriate fare no
10 better. Plaintiff contends that when it comes to fee-shifting statutes, even where the language is
11 discretionary—i.e., the court “may” award fees—“prevailing plaintiffs in public interest litigation
12 are ‘ordinarily entitled’ to reasonable attorney fees, and fees may be denied only when ‘special
13 circumstances’ would render an award unjust.” (Dkt. No. 39 at 4 (citation omitted).) Thus,
14 Plaintiff argues that the HBOR, as a fee-shifting statute, somehow obligates the Court to award the
15 full amount of fees that she now seeks. But this argument misses the mark. First, Plaintiff cites
16 several cases in support of this proposition, but her cases make clear that this “special
17 circumstances” test applies to federal fee-shifting statutes and damages awards under Section
18 1021.5—neither of which is applicable here. See *Serrano*, 32 Cal. 3d at 632. Other cases that
19 Plaintiff cites do not address this test at all, but rather—based on the unique legislative history of
20 the particular statute—indicate that although the statutory language included the discretionary
21 word “may,” the award of attorneys’ fees was still mandatory. *Jones v. Tracy Sch. Dist.*, 27 Cal.
22 3d 99, 109 (1980). Put simply, Plaintiff is barking up the wrong tree with this argument: the Court
23 agrees that Plaintiff is entitled to attorneys’ fees, and is not exercising discretion to decline to
24 award fees. Thus, the Court’s discretion is not being exercised with respect to whether to award
25 fees under the word “may” in the statute, but rather in its determination of what amount is
26 reasonable. In doing so, to square with the plain language and purpose of the statute, the Court is
27 limiting the scope of recoverable attorneys’ fees to those pertaining to work done in connection
28 with the injunctive relief that Plaintiff obtained—i.e., the result that triggers the statutory award of

1 attorneys’ fees in the first instance—and other work up until Plaintiff should have known that this
2 action no longer presented a live case or controversy. This practice does not run afoul of the
3 authority that Plaintiff cites.

4 Thus, the Court concludes that because the safe harbor provision of the HBOR mooted
5 Plaintiff’s case, which Plaintiff knew or reasonably should have known at the time she received
6 notice that Green Tree had recorded a Notice of Rescission of the Notice of Default, Plaintiff may
7 only recover attorneys’ fees for all work done up until that point, as well as fees for litigating the
8 instant motion.

9 **B. Award of Attorneys’ Fees and Costs**

10 Because the Court concludes that Plaintiff is entitled to attorneys’ fees and costs under
11 Section 2924.12(i), the sole issue before Court is the amount that should be awarded. Plaintiff
12 requests \$92,447.07 in attorneys’ fees and costs. (See Dkt. No. 27 ¶ 24; see also Dkt. No. 34 at 3.)
13 This total is twice the full amount of attorneys’ fees actually expended on her case. Green Tree
14 contends that the Court should award only a portion of that amount.

15 1. Legal Standard

16 “[A] court assessing attorneys[’] fees begins with a touchstone or lodestar figure, based on
17 the careful compilation of the time spent and reasonable hourly compensation of each attorney . . .
18 involved in the presentation of the case.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131-32 (2001)
19 (internal quotation marks omitted); see also *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th
20 Cir. 1996) (“The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party
21 reasonably expended on the litigation by a reasonable hourly rate.”).

22 “In determining the reasonable hourly rate, the district court should be guided by the rate
23 prevailing in the community for similar work performed by attorneys of comparable skill,
24 experience, and reputation.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir.
25 1986), amended on other grounds by 808 F.2d 1373 (9th Cir. 1987). The relevant community for
26 the purposes of determining the prevailing market rate is generally the “forum in which the district
27 court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). In terms of the
28 reasonable amount of time spent, the Court should only award fees based on “the number of hours

1 reasonably expended on the litigation” and should exclude “hours that are excessive, redundant, or
2 otherwise unnecessary.” Hensley, 461 U.S. at 433-34. “There is no precise rule or formula for
3 making these determinations[,]” and “[t]he court necessarily has discretion in making this
4 equitable judgment.” Id. at 436-37.

5 “Once the court has fixed the lodestar, it may increase or decrease that amount by applying
6 a positive or negative ‘multiplier’ to take into account a variety of other factors, including the
7 quality of the representation, the novelty and complexity of the issues, the results obtained, and the
8 contingent risk presented.” Thayer v. Wells Fargo Bank, N.A., 92 Cal. App. 4th 819, 833 (2001)
9 (citation omitted).

10 2. Analysis

11 Plaintiff seeks attorneys’ fees for all work done in this case, from the time she initiated this
12 action in Superior Court through the instant motion for attorneys’ fees and costs. (See Dkt. No. 26
13 at 5.) In total, Plaintiff seeks \$92,447.07 in fees and costs. Broken down, Plaintiff’s lodestar
14 request is \$22,600.00 in attorneys’ fees up until the date that Plaintiff received notice of Green
15 Tree’s Notice of Rescission on December 16, 2013; \$22,460.00 in attorneys’ fees for litigation
16 since that date; and, separately, \$5,720.00 in attorneys’ fees for briefing the instant motion. (Id.)
17 Plaintiff also seeks an enhancement of that lodestar amount; specifically, Plaintiff asks the Court
18 to double the fee amount due to (1) the great risk counsel took in taking a contingency fee case;
19 (2) the novelty and difficulty of the case; (3) the results obtained; and (4) the extent to which
20 counsel for Green Tree made much of the litigation unnecessary. (Id. at 9-13.) Plaintiff also
21 argues that it is appropriate to award attorneys’ fees and costs for the period after Green Tree
22 rescinded the Notice of Default despite the HBOR’s safe harbor provision, which as described
23 above, provides that borrowers are not entitled to damages after a defendant cures an HBOR
24 violation. (Id. at 14-17.) In addition, Plaintiff seeks \$1,739.17 in costs up until notice of
25 rescission, and another \$267.90 in costs from that date until the present. (Id. at 5.) Finally,
26 Plaintiff seeks an order requiring Green Tree to pay interim fees. (Id. at 18.) The Court will
27 address each request in turn.

28

1 a. Reasonable Hourly Rate

2 “The first step in the lodestar analysis requires the court to determine a reasonable hourly
3 rate for the fee applicant’s services. This determination involves examining the prevailing market
4 rates in the community charged for similar services by lawyers of reasonably comparable skill,
5 experience, and reputation.” Cotton v. City of Eureka, 889 F. Supp. 2d 1154, 1167 (N.D. Cal.
6 2012) (internal quotation marks and citations omitted); see also Camacho, 823 F.3d at 979. The
7 “relevant community” for the purposes of the instant application is the district in which the lawsuit
8 proceeds. Barjon v. Dalton, 132 F.3d 496, 500 (9th Cir. 1997). “The fee applicant has the burden
9 of producing satisfactory evidence . . . that the requested rates are in line with those prevailing in
10 the community[.]” Jordan v. Multnomah Cnty., 815 F.2d, 1258, 1263 (9th Cir 1987). In addition
11 to affidavits from the fee applicant himself, other evidence of the prevailing market rate may
12 include affidavits from other area attorneys or examples of rates awarded to counsel in previous
13 cases. See Cotton, 889 F. Supp. 2d at 1167 (citation omitted). However, the actual rate that the
14 fee applicant charged is not evidence of the prevailing market rate. Id. (citing *Schwarz v. Sec’y of*
15 *Health & Human Servs.*, 73 F.3d 895, 908 (9th Cir. 1995) (quotation omitted)).

16 Here, Plaintiff asserts that the fee award in this case should be based on a rate of \$400 per
17 hour for her attorney, T. Theodore Cruz. (Dkt. No. 26 at 5.) Green Tree contends that Mr. Cruz’s
18 actually billed rate of \$200 per hour is more appropriate. (Dkt. No. 34 at 6.) The Court concludes
19 that a reasonable rate of compensation in this matter is \$400 per hour.

20 In support of her motion, Plaintiff has submitted declarations from two attorneys, the first
21 of which is Mr. Cruz, who has been counsel of record in this matter from the outset of litigation.
22 (Dkt. No. 27 ¶2.) Having earned a J.D. and an LL.M., Mr. Cruz has been practicing law in
23 California for fifteen years and was admitted to practice in this District in 1997. (Id.) Mr. Cruz is
24 a sole practitioner who has experience litigating in a wide range of subject areas, including
25 contracts, real property, insurance coverage, medical malpractice, employment, and commercial
26 law. (Id. ¶ 3.) Although Mr. Cruz billed Plaintiff \$200 per hour for his services in this matter, he
27 avers that \$400 per hour is the typical market rate for this type of case from a lawyer of similar
28 skill and experience as Mr. Cruz. (Dkt. No. 27 ¶ 3; Dkt. No. 26 at 8.) While Mr. Cruz does

1 discuss the prevailing rate in the proper locale, he does not provide any further explanation for his
2 opinion that a \$400 hourly rate is reasonable.

3 Plaintiff also has submitted the declaration of Virginia M. George, a partner in a local law
4 firm that is not affiliated with Mr. Cruz. (Dkt. No. 28.) Ms. George has been practicing law in
5 California since 1986, and her roles have included serving as a deputy district attorney; teaching
6 evidence, criminal procedure, and wills and trusts; representing senior citizens who had been
7 financially abused; serving on the county probate bench; and, since 2011, litigating matters
8 involving trust administration, probate, conservatorship, and guardianship matters. (Id. ¶¶ 1-2.)
9 Ms. George’s law firm also handles real estate matters, and she has handled fee requests on her
10 firm’s behalf. (Id.) Ms. George states that she is familiar with Mr. Cruz and that he is known as a
11 competent attorney. (Id. ¶ 2.) Like Mr. Cruz, Ms. George asserts that \$400.00 per hour is “quite
12 reasonable for a litigation attorney with fifteen years of experience and within the market range for
13 comparably qualified and experienced attorneys handling comparable litigation in the Contra
14 Costa/Alameda County areas”—areas that are indisputably part of the Northern District of
15 California. (Id. ¶ 2.)

16 Both attorneys’ declarations provide support for Plaintiff’s requested rate. First, both
17 declarations discuss the rate in the relevant legal market. Cf. Schwarz, 73 F.3d at 908 (rejecting as
18 unhelpful to a fee inquiry information about similarly qualified attorneys in markets other than the
19 relevant community). Ms. George’s declaration explicitly states that she has worked on fee
20 motions for her firm, which handles litigation involving real property, and that the \$400 rate is
21 appropriate for such cases for a lawyer of Mr. Cruz’s experience. Taken together, the Court finds
22 that these declarations provide support for Plaintiff’s requested \$400 hourly rate.

23 Plaintiff does not address whether this rate is commonly awarded by other judges in the
24 Northern District for similar cases tried by attorneys with comparable experience. Green Tree
25 does not address this issue, either. But the Court conducted its own review, and found that other
26 courts in this District have determined that rates ranging from \$180 and \$425 per hour are
27 appropriate in wrongful foreclosure cases for attorneys with similar breadth and length of
28 experience. Mitchell v. Wells Fargo Bank, N.A., No. 13-04017-KAW, 2014 WL 1320295, at *4

1 (N.D. Cal. Apr. 1, 2014) (finding \$290/hour to be a reasonable hourly rate for an attorney with 15
2 years of experience litigating an HBOR case); *Sami v. Wells Fargo Bank, N.A.*, No. C 12-00108
3 DMR, 2012 WL 3204194, at *6 (N.D. Cal. Aug. 3, 2012) (finding \$320/hour to be a reasonable
4 hourly rate for an attorney with 18 years of experience in a wrongful foreclosure action alleging
5 various state law claims, but none under HBOR); *Makreas v. First Nat'l Bank of No. Cal.*, No. 11-
6 cv-02234-JST, 2014 WL 2582027, at *6 (N.D. Cal. June 6, 2014) (finding hourly rates ranging
7 from \$180 to \$425 per hour reasonable for time spent on a foreclosure case). These exemplars
8 provide further support for the reasonableness of Plaintiff's requested \$400 per hour rate.

9 Green Tree requests that the \$200 per hour rate govern. But Green Tree does not offer any
10 evidence or explanation why that should be the case, other than the fact that it was the actual rate
11 charged, which is no consequence in the analysis. See *Cotton*, 889 F. Supp. 2d at 1167. Given the
12 lack of meaningful objection, the declarations that Plaintiff submits along with prior cases from
13 this District sufficiently establish that the requested \$400 per hour rate is reasonable.

14 b. Reasonableness of Time Spent

15 With respect to the hours spent, Mr. Cruz avers that he spent a total of 225.3 hours on this
16 matter. (Dkt. No. 26 at 5.) For the reasons explained above, the Court concludes that Plaintiff is
17 only entitled to fees for work done up to the date that Plaintiff received notice of the Notice of
18 Rescission that mooted this action; among the hours billed, 113 were for work during this period.
19 (See *id.*) Green Tree seeks to reduce this number, contending that a variety of billing entries are
20 unreasonable. Below, the Court addresses whether the time billed was reasonable.

21 i. Travel Time

22 Plaintiff's counsel has submitted a number of invoices, some of which reflect that he seeks
23 to recover attorneys' fees to compensate time he spent traveling for this case. Green Tree argues
24 that Mr. Cruz's travel time should not be compensated, let alone at the professional rate, so the
25 total number of billable hours should be reduced to exclude travel time or the rate should be
26 reduced. The Court declines to make either reduction.

27 Generally, courts in this Circuit do not compensate travel time at a lower rate than time
28 billed for other tasks, so long as the travel time is considered reasonable. See, e.g., *Defenbaugh v.*

1 JBC & Assocs., No. C-03-0651-JCS, 2004 WL 1874978, at *12 (N.D. Cal. 2004) (compensating
2 travel time at full professional rate); *Ilick v. Miller*, 68 F. Supp. 2d 1169, 1178 (D. Nev. 1999)
3 (compensating travel time at the full professional rate because attorneys are entitled to bill for lost
4 productivity during travel, but limiting billable travel time to six hours within any 24-hour period,
5 for “in the court’s experience, most attorneys would be satisfied with six hours of billable time at
6 the end of any working day”); *Allen v. City of Los Angeles*, 1995 WL 433720, at *10 (C.D. Cal.
7 Jan. 13, 1995) (“The Court does not believe an arbitrary percentage reduction on all hours claimed
8 for travel is appropriate. Rather, the Court has either allowed or disallowed travel time depending
9 upon the purpose for the travel.”).

10 Here, Mr. Cruz has billed 4.3 hours for travel on 2 days: (1) August 16, 2013 for travel to
11 and from the County Recorder’s office to retrieve real property records related to the subject of
12 this litigation; (2) August 21, 2013 time traveling to and from and waiting in the Superior Court to
13 file the complaint; (Dkt. No. 29 at 1-4). Although, as Green Tree points out, Mr. Cruz could
14 have engaged an attorney service to perform these tasks at potentially lower rates, this is not
15 required, particularly where, as here, time is of the essence and there is no room for error
16 inasmuch as the attorney is seeking emergency injunctive relief to prevent a fast-approaching
17 harm. The Court finds this time to be reasonably well spent and therefore awards full fees for
18 these 4.3 hours.

19 ii. Non-Legal Activities

20 Green Tree next argues that Plaintiff should not be awarded fees for time spent on certain
21 activities that do not qualify as professional legal services. Green Tree points to activities that
22 they contend “should be completed by a paralegal or legal assistance, at a lower rate than \$200 an
23 hour” (Dkt. No. 34 at 7), in particular, 1.7 hours typing a transcript of a recorded telephone call
24 between Plaintiff and a Green Tree representative. (Dkt. No. 34 (citing Dkt. No. 29 at 1-4.) Mr.
25 Cruz, for his part, contends that this is merely another legal task that happened to be clerical, and
26 courts typically do not require a sole practitioner to vary his rates based on the type of task
27 performed. (Dkt. No. 39 at 7-8.)

28 “Clerical and secretarial work is not compensable as attorneys fees.” *Campbell v. Nat’l*

1 Passenger R.R. Corp., 718 F. Supp. 2d 1093, 1103 (N.D. Cal. 2010) (citing Davis v. City of San
2 Francisco, 976 F.2d 1536, 1543 (9th Cir. 1992)). However, the Court concludes that this work
3 can be properly billed for two reasons. First, the task was not quite clerical, like mere calendaring
4 and docketing work. Rather, the work was appropriately done by counsel himself. Mr. Cruz
5 began his work on this case just nine days before the scheduled trustee sale, and the recorded call
6 was highly relevant to establishing the likelihood of success on the merits for the purposes of
7 obtaining a temporary restraining order to prevent that sale, which the Superior Court did, in fact,
8 impose. (See Dkt. No. 27 ¶ 8.) Given the time constraints, it would be unreasonable to require
9 Mr. Cruz to farm out the work of reviewing the transcript to an outside source. Moreover, 1.7
10 hours is a minimal amount of time; the Court could imagine compensating Mr. Cruz for merely
11 listening to the call repeatedly in order to prepare his case, so his fees should not be docked
12 because he prepared a transcript at the same time. Thus, the Court will not reduce the billable
13 hours to remove this task.

14 iii. Work Done on Claims Against BANA

15 Green Tree also asks the Court to exclude from the lodestar calculation 2.5 hours of work
16 associated with adding claims against BANA and Fannie Mae. (Dkt. No. 34 at 9-10.) A
17 prevailing party may be awarded attorneys' fees for work done on claims against co-defendants—
18 even unsuccessful, dismissed claims—so long as the claims are “related” to a claim on which the
19 party actually prevails. Hensley, 461 U.S. at 434-45. In determining whether the claims are
20 “related,” the Ninth Circuit instructs courts to consider “whether the relief sought on the
21 unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from
22 the course of conduct that gave rise to the injury on which the relief granted is premised.”
23 Schwarz, 73 F.3d at 903 (internal quotation marks and citations omitted). In other words, the
24 focus is “on whether the unsuccessful and successful claims arose out of the same ‘course of
25 conduct.’ If they didn’t they are unrelated under Hensley.” Id.; see also Stonebrae L.P. v. Toll
26 Bros., Inc., 521 F. App’x 592, 594 (9th Cir. 2013) (affirming district court’s award of attorneys’
27 fees related to claims against dismissed co-defendant because the claims were related, the plaintiff
28 actually prevailed, and the claims “arose from the same course of conduct”). Under this test,

1 Plaintiff may recover attorneys’ fees for work done on claims against BANA and Fannie Mae,
2 since they arose from the same course of conduct as the claims against Green Tree. The claims
3 are all related to Defendants’ treatment of Plaintiff’s loan, her eventual request for a loan
4 modification, and the later initiation of foreclosure proceedings. (See generally Dkt. No. 1.)
5 Accordingly, the Court will not reduce the number of hours in the lodestar calculation on this
6 ground.

7 iv. Excessive or Duplicative Hours

8 Finally, Green Tree seeks a general 60% reduction in the number of billable hours on the
9 ground that Plaintiff’s counsels’ billing in this matter was excessive and duplicative. “An attorney
10 fee award should include compensation for all hours reasonably spent[, which] means padding in
11 the form of inefficient . . . efforts is not subject to compensation.” *Rey v. Madera Unified Sch.*
12 *Dist.*, 203 Cal. App. 4th 1223, 1243 (2012) (internal quotation marks and citations omitted). Thus,
13 in determining what number of hours are reasonably compensable, the “district court should
14 exclude hours that are excessive, redundant, or otherwise unnecessary.” *McCown v. City of*
15 *Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2008) (citation omitted). “To the extent a trial court is
16 concerned that a particular award is excessive, it has broad discretion to adjust the fee downward
17 or deny an unreasonable fee altogether.” *Ketchum*, 24 Cal. 4th at 1138. If the court decides to do
18 so, however, it must “set forth a concise but clear explanations of its reasons” for the reduction—
19 whether it does so with respect to particular tasks or takes the “meat-axe” approach, reducing the
20 total number of hours by a given percentage. *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145,
21 1149 (9th Cir. 2001); see also *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992) (noting
22 that the preferred method is to “disallow[] specific items of unreasonable activity and provid[e]
23 examples of excessive time spent on” tasks like legal research (citation omitted)).

24 The Court agrees that Plaintiff’s invoices reflect some duplicative and excessive charges.
25 First, with respect to duplicative fees, the Court reduces the total recoverable hours by the 12.6
26 hours that Plaintiff’s counsel spent relating to the motion to compel discovery in July of 2014, as
27 Green Tree already paid attorneys’ fees on this motion in compliance with the order of the
28 Superior Court. (See Dkt. No. 34 at 9.) Allowing a double recovery of these fees would not be

1 reasonable; attorneys’ fee awards are not meant to create a windfall for the prevailing party.

2 In addition, the Court is troubled by a number of entries in Mr. Cruz’s billing invoices that
3 seem to be excessive. For example, Mr. Cruz billed 39.4 hours to prepare a 10-page complaint.
4 (Dkt. No. 29 at 1-4.) Although the HBOR is a relatively new law, Plaintiff’s is far from the first
5 complaint alleging a dual tracking violation under that statute. Similarly, counsel reported
6 spending 4.9 hours drafting a three-page application for a temporary restraining order, which
7 included a mere one-paragraph memorandum of points and authorities. (Dkt. No. 29 at 1-3.)
8 These inflated numbers cast doubt on the rest of Mr. Cruz’s billing practices. The Ninth Circuit
9 has stated that a “district court can impose a small reduction, no greater than 10 percent—a
10 ‘haircut’—based on its exercise of discretion and without a more specific explanation.” *Moreno v.*
11 *City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Accordingly, after subtracting from the
12 113.1-hour total the 12.6 hours for work for which Plaintiff has already been reimbursed, the
13 Court will reduce the total number of hours by 10 percent. In doing so, the Court finds that
14 Plaintiff’s counsel is entitled to recover attorneys’ fees for 99.1 hours of work.

15 c. Adjustments to Lodestar

16 Plaintiff requests a 2.0 multiplier—a full doubling—of the lodestar calculation. Under
17 California law, “the lodestar is the basic fee for comparable legal services in the community.”
18 *Ketchum*, 24 Cal. 4th at 1132. A court may adjust the lodestar “based on factors including . . . (1)
19 the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3)
20 the extent to which the nature of the litigation precluded other employment by the attorneys; [and]
21 (4) the contingent nature of the fee award.” *Id.*; see also *Thayer*, 92 Cal. App. 4th at 833.
22 Importantly, “[t]here is no hard-and-fast rule limiting the factors that may justify an exercise of
23 judicial discretion to increase or decrease a lodestar calculation.” *Thayer*, 92 Cal. App. 4th at 834.
24 However, “[a]n upward adjustment of the lodestar is appropriate only in extraordinary cases, such
25 as when the attorneys faced exceptional risks of not prevailing or not recovering any fees.”
26 *Campbell*, 718 F. Supp. 2d at 1103 (citing *Chalmers*, 796 F.2d at 1212); *Fischer v. SJB-P.D. Inc.*,
27 214 F.3d 1115, 1119 n.4 (9th Cir. 2000); see also *Pennsylvania v. Del. Valley Citizens’ Council*
28 *for Clean Air*, 478 U.S. 546, 565 (1986) (noting that a “strong presumption” exists that the

1 lodestar figure represents a “reasonable fee” and therefore it should only be enhanced or reduced
2 in “rare and exceptional cases” (internal quotation marks omitted)). Notably, the trial court is
3 never required to add a fee enhancement to the basic lodestar figure based on any particular factor,
4 but retains discretion to do so in the appropriate case. Ketchum, 24 Cal. 4th at 1138.

5 According to Plaintiff, this is the sort of “rare and exceptional” case warranting a fee
6 enhancement under California law. See Fischer, 214 F.3d at 1119 n.4. In particular, Plaintiff
7 contends that applying a multiplier of 2.0 to the lodestar amount is appropriate given (1) the
8 contingent nature of the fee award, (2) the novelty and difficulty of the questions involved, and (3)
9 the results obtained.⁴ (Dkt. No. 26 at 8-13.) Mr. Cruz contends that this case represented a
10 significant risk for him insofar as his “compensation is wholly dependent upon achieving success
11 for his client” since “his client, by virtue of being a loan borrower in financial distress seeking a
12 loan modification during the economic crisis, would not be able to pay his fees.” (Id. at 8-9.)
13 According to Mr. Cruz, adding to the risk involved in this case is that he and his client were up
14 against defendants with far greater resources. (Id. at 9.) In addition, Plaintiff argues that an
15 enhancement is warranted based on the novelty and difficulty of this litigation’s subject matter.
16 (Id. at 10.)

17 But California courts have made clear that in assessing a request for a lodestar
18 enhancement, “a court should not consider contingent risk or exceptional skill to the extent these
19 factors are already encompassed within the lodestar[,]” for when the hourly fee and number of
20 hours billed already reflect the risk, attorneys’ skill, and complexity of the issues, enhancing the
21 lodestar for the same reason “would result in unfair double-counting.” *Rodriguez v. Barrita, Inc.*,
22 No. C 09-04057-RS, — F. Supp. 2d —, 2014 WL 2967925, at *9 (N.D. Cal. July 1, 2014)
23 (internal quotation marks, alterations, and citations omitted); see also Ketchum, 24 Cal. 4th at
24

25 ⁴ Plaintiff also contends that an enhancement is appropriate given the extent to which defense
26 counsel’s conduct made much of the litigation unnecessary. (Dkt. No. 26 at 13-17.) The Court
27 declines to entertain this argument given that the attorneys’ fee award does not include
28 compensation for work done after Plaintiff was given notice of the Notice of Rescission, and
Plaintiff’s argument as to this factor is solely based on post-rescission litigation.

1 1138-39 (noting that, for the most part, the relevant legal market already compensates for
2 contingency risk, and the lodestar amount already reflects the quality of representation and
3 difficulty of the legal question).

4 Each of these factors has already been addressed in the initial lodestar calculation.
5 Mortgage foreclosure cases, by their very nature, involve representation of plaintiffs who at least
6 appear to have been unable to make monthly loan payments and thus are in no position to pay
7 attorneys' fees. Contingency arrangements, therefore, are a normal feature of representing
8 plaintiffs in such cases. Presumably, therefore, the contingent nature of these cases is priced into
9 determining the prevailing market rates for such attorneys. Thus, the lodestar has already
10 addressed the contingent nature of the fee award. Notably, the lodestar also accounts for the
11 contingent nature of the risk by, among other things, awarding fees based on the prevailing market
12 rate, which is double the rate that Mr. Cruz billed; thus, the lodestar already makes up for the
13 delay in payment caused by Mr. Cruz advancing fees and costs for his client. See Ketchum, 24
14 Cal. 4th at 1132 ("The contingent fee compensates the lawyer not only for the legal services he
15 renders but for the loan of those services."); see, e.g., Rodriguez, 2014 WL 2967925, at *9. The
16 same is true of the novelty and complexity of the action: these are reflected in the significant
17 number of hours that counsel billed in a relatively short period of time. Thus, although Mr. Cruz
18 undertook a risk in litigating this case involving claims for relief under a recently enacted statute
19 and achieved the result his client sought, the lodestar already reflects these considerations, so no
20 multiplier is appropriate.

21 d. Fee Motion

22 Finally, Plaintiff seeks an additional \$5,720.00 in fees for her attorney's time spent on this
23 motion. (Dkt. No. 26 at 5; Dkt. No. 27 ¶ 22.) "In this Circuit, plaintiffs may recover attorneys'
24 fees for time reasonably expended on a motion for attorneys' fees and costs." Garcia v. Resurgent
25 Capital Servs., L.P., No. C-11-1253 EMC, 2012 WL 3778852, at *12 (N.D. Cal. Aug. 30, 2012)
26 (citation omitted). On this fee motion, Cruz seeks to bill 28.6 hours of work, representing 11.8
27 hours of legal research, and 16.8 hours of drafting motions and declarations. (Dkt. No. 27 ¶ 22.)
28 Considering that this fee request involves novel questions of law, this amount of time seems

1 reasonable. However, for the reasons described above in Section B.2.b.iv, supra, the Court
2 reduces the number of hours to 28.3.⁵

3 e. *Total Attorneys' Fees*

4 In sum, the Court concludes that the lodestar calculation in this case is a total of 127.4
5 hours of work billed at a rate of \$400 per hour for a total of \$50,960.00.

6 d. *Reasonableness of Costs*

7 As mentioned above, the HBOR allows a prevailing plaintiff to recover “reasonable
8 attorney[s’] fees and costs[.]” Cal. Civ. Code § 2924.12(i). Plaintiff seeks a total of \$2,007.07 in
9 costs as reflected in Plaintiff’s counsel’s well-documented billing statements. (See Dkt. No. 26 at
10 5 & Ex. A.) For the reasons explained above, the Court will only award costs of this litigation up
11 until the point that Plaintiff had notice that Green Tree had filed a Notice of Rescission, thereby
12 mooted this action. Of the total fees sought, \$1,739.17 represent fees that fall into this category,
13 that is, fees incurred prior to Plaintiff’s receipt of notice that Green Tree had recorded the Notice
14 of Rescission. (Dkt. No. 27 ¶ 24.) It appears to the Court that this total amount reflects the sum of
15 twice the filing fee for Superior Court (\$435.00) and fees for service of documents on Defendants
16 (\$820.30) (Dkt. No. 29 at 3-4). These types of costs are reasonable. Less the double-billed filing
17 fee, the total costs for the allowable period are \$1,255.30. Plaintiff’s counsel’s cost account is
18 reasonable and well-documented, and as such the Court will award costs in that amount.⁶

19 **C. Request for an Order Awarding Interim Fees**

20 Finally, Plaintiff seeks an order for interim fees—that is, an order requiring Green Tree to
21 pay the award of attorneys’ fees and costs in full immediately instead of waiting until entry of
22 judgment. (Dkt. No. 26 at 17-19.) From Plaintiff’s perspective, an interim order is necessary
23 because Green Tree “does not intend to pay any judgment issued by this court awarding plaintiff’s
24 fees and costs because it does not want [Plaintiff] to use the funds to redeem and keep her
25

26 ⁵ Calculated as the total amount of hours on the fee motion (28.6) less ten percent.

27 ⁶ As described above in Section B.2.b.iii, supra, the Court declines to offset the total costs amount
28 by reducing costs associated with work related to BANA and Fannie Mae because the claims
against all Defendants are related.

1 property.” (Dkt. No. 40 ¶ 4.)

2 Interim, or interlocutory, fees are the exception rather than the rule; normally, a party must
3 wait until judgment is entered to collect its fees. *Richard S. v. Dep’t of Developmental Servs.*, 317
4 F.3d 1080, 1085 (9th Cir. 2003). An award of interim fees may be appropriate where a plaintiff
5 has won preliminary injunctive relief after extensive litigation, and counsel had been advancing
6 the plaintiff’s fees and costs and seeks to obtain the fees before proceeding through litigation on
7 the merits, which presented the possibility of an even greater expenditure of the attorneys’ time
8 and effort. See *Bell v. Farmers Ins. Exch.*, 87 Cal. App. 4th 805, 830 (2001). Such is simply not
9 the case here, where no further litigation looms; to the contrary, the action will be dismissed upon
10 resolution of the instant motion. Plaintiff will have a judgment in her favor on the fees and costs
11 and will have available to her the mechanisms to enforce said judgment under Federal Rule of
12 Civil Procedure 69(a)(1).

13 Moreover, even if such an interim award were appropriate on policy grounds, under
14 California law “the propriety of [an] interim award of attorney fees depends on whether it [is]
15 specifically provided for by statute.” *Bell*, 87 Cal. App. 4th at 930 (internal quotation marks
16 omitted). The cases that Plaintiff cites in support of interim fee awards involve claims under
17 federal civil rights statutes or other federal law, not under state laws. See *id.* at 832 (citations
18 omitted). To the extent that California courts have awarded interim fees, they have done so only
19 with respect to awards under Section 1021.5. See *id.* (collecting cases). “Apart from the sphere of
20 private attorney general actions under Code of Civil Procedure 1021.5, the award of interim
21 attorney fees in California remains a wholly untested and novel concept that is ordinarily barred
22 by explicit statutory language.” *Id.* (citations omitted). Absent the legislature’s expressed intent
23 to allow parties to recover attorneys’ fees and costs prior to final judgment, California courts have
24 declined to find that other state statutes authorize awards of interim fees, even where the statute is
25 meant to protect individual plaintiffs. See *id.* (declining to read Labor Code section 1194, which
26 provides a cause of action for employees receiving less than minimum wage to recover the unpaid
27 balance of the full amount of minimum wage, as authorizing interim fees). So it is here. The
28 HBOR does not specifically provide for interim fees, and the Court will not read into the statute

1 what the state legislature has declined to adopt. Accordingly, Plaintiff is not entitled to an order
2 awarding interim fees in this matter.

3 **CONCLUSION**

4 For the reasons stated above, the Court awards Plaintiff reasonable attorneys' fees and
5 costs in the amount of \$52,215.30. This amount consists of \$50,960.00, in attorneys' fees and
6 \$1,255.30 in costs. The Court declines to enter an interim order requiring Green Tree to pay the
7 fee amount by date certain. As the Court previously ruled, this matter is dismissed in its entirety
8 as moot, and judgment will be entered in Plaintiff's favor requiring Green Tree to pay attorneys'
9 fees and costs.

10 **IT IS SO ORDERED.**

11 Dated: February 13, 2015

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14 JACQUELINE SCOTT CORLEY
15 United States Magistrate Judge
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