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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID FOWLER, et al.,  
Plaintiffs,  
v.  
WELLS FARGO BANK, N.A.,  
Defendant.

Case No. [18-cv-01254-MMC](#)

**ORDER AFFORDING PARTIES  
LEAVE TO FILE SUPPLEMENTAL  
BRIEFING; CONTINUING HEARING  
ON DEFENDANT’S MOTION TO  
DISMISS AND PLAINTIFFS’  
APPLICATION FOR PRELIMINARY  
INJUNCTION; CONTINUING CASE  
MANAGEMENT CONFERENCE**

Before the Court is defendant’s Motion to Dismiss, filed August 17, 2018. Plaintiffs have filed opposition, to which defendant has replied. Having read and considered the parties’ respective written submissions, the Court, for the reasons stated herein, finds it appropriate to afford each party an opportunity to file a supplemental brief.

In its motion, defendant argues, inter alia, plaintiffs’ claims, all of which challenge defendant’s “conduct concerning the mortgage secured by [plaintiffs’] property” (see Compl. ¶ 1), are preempted by the Home Owners Loan Act (“HOLA”), an issue as to which the parties have set forth their respective positions at length. A factually related issue of interest to the Court, however, has not been addressed by the parties, specifically, whether, under the terms of the subject Deed of Trust, the parties agreed to be bound by HOLA. See, e.g., Marquez v. Wells Fargo Bank, N.A., 2013 WL 5141689, at \*4 (N.D. Cal. September 13, 2013); (see also Def.’s Req. for Judicial Notice Ex. A ¶¶ I(B), I(C), 15). As the terms of the Deed of Trust may have some bearing on the resolution of defendant’s motion, the Court finds it appropriate to give the parties an opportunity to address this additional issue.

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Accordingly, the Court hereby sets the following supplemental briefing schedule and CONTINUES the hearing on defendant's motion, as follows:

1. No later than October 19, 2018, defendant shall file its supplemental brief, not to exceed five pages in length and limited to the additional issue identified above.

2. No later than October 26, 2018, plaintiffs shall file any supplemental opposition, not to exceed five pages in length and limited to the additional issue identified above.

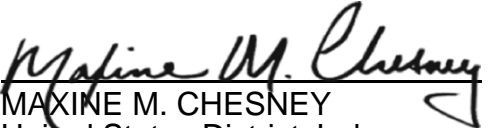
3. The hearing on defendant's motion to dismiss is continued from October 19, 2018, to November 16, 2018, at 9:00 a.m.

Additionally, as the resolution of defendant's motion to dismiss may bear on the resolution of plaintiffs' pending application for a preliminary injunction, the Court hereby CONTINUES the hearing on plaintiffs' application from October 19, 2018, to November 16, 2018, at 9:00 a.m.

Lastly, in the light of the pendency of the above-referenced motion and application, the Case Management Conference is hereby CONTINUED from October 26, 2018, to December 14, 2018, at 10:30 a.m. A Joint Case Management Statement shall be filed no later than December 7, 2018.

**IT IS SO ORDERED.**

Dated: October 12, 2018

  
MAXINE M. CHESNEY  
United States District Judge