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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD KRUG,

Plaintiff,

vs.

WELLS FARGO BANK, N.A. ET AL.,

Defendants.

Case No.: 11-CV-5190 YGR

**ORDER GRANTING MOTION OF DEFENDANT
WELLS FARGO BANK, N.A. FOR AN AWARD
OF ATTORNEYS' FEES**

Defendant Wells Fargo Bank, N.A., successor by merger with Wells Fargo Bank, Southwest N.A. f/k/a Wachovia Mortgage, FSB f/k/a World Savings Bank, FSB (“Wells Fargo”) brings this motion for an award of attorneys’ fees after the Court granted its most recent motion to dismiss without leave to amend. Wells Fargo Bank seeks attorneys’ fees based upon provisions of the written agreements that underlie the complaint herein. No opposition has been filed to the motion.

Having carefully considered the papers submitted and the pleadings in this action, and for the reasons set forth below, the Court hereby **GRANTS** the Motion for an Award of Attorneys’ Fees.¹

The Supreme Court has recognized that, while it is appropriate for the district court to exercise its discretion in determining an award of attorneys' fees, it remains important for the court to provide “a concise but clear explanation of its reasons for the fee award.” *Hensley v. Eckerhart*,

¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion appropriate for decision without oral argument. Accordingly, the Court **VACATES** the hearing set for **August 14, 2012**.

1 461 U.S. 424, 437 (1983); *see also Hall v. Bolger*, 768 F.2d 1148, 1151 (9th Cir.1985) (court
2 should provide an explanation of the reasonable hours and hourly rate it uses to arrive at fee
3 award).

4 State law governs the interpretation and application of contractual attorneys' fees
5 provisions. *See Resolution Trust Corp. v. Midwest Fed. Savings Bank*, 36 F.3d 785, 800 (9th Cir.
6 1993) (applying California law to interpret contract that included fee-shifting provision); *Berkla v.*
7 *Corel Corp.*, 302 F.3d 909, 919 n. 11 (9th Cir. 2002). California Civil Code § 1717 provides for an
8 award of reasonable attorneys' fees to a prevailing party where the contract underlying the dispute
9 includes a provision for an award of attorneys' fees incurred to enforce the agreement. "If a
10 contractual attorney fee provision is phrased broadly enough, it may support an award of attorney
11 fees to the prevailing party in an action alleging both contract and tort claims." *Lockton v.*
12 *O'Rourke*, 184 Cal. App. 4th 1051, 1076 (2010). A broad fee clause entitles a party "to fees
13 incurred in defending itself against 'interrelated' allegations of fraud." *Abdallah v. United Savings*
14 *Bank*, 43 Cal. App. 4th 1101, 1111(1996) (fees incurred by bank in defending against claims of
15 fraud arising from note and deed of trust were covered by the fees provision in those agreements).

16 Here, both the promissory note and deed of trust contain attorneys' fee provisions. The
17 promissory note provides at paragraph 7(E) that the lender will have the right to be paid back for all
18 costs incurred in enforcing the Note, including attorneys' fees. (*See Notice of Removal, Exh. A*
19 *[Complaint]* at p 155 *[Exh. C to the original complaint, Promissory Note].*) The Deed of Trust
20 provides that if someone, including the borrower, initiates legal proceedings that could affect the
21 lender's rights in the property, then the lender may take whatever action it deems necessary,
22 including incurring attorneys' fees, which the borrower must repay. (*See Notice of Removal, Exh.*
23 *A [Complaint]* at p 165 *[Exh. D to the original complaint, Deed of Trust].*) The bank's actions
24 here, in defending against Plaintiff's claims to invalidate the loan and the deed of trust on a variety
25 of theories, is fully within the scope of both attorneys' fees provisions.

26 It is clear that Wells Fargo is the prevailing party, have successfully moved to dismiss the
27 claims against it. Thus, the only remaining questions are whether the hours and hourly rates sought
28 by Wells Fargo are reasonable.

1 In the Ninth Circuit, reasonable attorneys' fees are determined by first calculating the
2 "lodestar." *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir.1987). "The 'lodestar' is
3 calculated by multiplying the number of hours the prevailing party reasonably expended on the
4 litigation by a reasonable hourly rate." *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th
5 Cir.1996). There is a strong presumption that the lodestar figure represents a reasonable fee.
6 *Jordan*, 815 F.2d at 1262. In calculating a reasonable number of hours, the applicant must justify
7 his or her claim by submitting detailed time records. The court may adjust these hours down if it
8 believes the documentation to be inadequate, if the hours were duplicative, or if the hours were
9 either excessive or unnecessary. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th
10 Cir.1986). Reasonable fees are generally calculated according to the prevailing market rates in the
11 forum district. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir.1992). Upward adjustment of
12 the lodestar is warranted only in extraordinary cases. *Chalmers*, 796 F.2d at 1212.²

13 The Court is satisfied that the hourly rates of the attorneys involved are reasonable for
14 attorneys with comparable levels of experience working on similar issues in this market. As to the
15 reasonable number of hours, the Court finds that the hours should be limited to: 97 attorney hours
16 at \$320 per hour, plus 14.4 paralegal hours at \$155 per hour, for a total of \$30,432.00 incurred up
17 until the time of judgment. As to the fees incurred in bringing the instant motion, the Court finds
18 that two hours' time at \$320.00 per hour, for a total of \$640.00 is reasonable. Therefore, Wells
19 Fargo Bank is awarded a total of \$31,072.00 as reasonable attorneys' fees.

20 This order terminates Docket No. 64.

21 **IT IS SO ORDERED.**

22 **Date: August 8, 2012**

23 
24 **YVONNE GONZALEZ ROGERS**
25 **UNITED STATES DISTRICT COURT JUDGE**

26 ² In establishing the reasonable hourly rate, the district court takes into account such factors
27 as: (1) the novelty and complexity of the issues, (2) the special skill and experience of counsel, (3)
28 the quality of representation, (4) the results obtained and (5) the contingent nature of the fee
agreement. *City of Burlington v. Dague*, 505 U.S. 557, 562-63, 112 S.Ct. 2638, 120 L.Ed.2d 449
(1992). These factors are subsumed in the initial lodestar calculation, and should not serve as
independent bases for adjusting fee awards. *Morales*, 96 F.3d at 363-64.