

1 that motion because Rivera's state law claims were preempted by the Home Owners' Loan Act of
2 1933, 12 U.S.C. § 1461 *et seq.*, and dismissed the case with prejudice on August 4, 2009. (Doc. No.
3 26).

4 Wachovia now seeks an award of \$36,841 in attorney's fees. (Doc. No. 28). The Adjustable
5 Rate Mortgage Note that was the subject of litigation includes the following provision:

6 The Lender will have the right to be paid back by me for all of its costs and expenses
7 in enforcing this Note to the extent not prohibited by applicable law. Those expenses
8 may include, for example, reasonable attorneys' fees and court costs.

9 (Doc. No. 28, Ex. A at 9). Similarly, the Deed of Trust includes the following provision in
10 Paragraph 7:

11 If: (A) I do not keep my promises and agreements made in this Security
12 Instrument, or (B) someone, including me, begins a legal proceeding that may
13 significantly affect Lender's rights in the Property (such as a legal proceeding in
14 bankruptcy, in probate, for condemnation or to enforce laws or regulations), then
15 Lender may do and pay for whatever it deems reasonable or appropriate to protect the
16 Lender's rights in the Property. Lender's actions may, without limitation, include
17 appearing in court, paying reasonable attorneys' fees, purchasing insurance required
18 under Section 5, above (such insurance may cost more and provide less coverage than
19 the insurance I might purchase), and entering on the Property to make repairs. Lender
20 must give me notice before Lender may take any of these actions. Although Lender
21 may take this action under this Paragraph 7, Lender does not have to do so. Any action
22 taken by Lender under this Paragraph 7, will not release me from my obligations under
23 this Security Instrument.

24 I will pay to Lender any amounts which Lender advances under this Paragraph
25 7 with interest, at the interest rate in effect under the Secured Notes which have not
26 been paid. I will pay those amounts to Lender when Lender sends me a notice
27 requesting that I do so. Interest on each amount will begin to accrue on the date that
28 the amount is advanced by Lender. However, Lender and I may agree in writing to
terms that are different from those in this Paragraph 7. This Security Instrument will
protect Lender in case I do not keep this promise to pay those amounts with interest.

(Doc. No. 28, Ex. B at 18). Wachovia argues that these provisions entitle it to an award of its
attorney's fees from Rivera.

Wachovia supports its request for attorney's fees with detailed information about its attorneys
and the hours those attorneys billed in this matter. Six attorneys and two paralegals, all from the same
firm, worked on Wachovia's defense. (Doc. No. 28, Declaration of Fred Hickman, ¶ 2, hereinafter
"Decl."). Each of the attorneys has at least ten years of experience and is highly credentialed. (*See*
Decl. ¶ 2). According to the provided billing statements, these eight professionals billed over 120
hours at rates ranging from \$145 per hour for a paralegal to \$320 per hour for the most experienced

1 attorneys. (Doc. No. 28, Ex. E). Wachovia has excluded from its request any attorney’s fees for time
2 spent defending the federal claims in the initial complaint. (Decl. ¶ 9). For their efforts, Wachovia’s
3 attorneys successfully defended the suit by filing two motions to dismiss. The first motion became
4 moot upon the filing of the First Amended Complaint and the court granted the second motion with
5 prejudice. (*See* Doc. No. 7, 21, 26).

6 **I. LEGAL STANDARD**

7 Contract provisions providing reasonable attorney’s fees to the prevailing party in an action
8 on the contract are enforceable. *See LaFarge Conseils et Etudes, S.A. v. Kaiser Cement & Gypsum*
9 *Corp.*, 791 F.2d 1334, 1339 (9th Cir. 1986).

10 In calculating reasonable attorney fees the court must consider the following factors:
11 (1) the time and labor required, (2) the novelty and difficulty of the questions involved,
12 (3) the skill necessary to perform the legal services properly, (4) the preclusion of other
13 employment by the attorney due to acceptance of the case, (5) the customary fee, (6)
14 whether the fee is fixed or contingent, (7) time limitations imposed by the client or
15 circumstances, (8) the amount involved and the results obtained, (9) the experience,
16 reputation and ability of the attorneys, (10) the “undesirability” of the case, (11) the
17 nature and length of the professional relations with the client, and (12) awards in
18 similar cases.

19 *Id.* at 1341-42. A complete failure to consider these factors is an abuse of consideration, but a court
20 may properly deem that some factors are not relevant. *Id.* at 1342.

21 **II. DISCUSSION**

22 The plain language of the above-quoted provisions in the Note and the Deed of Trust entitle
23 Wachovia to attorney’s fees in this action if Wachovia was “enforcing th[e] Note” or this proceeding
24 could “significantly affect [Wachovia’s] rights in the Property.” Both of these prerequisites are met.
25 Rivera sought to quiet title, which would extinguish any rights Wachovia has in the property and make
26 enforcing the Note impossible. Therefore, Wachovia has a contractual right to attorney’s fees in this
27 matter.

28 Moreover, the right to attorney’s fees extends to all causes of action that are “inextricably
intertwined” with the contract action. *Finalco, Inc. v. Roosevelt*, 235 Cal. App. 3d 1301, 1307 (1991).
All of Rivera’s state causes of action are either based directly on the contract, require predicate acts
based on breach of contract, or relate to the formation of the contract. Thus, all of Rivera’s causes of
actions are “inextricably intertwined” with the contract, and Wachovia is entitled to attorney’s fees

1 for its defense of them.


2 Nonetheless, the *LaFarge* factors suggest a somewhat lower fee than Wachovia requests. The
3 time and labor required to defend the matter were not great, nor were the legal questions novel or
4 difficult. The case was resolved on a motion to dismiss, before Wachovia prepared an answer or
5 conducted discovery. As a mortgage provider, Wachovia has undoubtedly defended similar cases in
6 the past. Federal preemption provided a single, overarching defense that mitigated the need for in-
7 depth analysis of each cause of action. And although not inconsequential, the amount in controversy
8 was also not great. On these facts, it is unclear why Wachovia required the services of so many
9 experienced and highly-credentialed attorneys. While the experience, reputation, and ability of the
10 attorneys is not questioned, it seems that these attorneys had an overabundance of skill and experience
11 necessary to perform the legal services properly.

12 Finally, a careful review of the attorneys' billing statements suggests that Wachovia has
13 underestimated the amount of fees attributable to the defense of the federal law causes of action.
14 While Wachovia deducted for the initial research and brief drafting regarding the federal causes of
15 actions, it did not make comparable deductions for the extensive editing and redrafting it did on those
16 same briefs. Therefore, the court is persuaded to lower the award of attorney's fees further.

17 For the foregoing reasons, the court GRANTS Defendant's motion for attorney's fees. The
18 court finds that, based on the factors outlined above, sixty hours of attorneys' time and two hours of
19 paralegals' time is reasonable to defend this action. The court applies the rates of Raymond Collins
20 (\$270 per hour), an attorney with thirteen years of litigation experience, and paralegal Tejas Padhiar
21 (\$145 per hour), which the court finds reasonable. Therefore the court finds that attorney's fees in the
22 amount of \$16,490 is reasonable to defend this action. In addition, Defendant requests \$2,565 in fees
23 for bringing this motion. The court finds this amount reasonable. In sum, the court awards \$19,055
24 in attorney's fees to Defendant.

25 **IT IS SO ORDERED.**

26 DATED: October 23, 2009

27 
28 Hon. Jeffrey T. Miller
United States District Judge