

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAVID HELMSTETTER and)	
JACQUELINE HELMSTETTER,)	
)	
Plaintiffs,)	CIVIL ACTION
)	
v.)	No. 19-2532-KHV
)	
JPMORGAN CHASE BANK, N.A. and)	
FEDERAL NATIONAL MORTGAGE)	
ASSOCIATION,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

On June 4, 2019, plaintiffs filed suit against defendants in the District Court of Brown County, Kansas alleging violations of state and federal law related to plaintiffs’ HomeSaver Advance loan and subsequent loan modification agreement. See Notice Of Removal (Doc. #1) at 1. On September 3, 2019, defendants removed the action to this Court pursuant to the Court’s federal question and diversity jurisdiction under 28 U.S.C. §§ 1331 and 1332, respectively. See id. This matter is before the Court on plaintiffs’ Motion For Leave To Amend Complaint (Doc. #96) filed September 18, 2020 and the Report And Recommendation (Doc. #102) of United States Magistrate Judge Teresa J. James filed November 16, 2020. For reasons stated below, the Court overrules plaintiffs’ motion and fully adopts Judge James’s report and recommendation.

On September 11, 2020, Judge James entered a pretrial order elucidating plaintiffs’ 16 claims. See Pretrial Order (Doc. #94). The pretrial order specified that within seven days of filing, plaintiffs could file out of time a motion for leave to amend their complaint. Id. at 29. Plaintiffs timely filed such a motion and attached a proposed amended complaint. Motion For

Leave To Amend Complaint (Doc. #96). The amended complaint added three claims to those enumerated in the pretrial order. See Exhibit 1 Proposed Second Amended Complaint attached to Memorandum In Support Of Motion For Leave To Amend Complaint (Doc. #97). Defendants oppose plaintiffs' inclusion of the three additional claims. Memorandum In Opposition (Doc. #100).

On November 16, 2020, Judge James filed a report and recommendation that plaintiffs' motion be denied. Report And Recommendation (Doc. #102). Specifically, she found that plaintiffs' three additional claims are futile. Id. at 3. On December 7, 2020, plaintiffs timely filed objections to the report and recommendation. See Objection (Doc. #105).

When reviewing a magistrate judge's order, the Court must consider timely objections and modify or set aside any part of the magistrate's order that is clearly erroneous or is contrary to law. Fed. R. Civ. P. 72(a). If the order is on a dispositive matter, the Court must make "a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made". 28 U.S.C. § 636(b)(1); see Fed. R. Civ. P. 72(b)(3). The Court may accept, reject or modify, in whole or in part, the magistrate judge's recommendations or findings.

Here, plaintiffs only object to preserve future review by the Tenth Circuit. See Objection (Doc. #105) at 1 ("The following is for the purpose of preserving any potential issues to avoid waiver."). The Court therefore adopts Judge James' report and recommendation in full and notes for the record that plaintiffs' objections are preserved for appellate review.¹

IT IS THEREFORE ORDERED that plaintiffs' Motion For Leave To Amend Complaint (Doc. #96) filed September 18, 2020 is **OVERRULED**.

¹ Defendants responded to plaintiff's objections on the merits. Notice Of Defendants' Opposition To Plaintiffs' Record Objections (Doc. #106). Defendants' arguments are also noted for the record.

IT IS FURTHER ORDERED that the Court fully adopts Judge James's Report And Recommendation (Doc. #102).

Dated this 7th day of January, 2021 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge