

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**DAVID HENDERSON and
KATHY HENDERSON,**

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

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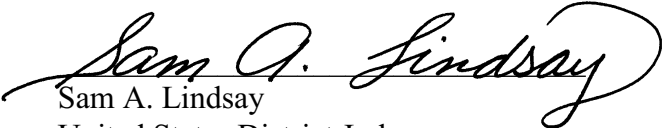
Civil Action No. **3:16-CV-492-L**

ORDER

Before the court is the Motion to Dismiss (Doc. 4), filed February 26, 2016, by Defendant Wells Fargo Bank, N.A. (“Defendant”). On August 15, 2016, Magistrate Judge Renée Harris Toliver entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”), recommending that the court grant the Motion to Dismiss but allow Plaintiffs to file an amended complaint to cure the deficiencies noted regarding their sole claim for wrongful foreclosure (Doc. 13). No objections to the Report were filed by either party. Plaintiffs instead filed their First Amended Complaint (“Amended Complaint”) on August 29, 2016, as permitted by the Report. Thereafter, the magistrate judge entered Supplemental Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Supplemental Report”) (Doc. 15), on September 1, 2016, recommending that the court grant the Motion to Dismiss and dismiss with prejudice this action because the Amended Complaint again fails to state a viable claim of wrongful foreclosure under Texas law.

Instead of granting the Motion to Dismiss as recommended in the original Report, the court **denies as moot** the Motion to Dismiss (Doc. 4) in light of the Amended Complaint.* The original Report is similarly **moot**, although the facts and law set forth in that Report are correct. Further, while the Supplemental Report recommends that the court grant Defendant's Motion to Dismiss, the court construes the Supplemental Report as a *sua sponte* motion to dismiss, to which Plaintiffs will have the opportunity to respond within the time provided for filing objections to the Supplemental Report before the court rules on the *sua sponte* motion. Defendant **shall not** file a reply to the *sua sponte* motion unless ordered by the court.

It is so ordered this 2nd day of September, 2016.


Sam A. Lindsay
United States District Judge

* The court's determination in this regard is not intended to be a comment on the validity of the wrongful foreclosure claim included in the Amended Complaint, which will be determined after Plaintiffs have an opportunity to respond to the Supplemental Report.