
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MARK EDWARD TOWNER,

Plaintiff,

v.

USAA FEDERAL SAVINGS BANK doing
business as USAA FINANCIAL SERVICES,

Defendant.

ORDER ADOPTING
REPORT & RECOMMENDATION

Case No. 2:14-cv-00148-DN-DBP

District Judge David Nuffer

Magistrate Judge Dustin B. Pead

The Report & Recommendation¹ by United States Magistrate Judge Dustin B. Pead issued on January 15, 2015, sets forth recommendations on several pending motions.² The parties were notified of their right to file objections to the Report and Recommendation (R&R) within fourteen (14) days of service pursuant to [28 U.S.C. § 636\(b\)](#) and Rule 72(b) of the Federal Rules of Civil Procedure. As of the date of this order, no objections to the Report and Recommendation have been filed.

On January 21, 2015, Plaintiff filed a memorandum³ in support of the R&R. And on January 29, 2015, Plaintiff filed a Motion⁴ to Accept Report & Recommendations [86] with Following Clarifications and Understanding. The two documents are identical. A review of Plaintiff's submitted documents reveals that Plaintiff is requesting legal advice, that is, he

¹ [Docket no. 86](#), filed January 15, 2015.

² See Application for Default Judgment on USAA Federal Savings Bank Counterclaim, [docket no. 64](#), filed November 20, 2014; Motion to Strike USAA FSB's November 20, 2014 Counterclaim, [docket no. 71](#), filed November 25, 2014; Defendant/Counterclaimant's Motion and Memorandum in Support of Motion for Summary Judgment, [docket no. 63](#), filed November 14, 2014.

³ Memorandum in Support of Report & Recommendation [86] With Following Clarifications and Understanding, [docket no. 87](#), filed January 21, 2015.

⁴ [Docket no. 88](#), filed January 29, 2015.

requests clarification on his understanding of the [Magistrate Judge's R&R](#). Pursuant to 28 U.S.C. § 636(b)(1), “[a] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” Plaintiff does not make any objections to any particular portion or specified findings or recommendations of the R&R. While the Court is mindful of Plaintiff’s *pro se* status, “it is not the proper function of the district court to assume the role of advocate for the pro se litigant[.]” and provide him clarification on his understanding of the R&R.⁵ Nor is it the function of the opposing party to provide any clarification.

Pursuant to [28 U.S.C. § 636\(b\)](#) and Rule 72(b)(3) of the Federal Rules of Civil Procedure, the Court has reviewed de novo all materials, including the record that was before the magistrate judge and the reasoning set forth in the Report and Recommendation. The Court agrees with the analysis and conclusion of the magistrate judge, and adopts the Report and Recommendation.

IT IS HEREBY ORDERED that:

- (1) the Report and Recommendation is ADOPTED;⁶
- (2) Defendant’s Motion for Default judgment is DENIED;⁷
- (3) Plaintiff’s Motion to Strike USAA FSB’s November 20, 2014 Counterclaim is DENIED;⁸

⁵ [Hall v. Bellmon](#), 935 F.2d 1106, 1110 (10th Cir.1991); *see also* [Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.](#), 528 U.S. 152, 162, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000) (“[T]he trial judge is under no duty to provide personal instruction on courtroom procedure or to perform any legal ‘chores’ for the defendant that counsel would normally carry out.”).

⁶ [Docket no. 86](#).

⁷ [Docket no. 64](#).

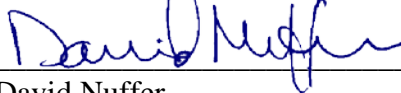
⁸ [Docket no. 71](#).

(4) Defendant's motion for summary judgment is GRANTED in part and DENIED IN PART;⁹

(5) Plaintiff's sole cause of action, the Fair Credit Reporting Act claim, is DISMISSED.

Dated February 2, 2015.

BY THE COURT:



David Nuffer

United States District Judge

⁹ [Docket no. 63](#).