

Exhibit 19



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Metzger v. Wells Fargo Bank, N.A.

United States District Court for the Central District of California

April 28, 2014, Decided; April 28, 2014, Filed

LA CV14-00526 JAK (SSx)

Reporter

2014 U.S. Dist. LEXIS 59427; 2014 WL 1689278

Brian L. Metzger, et al. v. Wells Fargo Bank, N.A., et al.

Core Terms

preempted, cause of action, mortgages, servicing, federal savings association, preemption, state law, successor, modification, alleges, notice, loans, fail to state a claim, foreclosure, originated, trust deed, Savings, regulations, processing, borrower, recorded, applies, lending, notice of default, federal savings, good faith, initiated, declaratory relief, foreclosure sale, postpone

Case Summary

Overview

HOLDINGS: [1]-The borrowers expressly agreed that the loan would be governed by the Home Owners' Loan Act (HOLA); [2]- The causes of action arising under Cal. Civ. Code §§ 2924(a)(6), 2923.6(c), and 2923.55 were preempted by HOLA; [3]-The claim under Cal. Civ. Code § 2924.17 was preempted by HOLA as it was based on the preempted claim under § 2923.55; [4]-The borrowers' claims for negligence, breach of implied covenant of good faith and fair dealing, unjust enrichment, declaratory relief, and quiet title were preempted by HOLA; [5]-The borrowers' claim under Cal. Bus. & Prof. Code § 17200 was preempted by HOLA as it was based on their preempted § 2923.55 claim.

Outcome

Motion granted with prejudice.

LexisNexis® Headnotes

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Civil Procedure > ... > Pleadings > Complaints > Requirements for Complaint

HN1 To withstand a motion brought pursuant to Fed. R. Civ. P. 12(b)(6), a complaint must plead each claim with sufficient specificity to give the defendant fair notice of what the claim is and the grounds upon which it rests. Although a complaint need not contain detailed factual allegations, it must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. However, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Banking Law > ... > Banking & Finance > Regulators > US Office of Thrift Supervision

Real Property Law > Financing > Mortgages & Other Security Instruments > General Overview

HN2 The Home Owners' Loan Act (HOLA), a product of the Great Depression of the 1930s, was intended to provide emergency relief with respect to home mortgage indebtedness at a time when as many as half of all home loans in the country were in default. In enacting HOLA, Congress provided the Office of Thrift Supervision (OTS) with plenary authority to issue regulations governing federal savings and loans. 12 U.S.C.S. § 1464. The broad language of HOLA expresses no limits on OTS's authority to regulate the lending practices of federal savings and loans.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Banking Law > ... > Banking & Finance > Regulators > US Office of Thrift Supervision

Constitutional Law > Supremacy Clause > Federal Preemption

Real Property Law > Financing > General Overview

HN3 Pursuant to its plenary authority, Office of Thrift Supervision (OTS) promulgated a regulation, 12 C.F.R. §

560.2, which states that OTS occupies the entire field of lending regulation for federal savings associations. Section 560.2(b) provides examples of specific types of states laws that OTS intended to preempt. Section 560.2(c) describes state laws that are not preempted. State laws that are preempted by Section 560.2 include those that impose requirements regarding (1) the terms of credit, including amortization of loans and the deferral and capitalization of interest and adjustments to the interest rate, balance, payments due, or term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon the passage of time or a specified event external to the loan and (2) processing, origination, servicing, sale or purchase of, or investment or participation in, mortgages. 12 C.F.R. § 560.2(b)(4) and (10).

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption

Evidence > Inferences & Presumptions > Presumptions > Creation

Evidence > Inferences & Presumptions > Presumptions > Rebuttal of Presumptions

Real Property Law > Financing > General Overview

HN4 State laws that are not preempted by the regulations to the Home Owners' Loan Act, to the extent that they only incidentally affect the lending operations of federal savings associations, include contract and commercial law, real property law, and tort law. 12 C.F.R. § 560.2(c). If a state law is not listed in 12 C.F.R. § 560.2(b), it may nevertheless be preempted if the law affects lending. If it does, then, in accordance with § 560.2(a), the presumption arises that the law is preempted. That presumption can be reversed only if the law can clearly be shown to fit within the confines of paragraph (c). For these purposes, paragraph (c) is intended to be interpreted narrowly. Any doubt should be resolved in favor of preemption. OTS, Final Rule, 61 Fed. Reg. 50951, 50966-67 (Sep. 30, 1996). Even state laws of general applicability, such as tort, contract, and real property laws, are preempted if their enforcement would impact thrifts in areas listed in § 560.2(b). Thus, a state law may, as applied, be a type of state law contemplated in the list under § 560.2(b).

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption

Real Property Law > Financing > General Overview

HN5 Several district courts have held that Home Owner's Loan Act preemption applies to conduct relating to a loan that originated with a federal savings association, even where the conduct at issue was performed by a successor entity that is not a federal savings association.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption

Real Property Law > Financing > General Overview

HN6 District courts have taken three distinct positions regarding Home Owners' Loan Act (HOLA) preemption. The first is that HOLA preemption applies to the conduct of successors to federal savings associations in servicing a loan that was originated by a federal savings association. The second position is that HOLA preemption does not apply to claims brought against successors to federal savings associations, whether such claims arise out of the conduct of the successor entity or the conduct of the federal savings association. The third position is that HOLA preemption applies after a loan has been transferred to a successor to a federal savings association, but only to those claims that arise from conduct of the federal savings association. Thus, the third position is that HOLA preemption does not apply to claims that arise from the conduct of the successor in servicing and managing the loan.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Civil Procedure > ... > Federal & State Interrelationships > Federal Common Law > Preemption

HN7 In the Rhue decision, the United States District Court for the Central District of California stated, although the surviving corporation in a merger succeeds to the rights and liabilities of the acquired corporation, Home Owners' Loan Act preemption is not a right that the successor had obtained. Accordingly, the court stated that the important consideration is the nature of the alleged claims that are the subject of the suit. The governing laws would be those applicable at the time the alleged misconduct occurred.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Banking Law > ... > Banking & Finance > Regulators > US Office of Thrift Supervision

Constitutional Law > Supremacy Clause > Federal Preemption

Real Property Law > Financing > General Overview

HN8 12 C.F.R. § 560.2 provides that Home Owners' Loan Act preempts state laws imposing requirements on federal

savings associations regarding the sale of mortgages. The Office of Thrift Supervision has stated that, if state laws were applied to the management and servicing of loans originated by federal savings associations after the loans are sold or assigned to other entities, such laws might interfere with the ability of federal savings associations to sell mortgages that they originate under a uniform federal system. OTS Opinion Letter, P-2003-5 (July 23, 2003). Loan originators frequently sell or assign loans to third parties. Indeed, the marketability of a mortgage in the secondary market is critical to a savings and loan, for it thereby can sell mortgages to obtain funds to make additional home loans. Accordingly, the rationale for applying preemption to the assignees of federal thrifts is to allow the thrifts themselves greater freedom from state interference.

Evidence > Judicial Notice > Adjudicative Facts > Public Records

HN9 Whether or not judicial notice is appropriate, a court can consider an Opinion Letter as a public record reflecting an interpretation by an agency of its regulations. Such opinion letters are routinely considered as persuasive authority in cases interpreting agency regulations.

Banking Law > ... > Banking & Finance > Regulators > US Office of Thrift Supervision

Real Property Law > Financing > Mortgages & Other Security Instruments > General Overview

Real Property Law > ... > Mortgages & Other Security Instruments > Transfers > Transfers by Mortgagees

HN10 The Office of Thrift Supervision has adopted a general principle that loan terms should not change simply because an originator entitled to federal preemption may sell or assign a loan to an investor that is not entitled to federal preemption. OTS Opinion Letter, P-2003-5 (July 23, 2003). A loan agreement provides that its terms may be changed only by an agreement in writing signed by borrower and lender. Several district courts have recognized that, where a loan agreement expressly incorporates federal regulations governing federal savings associations, those regulations apply to the conduct of a successor to the agreement, even where the successor is not a federal savings association.

Real Property Law > Financing > Foreclosures > General Overview

HN11 See Cal. Civ. Code § 2924.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption
Real Property Law > Financing > Foreclosures > General Overview

HN12 Claims arising under Cal. Civ. Code § 2924 are preempted by the Home Owners' Loan Act because such claims concern the processing and servicing of mortgages.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Civil Procedure > ... > Federal & State Interrelationships > Federal Common Law > Preemption

Real Property Law > Financing > Foreclosures > General Overview

HN13 Claims for violations of Cal. Civ. Code § 2923.6 are preempted by the Home Owners' Loan Act because they implicate the processing and servicing of mortgages.

Real Property Law > Financing > Mortgages & Other Security Instruments > General Overview

HN14 Cal. Civ. Code § 2923.6(g) exempts loan servicers from evaluating a modification application if the borrower has been evaluated for a loan modification prior to January 1, 2013, unless the borrower shows a material change in his financial circumstances.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption

Real Property Law > Financing > Foreclosures > General Overview

HN15 Cal. Civ. Code § 2923.55 provides that, a mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Because § 2923.5 is a state law that attempts to regulate federal savings banks and their lending and servicing activities, it is exactly the sort of statute that is proscribed by the Home Owners' Loan Act.

Real Property Law > Financing > Foreclosures > General Overview

HN16 The only relief available under Cal. Civ. Code § 2923.55 is the postponement of a foreclosure sale.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption

Real Property Law > Financing > Foreclosures > General Overview

HN17 A cause of action for violation of Cal. Civ. Code § 2924.17 is preempted by the Home Owners' Loan Act because it imposes requirements on the processing and servicing of mortgages.

Real Property Law > Financing > Foreclosures > General Overview

HN18 The remedy for a violation of Cal. Civ. Code § 2924 is the postponement of the foreclosure sale.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption

Real Property Law > Financing > General Overview

Torts > Negligence > Types of Negligence Actions > General Overview

HN19 When a negligence claim seeks to apply a state law of general applicability to require a lender to take particular affirmative actions in servicing a mortgage, it is preempted by the Home Owners' Loan Act.

Real Property Law > Financing > General Overview

Torts > ... > Elements > Duty > General Overview

HN20 As a general rule stated in the Nymark decision, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money. Numerous cases have characterized a loan modification as a traditional money lending activity, warranting application of the rule articulated in the Nymark decision. When a borrower has not alleged any participation beyond that of the usual money lender, he cannot state a negligence claim against a borrower.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption

Contracts Law > Contract Interpretation > Good Faith & Fair Dealing

Real Property Law > Financing > General Overview

HN21 When the plaintiffs rely on state laws of general application, their claims of breach of the implied covenant of good faith and fair dealing are preempted by the Home Owners' Loan Act if the state laws, as applied to federal

savings and loans, require affirmative action by the federal savings and loans association or other behavior specific to savings and loans activity.

Contracts Law > Contract Conditions & Provisions > General Overview

HN22 An implied covenant is based on the terms of the contract, rather than statutory duties imposed.

Banking Law > ... > Banking & Finance > Federal Acts > Home Owners' Loan Act

Constitutional Law > Supremacy Clause > Federal Preemption

Real Property Law > Financing > General Overview

HN23 When a borrower's claim under Cal. Bus. & Prof. Code § 17200 is predicated on a claim under Cal. Civ. Code § 2923.55 that is preempted by the Home Owners' Loan Act (HOLA), his claim under § 17200 is preempted by HOLA.

Real Property Law > Financing > Foreclosures > General Overview

HN24 The remedy for noncompliance Cal. Civ. Code § 2923.5 is a simple postponement of the foreclosure sale, nothing more.

Civil Procedure > ... > Federal & State Interrelationships > Federal Common Law > Preemption

Constitutional Law > Supremacy Clause > Federal Preemption

Contracts Law > Remedies > Equitable Relief > Quantum Meruit

HN25 Claims for breach of implied duty of good faith and fair dealing and unjust enrichment are preempted to the extent they rely on preempted claims.

Civil Procedure > Judgments > Declaratory Judgments > General Overview

HN26 Any right for declaratory relief depends on whether or not a plaintiff is ultimately able to state any underlying claim that is tenable.

Real Property Law > Title Quality > Adverse Claim Actions > Quiet Title Actions

HN27 The purpose of the quiet title action is to determine all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to.

Counsel: [*1] Attorneys for Plaintiffs: Not Present.

Attorneys for Defendants: Not Present.

Judges: JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE.

Opinion by: JOHN A. KRONSTADT

Opinion

CIVIL MINUTES — GENERAL

Proceedings: (IN CHAMBERS) ORDER RE DEFENDANT'S MOTION TO DISMISS THE COMPLAINT (DKT. 6)

I. Introduction

This action arises out of the default by Brian Metzger and Mary Hovis-Metzger ("Plaintiffs"), on a loan secured by their home, and the subsequent initiation of foreclosure proceedings. Plaintiffs allege that Wells Fargo Bank, N.A., ("Wells Fargo" or "Defendant"), World Savings Bank, FSB ("WSB") and Does 1 through 50 failed to contact them and failed to negotiate in good faith with respect to their application for a loan modification prior to initiating foreclosure proceedings. Plaintiffs also contend that Defendant lacks a legal interest in the subject property. Dkt. 1, Exh. A. The First Amended Complaint ("FAC") advances ten causes of action: (i) Violation of Cal. Civ. Code § 2924(a)(6); (ii) Violation of Cal. Civ. Code § 2923.6(c); (iii) Violation of Cal. Civ. Code § 2923.55; (iv) Violation of Cal. Civ. Code § 2924.17; (v) Negligence; (vi) Breach of Implied Covenant of Good Faith and Fair Dealing; (vii) Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; [*2] (viii) Unjust Enrichment; (ix) Declaratory Relief; and (x) Quiet Title. Dkt. 13.

On January 29, 2014, Wells Fargo filed a Motion to Dismiss (the "Motion"). Dkt. 6.¹ The Court heard oral argument on the Motion on March 31, 2014. Dkt. 24. The Court directed each party to file a supplemental brief with respect to whether the Court may take judicial notice of certain documents submitted by Defendant in support of the Motion. *Id.* The parties submitted supplemental briefs on April 7, 2014. Dkt. 25, 26. For the reasons set forth in this Order, the

Motion is GRANTED WITH PREJUDICE, *i.e.*, without leave to amend.

II. Factual Background

In 1993, Plaintiffs became sole owners of real property located at 4307 Palmero Drive, Los Angeles, California 90065 (the "Property"). Dkt. 13, ¶ 8. On or around April 11, 2007, Plaintiffs obtained a loan from WSB for \$536,000 (the "Loan"). *Id.* at ¶ 13. The Loan was secured by the Property. *Id.* On December 31, 2007, WSB changed its name to "Wachovia Mortgage, FSB." Dkt. 7, Exh. D. On November 1, 2009, Wachovia Mortgage, FSB was converted to a national bank, and merged with Wells Fargo. Dkt. 7, Exh. F.

Plaintiffs experienced financial difficulty beginning in 2011. Dkt. 13, ¶ 20. In mid-2012, Plaintiffs applied to Wells Fargo for a loan modification. *Id.* at ¶¶ 22-26. On September 27, 2012, Wells Fargo denied this application. *Id.* at ¶ 27. On December 4, 2012, Plaintiffs "submitted a new request for assistance." *Id.* at ¶ 28. On March 22, 2013, Wells Fargo denied Plaintiffs' second request. *Id.* at ¶ 33. On June 13, 2012, Wells Fargo informed Plaintiffs that it had started the internal process that would lead to a foreclosure with respect to the Property. *Id.* at ¶ 34. On June 19, 2013, Plaintiffs submitted another request for assistance. [*4] *Id.* at ¶ 35. On June 25, 2013, Wells Fargo sent Plaintiffs a letter informing them that it was in the process of reviewing their application. *Id.* at ¶ 36. On June 27, 2013, Wells Fargo caused a Notice of Default to be recorded against the Property. *Id.* at ¶ 37.

Plaintiffs allege that they submitted approximately seven "loan modification packages in an attempt to obtain a reasonable modification, all to no avail." *Id.* at ¶ 49. Plaintiffs allege that, "[p]rior to the recording of the Notice of Default on June 27, 2013, Defendants, and each of them, never initiated contact with Plaintiffs in order to assess their financial situation or to discuss alternatives to foreclosure." *Id.* at ¶ 51.

III. Analysis

A. Legal Standard

HNI To withstand a motion brought pursuant to Fed. R. Civ. P. 12(b)(6), a complaint must plead each claim with

¹ The Motion was filed in response to the original Complaint. However, after Plaintiffs filed a Notice of Intention to file the FAC, the Court informed Defendant that, if it believed that the FAC failed to cure the deficiencies identified in the Motion to Dismiss, it could supplement its prior memorandum in support of the Motion. Dkt. 12. On March 7, 2014, Plaintiffs filed the FAC. Dkt. 13. On March 13, 2014, Wells Fargo submitted a supplemental memorandum in support of the Motion, addressing what it contends are the deficiencies in the operative FAC. Dkt. 14. Accordingly, the Motion has [*3] been deemed to address the FAC.

sufficient specificity to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (internal quotations omitted). Although a complaint need not contain detailed factual allegations, it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that [*5] is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. . . . While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

B. Application

1. Whether HOLA Preemption May be Applied

a. Legal Standard

HN2 "The HOLA, a product of the Great Depression of the 1930's, was intended to provide emergency relief with respect to home mortgage indebtedness at a time when as many as half of all home loans in the country were in default." *Fidelity Federal Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 159, 102 S. Ct. 3014, 73 L. Ed. 2d 664 (1982) (internal citations omitted). In enacting HOLA, Congress provided the Office of Thrift Supervision ("OTS") with "plenary authority to issue regulations governing federal savings and loans." *Id.* (citing 12 U.S.C. § 1464). "The broad language of [HOLA] expresses no limits on [OTS's] authority to regulate the lending practices of federal savings and loans." *Id.* at 153.

HN3 Pursuant to its plenary authority, OTS promulgated a regulation, 12 C.F.R. § 560.2, [*6] which states that OTS "occupies the entire field of lending regulation for federal savings associations."² Section 560.2(b) "provides examples of specific types of states laws that OTS intended to preempt;" Section 560.2(c) "describes state laws that are not preempted." *Reyes v. Downey Sav. & Loan Ass'n, F.A.*, 541 F. Supp. 2d 1108, 1113 (C.D. Cal. 2008). State laws that are pre-empted by Section 560.2 include those that impose requirements regarding:

[t]he terms of credit, including amortization of loans and the deferral and capitalization of interest and adjustments to the interest rate, balance, payments due, or term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon the passage of time or a specified event external to the loan; [and] . . .

Processing, origination, servicing, sale or purchase of, or investment or participation in, mortgages.

12 C.F.R. § 560.2(b)(4)&(10).

HN4 State laws that are not pre-empted, "to the extent that they only incidentally affect the lending operations of Federal savings associations," include "[c]ontract and commercial law . . . [r]eal property law . . . [and] [t]ort law . . ." 12 C.F.R. § 560.2(c).

If a state law is not listed in Section 560.2(b), it may nevertheless be pre-empted if "the law affects lending. If it does, then, in accordance with [Section 560.2(a)], the presumption arises that the law is preempted. This presumption can be reversed only if the law can clearly be shown to fit within the confines of paragraph (c). For these purposes, paragraph (c) is intended to [*8] be interpreted narrowly. Any doubt should be resolved in favor of preemption." OTS, Final Rule, 61 Fed. Reg. 50951, 50966-67 (Sep. 30, 1996).

"Even state laws of general applicability, such as tort, contract, and real property laws, are preempted if their enforcement would impact thrifts in areas listed in 560.2(b)." *Rivera v. Wachovia Bank*, No. 09-CV-0433, 2009 U.S. Dist. LEXIS 68391, 2009 WL 2406301, *2 (S.D. Cal., Aug. 4, 2009). Thus, a state law may, "as applied, [be] a type of state law contemplated in the list under paragraph (b) of 12 C.F.R. 560.2." *Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001, 1006 (9th Cir. 2008).

b. Application

Plaintiffs contend that HOLA preemption does not apply because Wells Fargo is not a federal savings association. Dkt. 15, at 2-3. Wells Fargo contends that, because the loan

² Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), OTS was transferred to the Office of the Comptroller of the Currency ("OCC"). On August 9, 2011, OCC issued an Interim Final Rule that supersedes Section 560.2. However, that [*7] Interim Final Rule does not apply retroactively. *See Davis v. World Sav. Bank, FSB*, 806 F. Supp. 2d 159, 166 n.5 (D.D.C. 2011). It applies only to contracts entered into on or after the date Dodd-Frank became effective, *i.e.*, on or after July 21, 2010. *Tamburri v. Suntrust Mortg., Inc.*, 875 F. Supp. 2d 1009, 1020 (N.D. Cal. 2012); *Copeland-Turner v. Wells Fargo Bank*, 800 F. Supp. 2d 1132, 1137-38 (D. Or. 2011). The loan agreement at issue in this action was entered into on April 11, 2007. Dkt. 13, ¶ 13. Therefore, Section 560.2 applies in this action.

originated with WSB, which was a federal savings association, and Wells Fargo is a successor-in-interest to WSB, HOLA preemption applies to the conduct of Wells Fargo in connection with the servicing and management of the loan. Dkt. 6, at 4, n.3. **HN5** Several district courts have held that HOLA preemption applies to conduct relating to a loan that originated with a federal savings association, even where the conduct [*9] at issue was performed by a successor entity that is not a federal savings association. *See, e.g., Sato v. Wachovia Mortgage, FSB*, 2011 U.S. Dist. LEXIS 75418, 2011 WL 2784567 (N.D. Cal. July 13, 2011); *DeLeon v. Wells Fargo Bank, N.A.*, 729 F.Supp.2d 1119, 1126 (N.D.Cal.2010); *Haggarty v. Wells Fargo Bank, N.A.*, 2011 U.S. Dist. LEXIS 9962, 2011 WL 445183 (N.D. Cal. Feb. 2, 2011); *Caovilla v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 70143, 2013 WL 2153855 (N.D. Cal. May 16, 2013).

However, "there is a growing divide in the district courts' treatment of this issue." *Kenery v. Wells Fargo, N.A.*, 2014 U.S. Dist. LEXIS 4672, 2014 WL 129262 (N.D. Cal. Jan. 14, 2014). **HN6** District courts have taken three distinct positions. The first is the one described above — HOLA preemption applies to the conduct of successors to federal savings associations in servicing a loan that was originated by a federal savings association. The second position is that HOLA preemption does not apply to claims brought against successors to federal savings associations, whether such claims arise out of the conduct of the successor entity or the conduct of the federal savings association. *Albizo v. Wachovia Mortgage*, 2012 U.S. Dist. LEXIS 55985, 2012 WL 1413996 (E.D. Cal. Apr. 20, 2012); *Gerber v. Wells Fargo Bank, N.A.*, 2012 U.S. Dist. LEXIS 15860, 2012 WL 413997 (D. Ariz. Feb. 9, 2012).

The [*10] third position is that HOLA preemption applies after a loan has been transferred to a successor to a federal savings association, but only to those claims that arise from conduct of the federal savings association. Thus, the third position is that HOLA preemption does not apply to claims that arise from the conduct of the successor in servicing and managing the loan. *Leghorn v. Wells Fargo Bank, N.A.*, 950 F. Supp.2d 1093 (N.D. Cal. 2013); *Rhue v. Wells Fargo Home Mortgage, Inc.*, 2012 U.S. Dist. LEXIS 188384, 2012 WL 8303189 (C.D. Cal. Nov. 27, 2012); *Valtierra v. Wells*

Fargo Bank, N.A., 2011 U.S. Dist. LEXIS 18669, 2011 WL 590596 (E.D. Cal. Feb. 10, 2011). **HN7** In *Rhue*, the district court stated, although "the surviving corporation in a merger succeeds to the rights and liabilities of the acquired corporation . . . preemption is not a 'right' that Wells Fargo has obtained." 2012 U.S. Dist. LEXIS 188384, 2012 WL 8303189, at *3. Accordingly, the court stated, "[t]he important consideration is the nature of the alleged claims that are the subject of the suit. The governing laws would be those applicable . . . at the time the alleged misconduct occurred . . . Therefore, WSB's conduct before its merger with Wells Fargo on November 1, 2009 would be governed by HOLA where appropriate, [*11] while Wells Fargo's own conduct after that date would not." *Id.*

HN8 12 C.F.R. § 560.2 provides that HOLA preempts state laws imposing requirements on federal savings associations regarding the sale of mortgages. The OTS has stated that, if state laws were applied to the management and servicing of loans originated by federal savings associations after the loans are sold or assigned to other entities, such laws "might interfere with the ability of federal savings associations to sell mortgages that they originate under a uniform federal system." OTS Opinion Letter, P-2003-5 (July 23, 2003), Dkt. 21, Exh. J at 17, n. 18.³ Loan originators frequently sell or assign loans to third parties. Indeed, "the marketability of a mortgage in the secondary market is critical to a savings and loan, for it thereby can sell mortgages to obtain funds to make additional home loans." *Akopyan v. Wells Fargo Home Mortgage Inc.*, 215 Cal. App.4th 120, 143, 155 Cal. Rptr. 3d 245 (2013). Accordingly, "the rationale for applying preemption to the assignees of federal thrifts is to allow the thrifts themselves greater freedom from state interference." *Id.* at 148.

Further, Plaintiffs expressly agreed that the loan would be governed by HOLA. The Note and Deed of Trust provide that,

This Security Instrument and the Secured Notes shall be governed by and construed under federal law and federal rules and regulations, including those for federally chartered savings institutions.

Dkt. 7, Exh. A, ¶12; Dkt. 7, Exh. B, ¶ 15.

³ Plaintiffs contend that the Court cannot take judicial notice of the OTS Opinion [*12] Letter, which was submitted by Defendant in its Supplemental Request for Judicial Notice. Dkt. 25. However, **HN9** whether or not judicial notice is appropriate, the Court can consider the Opinion Letter as a public record reflecting an interpretation by the OTS of its regulations. Such opinion letters are routinely considered as persuasive authority in cases interpreting agency regulations. *See Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001, 1005 n.1 (9th Cir. 2008); *Akopyan*, 215 Cal. App.4th at 148; *Reyes v. Downey Savings and Loan Ass'n, F.A.*, 541 F. Supp.2d 1108, 1114 (C.D. Cal. 2008); *McCarthy v. Option One Mortg. Corp.*, 362 F.3d 1008, 1013 (7th Cir. 2004).

HN10 The OTS has adopted a "general principle that loan terms should not change simply because an originator entitled to federal preemption may sell or assign a loan to an investor that is [*13] not entitled to federal preemption." OTS Opinion Letter, P-2003-5 (July 23, 2003), Dkt. 21, Exh. J at 17, n. 18. The loan agreement provides that its terms may be changed only "by an agreement in writing signed by Borrower and Lender." Dkt. 7, Exh. B, ¶ 23. Several district courts have recognized that, where a loan agreement expressly incorporates federal regulations governing federal savings associations, those regulations apply to the conduct of a successor to the agreement, even where the successor is not a federal savings association. *Marquez v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 131364, 2013 WL 5141689, at *4 (C.D. Cal. Sep. 13, 2013) (recognizing the division among district courts with respect to extending HOLA preemption to the conduct of successors to federal savings associations, but finding, "[i]n this case, however, given that plaintiffs contracted with a Federal Savings Bank, and that the parties agreed to be bound by such laws under the terms of the Deed of Trust, the court finds no bar to applying HOLA preemption"); *Babb v. Wachovia Mortg., FSB*, 2013 U.S. Dist. LEXIS 106228, 2013 WL 3985001 (C.D. Cal. July 26, 2013) ("In this case, Plaintiffs contracted with a Federal Savings Bank. Further, the parties agreed to be [*14] bound by such laws under the terms of the trust deed. Thus, HOLA preemption applies in this case."). For these reasons, HOLA preemption applies in this action.

2. First Cause of Action: Lack of Standing

Plaintiffs contend that Wells Fargo lacks standing to foreclose on the Property because, "at the time Defendants caused the Notice of Default to be recorded . . . the First Deed of Trust was securitized and split from the First Promissory Note and was transferred into multiple classes of the WORLD SAVINGS BANK REMIC 29" (the "Trust"). FAC, Dkt. 13, ¶ 67. Plaintiffs contend that the "original Promissory Note was never in the physical possession of [the Trust]," as required by the Pooling and Servicing Agreement applicable to the Trust, and therefore "[a]ny action by [the Trust] in contravention of the [Pooling and Servicing Agreement] is void." *Id.* at ¶ 68. Therefore, Plaintiffs contend that Defendant initiated foreclosure without properly transferring the beneficial interest of the Deed of Trust, in violation of Cal. Civ. Code §2924(a)(6). That statute provides that

HN11 [n]o entity shall record or cause a notice of default to be recorded or otherwise initiate foreclosure process unless it [*15] is the holder of the beneficial interest under the mortgage or deed of trust, the original

trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest.

Cal. Civ. Code §2924(a)(6).

HN12 "[C]laims arising under California Civil Code section 2924 are preempted by HOLA" because such claims concern the "processing" and "servicing" of mortgages. *Sami v. Wells Fargo Bank, N.A.*, 2012 U.S. Dist. LEXIS 38466, 2012 WL 967051, at *8 (N.D. Cal. Mar. 21, 2012); *Terrazas v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 153046, 2013 WL 5774120, *5 (S.D. Cal. Oct. 24, 2013) (the "allegation that Wells Fargo is not the true owner of the Note or Deed of Trust, and therefore had no authority to . . . foreclose upon the Plaintiffs' home . . . relate[s] to the actions of the originator of the loan and its successor entities in 'servicing' the mortgage."); *Ahmed v. Wells Fargo Bank & Co.*, 2011 U.S. Dist. LEXIS 49526, 2011 WL 1751415, *3 (N.D. Cal. May 9, 2011) (causes of action concerning "alleged defects in the procedure used to foreclose the subject property," including the claim that "defendants did not possess the promissory note," were preempted by HOLA, because they were "predicated upon alleged improprieties in the foreclosure [*16] procedure used by defendants and therefore affect lending because they involve the processing, origination, servicing, sale or purchase of, or investment or participation in, mortgages"); *Wienke v. Indymac Bank FSB*, 2011 U.S. Dist. LEXIS 26392, 2011 WL 871749, *4 (N.D. Cal. Mar. 14, 2011); *Stefan v. Wachovia*, 2009 U.S. Dist. LEXIS 113480, 2009 WL 4730904, *2 (N.D. Cal. Dec. 7, 2009). Accordingly, the first cause of action, for violation of Cal. Civ. Code §2924(a)(6), is preempted by HOLA.

Further, even if this cause of action were not preempted, it fails to state a claim for relief because Wells Fargo does not claim to have obtained an interest in the loan through the Trust; it obtained an interest in the loan as the successor of WSB, which initiated the loan. The Note and Deed of Trust identify "WORLD SAVINGS BANK, FSB, ITS SUCCESSORS AND/OR ASSIGNEES" as the "Lender." Dkt. 7, Exhs. A, B. Thus, whether or not the loan was assigned to the trust does not affect the interest held by Wells Fargo in the loan or its standing to foreclose on the Property. For this additional reason, the first cause of action fails to state a claim.

3. Second Cause of Action: Violation of Cal. Civ. Code § 2923.6(c)

The second cause of action alleges that Wells Fargo [*17] "recorded or caused to be recorded a Notice of Default

against Plaintiffs' property during a pending loan modification review" in violation of Cal. Civ. Code § 2923.6(c). Dkt. 13, ¶ 86. **HNI3** "[C]laims for violations of § 2923.6 are preempted by HOLA" because they implicate the "processing" and "servicing" of mortgages. *Marquez*, 2013 U.S. Dist. LEXIS 131364, 2013 WL 5141689, at *5 (citing *Sato*, 2011 U.S. Dist. LEXIS 75418, 2011 WL 2784567, at *7); *Wornum v. Aurora Loan Services*, 2011 U.S. Dist. LEXIS 89461, 2011 WL 3516055, *8 (N.D. Cal. Aug. 11, 2011) ("§ 2923.6 claim is clearly aimed at the processing and servicing of Plaintiffs' loan and therefore is preempted by HOLA."); *Osorio v. Wachovia Mortg.*, FSB, 2012 U.S. Dist. LEXIS 64600, 2012 WL 1610110, *3 (S.D. Cal. May 8, 2012); *Lothlen v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 169294, 2013 WL 6185527, *3 (N.D. Cal. Nov. 26, 2013).

Further, even if this cause of action were not preempted, it fails to state a claim for relief because **HNI4** Section 2923.6(g) "exempts loan servicers from evaluating a modification application if the borrower has been evaluated for a loan modification prior to January 1, 2013," unless the borrower shows a material change in his financial circumstances. *Saber v. JPMorgan Chase Bank, N.A.*, 2014 U.S. Dist. LEXIS 8718, 2014 WL 255700 (C.D. Cal. Jan. 23, 2014). The FAC alleges that Plaintiffs [*18] applied for a loan modification on June 19, 2013. *Id.* at ¶ 35. The FAC does not allege that Plaintiffs represented to Wells Fargo that there had been a material change in their financial circumstances between March 22, 2013, when Wells Fargo denied their prior application, and June 27, 2013, when Wells Fargo caused a Notice of Default to be recorded. For this additional reason, the second cause of action fails to state a claim.

4. Third Cause of Action: Violation of Cal. Civ. Code § 2923.55

The third cause of action alleges that Wells Fargo did not initiate contact with Plaintiffs prior to issuing the Notice of Default and this conduct violated Cal. Civ. Code § 2923.55.

Dkt. 13, at 18. **HNI5** That statute provides that, "a mortgage servicer shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." Cal. Civ. Code § 2923.55. "Because Section 2923.5 is a state law that attempts to regulate federal savings banks and their lending and servicing activities, it is exactly the sort of statute that is proscribed by the HOLA." *Williams v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 68615, 2013 WL 2047000, *3 (C.D. Cal., May 13, 2013); [*19] *McNeely v. Wells Fargo Bank, N.A.*, 2011 U.S. Dist. LEXIS 145322, 2011 WL 6330170 (C.D. Cal., Dec. 15, 2011); *Taguinod v. World Savings Bank, FSB*, 755 F. Supp. 2d 1064, 1073-74 (C.D. Cal. 2010).⁴

5. Fourth Cause of Action: Violation of Cal. Civ. Code § 2924.17

The fourth cause of action alleges that Wells Fargo recorded a declaration that inaccurately represented that it had contacted Plaintiffs prior to issuing the Notice of Default in violation of Cal. Civ. Code § 2924.17. Dkt. 13, at 20. This claim [*20] is predicated on the third cause of action which, for the reasons stated above, is preempted under HOLA. Accordingly, this cause of action is also preempted. *Marquez*, 2013 U.S. Dist. LEXIS 131364, 2013 WL 5141689, at *5. *See also Kenery v. Wells Fargo, N.A.*, 2014 U.S. Dist. LEXIS 4672, 2014 WL 129262 *4 (N.D. Cal. Jan. 14, 2014) (**HNI7** cause of action for violation of Cal. Civ. Code § 2924.17 is preempted by HOLA because it imposes requirements on the processing and servicing of mortgages).⁵

6. Fifth Cause of Action: Negligence

The fifth cause of action alleges that Wells Fargo was negligent in failing properly to process Plaintiffs' loan modification applications. Dkt. 13, at 23. As a result, Plaintiffs contend that they now suffer the imminent threat of losing their home through foreclosure proceedings and have incurred legal fees and expenses to clear title to the property. [*21] *Id.* **HNI9** This claim seeks to apply a state

⁴ If this cause of action were not preempted, it fails to state a claim for relief because it is not ripe. **HNI6** The only relief available under Section 2923.55 is the postponement of a foreclosure sale. *Mabry v. Super. Ct.*, 185 Cal. App.4th 208, 221, 110 Cal. Rptr. 3d 201 (2010). Plaintiffs do not allege that a foreclosure sale is scheduled. "Accordingly, there is no sale to postpone, and Plaintiffs' . . . claim is not ripe." *Caceres v. Bank of America, N.A.*, 2013 U.S. Dist. LEXIS 184605, 2013 WL 7098635, *4 (C.D. Cal. Oct. 28, 2013); *In re Sandri*, 501 B.R. 369, 378 (N.D. Cal. 2013) (dismissing claim where, "[i]n the seventeen months since the June 2012 recording of the notice of default, no notice of sale has been recorded. There is no pending foreclosure sale to postpone.").

⁵ If this cause of action were not preempted, it fails to state a claim for relief because, "as is the case with 2923.5, **HNI8** the remedy for a violation of § 2924 is the postponement of the foreclosure sale." *Bennett v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 112756, 2013 WL 4104076, *5 (N.D. Cal. Aug. 9, 2013). As discussed above, because there is no pending foreclosure sale to postpone, this claim is not ripe.

law of general applicability to require Defendant to take particular affirmative actions in servicing a mortgage. As a result, it is preempted by HOLA. *Babb v. Wachovia Mortg., FSB*, No. CV-12-02038, 2013 U.S. Dist. LEXIS 106228, 2013 WL 3985001 (C.D. Cal., July 26, 2013) (dismissing plaintiff's negligence claims involving servicing of a mortgage as preempted by HOLA's Section 560.2(b)(10)); *Ayala v. World Savings Bank, FSB*, 616 F. Supp. 2d 1007 (C.D. Cal., 2009); *Fowler v. Wells Fargo Bank*, No. C-12-04869, 2012 U.S. Dist. LEXIS 162198, 2012 WL 5503538 (N.D. Cal., Nov. 13, 2012).

Further, even if this cause of action were not preempted, it fails to state a claim for relief because **HN20** "as a general rule, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." *Nymark v. Heart Fed. Savs. & Loan Ass'n*, 231 Cal. App.3d 1089, 1096, 283 Cal. Rptr. 53 (1991). "Numerous cases have characterized a loan modification as a traditional money lending activity, warranting application of the rule articulated in *Nymark*." *Settle v. World Sav. Bank, F.S.B.*, 2012 U.S. Dist. LEXIS 4215, 2012 WL 1026103, *8 (C.D. Cal. Jan. 11, 2012). "Because [*22] Plaintiffs . . . have not alleged any participation beyond that of the usual money lender, they cannot state a negligence claim against Wells Fargo." *DeLeon*, 2011 U.S. Dist. LEXIS 8296, 2011 WL 311376 at *9.

7. Sixth Cause of Action: Breach of Implied Covenant of Good Faith

The sixth cause of action alleges that Wells Fargo breached the implied covenant of good faith and fair dealing because it "securitized the First Promissory Note, made assignments outside of the terms of the First Promissory Note without Plaintiffs' agreement and consent . . . [has] not negotiated in good faith as required by California Civil Code § 2924.5 in reviewing Plaintiffs' application for a loan modification," and "engaged in dual tracking" in violation of Cal. Civ. Code § 2923.6(c). Dkt. 13, at 24-25. As discussed above, **HN21** "when plaintiffs rely on state laws of general application, their claims are preempted if the state laws, as applied to federal savings and loans, require affirmative action by the federal savings and loans association or other behavior specific to savings and loans activity." *Reyes*, 541 F. Supp. 2d at 1113; *Silvas*, 514 F.3d at 1006. Because Plaintiffs' allegations concern the servicing of mortgages, they are preempted [*23] by HOLA. See *Taguinod*, 755 F. Supp. 2d at 1072 ("HOLA preempts any state law claim relating to good faith and fair dealing in lending.").

Further, even if this cause of action were not preempted, it fails to state a claim for relief. As discussed above, Plaintiffs' claims with respect to the securitization and assignment of the loan do not state claims for relief. Accordingly, to the extent this cause of action is predicated on those claims, it is also deficient. With respect to the alleged failure by Wells Fargo to comply with Cal. Civ. Code §§ 2924.5 and 2923.6(c), **HN22** an implied covenant is based on the terms of the contract, rather than "statutory duties imposed." *Smith v. San Francisco*, 225 Cal. App.3d 38, 49, 275 Cal. Rptr. 17 (1990). Plaintiffs fail sufficiently to allege that Wells Fargo's alleged failure to comply with certain statutory duties "unfairly frustrate[d] [their] right to receive the benefits of the agreement." *Guz v. Bechtel Nat'l. Inc.*, 24 Cal.4th 317, 349, 100 Cal. Rptr. 2d 352, 8 P.3d 1089 (2000). To the contrary, the Deed of Trust states that, if the borrower fails to "pay the full amount of each regularly scheduled payment on the date it is due," then the "[l]ender may exercise the power of sale, take action to have [*24] the Property sold under applicable law, and invoke such other remedies as may be permitted under any applicable law." Dkt. 7, Exh. B, at 13. For this additional reason, the sixth cause of action fails to state a claim.

8. Seventh Cause of Action: Violation of Cal. Bus. & Prof. Code § 17200

The seventh cause of action, which is for violation of Cal. Bus. & Prof. Code § 17200, is predicated on the alleged violation of Cal. Civ. Code § 2923.55. Dkt. 13, at 26. That claim has been addressed above. Plaintiffs' ability to "plead a viable claim under [Section] 17200 depends on [their] being able to plead some underlying fraud or unfair practice that is not preempted by HOLA." *Ortiz v. Wells Fargo Bank, N.A.*, 2011 U.S. Dist. LEXIS 58243, 2011 WL 4952979, at *8 (N.D. Cal. May 27, 2011). **HN23** Because Plaintiffs' claim under Cal. Civ. Code § 2923.55 is preempted by HOLA, their Section 17200 claim fails. *Williams*, 2013 U.S. Dist. LEXIS 68615, 2013 WL 2047000 at *4 (to the extent Plaintiff's Section 17200 claim is "rooted in his underlying claim for violation of Section 2923.5," and that underlying claim is dismissed, "this claim too must be dismissed"); *Silvas*, 514 F.3d at 1006 (Section 17200 claim preempted under 12 C.F.R. § 560.2(b)(2)&(9)); *Casey v. F.D.I.C.*, 583 F.3d 586, 593 (8th Cir. 2009).

Further, [*25] even if this cause of action were not preempted, it fails to state a claim for relief because, as noted, **HN24** "the remedy for noncompliance [with Section 2923.5] is a simple postponement of the foreclosure sale, nothing more." *Mabry*, 185 Cal. App.4th at 214. Thus, because Plaintiffs have not "lost money or property as a

result of” the alleged violation of Cal. Civ. Code §2923.55, they lack standing to pursue a claim under Section 17200. *Annunziato v. eMachines, Inc.*, 402 F. Supp.2d 1133, 1136-37 (C.D. Cal. 2005).

9. Eighth Cause of Action: Unjust Enrichment

The eighth cause of action alleges that Defendant has been unjustly enriched because Plaintiffs have made mortgage payments to Defendant notwithstanding that Defendant has no right or interest in the Property. Dkt. 13, at 27. This cause of action is predicated on the first cause of action — lack of standing. Because that claim is preempted, this claim also fails. *Singh v. Wells Fargo Bank*, 2013 U.S. Dist. LEXIS 52727, 2013 WL 1787157, *4 (N.D. Cal. Mar. 8, 2013) (“Plaintiffs’ unjust enrichment...[claim, brought] on the premise that Defendant is not entitled to loan payments...[goes] to the processing and servicing of Plaintiffs’ loan...and [is] preempted by HOLA.”); [*26] *Campidoglio v. Wells Fargo & Co*, 2012 U.S. Dist. LEXIS 142624, 2012 WL 4514333, *11 (W.D. Wash. Oct. 2, 2012) (*HN25* claims for breach of implied duty of good faith and fair dealing and unjust enrichment are preempted to the extent they rely on preempted claims).

10. Ninth Cause of Action: Declaratory Relief

The ninth cause of action seeks declaratory relief “as to whether Defendant has authority to foreclose and Defendant’s right to title of the Plaintiffs’ property.” Dkt. 13, at 28. However, *HN26* “[a]ny right...for declaratory relief depends on whether or not [Plaintiffs] are ultimately able to state any underlying claim that is tenable.” *Ortiz*, 2011 U.S. Dist. LEXIS 58243, 2011 WL 4952979, at *5. Here, for the reasons discussed above, Plaintiffs’ underlying claims are preempted. Accordingly, this claim also fails.

Guerrero v. Wells Fargo Bank, N.A., 2010 U.S. Dist. LEXIS 96261, 2010 WL 8971769, *3 (C.D. Cal. Sept. 14, 2010) (claim for declaratory relief is preempted by HOLA because it attacks Defendant’s disclosure and processing, servicing and sale of a mortgage); *Hague v. Wells Fargo Bank, N.A.*, 2011 U.S. Dist. LEXIS 140122, 2011 WL 6055759, *5 (N.D. Cal. Dec. 6, 2011) (HOLA preempts the declaratory relief claim because it “fall[s] squarely within § 560.2(b)(10)’s specific preemption of state law claims that deal [*27] with ‘investment’ in mortgages.”).

11. Tenth Cause of Action: Quiet Title

The tenth cause of action seeks to quiet title against Wells Fargo’s claim to the subject property. Dkt. 13, at 28. *HN27* “The purpose of the quiet title action is to determine all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to.” *Ayala*, 616 F. Supp. 2d at 1015. This cause of action is premised on Plaintiffs’ claim that Wells Fargo has no right or interest in the property. Because that claim is preempted, this claim also fails. *DeLeon*, 729 F. Supp. 2d at 1128 (quiet title claim was preempted by HOLA because the claim was premised on preempted claims of wrongful foreclosure and defective notice).

IV. Conclusion

For the foregoing reasons, the Motion is GRANTED WITH PREJUDICE, *i.e.*, without leave to amend. Defendants shall lodge a proposed judgment no later than May 6, 2014. The notice shall include whether Plaintiffs agree to the form of Judgment. Any objections to the form of judgment shall be filed no later than May 13, 2014.

IT IS SO ORDERED.