

JUN 22 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WAYNE McINTOSH,

Plaintiff - Appellant,

v.

WELLS FARGO BANK, NA, FKA  
America's Servicing Company,

Defendant - Appellee.

No. 13-17483

D.C. No. 2:12-cv-01218-GMS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
G. Murray Snow, District Judge, Presiding

Submitted June 14, 2016\*\*

Before: BEA, WATFORD, and FRIEDLAND, Circuit Judges.

Wayne McIntosh appeals pro se from the district court's summary judgment in his diversity action alleging state law foreclosure claims. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court did not abuse its discretion in refusing to enforce the temporary restraining order because the order expired by its own terms one day after defendant removed the case, and McIntosh did not demonstrate that any party violated the restraining order. *See Cal. Dep't of Soc. Serv. v. Leavitt*, 523 F.3d 1025, 1031 (9th Cir. 2008) (setting forth standard of review for motions to enforce injunctions).

The district court did not abuse its discretion in denying McIntosh's motion to compel because discovery had closed and McIntosh did not demonstrate good cause for the untimely motion. *See Jorgansen v. Cassidy*, 320 F.3d 906, 913 (9th Cir. 2003) ("The district court is given broad discretion in supervising the pretrial phase of litigation, and its decisions regarding the preclusive effect of a pretrial order . . . will not be disturbed unless they evidence a clear abuse of discretion." (citation and internal quotation marks omitted)). Similarly, the district court did not abuse its discretion in denying McIntosh's motion to strike depositions because McIntosh did not identify the depositions he sought to strike. *See id.*

We reject McIntosh's contention that Citibank, N.A. failed to appear because the record shows that Citibank, N.A. timely appeared and answered the complaint.

We reject McIntosh's contention that the district court was biased or violated his due process or equal protection rights.

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**