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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

WILLIAM E. PERRYMAN,

Plaintiff,

v.

**JPMORGAN CHASE BANK, N.A.; QUALITY
LOAN SERVICE CORPORATION; and DOES
1 through 50, inclusive,**

Defendants.

1:16-cv-00643-LJO-SKO

**MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION TO REMAND; GRANTING
IN PART JPMORGAN CHASE BANK'S
MOTION TO DISMISS; REMANDING
CASE TO KINGS COUNTY SUPERIOR
COURT**

(Docs. 8, 10)

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I. INTRODUCTION

Pending before the Court is Plaintiff's motion to remand this case to Kings County Superior Court where it was originally filed on April 6, 2016, and subsequently removed to federal court by Defendant Chase Bank, N.A. ("Chase") on May 9, 2016. Plaintiff seeks remand under Federal Rule 12(b)(1), asserting the Court lacks subject matter jurisdiction because Chase failed to establish the amount placed in controversy by the complaint exceeds \$75,000, the minimum for diversity jurisdiction under 28 U.S.C. § 1332(a). Also pending before the Court is Chase's motion to dismiss Plaintiff's complaint. The Court determined these motions were appropriate for decision without oral argument pursuant to Local Rule 230(g), and the hearings set for July 28, 2016, and August 11, 2016, were vacated. (Docs. 12, 15.) For the following reasons, Plaintiff's Motion to Remand is DENIED, Chase's motion to dismiss is GRANTED in part, and the case is remanded to Kings County Superior Court.

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II. FACTUAL AND PROCEDURAL BACKGROUND

In June 2007, Plaintiff obtained a mortgage from Chase in the amount of \$255,000 on a residence in Lemoore, California (the "property"), and executed a Promissory Note as well as a Deed of

1 Trust in favor of Chase. (Cmplt., ¶¶ 1, 11.) In 2015, Plaintiff began experiencing financial difficulties
2 and contacted Chase for assistance. (Cmplt., ¶ 13.) Chase advised Plaintiff he would qualify for a loan
3 modification, encouraged Plaintiff to apply, but informed Plaintiff that he must fall – and remain – two
4 months behind on his mortgage payments prior to applying for a modification. (*Id.*) Chase advised
5 Plaintiff there was no other option for assistance besides defaulting on his mortgage payment
6 obligation, but "promised Plaintiff that no foreclosure actions would initiate against Plaintiff while he
7 was under review for modification." (*Id.*)

8 Plaintiff withheld mortgage payments from Chase for two subsequent months, gathered and
9 compiled the paperwork necessary to complete a loan modification application, submitted his full
10 application to Chase via certified mail, and received confirmation that his packet had been delivered.
11 (Cmplt., ¶¶ 14, 16.) Subsequently, Chase lost his application, Plaintiff resent all the loan modification
12 documents, and Chase informed him the loan modification application was under active review.
13 (Cmplt., ¶ 17.)

14 Despite informing him that his application was considered complete and it was "in process,"
15 after several months, Chase informed Plaintiff that his application was considered incomplete due to
16 "missing" documents that had not previously been required. (Cmplt., ¶¶ 19, 20.) Plaintiff submitted
17 the newly requested documents. (Cmplt., ¶ 22.) Plaintiffs' voicemails to Chase during the pendency of
18 his loan application consistently went unanswered, and months passed with no answer regarding his
19 pending application. Finally, while Plaintiff's loan modification application was pending, Chase caused
20 a Notice of Default to be recorded against the property on December 1, 2015, and a Notice of Trustee's
21 Sale was recorded on March 7, 2016.

22 On April 9, 2016, Plaintiff filed suit against Chase in Kings County Superior Court alleging
23 violations of the California Homeowners Bill of Rights; unfair competition under California Business
24 and Professions Code § 17200, *et seq.*, breach of the covenant of good faith and fair dealing,
25 negligence, negligent infliction of emotional distress, and breach of the Equal Credit Opportunity Act.

1 The relief sought included a declaration that Chase failed to abide by its own guidelines in offering
2 Plaintiff an application for a loan modification in violation of California Civil Code § 2923; violated
3 communication requirements under the California Homeowners Bill of Rights; and failed to provide the
4 required statutory notifications under the California Civil Code. Finally, the complaint sought to enjoin
5 Chase from violating the HOBOR and to temporarily enjoin the trustee's sale under California Civil Code
6 § 2924.12 until such time as the court determined that Chase had corrected and remedied all statutory
7 violations.

8 On May 9, 2016, Chase removed the action based on diversity jurisdiction asserting the amount
9 in controversy exceeded \$75,000 as Plaintiff sought to enjoin the pending foreclosure sale of his
10 property currently valued at \$165,500. Chase filed a motion to dismiss the complaint on June 15, 2016,
11 arguing Plaintiff had failed to plead a claim upon which relief could be granted. (Doc. 8.) On July 14,
12 2016, Plaintiff filed a motion to remand for lack of subject matter jurisdiction contending the amount in
13 controversy could not be predicated on the value of his property as he was seeking only a temporary
14 injunction on the trustee's sale while a loan modification request was pending. The motion to dismiss
15 was taken under submission on July 22, 2016, while Plaintiff's motion for remand on subject matter
16 jurisdiction grounds was pending. Currently pending before the Court is Chase's motion to dismiss and
17 Plaintiff's motion to remand.

18 **III. LEGAL STANDARDS**

19 **A. Removal Jurisdiction**

20 In considering a notice of removal, "it is to be presumed that a cause lies outside the limited
21 jurisdiction of the federal courts and the burden of establishing the contrary rests upon the party
22 asserting jurisdiction." *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (quoting
23 *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (quotation marks omitted)).
24 Courts "strictly construe the removal statute against removal jurisdiction," and "the defendant always
25 has the burden of establishing that removal is proper." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th

1 Cir.1992). Any doubts about jurisdiction must be resolved in favor of remand. *Id.*

2 Pursuant to 28 U.S.C. § 1441(a), a defendant may remove to federal court a claim filed in state
3 court that could have initially been brought in federal court. 28 U.S.C. § 1441(a); *Caterpillar Inc. v.*
4 *Williams*, 482 U.S. 386, 392 (1987). A district court must remand a case to state court "if at any time
5 before the final judgment it appears that the district court lacks subject matter jurisdiction." 28 U.S.C.
6 § 1447(c). To exercise diversity jurisdiction, a federal court must find complete diversity of citizenship
7 among the adverse parties, and the amount in controversy must exceed \$75,000. 28 U.S.C. § 1332(a).
8 "[W]here it is unclear or ambiguous from the face of a state-court complaint whether the requisite
9 amount in controversy is pled," the removing defendant bears the burden of proving by a
10 preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount.
11 *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007). "Under this burden, the
12 defendant must provide evidence establishing that it is 'more likely than not' that the amount in
13 controversy exceeds that amount." *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir.
14 1996).

15 **B. Motion to Dismiss – Rule 12(b)(6)**

16 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is a challenge to the
17 sufficiency of the allegations set forth in the complaint. A Rule 12(b)(6) dismissal is proper where
18 there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a
19 cognizable legal theory." *Balisteri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). In
20 considering a motion to dismiss for failure to state a claim, the court generally accepts as true the
21 allegations in the complaint, construes the pleading in the light most favorable to the party opposing the
22 motion, and resolves all doubts in the pleader's favor. *Lazy Y. Ranch LTD v. Behrens*, 546 F.3d 580,
23 588 (9th Cir. 2008).

24 To survive a 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts to state a claim
25 to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim

1 has facial plausibility when the Plaintiff pleads factual content that allows the court to draw the
2 reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556
3 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks
4 for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550
5 U.S. at 556). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed
6 factual allegations, a Plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires
7 more than labels and conclusions." *Twombly*, 550 U.S. at 555 (internal citations omitted). Thus, "bare
8 assertions . . . amount[ing] to nothing more than a 'formulaic recitation of the elements' . . . are not
9 entitled to be assumed true." *Iqbal*, 556 U.S. at 681. "[T]o be entitled to the presumption of truth,
10 allegations in a complaint . . . must contain sufficient allegations of underlying facts to give fair notice
11 and to enable the opposing party to defend itself effectively." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th
12 Cir. 2011). In practice, "a complaint . . . must contain either direct or inferential allegations respecting
13 all the material elements necessary to sustain recovery under some viable legal theory." *Twombly*, 550
14 U.S. at 562. To the extent that the pleadings can be cured by the allegation of additional facts, a
15 plaintiff should be afforded leave to amend. *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv.,*
16 *Inc.*, 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted).

17 **IV. ANALYSIS**

18 **A. Plaintiff's Motion to Remand is Denied**

19 Chase removed this action based on diversity jurisdiction under 28 U.S.C. § 1332(a). In his
20 motion to remand, Plaintiff contends Chase failed to establish the requisite amount in controversy, and
21 the Court lacks subject matter jurisdiction.

22 **1. Chase Fails to Establish Diversity Jurisdiction Under 28 U.S.C. § 1332(a)**

23 **a. Complete Diversity of the Parties Exists**

24 There is no dispute the parties are diverse for purposes of jurisdiction under 28 U.S.C. §
25 1332(a). Plaintiff Perryman is a California resident; Chase is an association organized under the laws

1 of the United States with its main office in Columbus, Ohio. (Doc. 1, ¶ 11.) Although Defendant
2 Quality Loan Service Corporation ("QLS") is a California corporation with its principal place of
3 business in San Diego, QLS is a trustee on the deed of trust on Plaintiff's home, against whom no
4 substantive allegations are made. Nominal parties with nothing at stake in the litigation are disregarded
5 in determining diversity, even if their technical joinder is proper. *Strotek Corp. v. Air Transport Ass'n*
6 *of Am.*, 300 F.3d 1129, 1133 (9th Cir. 2002); *see also Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461
7 (1980) ("[A] federal court must disregard nominal or formal parties and rest jurisdiction only upon the
8 citizenship of real parties to the controversy."). Because there are no substantive allegations against
9 QLS, it is a nominal party whose location is irrelevant for purposes of determining diversity
10 jurisdiction. Accordingly, there is complete diversity among the parties pursuant to Section 1332(a).

11 **b. Chase Has Not Established the Amount in Controversy Exceeds \$75,000**

12 Plaintiff's complaint does not specify the amount in controversy; therefore, Chase is required to
13 prove by a preponderance of the evidence that the amount in controversy requirement has been met.
14 *See Guglielmino*, 506 F.3d at 699; *Sanchez*, 102 F.3d at 404. Chase's notice of removal indicates the
15 \$75,000 amount-in-controversy threshold is satisfied because Plaintiff's complaint seeks to enjoin
16 foreclosure on his home, which is valued at \$165,500. (Doc. 1, ¶ 8.)

17 Plaintiff asserts his lawsuit involves a *temporary* injunction pending Chase's compliance with
18 the law, and under this circumstance, district courts in this circuit have concluded the amount in
19 controversy cannot be established by the entire loan or the value of the property. Chase's reliance on
20 the value of his property to establish the amount in controversy is therefore insufficient to establish
21 diversity jurisdiction.

22 Under the Ninth Circuit's decision in *Chapman v. Deutsche Bank Nat'l Trust Co.*, 651 F.3d
23 1039, 1045 (9th Cir. 2011), Chase argues that where a plaintiff seeks to enjoin foreclosure, the amount
24 in controversy is measured by the value of the real property at issue. Because Plaintiff seeks to enjoin
25 Chase from foreclosing on Plaintiff's house while his loan modification application is pending, Chase

1 maintains the complaint has placed the total value of the property into controversy.

2 When the heart or primary purpose of a lawsuit is a request for injunctive or other equitable
3 relief, the amount in controversy is measured by the value of the object of the litigation. *Cohn v.*
4 *Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (per curiam); *Chapman v. Deutsche Bank Nat'l Trust*
5 *Co.*, 651 F.3d 1039, 1045 (9th Cir. 2011); *Garfinkle v. Wells Fargo Bank*, 483 F.2d 1074, 1076 (9th
6 Cir. 1973). The parties' arguments highlight the split among district courts on the application of the
7 amount-in-controversy rule articulated in *Cohn*, *Chapman*, and *Garfinkle* as applied to cases where
8 temporary injunctive relief is sought while a mortgage loan modification request is pending. As it
9 pertains to the trustee's sale, the injunctive relief sought here was created under California's
10 Homeowners Bill of Rights ("HOBR"), which became effective on January 1, 2013. 2012 Cal. Stats.
11 Ch. 86, Assembly Bill 278, §20. The purpose of the HOBR is to ensure that borrowers are "considered
12 for, and have a meaningful opportunity to obtain, available loss mitigation options" in order to avoid
13 foreclosure. Cal. Civ. Code § 2923.4. Among other protections, the HOBR "attempts to eliminate the
14 practice, commonly known as dual tracking, whereby financial institutions continue to pursue
15 foreclosure even while evaluating a borrower's loan modification application." *Rockridge Trust v.*
16 *Wells Fargo, N.A.*, 985 F. Supp. 2d 1110, 1149 (N.D. Cal. 2013). To meet the policy objectives of the
17 HOBR in light of the threat of dual tracking, it was necessary for the legislature to create a pocket of
18 time to address alleged material violations of the HOBR *before* the underlying property was sold by the
19 lender at a trustee's sale. Therefore, where a borrower files suit to enjoin material violations of
20 particular sections of the HOBR *prior* to recordation of a trustee's deed upon sale, any trustee's sale is
21 temporarily enjoined until such time as a court determines the material violations have been remedied
22 or corrected. Cal. Civ. Code § 2924.12(a)(1)-(2). For purposes of federal jurisdiction, the question is
23 how temporarily enjoining a trustee's sale under the HOBR applies to determining the amount in
24 controversy.

1 A number of courts have concluded that enjoining foreclosure temporarily to afford time to
2 remedy alleged statutory violations related to a pending loan modification request does not place the
3 entire value of the underlying loan or property into controversy because the property is not the primary
4 object of the litigation – the loan modification process is the primary focus. *Uribe v. Wells Fargo*, 15-
5 cv-9053, 2016 WL 409666, at *1 (C.D. Cal. Feb. 2, 2016) (entire loan amount cannot be used to show
6 amount in controversy where plaintiff seeks injunctive relief to enjoin a foreclosure sale pending a loan
7 modification); *Vergara v. Wells Fargo Bank, N.A.*, 15-cv-00058-LJS, 2015 WL 1240421 (C.D. Cal.
8 Mar. 17, 2015) (finding request for loan modification and injunction enjoining bank from future
9 foreclosure did not place the value of the entire loan at issue); *Soto v. Litton Loan Servicing*, 10-cv-
10 05099, 2011 WL 724746, at *4 (N.D. Cal. Feb. 22, 2011) (plaintiffs' suit for loan modification did not
11 place value of house at issue in the litigation to meet the amount in controversy threshold); *Cheng v.*
12 *Well Fargo Bank, N.A.*, 10-cv-1764-JLS (FFMx), 2010 WL 4923045, at *2 (C.D. Cal. Dec. 2, 2010)
13 (the amount of the loan at issue is not a relevant measure of damage in loan modification case); *Landa*
14 *v. Flagstar Bank*, No. 10-cv-1429-L (BGS), 2010 WL 2772629, at *2 (S.D. Cal. July 13, 2010) (where
15 rescission of the underlying loan not sought, temporary injunction against foreclosure did not implicate
16 value of property or amount of the underlying mortgage for amount in controversy).¹

17 Other district courts have concluded that any injunction on foreclosure, however temporary,
18 places the injunctive relief at the heart of the litigation thus implicating the value of the property or the
19 amount of the underlying mortgage to establish the amount in controversy. *Thomas v. Wells Fargo*
20 *Bank, N.A.*, 3:15-cv-02344-GPC-JMA, 2016 WL 184405, at *4 (S.D. Cal. Jan. 14, 2016) (complaint
21 seeking to enjoin foreclosure due to pendency of loan modification application placed value of property
22

23 ¹ Other courts have drawn a narrower distinction, finding that where the foreclosure process has not yet been initiated by the
24 lender, a party seeking injunctive relief against potential foreclosure does not implicate the property value or the loan amount
25 for purposes of the amount in controversy. *Lopez v. JPMorgan Chase Bank, N.A.*, No. 15-cv-2030-JVS (JCGx), 2016 WL
320105, at * 2-3 (C.D. Cal. Jan. 25, 2016); *Quiroga v. Bank of America, N.A.*, No. 15-cv-1163-MFW (KKx), 2015 WL
4747978 *3 (C.D. Cal. Aug. 10, 2015); *Vonderscher v. Green Tree Servicing, LLC*, No. 2:13-cv-00490-MCE-EFB, 2013 WL
1858431, at *3-4 (E.D. Cal. May 2, 2013).

1 or amount of mortgage into controversy); *Campos v. Wells Fargo Bank*, No. 15-cv-1200 JVS (DTBx),
2 2015 WL 5145520, at * 3 n.1 (C.D. Cal. Aug. 31, 2015) (concluding that suit relating to loan
3 modification with no foreclosure activity alleged in the complaint implicated the entire value of the
4 underlying loan was at issue for purposes of jurisdiction); *Hendricks v. Wells Fargo Bank, N.A.*, No.
5 15:cv-01299-MFW (JEMx), 2015 WL 1644028 at *5 (C.D. Cal. Apr. 14, 2015) (request for injunctive
6 relief due to pending loan modification application indicates at least one object of the litigation is the
7 property and thus its value may be used to determine the amount in controversy); *Hernandez v.*
8 *Specialized*, No. 14-cv-9404-GW (JEMx), 2015 WL 350223, at * (C.D. Cal. Jan. 22, 2015); *Major v.*
9 *Wells Fargo Bank, N.A.*, No. 14-cv-998 2014 WL 4103936, at * 1 (S.D. Cal. Aug. 18, 2014) (value of
10 property or value of the loan may establish the amount in controversy in action arising out of
11 foreclosure); *Reyes v. Wells Fargo Bank, N.A.*, No. 10-cv-01667-JCS, 2010 WL 2629785 (N.D. Cal.
12 June 29, 2010) (concluding request to enjoin foreclosure sale made property the object of the litigation
13 and full amount of property or the loan amount could be used to satisfy amount in controversy
14 requirement).

15 The Court is not persuaded that the temporary injunction of the trustee's sale to which Plaintiff
16 is entitled under Section 2924.12(a)(2) is the heart or primary purpose of this litigation as was the
17 declaratory relief sought in *Chapman*, which also dealt with foreclosure. In *Chapman*, 651 F.3d at
18 1041-42, the plaintiffs filed a state court quiet title action against their lender who had foreclosed on the
19 plaintiffs' home after they had fallen behind on their mortgage payments. Asserting they were never
20 given statutory notice of the default or the trustee's sale, the plaintiffs sought a declaration voiding the
21 trustee's sale, a quiet title judgment determining they owned the property in fee simple, and damages.
22 *Id.* at 1042. In holding the district court properly exercised diversity jurisdiction under Section
23 1332(a)(1), the Ninth Circuit cited *Cohn* and determined the declaratory relief seeking to unwind the
24 trustee's sale of the property and vest title to the plaintiffs in fee simple was the heart of the suit. The
25 object of the declaratory relief in *Chapman* was the plaintiffs' home, which had an assessed value of

1 more than \$200,000, meeting the jurisdictional minimum.

2 The facts of this case and the nature of the equitable relief requested are very different from
3 *Chapman*. Plaintiff is not seeking to enjoin foreclosure permanently nor is he seeking to quiet title;
4 rather, he seeks to enjoin Chase's alleged violations of the HOBR in considering his loan modification
5 application. Unlike *Chapman*, none of Plaintiff's claims entitles him to permanently enjoin the trustee's
6 sale or implicate the actual validity of the foreclosure, as Plaintiff concedes he is in default on the
7 underlying mortgage. Chase asserts Plaintiff is nonetheless seeking a "permanent injunction" because
8 the words "permanent injunction" appear in the complaint's prayer for relief. This is a
9 mischaracterization of the complaint. Plaintiff seeks to "permanently" enjoin Chase from engaging in
10 unlawful and deceptive acts and practices under the HOBR and California law by failing to give him a
11 decision on his loan modification application. This cannot be read to mean Plaintiff seeks to enjoin the
12 trustee's sale permanently, particularly because the injunction available under Section 2924.12(a)(2) is
13 temporary and survives only until any violation of the HOBR is corrected or remedied. Distinct from
14 *Chapman*, there is no factual basis in Plaintiff's complaint, nor are any claims pled, to support a
15 permanent injunction against foreclosure of the property.

16 The object of this litigation, and indeed the purpose of the HOBR, is to require Chase to
17 consider Plaintiff's loan modification application and provide Plaintiff with a decision prior to
18 foreclosure. The Section 2924.12 temporary injunction is the procedural vehicle enabling Plaintiff to
19 pursue a decision from Chase on his loan modification application. In *Chapman*, title to the property
20 was the primary remedy the plaintiffs sought, thus the declaration regarding ownership of the house
21 was the primary object of the case. The temporary injunctive relief pertaining to the trustee's sale here
22 is not the heart of this case. Because Plaintiff alleges he is in default on the underlying loan and does
23 not challenge the actual validity of foreclosure, a temporary stall of the trustee's sale achieves very little
24 on its own and is not itself a correction or remedy for Chase's alleged violations of the HOBR.
25 Moreover, none of Plaintiff's claims, even if meritorious, require Chase to offer Plaintiff a modified

1 loan or permanently stop the foreclosure. It is Chase's consideration of an alternative loan that Plaintiff
2 seeks, not title to the property or permanent injunction on the foreclosure. Under these circumstances,
3 the temporary injunction on the trustee's sale under Section 2924.12 is distinguishable from the
4 declaratory relief sought in *Chapman* and is not the primary object of the litigation. *See also Garfinkle*,
5 483 F.2d at 1076 (plaintiff sought to *permanently* enjoin bank from foreclosure sale on grounds that
6 California's nonjudicial foreclosure statute was unconstitutional, thus property was the object of the
7 litigation and its value could be used to establish amount in controversy).

8 This Court finds persuasive those district courts which have concluded that temporarily
9 enjoining a trustee's sale while a loan modification is pending does not implicate the value of the
10 property for purposes of establishing the amount in controversy. *See Uribe, Vergara, Soto, Cheng, and*
11 *Landa, supra*. Chase has therefore not established by a preponderance of the evidence that the
12 jurisdictional minimum of \$75,000 has been placed into controversy by the complaint. As such,
13 removal jurisdiction is not supported under 28 U.S.C. § 1332(a).

14 **B. Removal Jurisdiction Exists under 28 U.S.C. § 1331**

15 Alternatively, Chase contends removal jurisdiction exists under 28 U.S.C. § 1331 because the
16 complaint sets forth a claim under federal law – i.e., the Equal Credit Opportunity Act ("ECOA"),
17 U.S.C. §§ 1691 -1691f. Although federal question jurisdiction was not identified in Chase's removal
18 papers as a basis for subject matter jurisdiction, the propriety of removal is determined solely on the
19 basis of the pleadings filed in state court and once it has been removed, the court has jurisdiction over it
20 on all grounds apparent from the complaint, not just those cited in the removal notice. (Doc. 13, 5:11-
21 20 (citing *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 976 (9th Cir. 2006)).) Here, the ECOA
22 claim was evident on the face of the complaint even though it was not raised by Chase as a basis for
23 removal jurisdiction. Removal jurisdiction is proper based on the existence of a federal question
24 pursuant to Section 1331. *See Brockman v. Merabank*, 40 F.3d 1013, 1016 (9th Cir. 1994).

25 As the Court has subject matter jurisdiction based on 28 U.S.C. §1331, Plaintiff's motion to

1 remand is DENIED. The Court next considers Chase's motion to dismiss the complaint pursuant to
2 Federal Rule 12(b)(6).

3 **B. Chase's Motion to Dismiss is Granted in Part and the Case is Remanded**

4 **1. Plaintiff's ECOA Claims is DISMISSED with Prejudice**

5 Plaintiff's Sixth Cause of Action sets forth a claim for breach of the ECOA. Plaintiff alleges he
6 returned a completed application for a loan modification to Chase during the summer of 2015, but
7 Chase never gave Plaintiff any official notification indicating it had been approved or denied. Plaintiff
8 alleges Chase violated the ECOA by failing to respond to his application within 30 days after its
9 submission. (Cmplt., ¶¶ 90-95.)

10 The ECOA "makes it illegal 'for any creditor to discriminate against any applicant, with respect
11 to any aspect of a credit transaction . . . on the basis of race, color, religion, national origin, sex or
12 marital status, or age.'" *Schlegel v. Wells Fargo Bank, N.A.*, 720 F.3d 1204, 1210 (9th Cir. 2013)
13 (quoting 15 U.S.C. § 1691(a)(1)). "One way that the ECOA effectuates this goal is through its notice
14 requirement, which states[,] '[e]ach applicant against whom adverse action is taken shall be entitled to a
15 statement of reasons for such action from the creditor.'" *Id.* (quoting 15 U.S.C. § 1691(a)(1)). This
16 notice of adverse action is to be provided to an applicant within 30 days after receipt of a completed
17 application for credit. 15 U.S.C. § 1691(d)(1). When a creditor takes an adverse action against an
18 applicant without giving the required notice, the applicant may sue for violation of the ECOA. *Id.* §
19 1691e ("Any creditor who fails to comply with any requirement imposed under this subchapter shall be
20 liable to the aggrieved applicant for any actual damages sustained by such applicant").

21 Circuit courts and district courts within this circuit have explicitly recognized that the ECOA's
22 notice requirements are distinct from its prohibition against discrimination in lending. *See Davis v.*
23 *U.S. Bancorp*, 383 F.3d 761, 766 (8th Cir. 2004) ("in addition to a generalized prohibition of
24 discrimination, [ECOA] also establishes procedural requirements for extending credit and
25 communicating with applicants"); *see also Watts v. JP Morgan Chase Bank, N.A.*, No. 5:11-cv-02780-

1 LHK, 2012 WL 3638537, at * 8 (N.D. Cal. Aug. 22, 2012) ("The ECOA prohibits discrimination
2 against an applicant for credit . . ." and, "in addition, the ECOA establishes procedural requirements
3 that creditors must follow in notifying any applicant when action is taken on the credit application").
4 Courts have articulated a multi-element test to determine whether a plaintiff has properly pled a claim
5 of discrimination under the ECOA. *Hafiz v. Greenpoint Mortgage Funding, Inc.*, 652 F. Supp. 2d
6 1039, 1045 (N.D. Cal. 2009). "To satisfy this test, plaintiff must allege that: (1) she is a member of a
7 protected class; (2) she applied for credit with defendants; (3) she qualified for credit; and (4) she was
8 denied credit despite being qualified." *Id.* (citing *Chiang v. Veneman*, 385 F.3d 256, 259 (3d Cir.
9 2004)). However, these pleading requirements are applicable to an ECOA claim only to the extent that
10 there is an allegation of discrimination. The ECOA's procedural requirements apply regardless of
11 whether the *Hafiz* elements have been satisfactorily pled.

12 Chase argues Plaintiff's claim must be dismissed because he fails to allege he is a member of a
13 protected class, but this conflates a discrimination claim and a procedural claim under the ECOA.
14 Where, as here, the complaint sets out allegations pertaining only to a procedural claim under the
15 ECOA, the failure to plead the elements of a separate and distinct ECOA discrimination claim is
16 irrelevant.

17 Chase also asserts Plaintiff's claim is defective because he was in default on his original loan at
18 the time of his loan modification application. The Court agrees. The ECOA's notice requirements do
19 not apply to a creditor's "refusal to extend additional credit under an existing credit arrangement where
20 the applicant is delinquent or otherwise in default." 15 U.S.C. §1691(d)(6). The implementing
21 regulations clarify that notification under the statute is required only for approval, counteroffer, or
22 "adverse action" on the application. 12 C.F.R. § 202.9(a)(1)(i). An adverse action "does not include . .
23 . [a]ny action or forbearance relating to an account taken in connection with inactivity, default, or
24 delinquency as to that account." 12 C.F.R. § 202.2(c)(2)(ii). Hence, where an applicant is already in
25 default, no notice is required as to a modification request pertaining to that loan. *See Smith v. Wells*

1 *Fargo Bank, N.A.*, No. 15-cv-01779-YGR, 2016 WL 283521, at * 6-7 (N.D. Cal. Jan. 25, 2016);
2 *Kaswell v. Wells Fargo Bank, N.A.*, No. CIV.A. RDB-13-2315, 2014 WL 3889183, at *4 (D. Md. Aug.
3 6, 2014) (notice requirements did not apply because mortgage was in default); *Guthrie v. Bank of Am.,*
4 *Nat. Ass'n*, No. CIV. 12-2472 ADM/LIB, 2012 WL 6552763, at *6 (D. Minn. Dec. 14, 2012)
5 ("Plaintiffs do not dispute that they had defaulted on their mortgage by the time of their loan
6 modification request. As a result, Bank of America's denial of this request did not amount to an 'adverse
7 action,' and it did not trigger ECOA notice requirements."); *Pandit v. Saxon Mortg. Servs., Inc.*, No.
8 11-3935, 2012 WL 4174888, at *7 (E.D.N.Y. Sept. 17, 2012) (notice requirement did not apply
9 because plaintiffs were in default), *but see Green v. Cent. Mortgage Co.*, No. 3:14-CV-04281-LB, 2015
10 WL 7734213, at *17 (N.D. Cal. Dec. 1, 2015) (following statutory interpretation in *MacDonald v.*
11 *Wells Fargo Bank N.A.*, No. 14-cv-04970-HSG, 2015 WL 1886000, at *3 (N.D. Cal. Apr. 24, 2015) to
12 deny motion to dismiss ECOA notice claim).

13 Here, Plaintiff concedes he was in default at the time he submitted his loan modification
14 application. In light of his default, any decision or denial of his loan modification application is not
15 considered an adverse action and thus the notice provisions of the ECOA are not triggered. Because of
16 Plaintiff's affirmative allegation of default, this claim cannot be cured by amendment, and it is
17 dismissed with prejudice.

18 **2. The Court Declines to Exercise Supplemental Jurisdiction Over Plaintiff's** 19 **Remaining State Law Claims**

20 Plaintiff's ECOA claim is the only federal claim and the sole basis for subject matter
21 jurisdiction. Upon its dismissal, the Court considers whether to exercise supplemental jurisdiction
22 over Plaintiff's remaining state law claims. Pursuant to 28 U.S.C. § 1367, a district court may decline
23 to exercise supplemental jurisdiction over state law claims if (1) they raise novel or complex issues of
24 state law, (2) the state claims substantially predominate over the federal claims, (3) the district court has
25 dismissed all of the federal claims, or (4) in exceptional circumstances, other compelling reasons justify

1 declining jurisdiction. While the presence of any one of these four factors may be sufficient grounds to
2 decline supplemental jurisdiction, in this case, several of these factors weigh against the exercise
3 supplemental jurisdiction.

4 First, Plaintiff's ECOA claim provided the only basis for federal jurisdiction over the state law
5 claims set forth in the complaint. Now that the ECOA claim is dismissed, it is appropriate to decline
6 jurisdiction over the remaining state law claims. Second, the state law claims raise important issues of
7 state law that are more appropriately resolved by the state courts. Third, this case is in its earliest
8 stages: an answer has not yet been filed nor has discovery commenced. *Carnegie–Mellon University v.*
9 *Cohill*, 484 U.S. 343 (1988) (weighing the principles of economy, convenience, fairness, and comity on
10 a motion to remand, the federal court should decline to exercise supplemental jurisdiction when
11 "federal-law claims have dropped out of the lawsuit in its early stages"). Finally, the fact that this case
12 was removed significantly alleviates any prejudice to Plaintiff since the state claims can be remanded,
13 rather than dismissed, and Plaintiff will return to the original forum of his choice.

14 For all these reasons, the Court declines to exercise supplemental jurisdiction over the
15 remaining state law claims. Thus, the Court does not reach Chase's arguments regarding dismissal of
16 the remaining state law claims. *Grauberger v. St. Francis Hosp.*, 169 F. Supp. 2d 1172, 1179 (N.D.
17 Cal. 2001) (after removal from state court and upon consideration of a motion to dismiss, court
18 dismissed RICO claim upon which subject matter jurisdiction rested, declined supplemental
19 jurisdiction, and refused to reach arguments regarding viability of remaining state law claims).

20 **V. CONCLUSION AND ORDER**

21 For the reasons stated above, it is HEREBY ORDERED that:

- 22 1. Plaintiff's Motion to Remand is DENIED;
- 23 2. Chase's Motion to Dismiss is GRANTED as to Plaintiff's ECOA claim which is
24 dismissed with prejudice, and the Motion to Dismiss is otherwise DENIED without
25 prejudice;

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- 3. The Court declines supplemental jurisdiction over Plaintiff's state law claims;
- 4. This case is REMANDED to Kings County Superior Court; and
- 5. The Clerk of Court is DIRECTED to close this case.

IT IS SO ORDERED.

Dated: August 22, 2016

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE