

1 **WO**

2

3

4

5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

6

7

8

Michael Wilson,

) No. CV-11-0546-PHX-FJM

9

Plaintiff,

) **ORDER**

10

vs.

11

GMAC Mortgage, et al.,

12

Defendants.

13

14

15

16

We have before us plaintiff’s motion to remand (doc. 8), defendants’ response (doc. 9), and plaintiff’s reply (doc. 10). We also have defendants’ notice of supplemental support and authority (doc. 11). Plaintiff moves to remand on the grounds that (1) the amount in controversy does not meet the jurisdictional minimum, (2) the parties lack complete diversity, and (3) we should abstain because plaintiff’s claims raise matters of significant state policy.

21

Plaintiff filed this action in the Superior Court of Arizona in Maricopa County. Defendants removed based on diversity jurisdiction. 28 U.S.C. § 1332. Plaintiff asserts causes of action for (1) fraud, (2) constructive fraud, (3) breach of contract, (4) intentional infliction of emotional distress, (5) negligence, (6) violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1521, et seq., and (7) unjust enrichment.

26

I

27

Plaintiff argues that defendants have not demonstrated that the amount in controversy exceeds \$75,000, as required by 28 U.S.C. § 1332(a). “We strictly construe the removal

28

1 statute against removal jurisdiction. Federal jurisdiction must be rejected if there is any
2 doubt as to the right of removal in the first instance.” Gaus v. Miles, Inc., 980 F.2d 564, 566
3 (9th Cir. 1992) (citations omitted). Defendants bear the burden of establishing that removal
4 is proper. Id. When the amount in controversy is not clear from the face of the complaint,
5 defendant must show by a preponderance of the evidence that the jurisdictional threshold has
6 been met. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 403–04 (9th Cir. 1996).

7 Plaintiff alleges the amount in controversy is \$45,271.51, the amount plaintiff paid
8 defendants in accordance with the parties’ settlement agreement, under which plaintiff was
9 to receive a loan modification and restoration of title. Plaintiff alleges that defendants
10 breached the settlement agreement by failing to modify the loan and restore title to the
11 property. Complaint, ¶ 40 (doc. 1-1). Defendants argue that the amount in controversy is
12 the unpaid balance on plaintiff’s home loan. Although plaintiff’s request for relief is made
13 in generalized terms, he apparently seeks to have the loan reinstated and title to the property
14 restored, in accordance with settlement agreement that defendants allegedly breached. See
15 Complaint, ¶ 23. Plaintiff’s settlement offer, which proposes reducing the amount of the loan
16 from over \$1.5 million to \$787,500.00, also suggests that plaintiff seeks to reinstate the loan.
17 See Submission of Supplemental Support, ex. B, “Settlement Proposal” (doc. 11-1). Courts
18 have concluded that “where a complaint seeks to invalidate a loan secured by a deed of trust,
19 the amount in controversy is the loan amount.” Ngoc Nguyen v. Wells Fargo Bank, N.A.,
20 749 F. Supp. 2d 1022, 1028 (N.D. Cal. 2010). Similarly, where plaintiff seeks to have a loan
21 reinstated, the amount in controversy is the value of the loan. The unpaid balance of the loan
22 is at least \$729,750, see Motion at 3, and therefore this action meets the jurisdictional
23 minimum.

24 We also note that even if we accepted plaintiff’s argument that his complaint is not
25 about the underlying loan, but about the settlement agreement, it is still more likely than not
26 that the amount in controversy exceeds \$75,000. Plaintiff argues that the amount in
27 controversy is only \$45,271.51, which he paid to defendants in accordance with the
28 settlement agreement. But plaintiff asserts seven causes of action, and seeks compensatory,

1 statutory, and punitive damages. It is more likely than not that the damages for all these
2 claims could exceed \$75,000.

3 II

4 Plaintiff alleges that the Notice of Removal (doc. 1) applied the citizenship standard
5 for corporations to defendant limited liability companies (“LLCs”). Motion at 5.

6 Plaintiff is a citizen of Arizona. Two of the GMAC defendants are LLCs,
7 Homecomings Financial LLC and GMAC Mortgage LLC.¹ An “LLC is a citizen of every
8 state of which its owners/members are citizens.” Johnson v. Columbia Properties Anchorage,
9 LP, 437 F.3d 894, 899 (9th Cir. 2006). The GMAC LLCs are wholly owned indirect
10 subsidiaries of Ally Financial, Inc., a Delaware corporation. See Response at 3.² A
11 corporation is a citizen of the state in which it is incorporated and where it has its principal
12 place of business. See 28 U.S.C. § 332(c)(1). Ally Financial is incorporated in Delaware,
13 and has its principal place of business in either Pennsylvania, Michigan or Minnesota.
14 Plaintiff provides no evidence contradicting defendants’ allegations regarding their
15 citizenship. Because Ally Financial is not a citizen of Arizona, neither are the wholly-owned
16 LLC defendants. Therefore, there is complete diversity among the parties.

17 III

18 Plaintiff argues that we should abstain from adjudicating his claims because his
19 complaint raises significant policy issues under Arizona law, and because our review will
20 disrupt the state’s efforts to adjudicate matters of public concern, within the meaning of
21

22 ¹ Defendants assert that a third LLC defendant, GMAC Home Services, was sold to
23 another company, and has no affiliation with the GMAC parties. Notice of Removal at 2–3.

24 ² The Notice of Removal does not fully explain the ownership of the LLCs, simply
25 alleging that GMAC Mortgage and Homecomings Financial are Delaware corporations.
26 Notice of Removal, ¶¶ 7, 9. However, in their Corporate Disclosure Statement, defendants
27 allege that “GMAC Parties are indirect wholly owned subsidiaries of Ally Financial Inc.”
28 Corporate Disclosure Statement at 2 (doc. 5). The uncontested allegations about the
citizenship of the LLCs’ owners, along with the explanation of the parties’ relationship in the
Corporate Disclosure Statement, are sufficient to establish the diversity of the parties.

1 Burford v. Sun Oil Co., 319 U.S. 315, 63 S.Ct. 1098 (1943).

2 We “have a strict duty to exercise the jurisdiction that is conferred upon [us] by
3 Congress.” Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716, 116 S.Ct. 1712, 1720
4 (1996). We may abstain pursuant to the Burford doctrine only when a case presents
5 “difficult questions of state law . . . whose importance transcends the result in the case then
6 at bar,” or if adjudication in this court would disrupt “state efforts to establish a coherent
7 policy with respect to a matter of substantial public concern.” Id. 517 U.S. at 726–27, 116
8 S.Ct. at 1726 (citing New Orleans Public Service, Inc. v. Council of City of New Orleans,
9 491 U.S. 350, 361, 109 S.Ct. 2506, 2514 (1989)). The “power to dismiss recognized in
10 Burford represents an extraordinary and narrow exception to the duty of the District Court
11 to adjudicate a controversy properly before it.” Id. (citing Colorado River Conservation Dist.
12 v. U.S., 424 U.S. 800, 813, 96 S.Ct. 1236, 1244 (1976)). Burford abstention is only
13 appropriate upon a showing: “(1) that the state has concentrated suits involving the local
14 issue in a particular court; (2) the federal issues are not easily separable from complicated
15 state law issues with which the state courts may have special competence; and (3) that federal
16 review might disrupt state court efforts to establish a coherent policy.” Tucker v. First Md.
17 Sav. & Loan, Inc., 942 F.2d 1401, 1404–05 (9th Cir. 1991).

18 Plaintiff points to Arizona’s high rate of foreclosures, his claim under the Arizona
19 Consumer Fraud Act, and the state law scheme governing foreclosure. Here, the state has
20 not concentrated its actions in a particular court. Moreover, we have repeatedly denied
21 plaintiffs’ requests for abstention and exercised jurisdiction over mortgage-related claims.
22 See, e.g., Schayes v. T.D. Service Co. of Arizona, 2011 WL 1793161, *6 (D. Ariz.); Schultz
23 v. BAC Home Loans Servicing, LP, 2011 WL 1771679, *3 (D. Ariz.); Campbell v.
24 California Reconveyance Co., 2011 WL 1740183, *1 (D. Ariz.); Frame v. Cal-Western
25 Reconveyance Corp., 2011 WL 1576712, *4 (D. Ariz.).

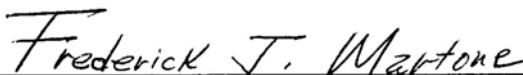
26 Plaintiff also argues that our adjudication of his claims would disrupt Arizona’s efforts
27 to establish a coherent policy. See Poulos v. Caesars World, Inc., 379 F.3d 654, 671
28 (9th Cir. 2004). Plaintiff notes that Arizona has filed an action against Bank of America,

1 alleging violations of the Arizona Consumer Fraud Act, and contends that if we deny his
2 motion to remand, it will “chill Arizona’s interest in properly applying its consumer fraud
3 laws and illegal foreclosure protections to state concerns.” Motion at 9. We disagree.
4 Plaintiff’s complaint does not implicate a “complicated state regulatory scheme.” United
5 States v. Morros, 268 F.3d 695, 705 (9th Cir. 2001). In fact, “questions relating to
6 foreclosures are regularly and seamlessly decided in Arizona’s federal court.” Yares v. Bear
7 Stearns Residential Mortg. Corp., 2011 WL 1376277, *5 (D. Ariz.). Given the extent of
8 foreclosure-related litigation in this state, plaintiff’s contention that our jurisdiction will
9 prevent the Arizona courts from fully addressing the issue is without merit. See Motion at
10 10. Moreover, if a truly unsettled question of state law arises that is critical to the state but
11 has evaded state review, certification is potentially available.

12 Because plaintiff’s claims do not arise from exceptional circumstances or raise novel
13 issues of Arizona law, we do not abstain from exercising jurisdiction.

14 Therefore, **IT IS ORDERED DENYING** plaintiff’s motion to remand (doc. 8).

15 DATED this 7th day of June, 2011.

16
17 
18 _____
19 Frederick J. Martone
20 United States District Judge
21
22
23
24
25
26
27
28