

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

7

8

9 Christopher Fromkin, ) No. 10-CV-8014-PCT-PGR

10 Plaintiff, )

11 vs. )

**ORDER**

12 IndyMac Bank FSB, a Federally Chartered )

13 Savings Bank, Mortgage Electronic )

14 Registration Systems, Inc., a Delaware )

15 corporation, OneWest Bank FSB, a )

16 Federally Chartered Savings Bank, Quality )

17 Loan Services, Inc., Trustee, a California )

18 Corporation, IMB REO, LLC, a Delaware )

19 limited liability company, John Does I-X; )

20 Jane Does I-X; ABC Corporations )

21 I-X;CDF Partnerships I-X and XYZ )

22 Investors IX., )

23 Defendants. )

24

25

26

27

28

29

30

31

32

33

34

35

36

37

Currently before the Court is Plaintiff's Motion to Remand the above-captioned matter to the Yavapai County Superior Court based on lack of personal jurisdiction, improper removal, and lack of consent of the Defendants to Removal. (Doc. 14.) Defendants OneWest Bank, FSB ("OneWest"), Mortgage Electronic Registration Systems, Inc. ("MERS"), and IMB REO, LLC ("IMB") (collectively, the "Removing Defendants"), submitted a Response in Opposition to Plaintiff's Motion to Remand. This Court finds that Plaintiff's arguments fail for lack of merit.

I. BACKGROUND

Plaintiff filed his Complaint in the Yavapai County Superior Court seeking, *inter alia*,

1 a Preliminary Injunction, a Permanent Injunction, declaratory relief and compensatory and  
2 punitive damages in connection with an allegedly illegal non-judicial foreclosure of the  
3 Plaintiff's home at a Trustee's Sale in Yavapai County.<sup>1</sup>

## 4 II. LEGAL STANDARD AND ANALYSIS

5 A federal court determines whether removal is proper pursuant to 28 U.S.C. § 1441.  
6 Under 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district  
7 courts of the United States have original jurisdiction, may be removed by the defendant or  
8 defendants, to the district court of the United States for the district and division embracing  
9 the place where such action is pending."

### 10 Personal Jurisdiction

11 Plaintiff contends that the Yavapai Superior Court did not have personal jurisdiction  
12 over *all* of the Defendants at the time of removal and therefore removal is prohibited. Under  
13 28 U.S.C. § 1441(f), a state court's lack of jurisdiction does not preclude a federal district  
14 court from hearing a claim upon removal. Nishimoto v. Federman-Bachrach & Assoc., 903  
15 F.2d 706, 714 n. 11 (9th Cir. 1990). Plaintiff's contention that Yavapai County Superior  
16 Court lacked personal jurisdiction over *some* of the Defendants and his conclusion that  
17 removal is therefore barred is inconsistent with 28 U.S.C. §1441(f).<sup>2</sup>

### 18 Improper Removal

19 Next, this action was removed on both federal question and diversity jurisdiction  
20 grounds. Thus, Plaintiff's argument that removal was improper is also without merit. District  
21 courts have diversity jurisdiction over civil actions between citizens of different states where

---

23 <sup>1</sup> Defendant IndyMac agreed to loan Plaintiff \$332,800.00 to purchase said home on  
24 a cash out refinance conditioned upon Plaintiff executing a Deed of trust and Promissory  
Note.

25 <sup>2</sup> Essentially, whether Yavapai County Superior Court had personal jurisdiction over  
26 all Defendants is irrelevant when determining whether removal is proper under 28 U.S.C. §  
27 1446(f).

1 the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. §  
2 1332(a). For purposes of determining diversity of citizenship, an individual person is  
3 deemed to be a citizen of the state in which he or she is domiciled. Lew v. Moss, 797 F.3d  
4 747, 749 (9th Cir.1986). A person is “domiciled” where he or she has “established a ‘fixed  
5 habitation or abode in a particular place and [intends] to remain there permanently or  
6 indefinitely.’” Id. at 749-50. (quoting Owens v. Huntling, 115 F.2d 160, 162 (9th Cir.1940)).  
7 For entities, the state of citizenship depends on the form of the entity. A corporation is  
8 deemed to be a citizen of the state in which it was incorporated as well as the state in which  
9 its principal place of business is located. Johnson v. Columbia Props. Anchorage, LP, 437  
10 F.3d 894, 899 (9th Cir.2006); 28 U.S.C. § 1332(c)(1). Plaintiff alleges that he is a resident  
11 of the State of Arizona. Removing Defendant IMB is a Delaware limited liability company  
12 with its principal place of business in Delaware. Defendant OneWest, FSB is a federally  
13 chartered savings bank that is neither domiciled, nor maintains its principal place of business,  
14 in Arizona. Defendant IndyMac Bank, FSB was a federal savings bank which was closed by  
15 the Office of Thrift Supervision, and on July 11, 2008, the FDIC was named as its  
16 conservator. Defendant MERS is a Delaware corporation with its principal place of business  
17 in Virginia. Defendant Quality Loan Services, Inc. is a California corporation with its  
18 principal place of business in California. Thus, complete diversity of citizenship between  
19 Plaintiff and each of the Defendants exists. Furthermore, Plaintiff seeks a judgment  
20 declaring that Defendants are not entitled to enforce a promissory note in the amount of  
21 \$332,800.00. Plaintiff further alleges that he is entitled to treble damages of at least  
22 \$118,411.20, and he seeks general, special, statutory, and punitive damages. Accordingly,  
23 in the pending matter, diversity jurisdiction exists under 28 U.S.C. § 1332 because, as  
24 established, there is complete diversity of citizenship among the parties and the amount in  
25 controversy exceeds the sum or value of \$75,000.00.

26 Additionally, at the time of removal, this Court had federal question jurisdiction under  
27 28 U.S.C. §1331. District courts have federal question jurisdiction over civil actions “arising

1 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Under the  
2 well-pleaded complaint rule, “federal jurisdiction exists only when a federal question is  
3 presented on the face of the plaintiff’s properly pleaded complaint.” Caterpillar, Inc. v.  
4 Williams, 482 U.S. 386, 392 (1987); Hunter v. Philip Morris, 582 F.3d 1039, 1042-43 (9<sup>th</sup>  
5 Cir. 2009). Plaintiff pled federal claims under 12 U.S.C. § 2601 et seq., 15 U.S.C. § 1602  
6 et seq., 12 C.F.R. § 226.2, 15 U.S.C. § 1692 et seq., and 15 U.S.C. § 1602 et seq.  
7 Accordingly, this Court had federal question jurisdiction over the foregoing federal claims  
8 and could exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over the related  
9 state claims.<sup>3</sup>

10 Consent

11 Finally, contrary to Plaintiff’s assertion otherwise, all of the consent required upon  
12 removal was obtained by the Removing Defendants. Under 28 U.S.C. § 1446(b), all  
13 defendants to an action must join in the removal of an action from state court to federal court.  
14 However, this general rule applies only to defendants properly joined and served at the time  
15 of removal. Cachet Residential Builders, Inc. v. Gemini Ins. Co., 547 F. Supp. 2d 1028,  
16 1030 (D. Ariz. 2007) (holding that consent of defendant who was not properly served was  
17 not required to remove action from state court) (quoting Emerich v. Rouche Ross & Co., 846  
18 F.2d 1990, 1193 n.3 (9th Cir. 1988)). Therefore, by obtaining the consent of the only  
19 Defendant which had received valid service of the Summons and Complaint *as of the date*  
20 *of the removal*, the Removing Defendants satisfied the consent requirement of § 1446(b).<sup>4</sup>

---

21  
22 <sup>3</sup> Section 1367(a) states: “[I]n any civil action of which the district courts have original  
23 jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that  
24 are so related to claims in the action within such original jurisdiction that they form part of  
the same case or controversy under Article III of the United States Constitution.”

25 <sup>4</sup> At the time of removal, only removing Defendant IMB had received valid service  
26 of the Summons and Complaint. On January 2, 2010, Plaintiff attempted to serve the now  
27 defunct Defendant IndyMac, FSB by mailing a copy of the Summons and Complaint to  
MERS (as the statutory agent for Defendant IndyMac, FSB). However, MERS is not in fact  
IndyMac, FSB's statutory agent in Arizona. Rather, service of process for Defendant

1 Accordingly,

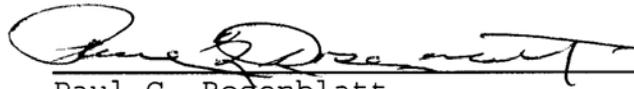
2 IT IS HEREBY ORDERED DENYING Plaintiff's Motion to Remand. (Doc. 14.)

3 DATED this 31<sup>st</sup> day of March, 2010.

4

5

6



7

Paul G. Rosenblatt  
United States District Judge

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

---

27 IndyMac, FSB must be made to the Federal Deposit Insurance Corporation, which has been appointed the receiver for IndyMac Bank, FSB.