

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**DANNY L. WEAVER and
STACEY E. WEAVER**

PLAINTIFF

v.

No. 3:15-cv-83-DPM

**EVERHOME MORTGAGE COMPANY¹ and
EVERBANK**

DEFENDANT

ORDER

1. The Weavers' motion to remand is denied. The only fighting issue is timeliness. The Court agrees with the reasoning and authorities in Everbank's brief, *No 17*. While written settlement offers are useful in determining removal timeliness, the written offer at issue here occurred during the parties' adversary proceeding before the initial state complaint was filed and was simply not conclusive enough of the amount in controversy to start Everbank's removal clock in this case. *Knudson v. Systems Painters, Inc.*, 634 F.3d 968, 974 (8th Cir. 2011); *Wang v. Pacific Cycle, Inc.*, 530 F. Supp. 2d 1048, 1051-52 (S.D. Iowa 2008). The post-complaint email and oral communications between the parties' lawyers – made outside of court and unsworn – also fall

¹The Court directs the Clerk to correct the docket: Everhome Mortgage Company merged with Everbank and is no longer a separate entity. *No 5 at n.1*.

short of being clear and unequivocal notices of removability. See *State Farm Fire & Casualty Co. v. Valspar Corp.*, 824 F. Supp. 2d 923, 931 (D. S.D. 2010) (emails); *Bajaba, LLC v. General Steel Domestic Sales, LLC*, 2014 WL 5363905, at *2 (W.D. Ark. 21 October 2014) (oral statements). The only firm notice came through the Weavers' discovery responses.

2. Everbank's motion to quash the requests for admissions is granted. The problem is the Weavers' complaint. It is not a short and plain statement of claims; it tries to tell the whole story of the case. FED. R. CIV. P. 8(a). The Court acknowledges the Weavers' burden under *Twombly* and *Iqbal* to plead facts, rather than conclusions, but this is just too much. The Court orders the Weavers to file an amended complaint – a trimmed down, more general, less particularized short and plain statement. The Court directs Everbank to respond in kind: admitting everything that it can, based on its now knowing much about the case. We need to move to the merits now.

* * *

Motion to remand, *No 14*, denied. Motion to quash, *No 5*, granted.
Amended complaint due by 15 May 2015.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

27 April 2015