

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-6256-CAS (MANx)	Date	August 24, 2011
Title	KATHRYN O. SMITH V. WELLS FARGO BANK, ET AL.		

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Present: The Honorable **CHRISTINA A. SNYDER**

RITA SANCHEZ	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

**Proceedings: (In Chambers:) ORDER TO SHOW CAUSE FOR FAILURE TO OBTAIN APPROVAL FOR REMOVAL FROM ALL DEFENDANTS**

**I. INTRODUCTION**

On June 20, 2011, plaintiffs Kathryn O. Smith and Michael W. Ball filed the instant action in Los Angeles County Superior Court against Wells Fargo Bank, N.A. (“Wells”); Matrix Services (“Matrix”); National Title Ins., Co. (“National”); Assured Lender Services, Inc. (“ALSI”); and Does 1-100 (collectively “defendants”). Plaintiffs allege violations of numerous state and federal laws related to a loan originated by Wells Fargo, including RICO, 18 U.S.C. §§ 1961 *et seq.*, and the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*

On July 28, 2011, defendant Matrix removed this action to federal court. Matrix was not joined by any other named defendant in this action.

**II. DISCUSSION**

Civil actions brought in a state court generally may be removed to a federal district court when the district court has original jurisdiction that arises under the laws of the United States. 28 U.S.C. § 1441(b). Section 1446(b) requires notice of removal to be filed within thirty (30) days of receipt, by the defendant, of the initial pleading setting forth the claim for relief. All defendants must join in a removal petition or file written consent to removal within the same thirty day period following service of the initial pleading. See Prize Frize, Inc. v. Matrix, Inc., 167 F.3d 1261, 1266 (9th Cir. 1999); Hewitt v. City of Stanton, 798 F.2d 1230, 1232 (9th Cir. 1986).

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There are exceptions to the unanimity rule. Nominal parties need not join in a removal petition or file written consent to removal within the same thirty day period following service of the initial pleading. See Prize Frize, Inc. v. Matrix, Inc., 167 F.3d at 1266. A defendant is a nominal party where its role is limited to that of a stakeholder or depositary. See Tri-Cities Newspapers, Inc. v. Tri-Cities Printing Pressman & Assistants' Local 349, 427 F.2d 325, 327 (5th Cir. 1970). Further, the absence of those defendants who were not properly served from a removal notice does not render the removal defective. See Destfino v. Reiswig, 630 F.3d 952, 957 (9th Cir. 2011).

Matrix's removal appears to be improper because the other defendants have not unanimously joined in the removal. See Prize Frize, 167 F.3d at 1266. Matrix's removal papers, however, suggest that exceptions to the unanimity rule exist. Matrix asserts that "[b]ased upon information and belief, neither Wells nor National have been served and/or responded to the Complaint." Def. Notice of Removal ¶ 6. This assertion is not supported by any declaration or evidence that plaintiffs failed to properly serve Wells and/or National. Without evidence the other named defendants have not been properly served, these other defendants must join in Matrix's removal petition or file written consent to removal. See Prize Frize, 167 F.3d at 1266.

**III. CONCLUSION**

Nowhere in Matrix's notice of removal or in the accompanying papers is there an indication that the other named defendants have unanimously consented to removal. Further, there is no evidence that defendants Wells or National were not served by plaintiffs. Accordingly, the Court ORDERS defendant Matrix to SHOW CAUSE within **twenty (20) days** of the date of this order why the instant action should not be remanded for failure to timely remove.

IT IS SO ORDERED.

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Initials of  
Preparer  
RS

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