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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GUADALUPE M. ROMAN, et al.,

Plaintiffs,

v.

BANK OF AMERICA, N.A., et al.

Defendants.

Case No. 15-4344 FMO (JEMx)

ORDER REMANDING ACTION

Having reviewed and considered the record and all the briefing filed with respect to plaintiffs' Motion to Remand ("Motion"), the court concludes that oral argument is not necessary to resolve the Motion. See Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001).

INTRODUCTION

On May 5, 2015, Guadalupe M. Roman and Rosalinda A. Sanchez ("plaintiffs") filed a Complaint in the Superior Court of the State of California for the County of Los Angeles against defendants Bank of America, N.A., the Bank of New York Mellon, and Does 1 through 10 (collectively, "defendants"). (See Notice of Removal ("NOR") at ¶ 1 & Exhibit ("Exh.") A ("Complaint")). The Complaint arises from defendants' purported "improper process and handling of Plaintiffs' loan modification application." (Complaint at ¶ 24).

Plaintiffs' Complaint asserts only state-law causes of action, (see Complaint at ¶¶ 47-113), including claims under California's Homeowner Bill of Rights ("HBOR") and California Business

1 and Professions Code §§ 17200, et seq. In addition to damages, plaintiffs seek an injunction
2 pursuant to California Civil Code § 2924.19. (See id. at ¶¶ 110-113).

3 On June 9, 2015, defendants removed the action on diversity jurisdiction grounds pursuant
4 to 28 U.S.C. §§ 1332, 1441, and 1446. (See NOR at ¶¶ 4-7). Plaintiffs filed the instant Motion on
5 June 22, 2015. Defendants filed an Opposition to Plaintiffs' Motion for Remand ("Opp.") on July
6 9, 2015, and plaintiffs filed a Reply in Support of Motion to Remand on July 16, 2015.

7 LEGAL STANDARD

8 "[A]ny civil action brought in a State court of which the district courts of the United States
9 have original jurisdiction, may be removed by the defendant or the defendants, to the district
10 court[.]" 28 U.S.C. § 1441(a). A removing defendant bears the burden of establishing that
11 removal is proper. See Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) ("The strong
12 presumption against removal jurisdiction means that the defendant always has the burden of
13 establishing that removal is proper.") (internal quotation marks omitted); Abrego Abrego v. The
14 Dow Chem. Co., 443 F.3d 676, 684 (9th Cir. 2006) (per curiam) (noting the "longstanding, near-
15 canonical rule that the burden on removal rests with the removing defendant"). Moreover, if there
16 is any doubt regarding the existence of subject matter jurisdiction, the court must resolve those
17 doubts in favor of remanding the action to state court. See Gaus, 980 F.2d at 566 ("Federal
18 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.").
19 Indeed, "[i]f at any time before final judgment it appears that the district court lacks subject matter
20 jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c); see Kelton Arms Condo. Owners
21 Ass'n, Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003) ("Subject matter
22 jurisdiction may not be waived, and, indeed, we have held that the district court must remand if
23 it lacks jurisdiction."); Snell v. Cleveland, Inc., 316 F.3d 822, 826 (9th Cir. 2002) ("Federal Rule
24 of Civil Procedure 12(h)(3) provides that a court may raise the question of subject matter
25 jurisdiction, sua sponte, at any time during the pendency of the action, even on appeal.") (footnote
26 omitted); Washington v. United Parcel Serv., Inc., 2009 WL 1519894, *1 (C.D. Cal. 2009) (a
27 district court may remand an action where the court finds that it lacks subject matter jurisdiction
28 either by motion or sua sponte).

1 **DISCUSSION**

2 I. SUBJECT MATTER JURISDICTION.

3 Having reviewed the Complaint, the NOR and the briefing filed in connection with the
4 Motion, the court is persuaded plaintiffs could not have originally brought this action in federal
5 court, and therefore removal was improper. See 28 U.S.C. § 1441(a); Caterpillar, Inc. v. Williams,
6 482 U.S. 386, 392, 107 S.Ct. 2425, 2429 (1987) (“Only state-court actions that originally could
7 have been filed in federal court may be removed to federal court by the defendant.”) (footnote
8 omitted).

9 Defendants bear the burden of proving by a preponderance of the evidence that the amount
10 in controversy meets the \$75,000 jurisdictional threshold.¹ See Valdez v. Allstate Ins. Co., 372
11 F.3d 1115, 1116-17 (9th Cir. 2004); Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089,
12 1090 (9th Cir. 2003) (per curiam). As an initial matter, the amount of damages plaintiffs seek
13 cannot be determined from the Complaint as it does not set forth a specific amount. (See,
14 generally, Complaint). Defendants, however, contend that when “a plaintiff seeks injunctive relief,
15 the amount in controversy is measured by the value of the object of the litigation[,]” (NOR at ¶ 18;
16 Opp. at 4, citing Zepeda v. U.S. Bank, N.A., 2011 WL 4351801, *4 (C.D. Cal. 2011)), and that if
17 “the primary purpose of a lawsuit is to enjoin a bank from selling or transferring property, then the
18 property is the object of the litigation.” (NOR at ¶ 19; Opp. at 4, quoting Reyes v. Wells Fargo
19 Bank, N.A., 2010 WL 2629785, *4-5 (N.D. Cal. 2010)) (internal quotation marks omitted)).
20 According to defendants, since plaintiffs are seeking injunctive relief, the amount in controversy
21 is determined by the underlying loan or the market value of the property, which in this case would
22 place the amount in controversy beyond the \$75,000 jurisdictional threshold. (See NOR at ¶¶ 20-
23 22).

24 Contrary to defendants’ assertions, the fact that the Complaint mentions possible
25 foreclosure of the subject property and seeks some form of injunctive relief “is not dispositive of
26 whether the loan amount establishes the amount in controversy[.]” See Vonderscher v. Green

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28 ¹ Diversity of citizenship is not challenged by plaintiffs. (See, generally, Motion).

1 Tree Servicing, LLC, 2013 WL 1858431, *3 (E.D. Cal. 2013) (“[T]he fact that Plaintiffs’ complaint
2 includes mention of foreclosure, and indeed seeks to enjoin a potential foreclosure, is not
3 dispositive of whether the loan amount establishes the amount in controversy for purposes of
4 diversity jurisdiction.”); Horace v. LaSalle Bank Nat’l Ass’n, 2009 WL 426467, *1-2 (M.D. Ala.
5 2009) (remanding case where plaintiff had obtained a temporary restraining order enjoining
6 foreclosure but finding that the “true gravamen” of complaint was for unspecified damages).
7 Indeed, “[c]ourts have roundly rejected the argument that the amount in controversy is the entire
8 amount of the loan where a plaintiff seeks injunctive relief to enjoin a foreclosure sale pending a
9 loan modification.” Vergara v. Wells Fargo Bank, N.A., 2015 WL 1240421, *2 (C.D. Cal. 2015)
10 (emphasis omitted) (collecting cases); see also Jauregui v. Nationstar Mortg. LLC, 2015 WL
11 2154148, *4 (C.D. Cal. 2015) (same).

12 Here, plaintiffs are not seeking a permanent injunction. Rather, they are seeking an
13 injunction pursuant to California Civil Code § 2924.19, (see Complaint at ¶¶ 110-112), which “does
14 not authorize permanent injunctive relief, but permits it only until the defendant shows that the
15 material violation has been corrected and remedied.” Vergara, 2015 WL 1240421, at *2 n. 1
16 (internal quotation marks omitted). Further, it is clear from the Complaint that – in addition to
17 temporary injunctive relief – plaintiffs are seeking civil penalties and damages for the alleged
18 violations of state law.² (See, e.g., Complaint at ¶¶ 52, 59, 63, 74, 84, 94, 104, 109 & 113); see
19 also Horace, 2009 WL 426467, at *1-2 (remanding case where plaintiff had obtained a temporary
20 restraining order enjoining foreclosure but finding that the “true gravamen” of complaint was for
21 unspecified damages).

22 Defendants also contend that “under the ‘pecuniary result’ test for determining the amount
23 in controversy, the amount at issue here exceeds &75,000.00 as well[, because] Plaintiffs seek
24 a permanent injunction[.]” (Opp. at 6). However, as noted above, plaintiffs are not seeking a
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27 ² Defendants point to paragraph four of the Prayer for Relief in support of their contention that
28 plaintiffs seek a permanent injunction. (See, e.g., Opp. at 5 & 8). However, that paragraph does
not specifically seek a permanent injunction.

1 permanent injunction, but rather a temporary injunction pursuant to California Civil Code §
2 2924.19.

3 Moreover, plaintiffs' allegations are directed towards violations of law during the loan
4 modification process. In such a context, the "damages would likely amount to the difference
5 between [the] existing loan and any modified loan to which [plaintiff] may have been entitled."
6 Morales v. Select Portfolio Servicing, Inc., 2014 WL 6851435 (C.D. Cal. 2014); Johnson v. Wells
7 Fargo Home Mortg., 2012 WL 1229880, *4 (C.D. Cal. 2012) ("[I]f a plaintiff asserts that he is
8 entitled to a wrongfully denied loan modification, the amount put into controversy is the difference
9 between the value of the existing loan and the proposed modified loan."). Defendants do not put
10 forward any evidence regarding this amount. (See, generally, NOR & Opp.).

11 In sum, given that any doubt regarding the existence of subject matter jurisdiction must be
12 resolved in favor of remanding the action to state court, see Gaus, 980 F.2d at 566, the court is
13 not persuaded that defendants have met their burden of proving by a preponderance of the
14 evidence that the amount in controversy meets the jurisdictional threshold. See Matheson, 319
15 F.3d at 1090 ("Where it is not facially evident from the complaint that more than \$75,000 is in
16 controversy, the removing party must prove, by a preponderance of the evidence, that the amount
17 in controversy meets the jurisdictional threshold. Where doubt regarding the right to removal
18 exists, a case should be remanded to state court.") (footnote omitted); Valdez, 372 F.3d at 1116-
19 17. Therefore, there is no basis for diversity jurisdiction.

20 II. COSTS AND FEES.

21 Plaintiffs' request attorney's fees in connection with their Motion. (Motion at 9). Section
22 1447(c) provides in relevant part that "[a]n order remanding the case may require payment of just
23 costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28
24 U.S.C. § 1447(c). "Absent unusual circumstances, courts may award attorney's fees under §
25 1447(c) only where the removing party lacked an objectively reasonable basis for seeking
26 removal." Martin v. Franklin Capital Corp., 546 U.S. 132, 141, 126 S.Ct. 704, 711) (2005). Here,
27 the court finds that defendants did not lack an objectively reasonable basis for removal.

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