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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FEDERAL HOME LOAN MORTGAGE CORPORATION,)	1:10-cv-2337 OWW DLB
)	
Plaintiff,)	SCHEDULING CONFERENCE ORDER
)	
v.)	Motion to Remand Filing
)	Deadline: 6/17/11
JULIAN GALLARDO,)	
)	Motion to Remand Hearing
Defendant.)	Date: 7/18/11 10:00 Ctrm. 3
)	
)	

I. Date of Scheduling Conference.
June 15, 2011.

II. Appearances Of Counsel.
Pite Duncan, LLP by Jason W. Short, Esq., appeared on behalf of Plaintiff.

Defendant has not participated in any joint Scheduling Conference statement efforts. Defendant Julian Gallardo stipulated to judgment in a prior State Court unlawful detainer proceeding in this case. The case was subsequently removed to this Court and Mr. Gallardo has not responded or otherwise communicated with Plaintiff's counsel.

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1 III. Summary of Pleadings.

2 1. Plaintiff purchased the real property located at 2409
3 Park Brae Way, Modesto, CA 95358 (hereinafter the "Subject
4 Property") at trustee's sale on June 8, 2010. Plaintiff's title
5 was duly perfected by the recording of the Trustee's Deed Upon
6 Sale. Defendant was served with Written Notice to Vacate on July
7 15, 2010. Defendant failed to comply with the Notice to Vacate
8 and Plaintiff filed the instant action for unlawful detainer on
9 or about August 10, 2010. At trial on November 15, 2010, the
10 parties stipulated to Judgment whereby Defendant admitted that
11 Plaintiff was entitled to possession, but Plaintiff would not
12 seek to enforce the Writ of Possession Prior to December 5, 2010.

13 2. Defendant failed to vacate the Subject Property by
14 December 5, 2010. Instead, Defendant filed a Notice of Removal
15 of the unlawful detainer case to Federal Court on December 15,
16 2010 and filed a Chapter 13 Bankruptcy Petition on December 17,
17 2010 in the Eastern District of California, designated as case
18 number 10-94880. Plaintiff sought, and was granted, relief from
19 the Automatic Stay on February 25, 2011. On March 2, 2011, the
20 Stanislaus County Sheriff's Department executed Plaintiff's Writ
21 of Possession and placed Plaintiff in peaceful possession of the
22 Subject Property.

23 3. Plaintiff contends that the removal of the instant case
24 to Federal Court was improper because removal cannot be
25 accomplished after the Court, having jurisdiction over the claims
26 to be removed, has made its findings of fact and conclusions of
27 law. (1 Norton Bankr. L. & Prac. 3d § 7:1). Defendants may not
28 remove a case from a state court to a federal court after the

1 state court has entered a final judgment that terminates the
2 litigation. (14B Fed. Prac. & Proc. Juris. § 3721 (4th ed.)).
3 Moreover, this case was not properly removed as neither federal
4 question nor diversity jurisdiction exists.

5 IV. Orders Re Amendments To Pleadings.

6 1. Plaintiff does not propose any further amendments to
7 any pleadings.

8 V. Factual Summary.

9 A. Admitted Facts Which Are Deemed Proven Without Further
10 Proceedings.

11 1. See paragraph 1 in the Summary of Pleadings
12 section above.

13 B. Contested Facts.

14 1. None.

15 VI. Legal Issues.

16 A. Contested.

17 1. Jurisdiction is disputed. Plaintiff contends
18 the Court does not have jurisdiction under 28 U.S.C. §§ 1531 or
19 1441 because the amount in controversy does not exceed \$75,000
20 and the complaint is based exclusively on Cal. Code Proc.
21 §§ 1161(a) and 1174(b).

22 2. No basis for Federal jurisdiction exists and
23 therefore venue is not proper.

24 3. Whether this case should be remanded to State
25 Court it having been finally adjudicated by a judgment entered
26 December 10, 2010.

27 VII. Consent to Magistrate Judge Jurisdiction.

28 1. Plaintiff has consented to transfer the case to the

1 Magistrate Judge for all purposes, including trial.

2 VIII. Corporate Identification Statement.

3 1. Any nongovernmental corporate party to any action in
4 this court shall file a statement identifying all its parent
5 corporations and listing any entity that owns 10% or more of the
6 party's equity securities. A party shall file the statement with
7 its initial pleading filed in this court and shall supplement the
8 statement within a reasonable time of any change in the
9 information.

10 IX. Discovery Plan and Cut-Off Date.

11 1. Plaintiff will file a motion for remand on or before
12 June 17, 2011.

13 2. That motion shall be heard July 18, 2011 at 10:00 a.m.
14 in Courtroom 3.

15 3. It is anticipated that this case will be resolved by
16 motion and therefore no other matters need be considered in this
17 Scheduling Order at this time.

18 X. Motions - Hard Copy.

19 1. The parties shall submit one (1) courtesy paper copy to
20 the Court of any motions filed. Exhibits shall be marked with
21 protruding numbered or lettered tabs so that the Court can easily
22 identify such exhibits.

23

24 IT IS SO ORDERED.

25 Dated: June 15, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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