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3 **UNITED STATES DISTRICT COURT**  
4 **EASTERN DISTRICT OF CALIFORNIA**  
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6 **RICHARD MCGUINNESS, an individual,**  
7 **and MELODY MCGUINNESS,**

8 **Plaintiff**

9 v.

10 **WELLS FARGO BANK, NA, a business**  
11 **entity and DOES 1 to 10, inclusive,**

12 **Defendants**

**CASE NO. 1:15-CV-00390- AWI-GSA**

**ORDER GRANTING JOINT**  
**STIPULATION REQUESTING THE**  
**REMAND OF THE FEDERAL ACTION**  
**TO THE STATE COURT**

**(Doc. 10)**

13  
14 Wells Fargo Bank, N.A., successor by merger with Wells Fargo Bank Southwest, N.A.,  
15 f/k/a Wachovia Mortgage, FSB, f/k/a World Savings Bank, FSB (“Defendants”) removed this case  
16 from the Superior Court of Stanislaus County on March 11, 2015. See Doc. 1. Defendants  
17 asserted that the basis for removal was the presence of diversity jurisdiction under 28 U.S.C. §  
18 1332. See id. On April 10, 2015, Richard McGuinness and Melody McGuinness (“Plaintiffs”) filed  
19 a Motion for Remand to Superior Court and Request for Payment of Attorney’s Fees by Defense  
20 Counsel in the Amount of \$2,500.00. See Doc. 8. On April 17, Defendants filed a joint  
21 stipulation requesting the remand of the federal action to the state court. See Doc. 10.

22 Federal courts are of limited jurisdiction, having subject matter jurisdiction only over  
23 matters authorized by the Constitution and Congress. See, e.g., Kokkonen v. Guardian Life Ins.,  
24 511 U.S. 375, 377 (1994). A “strong presumption” against removal jurisdiction exists. Gaus v.  
25 Miles, Inc., 980 F.2d 564, 567 (9th Cir. 1992). In seeking removal, the defendant bears the burden  
26 of proving that jurisdiction exists. Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986).

27 Under 28 U.S.C. § 1331, this Court has original jurisdiction over civil actions “arising  
28 under” federal law. Removal based on § 1331 is governed by the “well-pleaded complaint” rule.

1 Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). Under the rule, “federal jurisdiction exists  
2 only when a federal question is presented on the face of plaintiff’s properly pleaded complaint.”  
3 Id. at 392. If the complaint does not specify whether a claim is based on federal or state law, it is a  
4 claim “arising under” federal law only if it is “clear” that it raises a federal question. Duncan v.  
5 Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996). Thus, plaintiff is generally the “master of the  
6 claim.” Caterpillar, 482 U.S. at 392. There is no federal question jurisdiction simply because  
7 there is a federal defense to the claim. Id. at 392. The only exception to this rule is where the  
8 plaintiff’s federal claim has been disguised by “artful pleading,” such as where the only claim is a  
9 federal one or is a state claim preempted by federal law. Sullivan v. First Affiliated Sec., Inc.,  
10 813 F.2d 1368, 1372 (9th Cir. 1987).

11 The complaint here contains state law claims for unfair business practices (Cal. Bus. &  
12 Prof. Code § 17200 et seq.), negligence, and violations of the Rosenthal Act (Cal. Civ. Code  
13 § 1788). No federal claim is alleged. As such, this court does not have jurisdiction over this  
14 matter on the basis of federal question jurisdiction. This court will now consider whether it has  
15 diversity jurisdiction over the matter.

16 Subject matter jurisdiction based on diversity of citizenship requires all plaintiffs to have a  
17 different citizenship from all defendants and that the amount in controversy exceed \$75,000. See  
18 28 U.S.C. § 1332; Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978). In  
19 attempting to invoke federal diversity jurisdiction, defendants must prove that there is complete  
20 diversity of citizenship between the parties and that the amount in controversy exceeds \$75,000.  
21 28 U.S.C. § 1332. When an action has been removed and the amount in controversy is in doubt,  
22 there is a “strong presumption” that the plaintiff has not claimed an amount sufficient to confer  
23 jurisdiction. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citing St. Paul Mercury  
24 Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-90 (1938). “When not facially evident from the  
25 complaint that more than \$75,000 is in controversy, the removing party must prove, by a  
26 preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold.”  
27 Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003). “Conclusory  
28 allegations must provide evidence establishing that it is ‘more likely than not’ that the amount in

1 controversy exceeds [\$75,000].” Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th  
2 Cir. 1996). Indeed, “when a state-court complaint affirmatively alleges that the amount in  
3 controversy is less than the jurisdictional threshold, the ‘party seeking removal must prove with  
4 legal certainty that [the] jurisdictional amount is met.’” Guglielmino v. McKee Foods Corp.,  
5 506 F.3d 696, 699 (9th Cir. 2007).

6 Plaintiffs originally filed this litigation in Stanislaus County Superior Court by filing their  
7 complaint in Limited Civil Jurisdiction, which limits damages recoverable to \$24,999.00. In their  
8 motion to remand, Plaintiffs state that they “are seeking an order requiring Defendants to act  
9 appropriately under California State law and to uphold their duty of care required once they accept  
10 a loan modification application.” See Complaint, 5:4-6. Further, “[u]nder no circumstances have  
11 Plaintiffs sought to ‘invalidate a loan secured by a deed of trust’ . . . Nor have Plaintiffs sought  
12 to cancel a deed of trust or enjoin the bank from selling or transferring the property.” See id. at  
13 5:1-4. Accordingly, the jurisdictional amount has not been met in this case. See also Alex v. JP  
14 Morgan Chase & Co., 2:14-cv-01402-CAS-VBK; Doherty v. Ocwen Financial Corp., 2:14-cv-  
15 7118-PA-E.

16 After consideration of the Stipulation of Plaintiffs and Defendants and good cause  
17 appearing the Court ORDERS as follows:

- 18 1. The parties’ Stipulation to remand the instant action back to the State Court is  
19 GRANTED;
- 20 2. All pending hearing dates for this matter are VACATED;
- 21 3. The case will be remanded to the Superior Court of California, County of  
22 Stanislaus, Case No. 2012731, forthwith; and
- 23 4. The request for payment of attorney’s fees is DENIED.

24  
25 IT IS SO ORDERED.

26 Dated: April 20, 2015

  
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28 SENIOR DISTRICT JUDGE