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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL GARCIA,

Case No. 2:09-CV-03387-JAM-DAD

Plaintiff,

ORDER DENYING PLAINTIFF'S  
MOTION TO REMAND

v.

CITIBANK, N.A; AMERICAN HOME  
MORTGAGE CORPORATION; MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC.; POWER DEFAULT  
SERVICES, INC.; and DOES 1-250,  
inclusive,

Defendants.

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This matter comes before the Court on Plaintiff Daniel Garcia's ("Plaintiff's") Motion to Remand the case to state court ("Motion"). (Doc. #4). Defendants Citibank, N.A., Mortgage Electronic Registration Systems, and Power Default Services,

1 Inc. ("Defendants") oppose the motion.<sup>1</sup> Defendant American Home  
2 Mortgage Corporation ("AHMC") did not join in the opposition.  
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5 I. FACTUAL AND PROCEDURAL BACKGROUND

6 In July 2006, Plaintiff obtained a mortgage loan secured by  
7 his residential property located at 6748 Bodine Circle,  
8 Sacramento, CA, 95823 ("subject property"). The adjustable rate  
9 mortgage was in the sum of \$221,000. The terms of the loan were  
10 memorialized in the promissory Note which was secured by a Deed  
11 of Trust on the subject property. AHMC was the lender.  
12

13 Defendant AHMC filed a Chapter 11 bankruptcy petition on or  
14 about August 6, 2007. The bankruptcy case was ordered to be  
15 jointly administered with other affiliated bankruptcies. This  
16 bankruptcy case is still pending.  
17

18 On November 6, 2009, Plaintiff filed a complaint  
19 ("Complaint") against Defendants and AHMC in Sacramento County  
20 Superior Court, State of California, Case No. 34-2009-00063274.  
21 The Complaint alleges twelve state causes of action relating to  
22 the loan transaction.  
23

24 On December 4, 2009, Defendants filed a Notice of Removal  
25 to remove the state court action to this Court pursuant to 28  
26 U.S.C. § 1441, alleging diversity jurisdiction under 28 U.S.C. §  
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28 <sup>1</sup>This motion was determined to be suitable for decision without  
oral argument. E.D. Cal. L.R. 230(g).

1 1332. Plaintiff now moves to remand to state court, alleging the  
2 Notice of Removal is procedurally defective.

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4 II. OPINION

5 A. Legal Standard

6 A party may remove a state court action to federal court  
7 pursuant to 28 U.S.C. § 1441. Section 1441 provides that (1) a  
8 civil action brought in State court, (2) over which the district  
9 court has original jurisdiction, (3) can be removed to federal  
10 court embracing that state court action, (4) by the defendant or  
11 defendants in the state court action.  
12

13 The party requesting removal bears the burden of  
14 establishing that federal jurisdiction is proper. Gaus v.  
15 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citations  
16 omitted). "Federal jurisdiction must be rejected if there is any  
17 doubt as to the right of removal." Id. (citing Libhart v. Santa  
18 Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir. 1979).  
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21 B. Analysis

22 Plaintiff argues that the Notice of Removal is procedurally  
23 defective for two reasons: (1) the district court does not have  
24 original jurisdiction because the amount in controversy does not  
25 exceed \$75,000; and (2) all defendants did not join in the  
26 removal action.  
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1. Original Jurisdiction Pursuant to 28 U.S.C. § 1332

For removal to be proper, the district court must have original jurisdiction. Pursuant to 28 U.S.C. § 1332, district courts have original jurisdiction of all civil actions "where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States..." 28 U.S.C. § 1332. Here, Plaintiff concedes diverse citizenship. As set forth in Defendants' Notice of Removal of Action, this civil action is among citizens of different states.

Plaintiff argues that federal jurisdiction is lacking because Defendants have not demonstrated that the amount in controversy exceeds \$75,000.00. "Where a state court complaint does not specify a particular amount in damages, the removing defendant bears the burden of establishing, by a preponderance of the evidence, that ...the amount in controversy exceeds the [statutory minimum]." Sanchez v. Monumental Life Ins. Co., 102 F.3d 298, 404 (9th Cir. 1996).

"In actions seeking declaratory or injunctive relief, the amount in controversy is measured by the value of the object of the litigation." Hunt v. Wash. St. Apple Adver. Comm'n, 432 U.S. 333, 347 (1977). Here, Plaintiff seeks declaratory and injunctive relief in the Complaint, requesting an injunction to prevent the foreclosure proceedings. In addition, Plaintiff

1 seeks rescission of the contract and damages. The subject loan  
2 amount was originally \$221,000.00, excluding interest. As such,  
3 if the contract were rescinded, the value of relief would be at  
4 least \$221,000.00, which far exceeds the requisite amount in  
5 controversy.  
6

7 Accordingly, the district court does have original  
8 jurisdiction pursuant to 28 U.S.C. § 1332 because Defendants  
9 have established both diversity of citizenship and the required  
10 amount in controversy.  
11

## 12 13 2. Removal by all Defendants

14 Plaintiff also argues that the Notice of Removal is  
15 procedurally defective because defendant AHMC did not join in  
16 the removal. Defendants argue that AHMC was not required to  
17 join in removal for two reasons: (1) AHMC was not properly  
18 served; and (2) AHMC is protected by the automatic stay in  
19 bankruptcy.  
20

21 Generally, all properly served defendants must join in the  
22 notice of removal. 28 U.S.C. § 1446(b); Hewitt v. Stanton, 798  
23 F.2d 1230, 1232 (9th Cir. 1986). "Defendants over whom the court  
24 has not acquired jurisdiction may be disregarded in removal  
25 proceedings." Cnty. Bldg. Co. v. Md. Cas. Co., 8 F.2d 678, 678-  
26 79 (9th Cir. 1926); See also Matthews Metals Prods., Inc. v. RBM  
27 Precision Metal Prods., Inc., 186 F.R.D. 581, 582 (N.D. Cal.  
28

1 1999). Here, AHMC had not been properly served at the time of  
2 removal. As such, AHMC may be disregarded in the removal  
3 proceedings. Thus, all required defendants joined in the notice  
4 of removal.  
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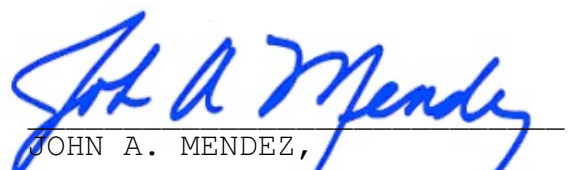
6 Upon filing a bankruptcy petition, a debtor is protected by  
7 the automatic stay, which operates as a stay to the commencement  
8 of a judicial action, including the issuance of process. 11  
9 U.S.C. § 362(a)(1). The stay is automatic unless a debtor has  
10 previously filed for bankruptcy. See 11 U.S.C. § 362(c)(3)(A);  
11 11 U.S.C. § 362(c)(4)(A). The automatic stay continues until  
12 the case is closed, dismissed, or a discharge is granted or  
13 denied. 11 U.S.C. § 362(c)(2). Here, AHMC is protected by the  
14 automatic stay throughout the bankruptcy proceedings. Because  
15 the case is still pending, the automatic stay has not ended.  
16 Thus, AHMC is not required to join in the notice of removal  
17 because AHMC is protected by the automatic stay.  
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20 III. ORDER

21 For the reasons set forth above, Plaintiff's Motion to  
22 Remand is DENIED WITH PREJUDICE.  
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24  
25 IT IS SO ORDERED.

26  
27 Dated: April 22, 2010

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE