

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

SUNIL WADHWA and LYNN LORI
WADHWA,

NO. CIV. 2:10-3361 WBS DAD

Plaintiffs,

REQUEST FOR BRIEFING

v.

AURORA LOAN SERVICES, LLC, a
subsidiary of AURORA BANK,
FSB; GREENPOINT MORTGAGE
FUNDING, INC.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; and DOES 1-10,
inclusive,

Defendants.

_____ /

-----oo0oo-----

Plaintiffs Sunil Wadhwa and Lynn Lori Wadhwa brought
this action against defendants Aurora Loan Services, LLC, a
subsidiary of Aurora Bank, FSB ("Aurora"), Greenpoint Mortgage
Funding, Inc. ("Greenpoint"), and Mortgage Electronic
Registration Systems, Inc. ("MERS"), arising out of defendants'
allegedly wrongful conduct relating to a loan transaction and

1 subsequent foreclosure on plaintiffs' home. The court will
2 require plaintiffs to file a brief on the issue of whether the
3 court has subject matter jurisdiction.

4 I. Procedural Background

5 On February 9, 2011, the court dismissed plaintiffs'
6 original Complaint. (Feb. 9, 2011, Order (Docket No. 20).) On
7 April 26, 2011, the court dismissed the federal claims in the
8 First Amended Complaint ("FAC" (Docket No. 23)) without leave to
9 amend and declined to exercise supplemental jurisdiction over the
10 state law claims. (Apr. 26, 2011, Order (Docket No. 30).) In
11 that Order, the court held that plaintiffs had failed to
12 sufficiently allege diversity jurisdiction, as the FAC did not
13 allege the citizenship of each party. (Id. at 11 n.3 (citing In
14 re Mexico City Aircrash of Oct. 31, 1979, 708 F.2d 400, 404 n.4
15 (9th Cir. 1983) ("The essential elements of diversity
16 jurisdiction, including the diverse residence of all parties,
17 must be affirmatively alleged in the pleadings.")).) The court
18 afforded plaintiffs leave to amend their state law claims to
19 allege diversity jurisdiction. (Id. at 12:18-20.)

20 Plaintiffs then filed the Second Amended Complaint
21 ("SAC" (Docket No. 32)), attempting to allege diversity
22 jurisdiction.

23 II. Discussion

24 "The federal courts are under an independent obligation
25 to examine their own jurisdiction" FW/PBS, Inc. v. City
26 of Dallas, 493 U.S. 215, 231 (1990). Federal courts have
27 original subject matter jurisdiction over actions "where the
28 matter in controversy exceeds the sum or value of \$75,000" and

1 the parties are completely diverse. 28 U.S.C. § 1332. For
2 purposes of diversity jurisdiction, a corporation is "deemed to
3 be a citizen of any State by which it has been incorporated and
4 of the State where it has its principal place of business." 28
5 U.S.C. § 1332(c)(1). "The general rule . . . is that 'in a suit
6 involving a subsidiary corporation, the court looks to the state
7 of incorporation and principal place of business of the
8 subsidiary, and not its parent.'" Danjaq, S.A. v. Pathe
9 Communic'ns Corp., 979 F.2d 772, 775 (9th Cir. 1992) (quoting 1
10 James W. Moore et al., Moore's Federal Practice ¶ 0.77[2.-5] (2d
11 ed. 1992)). This general rule applies even if the subsidiary
12 corporation defendant is wholly owned by the non-party parent
13 corporation. See, e.g., Schwartz v. Elec. Data Sys., Inc., 913
14 F.2d 279, 283 (6th Cir. 1990).

15 "The only recognized exception to this rule is where
16 the subsidiary is the alter ego of the parent corporation. Under
17 these circumstances, courts view the formal separateness between
18 the two corporations as merely a legal fiction." Danjaq, S.A.,
19 979 F.2d at 775. Even if a subsidiary corporation is an alter
20 ego of the parent corporation, a number of courts have narrowed
21 the exception, allowing it only to increase, rather than
22 decrease, the number of states in which the subsidiary
23 corporation is a citizen. See, e.g., Panalpina Welttransport
24 GmbH v. Geosource, Inc., 764 F.2d 352, 354 (5th Cir. 1985)
25 ("[T]he alter ego doctrine cannot be used to preserve diversity
26 jurisdiction by ignoring the place of incorporation of the
27 subsidiary and treating the subsidiary as if it were only a
28 citizen of the state of incorporation of the dominant

1 corporation."); see also 15 James W. Moore et al., Moore's
2 Federal Practice § 102.56[7][b] (3d ed. 2010) ("The attribution
3 of the parent's citizenship to the subsidiary may expand, rather
4 than supplant, the citizenship of the subsidiary.").

5 Here, in the SAC, plaintiffs allege that defendants
6 Aurora and MERS are citizens of states other than California¹
7 and that the subject property in California is plaintiffs'
8 "home." (SAC ¶¶ 1-3, 17.) However, plaintiffs do not allege the
9 state of incorporation or principal place of business of
10 defendant Greenpoint, the original lender.² Plaintiffs only
11 allege that Greenpoint's parent, Capital One Financial
12 Corporation, which is not a party to this action, is a Delaware
13 corporation with its principal place of business in Virginia.
14 (Id. ¶ 4.) However, the court looks to the citizenship of the
15 subsidiary actually being sued, not the parent, for purposes of

16
17 ¹ The Second Amended Complaint ("SAC") alleges that
18 defendant Mortgage Electronic Registration Systems, Inc., is a
19 Delaware corporation with its principal place of business in
20 Virginia. (SAC ¶ 3 (Docket No. 32).) The SAC alleges that
21 defendant Aurora Loan Services, LLC, is a subsidiary of Aurora
22 Bank, FSB, which is a Delaware corporation with its principal
23 place of business in Colorado. (Id. ¶ 2.); see Morgan v. Makin,
24 No. 2:11-cv-00018, 2011 WL 1322565, at *1 (D. Nev. Apr. 4, 2011)
25 ("An unincorporated association such as a partnership or limited
26 liability company has the citizenship of all of its members.").

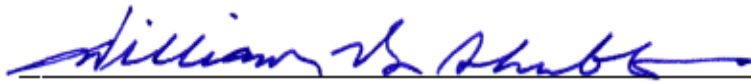
27 ² The court suspects that plaintiffs omitted the
28 citizenship of Greenpoint because they could not allege that
29 Greenpoint is diverse. See Willis v. Greenpoint Mortg. Funding,
30 Inc., Civil No. 09-593, 2009 WL 4730957, at *1 (S.D. Ill. Dec. 8,
31 2009) ("Greenpoint Mortgage Funding, Inc., is a corporation
32 incorporated under New York law with its principal place of
33 business in California and thus is a citizen of New York and
34 California for diversity purposes.") (emphasis added); Naulty v.
35 GreenPoint Mortg. Funding, Nos. C 09-1542, C 09-1545, 2009 WL
36 2870620, at *1 (N.D. Cal. Sept. 3, 2009) ("Defendant GreenPoint
37 is organized under the laws of the State of California and has
38 its principal place of business in Novato, California.") (citing
39 complaint) (emphases added).

1 diversity jurisdiction. See Danjaq, S.A., 979 F.2d at 775.

2 Based on plaintiffs' failure to allege the state of
3 incorporation and principal place of business of Greenpoint, the
4 court doubts that it has subject matter jurisdiction.

5 IT IS THEREFORE ORDERED that, within seven days of the
6 date of this Order, plaintiffs shall file a brief on the issue of
7 whether the court has subject matter jurisdiction.

8 DATED: June 16, 2011

9
10 

11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28