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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAULINE MARZETTE, an individual,)	Case No. 2:11-CV-2089 JAM-CKD
)	
Plaintiff,)	<u>ORDER DENYING PLAINTIFF'S</u>
)	<u>MOTION TO REMAND</u>
v.)	
)	
)	
PROVIDENT SAVINGS BANK, F.S.B.;)	
WELLS FARGO BANK, N.A.; AMERICAN)	
SERVICING COMPANY; NDEX WEST,)	
LLC; E*TRADE BANK; and DOES 1-)	
20, inclusive,)	
)	
Defendants.)	
)	

This matter comes before the Court on Plaintiff Pauline Marzette's ("Plaintiff") Motion to Remand (Doc. #5) this case to the Superior Court of California, County of El Dorado. Defendants Wells Fargo, N.A. ("Wells Fargo") and America's Servicing Company, named in the Complaint as American Servicing Company, ("ASC") (collectively "Defendants") oppose the motion to remand (Doc. #11). For the reasons set forth below, the Motion to Remand is DENIED.¹

¹ This matter was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). Oral argument was scheduled for October 19, 2011.

1 I. FACTUAL ALLEGATIONS AND SUMMARY OF ARGUMENTS

2 Plaintiff's Complaint (Doc. #1, Ex. A) alleges that she has a
3 mortgage loan from Wells Fargo, secured by a Deed of Trust that
4 encumbers her home. Compl., ¶¶ 1, 12. Plaintiff suffered
5 financial difficulties, causing her to fall behind in her mortgage
6 payments. Compl., ¶¶ 14-15. She alleges that she contacted ASC in
7 an attempt to seek a loan modification, but that ASC refused to
8 negotiate with her until she hired an attorney and her home was on
9 the brink of foreclosure. Compl., ¶¶ 17-21. ASC then offered her
10 a loan modification that allowed for reduced interest only payments
11 for five years, which she alleges she accepted under duress.
12 Compl., ¶¶ 21-22. Plaintiff alleges that ASC did not make clear to
13 her that this modification did not include escrow, and she did not
14 understand that she would need to make separate escrow payments in
15 addition to the modified mortgage payments. Compl., ¶ 24. The
16 Complaint alleges that Plaintiff cannot afford to make additional
17 escrow payments, and has realized that once her five year loan
18 modification expires, she will be in the same, or worse, position
19 than she was before the modification. Compl., ¶ 25. Plaintiff
20 brings state law claims for breach of contract, breach of the
21 covenant of good faith and fair dealing, and unfair business
22 practices under California Business and Professions Code §§ 17200,
23 et seq.

24 The Notice of Removal states that removal is proper due to
25 diversity of citizenship among Plaintiff and all Defendants. The
26 Notice of Removal claims that Plaintiff is a citizen of California,
27 ASC is a citizen of South Dakota, NDEX West is a citizen of
28 Delaware and Texas, and Wells Fargo is a citizen South Dakota. The

1 Motion for Remand argues that Wells Fargo is a citizen of South
2 Dakota and California, defeating complete diversity and requiring
3 remand to the Superior Court. The Motion for Remand also seeks
4 attorneys' fees and costs for removal and remand.

5 Plaintiff asserts that other courts have found Wells Fargo to be
6 a citizen of California and South Dakota. Plaintiff asks the Court
7 to take judicial notice (Doc. #6) of four cases that Plaintiff
8 contends support her argument that Wells Fargo is a citizen of
9 California and South Dakota. Defendants contend that Wells Fargo
10 is only a citizen of South Dakota, and that courts have made this
11 finding. Defendants also request that the Court take judicial
12 notice (Doc. #12) of a recorded copy of their Articles of
13 Association in South Dakota, and of a case from the Central
14 District of California in which the court reconsidered its earlier
15 position and found Wells Fargo to be a citizen only of South
16 Dakota. The Court takes judicial notice as requested by both
17 parties.

18 19 II. PROCEDURAL BACKGROUND

20 Plaintiff's Complaint was originally filed in the Superior
21 Court in El Dorado County, on July 5, 2011. Wells Fargo and ASC
22 removed the case to this Court on August 5, 2011 (Doc. #1).
23 Defendant NDEX West joined in removal (Doc. #2). Wells Fargo and
24 ASC note that no other defendants were served, therefore no other
25 defendants needed to join in removal. Defendant Provident Savings
26 Bank was dismissed from the Complaint (Doc. #10).

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1 III. OPINION

2 Jurisdiction is a threshold inquiry before the adjudication of
3 any case before a court. See Morongo Band of Mission Indians v.
4 Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir.
5 1988). A party may remove a state court action to federal court
6 pursuant to 28 U.S.C. § 1441. Section 1441 provides that (1) a
7 civil action brought in State court, (2) over which the district
8 court has original jurisdiction, (3) can be removed to federal
9 court embracing that state court action, (4) by the defendant or
10 defendants in the state court action.

11 For removal to be proper, the district court must have original
12 jurisdiction. Pursuant to 28 U.S.C. § 1332, district courts have
13 original jurisdiction of all civil actions "where the matter in
14 controversy exceeds the sum or value of \$75,000, exclusive of
15 interest and costs, and is between citizens of different States..."
16 28 U.S.C. § 1332. The party requesting removal bears the burden of
17 establishing that federal jurisdiction is proper. Gaus v. Miles,
18 Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citations omitted).
19 "Federal jurisdiction must be rejected if there is any doubt as to
20 the right of removal." Id. (citing Libhart v. Santa Monica Dairy
21 Co., 592 F.2d 1062, 1064 (9th Cir. 1979)).

22 Diversity must be complete, meaning that diversity is destroyed
23 if even one plaintiff and one defendant are citizens of the same
24 state. Tse v. Well Fargo Bank, N.A., 2011 WL 175520, *1 (N.D. Cal.
25 Jan. 19, 2011) (internal citations omitted). 28 U.S.C. § 1332
26 provides that a corporation may be a citizen of two different
27 states- the state by which is has been incorporated and the state
28 where it has its principal place of business. Id. However, 28

1 U.S.C. § 1348 limits the citizenship of a national banking
2 association to the state in which the association is located. Id.
3 Wells Fargo is a nationally chartered bank whose articles of
4 association assert that its main office is in South Dakota. Wells
5 Fargo also maintains a principal place of business in San
6 Francisco, California. Tse, *supra* (citing cases).

7 "In the course of holding that national banks are not 'located'
8 in every state in which they operate a branch, the Supreme Court
9 stated that national banks are located in the state designated in
10 the bank's articles of association as its main office." Tse, 2011
11 WL 175520 at *2, citing Wachovia Bank v. Schmidt, 546 U.S. 303, 318
12 (2006). This is the "main office" test for national banks'
13 citizenship. Id. However, the Supreme Court expressed no opinion
14 as to whether national banks are also "located in states in which
15 they maintain a principal place of business. Id. The Ninth
16 Circuit has not offered a controlling authority on the question of
17 a national bank's citizenship, but district court decisions from
18 within the Ninth Circuit favor a holding that a national bank is a
19 citizen of the state in which its main office, as specified in its
20 articles of association, is located. Id. (citing cases).

21 This Court notes the split among district courts of the Ninth
22 Circuit (compare, e.g., Saberi v. Wells Fargo Home Mortgage, 2011
23 WL 197860 at *3 (S.D. Cal. Jan.20, 2011) (holding that a national
24 bank is a citizen of both the state in which it has designated its
25 main office and the state where it has its principal place of
26 business); Tse, 2011 WL 175520 at *3 (holding that a national
27 banking association is a citizen only of the state in which its
28 main office is located); Silva v. Wells Fargo Bank, N.A., 2011 WL

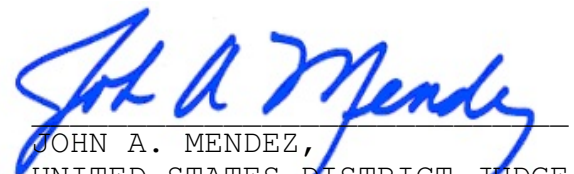
1 2437514, *2 (C.D. Cal. June 16, 2011) (same). However, having
2 reviewed the conflicting district court opinions, and the arguments
3 promulgated by Plaintiff and Defendants in the motion to remand and
4 brief in opposition to the motion, the Court finds most persuasive
5 Defendants' arguments in opposition to remand. In particular, the
6 Court is not persuaded that the provisions in 28 U.S.C. § 1332
7 pertaining to the citizenship of corporations apply to national
8 banking associations. Instead, applying the "main office" test and
9 28 U.S.C. § 1348, the Court finds that Wells Fargo is a citizen
10 only of South Dakota, the state where it has its main office
11 pursuant to its Articles of Association. Accordingly, the Court
12 finds that Wells Fargo is a citizen of South Dakota, not
13 California, and the Court has diversity jurisdiction over this
14 case.

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16 IV. ORDER

17 For the reasons set forth above, Plaintiff's Motion for Remand
18 is DENIED.

19 IT IS SO ORDERED.

20 Dated: November 9, 2011

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23 JOHN A. MENDEZ,
24 UNITED STATES DISTRICT JUDGE
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