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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD E. VONDERSCHER AND
HEATHER J. ROSS,

Plaintiffs,

v.

GREEN TREE SERVICING, LLC,

Defendant.

No. 2:13-cv-00490-MCE-EFB

MEMORANDUM AND ORDER

Through this action, Plaintiffs Richard E. Vonderscher and Heather J. Ross (“Plaintiffs”) seek redress from Defendant Green Tree Servicing, LLC (“Defendant”) based on state law claims of intentional and negligent misrepresentation, fraud, breach of contract and negligent infliction of emotional distress. Plaintiffs also allege that Defendant engaged in unfair competition in violation of California Business and Professions Code section 17200. The case was originally filed in California Superior Court, County of El Dorado. Defendant removed the action on March 11, 2013. Presently before the Court is Plaintiffs’ motion to remand the case to state court, filed on March 22, 2013. (ECF No.7.) Defendant filed a timely opposition to the motion. (ECF No. 8.) For the reasons set forth below, Plaintiffs’ Motion to Remand is granted.¹

¹ Because oral argument will not be of material assistance, the Court orders this matter submitted

1 **BACKGROUND²**

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3 Plaintiffs have lived in their home, located in South Lake Tahoe, for over twenty-
4 one years. On November 11, 2005, Plaintiffs refinanced their home loan and executed a
5 deed of trust against the subject property as security for a loan of \$362,500. The lender
6 for the loan was American Brokers Conduit. A deed of trust was recorded on
7 November 18, 2005. Plaintiffs state that the loan was negatively amortized, “interest
8 only,” with an interest rate of 6.375%. Then, in 2007, Plaintiff Richard Vonderscher
9 retired, and Plaintiffs’ income decreased. Plaintiffs allege that “sometime after their loan
10 was funded, [Defendant] started servicing their loan.” Plaintiffs applied for a loan
11 modification in October 2012. Plaintiffs’ loan modification application is still pending, and
12 Defendants are preparing to foreclose on Plaintiffs’ property.³

13
14 **STANDARD**

15
16 There are two bases for federal subject matter jurisdiction: (1) federal question
17 jurisdiction under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C. § 1332.
18 A district court has federal question jurisdiction in “all civil actions arising under the
19 Constitution, laws, or treaties of the United States.” *Id.* § 1331. A district court has
20 diversity jurisdiction “where the matter in controversy exceeds the sum or value of
21 \$75,000, . . . and is between citizens of different states, or citizens of a State and citizens
22 or subjects of a foreign state” *Id.* § 1332(a)(1)-(2).

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26 on the briefs. E.D. Cal. Local R. 230(g).

27 ² Unless otherwise noted, the following recitation of facts is taken, sometimes verbatim, from
Plaintiffs’ Complaint. (ECF No. 1.)

28 ³ While Plaintiffs’ Complaint states that Defendant is preparing to foreclose on the property and
asks that the Court enjoin any foreclosure, Plaintiffs’ Motion to Remand states that Plaintiffs are not in
default.

1 Diversity jurisdiction requires complete diversity of citizenship, with each plaintiff being a
2 citizen of a different state from each defendant. 28 U.S.C. § 1332(a)(1); Caterpillar,
3 Inc. v. Lewis, 519 U.S. 61, 68 (1996) (stating that complete diversity of citizenship is
4 required).

5 When a party brings a case in state court in “which the district courts of the United
6 States have original jurisdiction,” the defendant may remove it to the federal court
7 “embracing the place where such action is pending.” 28 U.S.C. § 1441(a). “The party
8 invoking the removal statute bears the burden of establishing federal jurisdiction.”
9 Ethridge v. Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988) (citing Williams v.
10 Caterpillar Tractor Co., 786 F.2d 928, 940 (9th Cir. 1986)). A motion to remand is the
11 proper procedure for challenging removal. Courts “strictly construe the removal statute
12 against removal jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)
13 (internal citations omitted). “[I]f there is any doubt as to the right of removal in the first
14 instance,” the court must grant the motion for remand. Id. Additionally, “[i]f at any time
15 before final judgment it appears that the district court lacks subject matter jurisdiction,
16 the case shall be remanded” to state court. 28 U.S.C. § 1447(c).

17 If the district court determines that removal was improper, then the court may also
18 award the plaintiff costs and attorney fees accrued in response to the defendant’s
19 removal. 28 U.S.C. § 1447(c). The court has broad discretion to award costs and fees
20 whenever it finds that removal was wrong as a matter of law. Balcorta v. Twentieth-
21 Century Fox Film Corp., 208 F.3d 1102, 1106 n.6 (9th Cir. 2000).

22 23 ANALYSIS

24
25 To demonstrate diversity jurisdiction existed at the time of removal, Defendant
26 must show that Plaintiffs and Defendant were of diverse citizenship and that it is more
27 likely than not that “the matter in controversy exceed[ed] the sum or value of \$75,000,
28 exclusive of interest and costs.”

1 28 U.S.C. § 1331; Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 376 (9th
2 Cir.1997); Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 403-04 (9th Cir, 1996).

3
4 **A. Diversity of Citizenship**

5
6 Defendant's removal papers state that Plaintiffs and Defendants are diverse, as
7 Plaintiffs are citizens of California and "Green Tree Servicing is not and never has been
8 a citizen of the State of California nor was it organized in the state of California." (ECF
9 No. 1.) Defendant is a limited liability company ("LLC"). According to the Ninth Circuit,
10 "LLCs resemble both partnerships and corporations. Notwithstanding LLCs' corporate
11 traits, however, every circuit that has addressed the question treats them like
12 partnerships for the purposes of diversity jurisdiction." Johnson v. Columbia Properties
13 Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006). "This treatment accords with the
14 Supreme Court's consistent refusal to extend the corporate citizenship rule to non-
15 corporate entities, including those that share some of the characteristics of corporations."
16 Id. (citing Carden v. Arkoma Assocs., 494 U.S. 185, 189 (1990) (treating a limited
17 partnership as having the citizenship of all its members); Great S. Fire Proof Hotel Co. v.
18 Jones, 177 U.S. 449, 456-57 (1900) (refusing to extend the corporate citizenship rule to
19 a "limited partnership association" although it possessed "some of the characteristics of
20 a corporation")); "This treatment is also consistent with the common law presumption
21 that unincorporated associations are not legal entities independent of their members."
22 Id. (citing Strotek Corp. v. Air Transp. Ass'n of Am., 300 F.3d 1129, 1133 n.2 (9th Cir.
23 2002)). Thus, "like a partnership, an LLC is a citizen of every state of which its
24 owners/members are citizens." Id.

25 Defendant's Notice of Removal states that Defendant is a Delaware limited
26 liability company. Defendant's sole member is Green Tree Licensing, LLC. Green Tree
27 Licensing LLC's sole member is Green Tree MH LLC, whose sole member is Green
28 Tree HE/HI LLC, whose sole member is Green Tree CL LLC.

1 Green Tree CL LLC's sole member is Green Tree Investment Holdings II LLC, whose
2 sole member is Green Tree Credit Solutions LLC. The sole member of Green Tree
3 Credit Solutions LLC is Walter Investment Holding Company LLC. The sole member of
4 Walter Investment Holding Company LLC is Walter Investment Management
5 Corporation, a Maryland corporation with its principal place of business in Florida.⁴
6 Thus, Defendant is a citizen, for purposes of diversity jurisdiction, of Maryland and
7 Florida.

8 Plaintiff's Motion to Remand does not contest Defendant's diversity, and at this
9 stage Defendant is "merely required to allege (not to prove) diversity." Kanter v. Warner-
10 Lambert Co., 265 F.3d 853 (9th Cir. 2001). Accordingly, there is diversity of citizenship
11 between Plaintiffs and Defendant, and Defendant has satisfied this prong of § 1331.

12 13 **B. Amount in Controversy**

14
15 If the Complaint alleges an amount in controversy greater than \$75,000, the
16 controversy requirement is satisfied unless the Court is convinced to "a legal certainty"
17 that plaintiff cannot recover more than \$75,000. St. Paul Mercury Indemn. Co. v. Red
18 Cab Co., 303 U.S. 283, 288-89; Sanchez, 102 F.3d 398; see also Crum v. Circus Circus
19 Enters., 231 F.3d 1129, 1131 (9th Cir. 2000). However, where the complaint leaves the
20 amount in controversy unclear or ambiguous, the burden rests with the removing
21 defendant to prove, by a preponderance of the evidence, that the amount in controversy
22 exceeds \$75,000. Gaus, 980 F.2d at 567. A removing defendant "may not meet [the]
23 burden by simply reciting some 'magical incantation' to the effect that 'the matter in
24 controversy exceeds the sum of [\$75,000],' but instead, must set forth in the removal
25 petition the underlying facts supporting its assertion that the amount in controversy
26 exceeds [\$75,000]." Id.

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28 ⁴ Defendant's Notice of Removal also lists the principal place of business and state of formation of each of LLC. However, under Ninth Circuit law regarding the citizenship of an LLC, this information does not bear on the citizenship of Defendant.

1 This requirement merely applies the general principle that a party seeking adjudication in
2 federal court bears the burden of proving that he or she belongs in federal court.
3 McNutt v. Gen. Motors Acceptance Corp. Of Indiana, 298 U.S. 178, 189 (1936).

4 The Complaint does not specify an amount in controversy. Plaintiffs contend that
5 Defendant has not shown that the \$75,000 amount in controversy is met, as they seek
6 damages only “related to loan modification and Defendants’ failure of a good faith review
7 of Plaintiffs’ loan modification application.” (ECF No. 7 at 4.) Plaintiffs further contend
8 that while “[i]t is clear that Plaintiffs do not want to lose their home as they have lived
9 there for over 21 years[,] . . . Plaintiffs’ home is not in default and therefore it is
10 premature for Defendant to assume that the amount of controversy can be determined
11 from seeking declaratory or injunctive relief.” (Id.)

12 Defendant argues that the primary purpose of Plaintiffs’ lawsuit is to enjoin
13 Defendant from selling or transferring Plaintiffs’ property in foreclosure, and that, to this
14 end, each of Plaintiffs’ causes of action “attempts to prevent foreclosure on the
15 property.” (ECF No. 8 at 3.) Thus, Defendant contends that the amount of Plaintiffs’
16 loan—\$362,500—establishes the amount in controversy. Defendants alternatively argue
17 that the amount in controversy could be established by the appraised value of the
18 subject property. However, Defendant provides absolutely no evidence, or even
19 allegations, as to the property’s value.

20 Contrary to Defendant’s argument, the fact that Plaintiffs’ complaint includes
21 mention of foreclosure, and indeed seeks to enjoin a potential foreclosure, is not
22 dispositive of whether the loan amount establishes the amount in controversy for
23 purposes of diversity jurisdiction. See Horace v. LaSalle Bank Nat’l Ass’n, No.
24 3:08cv1019–MHT (WO), 2009 WL 426467, *1–2 (M.D. Ala. Feb.17, 2009) (cited in
25 Baskin v. Wells Fargo Bank, N.A., C 11-0825 SBA, 2011 WL 5369123 (N.D. Cal. Nov. 7,
26 2011)).

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1 In Horace, the court granted the plaintiff's motion to remand where the "true gravamen of
2 [plaintiff's] complaint [was] the unspecified amount of damages [plaintiff] [sought] as a
3 result of alleged negligence and fraud associated with the procurement of the mortgage,"
4 even though the operative complaint in that case specifically asked the Court to enjoin a
5 foreclosure action. Id. The Horace court rejected the defendant's contention "that the
6 \$75,000 amount-in-controversy requirement is met simply because the original value of
7 the mortgage was \$283,500."

8 Numerous other courts have found that when a plaintiff does not seek to rescind
9 the loan at issue, but instead seeks damages in an unspecified amount under claims
10 such as breach of fiduciary duty, negligence, negligent misrepresentation, intentional
11 misrepresentation, fraud, violation of California Business and Professions Code section
12 17200, slander of title, defamation, and intentional infliction of emotional distress, the
13 amount in controversy is "not properly gauged by the loan amount." See Gaspar v.
14 Wachovia Bank, No. C 10-3597 SBA, 2011 WL 577416, at *4 (N.D. Cal. Feb.9, 2011);
15 see also Baskin v. Wells Fargo Bank, N.A., C 11-0825 SBA, 2011 WL 5369123 (N.D.
16 Cal. Nov. 7, 2011); Landa v. Flagstar Bank, FSB, No. 10cv1429-L(BGS), 2010 WL
17 2772629, at *2 (S.D. Cal. July 13, 2010). Similarly, courts have rejected using the
18 appraised value of the property as a measure of the amount in controversy when
19 Plaintiffs' action is "essentially a common law fraud action rather than a typical mortgage
20 foreclosure action." Landa, 2010 WL 2772629 (S.D. Cal. July 13, 2010).

21 In the present case, Plaintiffs primarily seek to modify their loan through the
22 HAMP modification program and to recover damages related to Defendant's alleged
23 fraudulent or intentional failure to modify Plaintiffs' loan. (See ECF No. 1.) Plaintiffs
24 allege that they are not in default on their loan, and thus any foreclosure proceedings
25 appear entirely hypothetical.

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1 That is, although it is somewhat unclear from Plaintiffs' Complaint and Motion, the Court
2 understands Plaintiffs to reason that because Plaintiffs currently have a diminished
3 income, Plaintiffs need a HAMP modification to afford their loan, and Plaintiffs were
4 injured by Defendant's allegedly fraudulent failure to provide such a modification.
5 Accordingly, Plaintiffs' action is essentially a common law fraud action, and the amount
6 of Plaintiffs' loan is not the proper measure of the amount in controversy. The appraised
7 value of the property (which Defendant did not provide) likewise does not provide a
8 proper measure of the amount in controversy in this case.

9 Defendant has failed to meet its burden of establishing by a preponderance of the
10 evidence that the amount in controversy exceeds \$75,000. Gaus, 980 F.2d at 567.
11 Because the Court must strictly construe the removal statute against removal
12 jurisdiction, the exercise of diversity jurisdiction is improper in this case, and this case
13 must be remanded to state court. Id.


14
15 **CONCLUSION**

16
17 For the reasons stated above, IT IS HEREBY ORDERED that:

- 18 1. Plaintiffs' Motion to Remand (ECF No. 7) is GRANTED;
19 2. All other pending motions are DENIED AS MOOT;
20 3. This case is REMANDED to California Superior Court, County of
21 El Dorado; and
22 4. The Clerk of the Court is directed to close the case.

23 IT IS SO ORDERED.

24 DATE: May 1, 2013

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26 
27 MORRISON C. ENGLAND, JR., CHIEF JUDGE
28 UNITED STATES DISTRICT COURT