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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SCOTT PAULHUS and LYNETTE
PAULHUS,

Plaintiffs,

v.

FAY SERVICING, LLC; CALIBER
HOME LOANS, INC., formerly
known as VERICREST FINANCIAL,
INC.; SUMMIT MANAGEMENT
COMPANY, LLC; and DOES 1
through 20, inclusive,

Defendants.

CIV. NO. 2:14-736 WBS AC

MEMORANDUM AND ORDER RE: MOTION
TO REMAND

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Plaintiffs Scott Paulhus and Lynette Paulhus brought
this action against defendants Fay Servicing, LLC, Caliber Home
Loans, Inc., formerly known as Vericrest Financial, Inc., and
Summit Management Company, LLC, arising out of the foreclosure of
plaintiffs' home. After plaintiffs filed this action in Placer
County Superior Court, defendants removed to federal court on the
basis of diversity jurisdiction. (Docket No. 1.) Plaintiffs

1 contend that removal was improper and move to remand the action
2 to Placer County Superior Court pursuant to 28 U.S.C. § 1447.¹

3 Federal courts have original jurisdiction over civil
4 actions between citizens of different states in which the amount
5 in controversy exceeds \$75,000, exclusive of interest and costs.
6 28 U.S.C. § 1332. Under 28 U.S.C. § 1441, "civil action[s]
7 brought in a State court of which the district courts of the
8 United States have original jurisdiction may be removed by the
9 defendant or defendants to federal district court." Abrego
10 Abrego v. Dow Chem. Co., 443 F.3d 676, 679-80 (9th Cir. 2006)
11 (alteration in original) (citations and internal quotation marks
12 omitted). "In addition, all defendants must agree to removal and
13 removal must occur within one year of the commencement of the
14 action." Id. (citing United Computer Sys., Inc. v. AT&T Corp.,
15 298 F.3d 756, 762 (9th Cir. 2002)).

16 Plaintiffs do not dispute that they are citizens of
17 California and are therefore diverse from defendants, who are
18 business entities incorporated under Delaware law and whose
19 principal places of business are outside of California. (See
20 Not. of Removal ¶ 4.) Defendants' Notice of Removal also
21 represents that each defendant consents to removal, (id. ¶ 6),
22 and thereby satisfies the unanimity requirement. See Proctor v.
23 Vishay Intertechnology Inc., 584 F.3d 1208, 1225 (9th Cir. 2009)
24 ("One defendant's timely removal notice containing an averment of
25 the other defendants' consent and signed by an attorney of record
26

27 ¹ Because oral argument will not be of material
28 assistance, the court orders this matter submitted on the briefs.
E.D. Cal. L.R. 230(g).

1 is sufficient.”).

2 Plaintiffs contend that removal was nonetheless
3 improper because the amount in controversy does not exceed
4 \$75,000. “In actions seeking declaratory or injunctive relief,
5 it is well established that the amount in controversy is measured
6 by the object of the litigation.” Cohn v. Petsmart, Inc., 281
7 F.3d 837, 840 (9th Cir. 2002) (quoting Hunt v. Wash. State Apple
8 Advertising Comm’n, 432 U.S. 333, 347 (1977)). In actions
9 arising out of the foreclosure of a plaintiff’s home, the amount
10 in controversy may be established by the value of the property,
11 see, e.g., Chapman v. Deutsche Bank Nat’l Trust Co., 651 F.3d
12 1039, 1045 n.2 (9th Cir. 2011) (“[T]he object in litigation is
13 the Property, which was assessed at a value of more than
14 \$200,000, and therefore satisfies the amount-in-controversy
15 requirement.”), or by the value of the loan, see, e.g., Ngoc
16 Nguyen v. Wells Fargo Bank, N.A., 749 F. Supp. 2d 1022, 1028
17 (N.D. Cal. 2010) (“Numerous courts have held that, where a
18 complaint seeks to invalidate a loan secured by a deed of trust,
19 the amount in controversy is the loan amount.”).

20 Here, the Deed of Trust indicates that plaintiffs
21 borrowed \$850,000 against their home, which far exceeds the
22 \$75,000 required for diversity jurisdiction. (See Compl. Ex. A
23 (Docket No. 1-1).) Plaintiffs do not offer any evidence
24 suggesting that the amount in controversy is below \$75,000.
25 Instead, plaintiffs insist, without citation, that “[i]f an in-
26 state plaintiff wishes to remain in state court, all it needs to
27 do is to refrain from alleging any particular sum in its prayer
28 for relief.” (Pls.’ Mem. at 4:18-19 (Docket No. 9).) Not so.

1 Even if a plaintiff declines to allege a particular amount in
2 controversy, removal is appropriate where a defendant can show by
3 a preponderance of the evidence, as defendants have done here,
4 that the amount in controversy exceeds \$75,000. See Sanchez v.
5 Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996). And
6 even if plaintiffs might have been able to defeat jurisdiction
7 from the outset by stating that they would seek to recover no
8 more than \$75,000, it is black-letter law that plaintiffs cannot
9 do so now that jurisdiction has attached. See St. Paul Mercury
10 Ins. Co v. Red Cab Co., 303 U.S. 283, 292 (1938) (holding that
11 when "the plaintiff after removal, by stipulation, by affidavit,
12 or by amendment of his pleadings, reduces the claim below the
13 requisite amount, this does not deprive the district court of
14 jurisdiction"). For the foregoing reasons, the court views
15 plaintiffs' motion to remand as frivolous.

16 IT IS THEREFORE ORDERED that plaintiffs' motion to
17 remand be, and the same hereby is, DENIED.

18 Dated: May 1, 2014

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20 WILLIAM B. SHUBB
21 UNITED STATES DISTRICT JUDGE
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