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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JOHN SOKOLOSKI and GAIL
SOKOLOSKI,

Plaintiffs,

v.

PNC MORTGAGE, a division of PNC
BANK, NA and DOES 1 through 10,
inclusive,

Defendant.

CIV. NO. 2:14-1374 WBS CKD

MEMORANDUM AND ORDER RE:
MOTION TO REMAND

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Plaintiffs John Sokoloski and Gail Sokoloski initiated this action in Yuba County Superior Court against defendant PNC Mortgage, bringing claims arising out of the threatened foreclosure of their home. Defendant removed this action on the basis of diversity jurisdiction, (Docket No. 1), and plaintiffs now move to remand, (Docket No. 6).¹

¹ Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs.

1 "[A]ny civil action brought in a State court of which
2 the district courts of the United States have original
3 jurisdiction, may be removed by the defendant or the defendants,
4 to the district court of the United States for the district . . .
5 where such action is pending." 28 U.S.C. § 1441(a). However, if
6 "it appears that the district court lacks subject matter
7 jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

8 Federal courts have original jurisdiction over cases
9 where complete diversity exists between the parties and the
10 amount in controversy exceeds \$75,000. 28 U.S.C. § 1332.
11 Because the parties agree that complete diversity exists, the
12 sole issue in this matter is whether the amount in controversy
13 requirement is met. As the party seeking removal, defendant "has
14 the burden of proving, by a preponderance of the evidence, that
15 the amount in controversy exceeds \$75,000." Cohn v. Petsmart,
16 Inc., 281 F.3d 837, 839 (9th Cir. 2002).

17 Here, plaintiffs' Complaint seeks \$1000 in statutory
18 damages. (Not. of Removal Ex. A ("Complaint") ¶ 31 (Docket No.
19 1).) However, plaintiffs also seek an unspecified amount of
20 actual damages, attorney's fees, punitive damages, and injunctive
21 relief, including an injunction to prevent defendant from
22 foreclosing upon plaintiffs' home. (Id. ¶¶ 31-48.)

23 "In actions seeking declaratory or injunctive relief,
24 it is well established that the amount in controversy is measured
25 by the value of the object of the litigation." Cohn, 281 F.3d at
26 839 (quoting Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S.

27
28 E.D. Cal. L.R. 230(g).

1 333, 347 (1977)). Where, as here, a plaintiff seeks to enjoin a
2 foreclosure, "the value of the property is the object of the
3 litigation." Reyes v. Wells Fargo Bank, N.A., Civ. No. 10-1667
4 JCS, 2010 WL 2629785, at *5 (N.D. Cal. June 29, 2010); see also
5 Garfinkle v. Wells Fargo Bank, 483 F.2d 1074, 1076 (9th Cir.
6 1973) (determining that the amount in controversy requirement was
7 satisfied because either the amount of the plaintiff's
8 indebtedness on the loan or the fair market value of the property
9 exceeded the statutory minimum). Since Garfinkle, district
10 courts have split in looking to either the fair market value of
11 the property or the amount of indebtedness to determine the
12 amount in controversy. See Reyes, 2010 WL 2629785, at *5
13 (describing disagreement and listing cases).

14 Under either approach, defendant has demonstrated that
15 the amount in controversy requirement is met here. First,
16 defendant has shown that the property was used to secure a loan
17 of \$150,000. (Def.'s Req. for Judicial Notice ("RJN") Ex. A.
18 (Docket No. 7-1).)² Although the property value may have
19 decreased somewhat since then, it is more likely than not that
20 the property's current value exceeds \$75,000, especially
21 considering plaintiffs present no evidence to the contrary.

22 Second, defendant has produced evidence that
23 plaintiffs' remaining indebtedness on the home is \$74,569.89.
24

25 ² The court will take judicial notice of the Deed of
26 Trust because it is a matter of public record whose accuracy
27 cannot be questioned. See Fed. R. Evid. 201; Lingad v. Indymac
28 Fed. Bank, 682 F. Supp. 2d 1142, 1146 (E.D. Cal. 2010)
(determining that a deed of trust was a publicly recorded
document properly subject to judicial notice).

1 (Arthur Decl. ¶ 4, Ex. 1 (Docket No. 8-1).) Although this amount
2 by itself does not exceed the jurisdictional minimum, when
3 combined with the \$5,215.50 in attorney's fees and costs
4 plaintiffs have already incurred,³ as well as the \$1,000 in
5 statutory damages plaintiffs seek, the amount in controversy
6 exceeds \$75,000.

7 Accordingly, because defendant has demonstrated that it
8 is more likely than not that the amount in controversy exceeds
9 \$75,000, this court has diversity jurisdiction and must deny
10 plaintiffs' order to remand.

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

13 Dated: August 6, 2014

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15 WILLIAM B. SHUBB
16 UNITED STATES DISTRICT JUDGE

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23 ³ If a statute underlying plaintiffs' claim authorizes an
24 award of attorneys' fees, the court may include such fees when
25 determining the amount in controversy. Galt G/S v. JSS
26 Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998). If plaintiffs
27 prevail on their Rosenthal Act claim, they will be entitled to
28 attorneys' fees. See Cal. Civ. Code § 1788.30(e). Although
plaintiffs argue that it would be too speculative to estimate the
full amount of attorney's fees they may recover, they concede
that the \$5,215.50 in attorney's fees and costs already incurred
may be included in determining the amount in controversy.