

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

JOAN CLAPPIER,  
  
Plaintiff,  
  
v.  
  
UMPQUA BANK; UMPQUA HOLDING CORPORATION; KANIKA HOLLOWAY; JESSICK PARRACK, also known as Jessica Parrack; and Does 1 through 20, inclusive,  
  
Defendants.

No. 2:15-cv-00896-JAM-CKD

**ORDER GRANTING PLAINTIFF'S MOTION TO REMAND**

Plaintiff Joan Clappier ("Plaintiff") sued her mortgage company and two of its employees in Nevada County Superior Court. Defendants Umpqua Bank, Umpqua Holding Corporation, Kanika Holloway, and Jessica Parrack (collectively, "Defendants") removed the case. Because removal was untimely, the Court remands.<sup>1</sup>

///

---

<sup>1</sup>This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for June 17, 2015.

1 ///

2 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

3 Plaintiff claims that Defendants breached verbal and written  
4 agreements to refinance the mortgage on her ranch. Compl. at 4-  
5 7. This breach allegedly caused Plaintiff to lose her ranch and  
6 her good credit rating. Id. at 12-13. Plaintiff sued Defendants  
7 in state court, asserting breach of contract, unfair business  
8 practices, fraud, violation of California Civil Code section  
9 2924i, and slander of credit.

10 Plaintiff served Defendants with her complaint on February  
11 22, 2015. Farrar Decl. ¶ 7; id. Exh. A. On April 23, 2015, an  
12 attorney for Defendants Umpqua Bank, Umpqua Holding Corporation,  
13 and Jessica Parrack “had [his] first extended conversation with  
14 [Defendant] Halloway.” Kraft Decl. ¶ 7. This conversation  
15 revealed information about Halloway’s bankruptcy, leading  
16 Defendants’ attorney to conclude that Halloway was a sham  
17 defendant and that diversity jurisdiction was available. Id.  
18 Four days later, Defendants filed a notice of removal (Doc. #1).

19 About three weeks after removal, Plaintiff brought this  
20 motion to remand (Doc. #7). Defendants oppose the motion (Doc.  
21 #11).

22 II. OPINION

23 A. Legal Standard

24 A defendant may remove a state-court action if the initial  
25 pleading could have been filed in federal court. 28 U.S.C.  
26 § 1446; Caterpillar, Inc., v. Williams, 482 U.S. 386, 392 (1987);  
27 Durham v. Lockheed Martin Corp., 445 F.3d 1247, 1251 (9th Cir.  
28 2006). However, a court must strictly construe the removal

1 statute against removal jurisdiction. Gaus v. Miles, Inc., 980  
2 F.2d 564, 566 (9th Cir. 1992). "Federal jurisdiction must be  
3 rejected if there is any doubt as to the right of removal in the  
4 first instance." Id. (citing Libhart v. Santa Monica Dairy Co.,  
5 592 F.2d 1062, 1064 (9th Cir. 1979)).

6 Defendants lose their right to removal if the notice of  
7 removal is untimely. Durham, 445 F.3d at 1253. If the basis for  
8 removal is apparent from the initial pleading, Defendants who  
9 seek removal must do so within thirty days after receiving that  
10 pleading. 28 U.S.C. § 1446(b); Durham, 445 F.3d at 1253.  
11 Although this time limit is not jurisdictional, it is "mandatory"  
12 and "cannot be extended by continuance or stipulation." Fristoe  
13 v. Reynolds Metals Co., 615 F.2d 1209, 1212 (9th Cir. 1980);  
14 Lewis v. City of Fresno, 627 F. Supp. 2d 1179, 1182 (E.D. Cal.  
15 2008) (citations omitted). Nor can it be extended by later  
16 investigation revealing another basis for removal. Roth v. CHA  
17 Hollywood Medical Center, L.P., 720 F.3d 1121, 1123 (9th Cir.  
18 2013); Durham, 445 F.3d at 1253. A plaintiff seeking remand on  
19 the basis of untimely removal must move for remand within thirty  
20 days of the notice of removal. 28 U.S.C. § 1447(c).

21 B. Judicial Notice

22 As an initial matter, Defendants request judicial notice of  
23 Plaintiff's complaint and Defendant Halloway's bankruptcy  
24 filings (Doc. #11-2). Because these documents are in the public  
25 record and are not subject to reasonable dispute, the Court  
26 takes judicial notice. See Fed. R. Evid. 201; Santa Monica Food  
27 Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1025 n.2 (9th  
28 Cir. 2006); Lee v. City of Los Angeles, 250 F.3d 662, 689 (9th

1 Cir. 2001).

2 C. Analysis

3 Plaintiff seeks remand on the basis that removal was  
4 untimely, and that there is neither federal question nor  
5 diversity jurisdiction. The Court does not reach the latter  
6 issues, because the first issue is dispositive.

7 The parties agree that Defendants filed their notice of  
8 removal more than thirty days after being served with the  
9 original complaint. Defendants put forth two arguments for why  
10 the Court should excuse the late filing. First, Defendants  
11 contend that Plaintiff should be estopped from objecting to  
12 timeliness because her attorney misled them. See Opp. at 4.  
13 Second, Defendants suggest that they were not subject to the  
14 thirty-day limitation, because their own investigation revealed  
15 "new information indicating grounds for removal." See id. at 5.  
16 Neither argument prevails.

17 Plaintiff's attorney has not engaged in "gamesmanship" or  
18 "sat on [Plaintiff's] rights". Defendants complain that  
19 Plaintiff's attorney failed to reveal that Plaintiff intended to  
20 move for remand, and led them to believe that a first amended  
21 complaint would be filed, thus "delaying [] removal." Id. at 4-  
22 5. But Plaintiff's motion to remand is timely, as it was filed  
23 within the thirty-day period prescribed by section 1447(c).  
24 Plaintiff's attorney was under no obligation to advise Defendants  
25 of his litigation strategy or to remind them about the time  
26 limits in the removal statutes. Even if Plaintiff's attorney had  
27 misled Defendants' counsel about Plaintiff's intention to file a  
28 first amended complaint, such amendment would not affect the

1 right to remove, which is based on the "initial" pleading. See  
2 28 U.S.C. § 1446(b). Plaintiff has not waived her objections to  
3 Defendants' removal and is not estopped from seeking remand.

4 The Court also rejects Defendants' second argument.  
5 Defendants removed on the basis of both federal question and  
6 diversity jurisdiction. Notice of Removal at 2. They asserted  
7 federal question jurisdiction based on information revealed in  
8 the original complaint: namely, that Plaintiff's sixth cause of  
9 action was preempted by the Federal Fair Credit Reporting Act.  
10 See id. Because this basis for removal was apparent from the  
11 complaint, the thirty-day clock began to run when the complaint  
12 was served. And the clock was not reset by later-discovered  
13 information about Defendant Holloway. See Durham, 445 F.3d at  
14 1253 ("When the defendant receives enough facts to remove on any  
15 basis under section 1441, the case is removable, and section  
16 1446's thirty-day clock starts ticking. . . . [L]ater disclosure  
17 that the case is also removable on another ground under section  
18 1441 doesn't help bring [the case] into federal court.").

19 Defendants' removal was therefore untimely. The Court  
20 sustains Plaintiff's timely objection, and remands this case to  
21 Nevada County Superior Court.

22 III. ORDER

23 For the reasons set forth above, the Court GRANTS  
24 Plaintiff's motion to remand.

25 IT IS SO ORDERED.

26 Dated: June 19, 2015

27   
28 JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE