

1 Services, Inc. undertook foreclosure proceedings and scheduled a trustee’s sale of the Subject
2 Property. *Id.* ¶¶ 11–18.

3 Plaintiff filed a complaint in state court asserting six causes of action: five for
4 various violations of the HBOR and one for negligence arising from Wells Fargo’s alleged
5 mishandling of his most recent loan modification application. He seeks an unspecified amount of
6 damages as well as injunctive relief. *Id.* at 17:12–18:7. Wells Fargo removed the case to this
7 court. Plaintiff moves to remand, arguing the court lacks subject matter jurisdiction. Mot. 2:4–
8 19.

9 II. LEGAL STANDARD

10 When a case “[over] which the district courts of the United States have original
11 jurisdiction” is initially filed in state court, a defendant may remove it to federal court. 28 U.S.C.
12 § 1441(a). However, “[t]he burden of establishing federal jurisdiction is upon the party seeking
13 removal, and the removal statute is strictly construed against removal jurisdiction.” *Emrich v.*
14 *Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988) (citation omitted). “Federal jurisdiction
15 must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v.*
16 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

17 This case was removed on the basis of diversity jurisdiction under 28 U.S.C.
18 § 1332(a), which provides in relevant part that “[t]he district courts shall have original jurisdiction
19 of all civil actions where the matter in controversy exceeds the sum or value of \$75,000,
20 exclusive of interest and costs, and is between . . . citizens of different States.” 28 U.S.C.
21 § 1332(a). In removed diversity cases where the complaint leaves the amount in controversy
22 ambiguous or unclear, the removing defendant must prove by a preponderance of evidence that
23 the amount in controversy exceeds \$75,000. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696,
24 699 (9th Cir. 2007).

25 III. DISCUSSION

26 Plaintiff argues the court lacks subject matter jurisdiction because (1) the parties
27 are not citizens of different states, (2) Wells Fargo has not shown that the amount in controversy
28

1 exceeds \$75,000, and (3) removal was untimely. Mot. 2:4–19. The court finds the amount-in-
2 controversy requirement is not met, and so the court does not reach the other two issues.

3 In his complaint, plaintiff does not specify the amount of damages he seeks, so
4 Wells Fargo must prove by a preponderance of evidence that the amount in controversy exceeds
5 \$75,000. To satisfy that requirement, Wells Fargo argues the amount in controversy should be
6 measured by the balance of plaintiff’s loan or the value of the Subject Property because “[i]n
7 actions seeking declaratory or injunctive relief, . . .the amount in controversy is measured by the
8 value of the object of the litigation.” Notice of Removal 9:4–5, 10:16–21 (citing *Hunt v. Wash.*
9 *State Apple Advert. Comm’n*, 432 U.S. 333, 347 (1977); *Chapman v. Deutsche Bank Nat. Trust*
10 *Co.*, 651 F.3d 1039, 1045 n.2 (9th Cir. 2011)). Wells Fargo argues the object of this litigation is
11 its secured interest in the Subject Property because, “[s]hould Plaintiff prevail in this action, [he]
12 would retain title to the [Subject] Property, and enjoin Wells Fargo from taking any action under
13 its secured interest.” *Id.* at 10:16–17.

14 Plaintiff does not seek an injunction as sweeping in scope as Wells Fargo suggests,
15 namely, an indefinite injunction preventing Wells Fargo from taking any action under its secured
16 interest. In fact, the HBOR “does not authorize permanent injunctive relief, but permits it only
17 until the defendant show[s] that the material violation [of the HBOR] has been corrected and
18 remedied.” *Vergara v. Wells Fargo Bank, N.A.*, No. SACV 15-00058-JLS (RNBx), 2015 WL
19 1240421, at *2 n.1 (C.D. Cal. Mar. 17, 2015) (first alteration in original) (citation omitted). By
20 its terms, the injunction provision of the HBOR provides only that “[a]ny injunction shall remain
21 in place and any trustee’s sale shall be enjoined *until* the court determines that . . . the violation or
22 violations giving rise to the action for injunctive relief” have been remedied. Cal. Civ. Code.
23 § 2924.12(a)(2) (emphasis added); *see also Perryman v. JP Morgan Chase Bank*, No. 1:16-cv-
24 00643-LJO-SKO, 2016 WL 4441210, at *6 (E.D. Cal. Aug. 23, 2016) (“[T]he injunction
25 available under Section 2924.12(a)(2) is temporary and survives only until any violation of the
26 HBOR is corrected or remedied.”). Thus, although plaintiff prays for “injunctive relief enjoining
27 the Defendants . . . from foreclosing and/or otherwise selling and/or auctioning the Subject
28 Property,” Compl. 17:15–20, there is no doubt that plaintiff seeks only an injunction against

1 foreclosure until defendants comply with the HBOR because the HBOR authorizes no more.
2 Further, plaintiff makes clear elsewhere in his complaint that he requests an injunction pending
3 defendants' compliance with the HBOR. For example, plaintiff alleges he is "entitled to
4 injunctive relief staying any movement forward with a Trustee's Sale or any other foreclosure
5 proceedings *until Defendants bring their conduct into compliance with California law.*" Compl.
6 ¶ 35 (emphasis added). In short, plaintiff seeks only an injunction against foreclosure until
7 defendants comply with the HBOR, not, as Wells Fargo contends, an injunction "enjoin[ing]
8 Wells Fargo from taking any action under its secured interest." Notice of Removal 10:16–17.

9 Courts have reached different conclusions about whether an injunction under the
10 HBOR places the entire value of the property or loan balance at issue. As the *Turner* court
11 described the split in authority:

12 Some courts have concluded that an injunction to afford time to
13 remedy HBOR violations related to a loan modification application
14 places the modification itself—not the property or the loan—at the
15 center of the litigation. Others conclude that any injunction on
16 foreclosure, however temporary, places the injunctive relief at the
heart of the litigation thus implicating the value of the property or
the amount of the underlying mortgage to establish the amount in
controversy.

17 *Turner*, 2017 WL 2214961, at *2 (citations omitted).

18 Here, the court follows the former approach. The court finds persuasive the
19 *Perryman* court's reasoning that "[t]he object of this litigation, and indeed the purpose of the
20 HBOR, is to require [the mortgage servicer] to consider Plaintiff's loan modification application
21 and provide Plaintiff with a decision prior to foreclosure." *Perryman*, 2016 WL 4441210, at *6.
22 Moreover, that rationale enjoys support both in this district and others. *See, e.g., Ulshafer v. PHH*
23 *Mortg. Co.*, No. 2:16-cv-01141-MCE-CKD, 2017 WL 896290, at *4 (E.D. Cal. Mar. 6, 2017)
24 (collecting cases); *Vergara*, 2015 WL 1240421, at *2 (same).

25 Wells Fargo argues that *Garfinkle v. Wells Fargo Bank*, 483 F.2d 1074 (9th Cir.
26 1973), compels a different conclusion here. Opp'n 4:24–5:8, ECF No. 12. In *Garfinkle*, the court
27 looked to the market value of the property and the outstanding loan balance to satisfy the amount
28 in controversy requirement. *Garfinkle*, 483 F.2d at 1076. However, *Garfinkle* involved a

1 permanent injunction against foreclosure, with no apparent temporal limitation. *Id.* As discussed
2 above, the HBOR authorizes no such relief, so *Garfinkle* does not control.

3 At bottom, the injunction plaintiff seeks places neither the value of the Subject
4 Property itself nor the loan balance at the center of this litigation. There may be a monetary value
5 associated with the relief plaintiff seeks, but Wells Fargo leaves the court to wonder what it is.
6 Wells Fargo has not shown by a preponderance of evidence that the amount in controversy
7 exceeds \$75,000, and the court lacks subject matter jurisdiction.

8 IV. CONCLUSION

9 For the foregoing reasons, the court GRANTS plaintiff's motion to remand. In
10 light of this order, the court also DENIES Wells Fargo's motion to dismiss, ECF No. 3, as moot.
11 This action is remanded to the Superior Court of the State of California, County of Sacramento.

12 IT IS SO ORDERED.

13 DATED: August 9, 2017.

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16 UNITED STATES DISTRICT JUDGE
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