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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ARTHUR PETREY,

Plaintiff,

v.

WELLS FARGO BANK N.A., a national  
association,

Defendant.

No. 2:17-cv-00503-TLN-DB

**ORDER DENYING *EX PARTE*  
APPLICATION**

This action involves a foreclosure sale of real property, located at 27517 Edwards Ave., Escalon, CA, 95320. (*See* Compl., ECF No. 1.) Plaintiff Arthur Petrey (“Plaintiff”) filed an *ex parte* application to consolidate the instant action and a state court action pending in San Joaquin County Superior Court. (ECF No. 14) In the alternative, Plaintiff seeks an “order allowing a hearing on shortened notice for their motion to consolidate cases and a temporary restraining order and order to show cause halting further action in the UD Action.” (ECF No. 14 at 2.)

In the first instance, Plaintiff seeks to consolidate the instant action with a pending state court action denominated *Wells Fargo Bank N.A. v. Arthur Petrey, et al.*, Case No. MAN-CV-LUDR-2017-00349. In support of this argument, Plaintiff cites to California Civil Code of Procedure § 1048, which allows courts to consolidate actions for the purposes of judicial economy when they are sufficiently related. However, Federal Rule of Civil Procedure 42 is the

1 equivalent federal rule governing consolidating cases in federal court. Plaintiff fails to explain  
2 why the Court would apply the California procedural law rather than Federal Rule of Civil  
3 Procedure 42. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (a federal court exercising  
4 diversity jurisdiction must apply the substantive law of the state in which it sits except on  
5 procedural issues and on matters governed by the United States Constitution or federal statutes).  
6 Even so, neither California Code of Civil Procedure § 1048 nor Federal Rule of Civil Procedure  
7 42 permits the Court to consolidate the given actions. Both rules specify that a court may  
8 consolidate actions *before it*, necessarily implying an initial requirement that the actions be in the  
9 same court in order to consolidate. This appears to be an attempt to put an unusual spin on  
10 removal for which no authority has been offered. Indeed, it is far from clear that the state court  
11 action could be removed. Plaintiff has not demonstrated the Court would have original  
12 jurisdiction over the state court case and the Court will not conduct a *sua sponte* review where no  
13 such argument is made. In short, the Court is aware of no legal bases allowing a federal court to  
14 pluck an action out of state court because it suits the Court or because the Court thinks it would  
15 be better for everyone if it did.

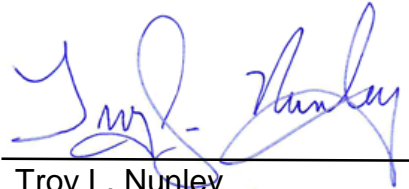
16 In order to resolve all issues, the Court will also discuss Plaintiff's alternative request for a  
17 temporary restraining order staying the state court action. The instant request is subject to the  
18 Anti-Injunction Act, 28 U.S.C. § 2283, which provides: "[a] court of the United States may not  
19 grant an injunction to stay proceedings in a State court except as expressly authorized by Act of  
20 Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."  
21 28 U.S.C. § 2283. Unless the sought-after injunction "falls within one of [the] three specifically  
22 defined exceptions" the Anti-Injunction Act serves as an "absolute prohibition against enjoining  
23 state court proceedings." *Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281,  
24 286 (1970). "[E]xceptions to the Anti-Injunction Act must be construed narrowly and doubts as  
25 to the propriety of a federal injunction against a state court proceeding should be resolved in favor  
26 of permitting the state action to proceed." *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987).  
27 Plaintiff has made no effort to show any of these exceptions apply. Consequently, the Court  
28 cannot find a stay is warranted or that Plaintiff is entitled to a TRO.

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For the above stated reasons, Plaintiff's *ex parte* application to consolidate or in the alternative issue a TRO staying the state court proceedings (ECF No. 14) is hereby DENIED.

IT IS SO ORDERED.

Dated: July 13, 2017



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Troy L. Nunley  
United States District Judge