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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GREGORY BARSTOW, an  
individual and borrower,  
  
Plaintiff,  
  
v.  
  
JP MORGAN CHASE BANK, N.A.,  
et. al.  
  
Defendants.

No. 2:18-cv-00840-JAM-KJN  
  
**ORDER DENYING DEFENDANT  
SPS' MOTION TO DISMISS AND MOTION  
TO STRIKE;**  
  
**SUA SPONTE ORDER REMANDING  
ACTION**

On March 7, 2017, Plaintiff Gregory Barstow ("Barstow" or "Plaintiff") brought the following claims against Defendants JP Morgan Chase Bank, N.A. ("JPM") and Select Portfolio, Servicing, Inc. ("SPS" or "Defendant") in the Superior Court of California for the County of San Joaquin ("Superior Court") based on Defendants' treatment of Plaintiff's mortgage loan modification application: (1) violation of California Business and Professions Code § 17200, et seq.; (2) violation of the covenant of good faith and fair dealing under oral agreement; (3) negligence; and (4) actual fraud under Cal. Civ. Code § 1572(3)(5). Compl., ECF No. 1-1. Plaintiff seeks \$57,200 in damages. Id., ¶¶ 38, 73,

1 76, 100, 121, 133, 167, 171.

2 On April 6, 2018, Defendants filed their Notice of Removal  
3 with this Court. Not. of Removal, ECF No. 1. Shortly  
4 thereafter, Defendant filed a motion to dismiss Plaintiff's  
5 complaint and a motion to strike portions of the complaint. ECF  
6 Nos. 3-4. Plaintiff opposed and argued the Court lacks subject  
7 matter jurisdiction. Opp., ECF No. 7, at 1-2. For the following  
8 reasons, the Court sua sponte remands this case to San Joaquin  
9 County Superior Court and denies Defendant's pending motions as  
10 moot.

11  
12 I. OPINION

13 Under 28 U.S.C. § 1441(a), a defendant may remove an action  
14 to federal court if the district court has original jurisdiction.  
15 Hunter v. Phillip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 2009)  
16 (quoting Ansley v. Ameriquest Mortg. Co., 340 F.3d 858, 961 (9th  
17 Cir. 2003)). 28 U.S.C. § 1332(a) provides district courts with  
18 "original jurisdiction" over matters based on diversity of  
19 citizenship. If at any time before final judgment it appears  
20 that the district court lacks subject matter jurisdiction, the  
21 case shall be remanded. 28 U.S.C. § 1447(c). A defendant  
22 seeking removal of an action to federal court has the burden of  
23 establishing federal jurisdiction in the case. Cal. ex rel.  
24 Lockyer v. Dynege, Inc., 375 F.3d 831, 838 (9th Cir. 2004).

25 Federal courts are presumptively without jurisdiction over  
26 civil actions. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375,  
27 377 (1994). Lack of subject matter jurisdiction is never waived  
28 and may be raised by the Court sua sponte. See Attorneys Trust

1 v. Videotape Comput. Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.  
2 1996); Snell v. Cleveland, Inc., 316 F.3d 822, 826 (9th Cir.  
3 2002).

4 The removal statute should be strictly construed in favor of  
5 remand and against removal. Harris v. Bankers Life and Cas. Co.,  
6 425 F.3d 689, 698 (9th Cir. 2005). Federal jurisdiction must be  
7 rejected if there is any doubt as to the right of removal in the  
8 first instance. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.  
9 1992).

10 Defendant removed this action based on diversity of  
11 citizenship and the amount in controversy meeting the \$75,000  
12 threshold. Reply, ECF No. 8, at 1-2. Defendant argues that  
13 because Plaintiff seeks injunctive relief, the amount in  
14 controversy is the full value of the mortgage loan—\$359,000. Id.  
15 Defendant cites Chapman v. Deutsche Bank Nat. Trust Co., 651 F.3d  
16 1039, 1045 (9th Cir. 2011) to support this argument. Id. In  
17 Chapman, the Ninth Circuit found the plaintiff's quiet title  
18 action satisfied the amount in controversy requirement because  
19 the object of the litigation was the property, which was assessed  
20 at a value of more than \$200,000. 651, F.3d at 1045, n.2. But  
21 the plaintiffs in Chapman, unlike Plaintiff here, sought a quiet  
22 title judgment determining that they were the owners of the  
23 disputed and foreclosed property. 651 F.3d at 1041.

24 In Corral v. Select Portfolio Servicing, Inc., 878 F.3d 770,  
25 775-76 (9th Cir. 2017), the Ninth Circuit clarified its holding  
26 from Chapman: “[w]hen a plaintiff seeks to quiet title to a  
27 property or permanently enjoin foreclosure, the object of the  
28 litigation is the ownership of the property” and “the value of

1 the property or the amount of indebtedness on the property is a  
2 proper measure of the amount in controversy." The Ninth Circuit  
3 further held that, in cases where the plaintiff seeks a temporary  
4 injunction pending review of a loan modification application,  
5 "the amount in controversy does not equal the value of the  
6 property or amount of indebtedness." Id. at 776. This is  
7 because, even if the plaintiff succeeds in her or his lawsuit,  
8 they would not be able to retain possession and ownership of the  
9 subject property without paying off their debt. Id.

10 Here, Plaintiff does not seek a permanent injunction and  
11 only seeks monetary damages of \$57,200. See Compl., ¶¶ 38, 73,  
12 76, 100, 121, 133, 167, 171. While Plaintiff states in the first  
13 paragraph of the complaint that he seeks "injunctive relief",  
14 Plaintiff does not ask for a permanent injunction anywhere in the  
15 complaint, including the Prayer for Relief. See Compl. Chapman  
16 is not applicable here and the Court finds that the amount in  
17 controversy requirement has not been met, i.e. the amount in  
18 controversy is determined by Plaintiff's request for \$57,200 in  
19 damages. This Court lacks diversity jurisdiction and therefore  
20 remands this case to the San Joaquin County Superior Court. See  
21 Corral, 878 F.3d at 775-776; see also Lenau v. Bank of America,  
22 N.A., 131 F.Supp.3d 1003, 1005-06 (E.D. Cal. 2015) (remanding  
23 action to state court because the amount in controversy was not  
24 the entire amount of the loan since the plaintiff sought  
25 injunctive relief to enjoin a foreclosure sale pending a decision  
26 on the loan modification application).

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II. ORDER

For the reasons set forth above, the Court remands this case to the Superior Court for the County of San Joaquin.

Defendant's motion to dismiss the complaint and motion to strike portions of the complaint are denied as moot.

IT IS SO ORDERED.

Dated: July 11, 2018



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE