

1 On May 22, OneWest Bank removed the proceeding to this
2 court. Doc #1. In its notice of removal, OneWest Bank indicated
3 that it represents only itself and no other parties. Id.

4 Plaintiff argues that OneWest Bank's notice of removal
5 was procedurally defective because OneWest Bank failed to obtain
6 joinder or consent of all defendants who had been served at the
7 time of removal and because OneWest Bank failed to provide this
8 court with a copy of all pleadings that had been served upon it.
9 Doc #15 at 3. Plaintiff's motion is unopposed.

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11 II

12 A defendant seeking to remove an action must do within
13 thirty days of having received the complaint. 28 USC § 1446(b).
14 Where, as here, there are multiple defendants, the rule of
15 unanimity requires that all defendants must join in removal.
16 Barbera v WMC Mortgage Corp, 2009 US Dist LEXIS 25785 (ND Cal)
17 (citing United Computer Sys, Inc v AT&T Corp, 298 F3d 756, 762 (9th
18 Cir 2002); Hewitt v City of Stanton, 798 F2d 1230, 1232-33 (9th Cir
19 1986); Schwarzer, Tashima, Wagstaffe, Federal Civil Procedure
20 Before Trial, § 2.611 at 2D1.2 (TRG 2008)). Failure to obtain
21 joinder or consent from all proper defendants renders a notice of
22 removal procedurally defective. Beltran v Monterey County, 2009 US
23 Dist LEXIS 21644 (ND Cal).

24 In the Ninth Circuit, a removing party need not seek
25 joinder of "nominal, unknown or fraudulently joined parties" in
26 removing an action. Id (citing United Computer Sys, Inc, 298 F3d
27 at 762). While this narrow exception includes a defendant that has
28 not been served at the time of removal, "[a] removing defendant

1 must exercise due diligence to ascertain if other defendants have
2 been served, and simply checking if a proof of service has been
3 filed with the court is insufficient." Orozco v EquiFirst Corp,
4 2008 WL 5412364, at *1 (CD Cal 2008); Beltran, 2009 US Dist LEXIS
5 21644.

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8 III

9 It is clear on the face of OneWest Bank's notice of
10 removal that all defendants did not join in removal. Doc #1.
11 Despite OneWest Bank's representation that "[i]t is unclear [at the
12 time of removal] as to whether or not any of the remaining parties
13 have been served with the Complaint and summons," Doc #16-8, at
14 least two defendants had already appeared in the matter, see Doc
15 #16-6, and three had been served. Doc #16-3 at 13-28. Given these
16 facts - and the lack of opposition to plaintiff's motion - the
17 court must conclude that OneWest Bank did not perform the requisite
18 due diligence to ascertain if other defendants have been served.

19 Because the court finds that OneWest Bank's notice of
20 removal was procedurally defective in that it was not joined by all
21 defendants, the court need not consider plaintiff's argument that
22 the notice was also defective for failure to file copies of all
23 pleading which had been served upon it. Doc #15 at 6.

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IV

For the above reasons, plaintiff's motion to remand (Doc #15) is GRANTED. The hearing scheduled for February 4, 2010 is HEREBY VACATED. The clerk is directed to transfer the file to the Superior Court of California for the County of Sonoma.

IT IS SO ORDERED.



VAUGHN R WALKER
United States District Chief Judge