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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALBERT RUBIO and SHANNON  
RUBIO,

No. C 10-05618 WHA

Plaintiffs,

v.

**ORDER REMANDING ACTION  
TO STATE COURT**

BAC HOME LOANS SERVICING, LP,  
RECONSTRUCT COMPANY, N. A., and  
TRUSTEE WELLS FARGO BANK N.A.  
for Securitized asset Backed Receivables,  
LLC 2005-HEI Mortgage Pass-Through  
Certificates, Series 2005-HEI:Homeq  
Servicing Corporation,

Defendants.

This action was filed in state court alleging five state-law claims. Defendants removed the action on the basis of diversity jurisdiction, under 28 U.S.C. 1332. Promptly upon assignment of this matter to the undersigned, plaintiffs noticed a motion to remand and defendants noticed a motion to dismiss. Defendants have now filed a “notice of non-opposition to plaintiff’s motion to remand.” It states:

When the Notice of Removal was filed, Counsel for Movants was under the mistaken belief that the Articles of Association for ReconTrust identified it as a national banking association with its main office in Texas and, thus, that ReconTrust was a citizen of Texas for purposes of diversity jurisdiction. However, after Plaintiffs filed the Motion to Remand, the matter was investigated further and it has been determined that ReconTrust’s Amended Articles of Association identify the main office as being located in Simi Valley, California. Therefore, ReconTrust is a citizen of California for purposes of diversity jurisdiction and there is not complete diversity as Counsel originally believed in


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good faith when it removed this action to this Court. Upon discovery of this information, Counsel for Movants promptly informed Counsel for Plaintiffs and prepared this Notice of Non-Opposition. Based on the foregoing, Movants do not oppose the Motion to Remand and agree that the matter should be remanded to state court.

Defendants also withdrew their motion to dismiss on this basis. District courts “shall” remand state law claims where the court lacks removal subject matter jurisdiction. 28 U.S.C. 1447(c). Accordingly, plaintiffs’ motion for remand is **GRANTED**. The Clerk shall remand this action to the Superior Court of California, County of Contra Costa. The motion hearing on **MARCH 10, 2011**, is **VACATED**.

**IT IS SO ORDERED.**

Dated: February 16, 2011.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE