

1 the reasons set forth below, the Court DENIES Plaintiffs' motion to
2 remand, OVERRULES Defendants' objection to Plaintiffs' amended
3 pleadings, and DENIES AS MOOT Defendants' motion to dismiss the
4 original complaint.

5
6 **II. BACKGROUND**

7 On October 28, 2011, Plaintiff Tarcicio Mora filed a Complaint
8 against Defendants in the Superior Court of the State of California
9 in and for the County of Sonoma. ECF No. 1 ("Not. of Removal") Ex.
10 A ("Compl.").¹ The Complaint alleges five causes of action, all
11 arising under California state law: (1) violation of California
12 Civil Code § 2923.5, (2) violation of California Civil Code §
13 17200, (3) breach of contract, (4) promissory estoppel, and (5) a
14 cause of action styled "declaratory relief."

15 On December 21, 2011, all three Defendants timely removed this
16 action to the United States District Court for the Northern
17 District of California, availing themselves of this Court's removal
18 jurisdiction over diversity cases. Not. of Removal at 2. A week
19 later, on December 28, 2011, Defendants filed a Motion to Dismiss
20 the Complaint. ECF No. 5 ("Mot. to Dismiss"). Mora had until
21 January 11, 2012 to file a responsive brief; he did not do so.
22 Additionally, because this case was initially assigned to a
23 magistrate judge, Civil Local Rule 73-1(a)(1) obligated Mora either
24 to consent to the magistrate judge's jurisdiction or affirmatively
25 request reassignment to a district judge. The Clerk of the Court
26 sent the appropriate forms to Mora's counsel. ECF No. 8. Mora did

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28 ¹ Plaintiff Remedios Mora had not yet joined the case. This
Section's references to "Mora" refer to Tarcicio Mora individually.

1 not respond. Accordingly, on January 13, 2012, this case was
2 reassigned to the judge now presiding. ECF No. 11. On January 18,
3 2012, Defendants renoticed their Motion to Dismiss, placing it
4 before the judge now presiding. ECF No. 12. On the same day, they
5 filed a brief noting that Mora had not opposed the Motion to
6 Dismiss and asking the Court to consider an additional reason for
7 dismissal: failure to prosecute. ECF No. 13 at 2-3.

8 On January 23, 2012, Tarcicio Mora, now joined by Remedios
9 Mora, filed their First Amended Complaint, ECF No. 15 ("FAC"),
10 along with a Motion to Remand this action back to California
11 Superior Court, ECF No. 16 ("Mot. to Remand"). The following day,
12 on January 24, 2012, Plaintiffs filed a Corrected First Amended
13 Complaint. ECF No. 17 ("CFAC"). Later that day, Defendants
14 objected to both the FAC and the CFAC as untimely and asked the
15 Court to strike them. ECF No. 18 ("Obj.") at 2-3. In the
16 alternative, Defendants requested leave to file another motion if
17 the Court permitted the amended pleadings to stand. Id. at 3.

18

19 **III. DISCUSSION**

20 **A. Defendants' Removal Was Proper**

21 If a federal court would have had subject-matter jurisdiction
22 over a civil action which a plaintiff chooses to file in state
23 court instead, a defendant may remove the case to federal court.
24 28 U.S.C. § 1441(a). A case is removable pursuant to federal
25 diversity jurisdiction when there is complete diversity between the
26 parties and the amount in controversy exceeds \$75,000. Id. §
27 1441(b) (citing id. § 1332(a)). Removal occurs at the defendant's
28 behest; the proper procedure for challenging removal is for a

1 plaintiff to file a motion to remand the case back to state court.
2 See 28 U.S.C. § 1447(c); Moore-Thomas v. Alaska Airlines, Inc., 553
3 F.3d 1241, 1244 (9th Cir. 2009). In the instant case, Plaintiffs
4 challenge removal on jurisdictional grounds. They maintain that
5 Defendants, who removed in diversity, have failed to show that more
6 than \$75,000 is in controversy.

7 Plaintiffs' argument rests on the faulty premise that the
8 Court may use the FAC, rather than the original Complaint, to
9 decide this Motion. See Mot. to Remand at 3, 5. The original
10 Complaint requests monetary relief but does not supply a dollar
11 figure. Compl. at 17. As explained below, this results in the
12 Court using the value of the Plaintiffs' home (the "Subject
13 Property") to calculate the amount in controversy. Plaintiffs'
14 amended complaint, however, prays for monetary relief in the
15 jurisdictionally insufficient amount of \$65,000.² Id. at 5.
16 Plaintiffs invite the Court to find that only that amount is in
17 controversy here. The Court declines to do so. It is beyond
18 dispute that a court deciding a motion to remand may base its
19 decision only on the complaint that was operative at the time of
20 removal. See Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers,
21 Inc., 159 F.3d 1209, 1213 (9th Cir. 1998). And "a plaintiff may
22 not compel remand by amending a complaint to eliminate" the basis
23 of the Court's removal jurisdiction. Id.

24 The operative pleading at the time of removal was Plaintiffs'

25 _____
26 ² Plaintiffs nowhere attempt to justify why they are entitled to
27 damages in the precise amount of \$65,000, as opposed to a figure
28 that would clearly support removal. Plaintiffs' omission supports
an inference that the \$65,000 figure was contrived to defeat
removal. The Court reminds Plaintiffs' counsel of Rule 11(b)'s
prohibition on presenting a pleading to the Court for any improper
purpose.

1 original state court Complaint. Because the Complaint requests
2 monetary relief but contains no dollar amounts, Defendants bear the
3 burden of showing by a preponderance of the evidence that more than
4 \$75,000 is in controversy here. See Singer v. State Farm Mut.
5 Auto. Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997). To this end,
6 Defendants draw the Court's attention to the Complaint's fifth
7 cause of action. Titled "Declaratory Relief," this cause of action
8 contends that "Defendants' security interest in the Subject
9 Property has been rendered void" ECF No. 20 ("Defs.' Opp'n
10 to MTR") at 5 (quoting Compl. ¶ 81).

11 When a plaintiff seeks declaratory relief, "it is well
12 established that the amount in controversy is measured by the value
13 of the object of the litigation." Chapman v. Deutsche Bank Nat.
14 Trust Co., 651 F.3d 1039, 1045 n.2 (9th Cir. 2011) (quotation marks
15 omitted). In actions to enjoin foreclosure sales, to quiet title,
16 or to remove a cloud from title, the object of the litigation is
17 the real estate itself. See id. Thus, the object of litigation in
18 this case is clearly the Subject Property, since Plaintiffs seek
19 postponement of the foreclosure sale and a declaration that
20 Defendants' interest in the Subject Property is void, which would
21 extinguish Defendants' power to seek foreclosure.

22 The only question left, then, is whether a preponderance of
23 the evidence shows that the Subject Property is worth more than
24 \$75,000. The Court finds that it does. The Court takes judicial
25 notice of the Deed of Trust for the Subject Property. ECF No. 6
26 Ex. 1 ("DOT"). This document, as Defendants point out, indicates
27 that the Subject Property acts as security for a loan in the
28 original principal amount of \$400,000. Defs.' Opp'n to MTR at 5

1 (citing DOT at 1). Plaintiffs have presented no opposing evidence.
2 Although it is possible that a \$400,000 loan might be secured by a
3 property worth less than \$75,000 -- secured, that is, by pennies on
4 the dollar -- such an arrangement is highly unlikely. Moreover,
5 the Subject Property is a family home in Petaluma, California, and
6 the Court takes judicial notice of the fact, generally known in
7 this District, that few if any residential properties there sell
8 for less than \$75,000. Fed. R. Evid. 201(b). Accordingly, the
9 Court finds that it is more likely than not that the Subject
10 Property was worth in excess of \$75,000 at the time of removal.³
11 Because the Court determines that the amount in controversy here
12 exceeds the jurisdictional amount, the Court DENIES Plaintiffs'
13 Motion to Remand.

14 **B. The FAC Was Timely Filed**

15 Because the Court retains jurisdiction over this matter, it
16 must decide Defendants' pending Motion to Dismiss. But first, the
17 Court must rule on Defendants' Objection to Plaintiffs' filing of
18 the FAC and CFAC. Defendants challenge the FAC as untimely. See
19 Obj. at 2-3. The Court does not agree. Federal Rule of Civil
20 Procedure 15 provides:

21 A party may amend its pleading once as a matter of course
22 within: (A) 21 days after serving it, or (B) if the
23 pleading is one to which a responsive pleading is

24 ³ The Court need not reach Defendants' arguments seeking to bring
25 other amounts into controversy (e.g., attorney fees). However, the
26 Court pauses to note that Defendants summarily state that attorney
27 fees and costs "count[] toward the jurisdictional amount" for
28 diversity. Defs.' Opp'n to MTR at 5. That is a misstatement of
the law. See Dukes v. Twin City Fire Ins. Co., No. CV-09-2197-PHX-
NVW, 2010 WL 94109, at *2 (D. Ariz. Jan. 6, 2010) (observing that
there is "disagreement within [the Ninth Circuit's District Courts]
as to whether attorneys' fees incurred after the date of removal
are properly included in the amount in controversy").

1 required, 21 days after service of a responsive pleading
or 21 days after service of a motion under Rule 12(b) . .
2 . , whichever is earlier.

3 Here, Plaintiff's Complaint is one "to which a responsive pleading
4 is required" -- namely, an Answer. Defendants, as is their right,
5 filed the instant Rule 12(b) Motion to Dismiss instead. Defendants
6 represent that they served this Motion on Plaintiffs on December
7 28, 2011. Obj. at 2-3. Therefore, under Rule 15, Plaintiffs had
8 until January 18, 2012, to amend the Complaint.

9 Rule 6(d) gives a party three extra days to respond if the
10 party is served in certain ways, for example, by mail or electronic
11 means. Plaintiffs represent that they were served with the Motion
12 in one of those ways. See Pls.' Resp. to Obj. 2. Thus, Rule 6(d)
13 extended Plaintiffs' January 18 deadline by three days, to January
14 21, 2012. That day was a Saturday. Rule 6(a)(1)(C) extends any
15 due date that falls on a Saturday "until the end of the next day
16 that is not a Saturday, Sunday, or legal holiday." In this case,
17 the rule extended Plaintiffs' time to amend its pleading to Monday,
18 January 23, 2012, and it was on that date that Plaintiffs filed the
19 FAC. Accordingly, the Court OVERRULES Defendants' Objection to the
20 filing of the FAC.

21 The CFAC warrants separate examination. Plaintiffs,
22 unhelpfully, failed to file a Notice of Errata along with the CFAC,
23 so it is not apparent to the Court what in the FAC they corrected,
24 why correction was needed, or, significantly, why the purported
25 correction is not an amendment unto itself within the meaning of
26 Rule 15. See Thomas v. Hickman, No. 1:06-cv-00215-AWI-SMS, 2007 WL
27 4302974, at *1 (E.D. Cal. Dec. 06, 2007) (construing correction
28 filed two days after FAC to be the operative pleading where

1 correction was filed along with Notice of Errata). Nevertheless,
2 "[u]nless undue prejudice to the opposing party will result, a
3 trial judge should ordinarily permit a party to amend its
4 complaint." Howey v. U.S., 481 F.2d 1187, 1190 (9th Cir. 1973).
5 Thus, even if the Court were to construe the CFAC as an amendment
6 made under Rule 15(b) rather than a correction to an amendment made
7 under Rule 15(a), it still would grant leave to amend in the
8 absence of undue delay, bad faith, futility, or, most importantly,
9 prejudice to Defendants. See Eminence Capital, LLC v. Aspeon,
10 Inc., 316 F.3d 1048, 1051-52 (9th Cir. 2003) (citing Foman v.
11 Davis, 371 U.S. 178, 182 (1962)). The Court discerns no prejudice
12 to Defendants resulting from stylistic amendments made one day
13 after an earlier filing.

14 Accordingly, the Court OVERRULES Defendants' objection to
15 Plaintiffs' filing of the CFAC. The CFAC is the operative
16 complaint in this case.

17 **C. Defendants' Motion to Dismiss Is Moot**

18 Having determined that the CFAC is the operative complaint,
19 the Court observes that Defendants' pending Motion to Dismiss
20 addresses only the original state court Complaint. Plaintiffs
21 never filed a brief in opposition to that Motion, instead amending
22 their pleading as a matter of right. The differences between the
23 original state court Complaint and the CFAC, though slight, have
24 enough substance that the Court cannot say at this juncture that
25 the pleadings are materially identical. Cf. Williamson v.
26 Sacramento Mortg., Inc., No. S-10-2600 KJM DAD, 2011 WL 4591098, at
27 *1-2 (E.D. Cal. Sept. 30, 2011) (applying motion to dismiss
28 original complaint to claims in amended complaint that were

1 "substantially similar"). Moreover, Plaintiffs should have the
2 chance to defend their pleading now that amendment as a matter of
3 course is off the table.

4 The Court therefore DENIES the pending Motion to Dismiss as
5 moot. The Court grants Defendants fourteen (14) days from the date
6 of this Order to file a motion responding to the CFAC.

7
8 **IV. CONCLUSION**

9 The Court DENIES Plaintiffs' Motion to Remand this action back
10 to California state court and retains jurisdiction over the case.
11 The Court OVERRULES Defendants' Objection to the filing of the
12 First Amended Complaint, as well as the Corrected First Amended
13 Complaint. The Corrected First Amended Complaint is now the
14 operative complaint in this case. Accordingly, the Court DENIES AS
15 MOOT Defendants' Motion to Dismiss the earlier, unamended
16 Complaint. The Court grants Defendants fourteen (14) days from the
17 date of this Order to file a motion responding to the Corrected
18 First Amended Complaint.

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20 IT IS SO ORDERED.

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22 Dated: March 15, 2012

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UNITED STATES DISTRICT JUDGE