

1
2
3
4
5
6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION
10

11 MICHAEL T. O'BRIEN, et al.,

No. C 12-0135 RS

12 Plaintiffs,

13 v.

ORDER RE JURISDICTIONAL ISSUE

14 AURORA LOAN SERVICES, LLC, et al.,

15 Defendants.
16 _____/

17 Defendants removed this action from Contra Costa County Superior Court, asserting
18 diversity of citizenship. There is no dispute, however, that defendant Cal-Western Reconveyance
19 Corporation is a citizen of California, and that therefore removal jurisdiction would be lacking
20 unless it was fraudulently joined or its presence in this litigation otherwise can be disregarded. Even
21 in the absence of a motion to remand, the Court has an obligation to ensure that subject matter
22 jurisdiction exists prior to reaching any issue going to the merits. *See Valdez v. Allstate Ins. Co.*,
23 372 F.3d 1115, 1116 (9th Cir. 2004).

24 Assertions like those made by Aurora here as to why Cal-Western does not defeat diversity
25 have been rejected in other similar cases. *See, e.g. Albert v. Wells Fargo Bank, N.A.* 2012 WL
26 1213718 (N.D.Cal., April 11, 2012); *Garnett v. Aurora Loan Services, LLC*, 2012 WL 1440920
27 (C.D.Cal., April 25, 2012). The party asserting the fraudulent joinder bears the burden of proof, and
28 remand must be granted unless the defendant can show that there is no possibility that the plaintiff

1 could prevail on any cause of action it brought against the non-diverse defendant. *See Levine v.*
2 *Allmerica Fin. Life Ins. & Annuity Co.*, 41 F.Supp.2d 1077, 1078 (C.D.Cal.1999). “The strong
3 presumption against removal jurisdiction means that the defendant always has the burden of
4 establishing that removal is proper.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir.1992) (internal
5 quotations omitted). “Courts should resolve doubts as to removability in favor of remanding the case
6 to state court.” *Id.*

7 In light of this issue, the hearing on the pending motion to dismiss and cross-motions for
8 summary judgment is vacated. No later than June 1, 2012, defendants shall file a supplemental
9 brief, not to exceed 15 pages, addressing the question of whether this action should be remanded to
10 state court for lack of removal jurisdiction. Plaintiffs may file a response, also not to exceed 15
11 pages, no later than June 8, 2012. The matter will then be taken under submission. In the event the
12 case is not remanded, the motions to dismiss and for summary judgment will then either be reset for
13 hearing or decided without oral argument, as may appear appropriate at that juncture.

14
15
16 IT IS SO ORDERED.

17
18 Dated: 5/23/12



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE