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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SCOT TOWNSEND and SHELLY  
TOWNSEND,

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No. C 12-06150 JSW

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Plaintiffs,

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v.

**ORDER TO SHOW CAUSE**

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WELLS FARGO BANK, N.A., AMERICAN  
HOME MORTGAGE SERVICING, INC, and  
DOES 1 through 100,

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Defendants.

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Federal courts are under a duty to raise and decide issues of subject matter jurisdiction *sua sponte* at any time it appears subject matter jurisdiction may be lacking. Fed. R.

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Civ. P. 12; *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). If the Court

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determines that subject matter jurisdiction is lacking, the Court must dismiss the case. *Id.*; Fed.

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R. Civ. P. 12(h)(3).

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The Court notes that there is a split in authority regarding whether national banking

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associations are citizens of the state where their principal place of business is located, as well as

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their main office. District courts within California are divided on whether *American Surety Co.*

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*v. Bank of California*, 133 F.2d 160 (9th Cir. 1943) and *Wachovia Bank v. Schmidt*, 546 U.S.

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303 (2006) are reconcilable. *Compare e.g., Flores v. Wells Fargo Bank, N.A.*, 2012 WL

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832546, \*2 (N.D. Cal. March 12, 2012) (finding that *Schmidt* abrogated *American Surety*); *with*

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*e.g., Taheny v. Wells Fargo Bank, N.A.*, 2012 WL 1120140, \*6 (E.D. Cal. April 3, 2012); *Rouse*

1 v. *Wachovia Mortg.*, 2012 WL 174206, \*12 (C.D. Cal. Jan. 13, 2012); *Rodriguez v. Wells Fargo*  
2 *Bank, Nat. Ass'n*, 2012 WL 1940572, \*3 (S.D. Cal. May 25, 2012) (finding that American  
3 Surety and Schmidt are reconcilable).

4 The Court HEREBY ORDERS Defendants to show cause why this Court has  
5 jurisdiction in writing by no later than April 17, 2013. Plaintiffs may file a response by no later  
6 than April 26, 2013. The Court FURTHER ORDERS that the hearing on Defendants' motion  
7 to dismiss is CONTINUED to May 31, 2013.

8 **IT IS SO ORDERED.**

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10 Dated: April 8, 2013

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE