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

LINDA COOKS,  
Plaintiff,  
v.  
WELLS FARGO BANK, N.A., et al.,  
Defendants.

Case No. [17-cv-02539-MMC](#)

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND; DENYING  
PLAINTIFF'S REQUEST FOR RULE 11  
SANCTIONS**

Re: Dkt. No. 13

Before the Court is plaintiff Linda Cooks' ("Cooks") Motion for Remand, filed May 17, 2017. On May 31, 2017, defendant Wells Fargo Bank, N.A. filed opposition,<sup>1</sup> and on June 7, 2017, Cooks filed a reply, after which, on June 29, 2017, with leave of Court, Wells Fargo Bank, N.A. filed a surreply. Having considered the parties' written submissions, the Court rules as follows.<sup>2</sup>

**BACKGROUND**

Cooks alleges that defendants Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, and Wells Fargo & Company collectively engaged in unlawful conduct in relation to a Wells Fargo "home loan" encumbering Cooks' "family home." (See Compl. at 2:1-4, ¶¶ 1, 10.) In particular, Cooks alleges, defendants engaged in a "predatory lending scheme" and 'pick-a-pay' payment program which negatively amortized her loan" (see id. ¶ 2), "strung her along" during a loan modification process" (see id. ¶ 3), and

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<sup>1</sup> The other two defendants, Wells Fargo Home Mortgage and Wells Fargo & Company, have not appeared.

<sup>2</sup> By order filed June 2, 2017, the Court took the matter under submission.

1 “recorded a Notice of Default on [her] home” while “a decision was pending” on her “loan  
2 modification application” (see id. ¶ 4).

3 On May 3, 2017, Wells Fargo Bank, N.A. removed the above-titled action on the  
4 asserted basis of diversity jurisdiction, contending the parties were “entirely diverse” in  
5 citizenship. (See Not. Removal at 2:12.) In particular, Wells Fargo Bank, N.A. asserted  
6 that (1) Cooks is a California citizen; (2) Wells Fargo Bank, N.A. is a South Dakota  
7 citizen; (3) Wells Fargo Home Mortgage “no longer exists as a separate and  
8 independent legal entity, having been merged into Wells Fargo Bank, N.A. in 2004” (see  
9 id. at 4:8-9); and (5) Wells Fargo & Company was fraudulently joined as a defendant to  
10 the action.

11 By the instant motion, Cooks argues that the parties are not diverse in citizenship  
12 and that Rule 11 sanctions should be imposed on Wells Fargo Bank, N.A. for removing  
13 the action.

14 **LEGAL STANDARD**

15 Where a case has been removed from state court and “at any time before final  
16 judgment it appears that the district court lacks subject matter jurisdiction, the case shall  
17 be remanded.” See 28 U.S.C. § 1447(c). The Court is required to “strictly construe the  
18 removal statute against removal jurisdiction,” and “[f]ederal jurisdiction must be rejected if  
19 there is any doubt as to the right of removal in the first instance.” See Gaus v. Miles, Inc.,  
20 980 F.2d 564, 566 (9th Cir. 1992). The removing defendant “always has the burden of  
21 establishing that removal is proper.” See id.

22 **DISCUSSION**

23 District courts have diversity jurisdiction over all civil actions between “citizens of  
24 different [s]tates” where the amount in controversy exceeds “\$75,000, exclusive of  
25 interest and costs.” See 28 U.S.C. § 1332. Diversity jurisdiction requires “complete  
26 diversity of citizenship”; diversity jurisdiction applies only where “the citizenship of each  
27 plaintiff is diverse from the citizenship of each defendant.” See Caterpillar, Inc. v. Lewis,  
28 519 U.S. 61, 68 (1996).

1 Here, as noted above, Cooks contends remand is appropriate because the parties  
2 are not diverse in citizenship. In particular, Cooks argues that (1) Wells Fargo Bank, N.A.  
3 is a citizen of California and (2) Wells Fargo & Company, although a citizen of California,  
4 is not fraudulently joined.

5 **A. Wells Fargo Bank, N.A.’s Citizenship**

6 In its Notice of Removal, Wells Fargo Bank, N.A. asserts it is a citizen of South  
7 Dakota and, as such, is diverse in citizenship from Cooks, a citizen of California. In  
8 particular, Wells Fargo Bank, N.A. argues that, as a national banking association, it “is a  
9 citizen of the [s]tate in which its main office, as set forth in its articles of association, is  
10 located,” see Wachovia Bank v. Schmidt, 546 U.S. 303, 307 (2006), and, in support  
11 thereof, attaches a copy of its Articles of Association, which state that its main office  
12 “shall be in the City of Sioux Falls, County of Minnehaha, State of South Dakota” (see  
13 Not. Removal Ex. F at 2).

14 Cooks, in her motion for remand, agrees that Wells Fargo Bank, N.A. is a citizen of  
15 South Dakota, but argues such defendant is also a citizen of California, the state in  
16 which, Cooks contends, Wells Fargo Bank, N.A. has its principal place of business. In  
17 support thereof, Cooks cites to two cases, namely, American Surety Co. v. Bank of Cal.,  
18 133 F.2d 160 (9th Cir. 1943), a Ninth Circuit case that held national banking associations  
19 are citizens of the “states in which their principal places of business are maintained,” see  
20 id. at 162, and Taheny v. Wells Fargo Bank, N.A., 878 F. Supp. 2d 1093 (E.D. Cal. 2012),  
21 a California district court case applying American Surety and holding Wells Fargo Bank,  
22 N.A. is a citizen of both South Dakota and California, see id. at 1094.

23 As noted in Taheny, however, district courts in the Ninth Circuit had, as of the time  
24 of that decision, “reached conflicting decisions on Wells Fargo’s citizenship,” depending  
25 on whether the court found a national banking association is a citizen “exclusively where  
26 its main office is located,” or is “also a citizen of the state of its principal place of  
27 business.” See id. at 1094 n.1. Subsequent thereto, as pointed out by Wells Fargo  
28 Bank, N.A., the Ninth Circuit resolved the conflict by holding, in light of Wachovia, that “a

1 national banking association is a citizen only of the state in which its main office is  
2 located.” See Rouse v. Wachovia Mortg., FSB, 747 F.3d 707, 715 (9th Cir. 2014). Given  
3 the holding in Rouse, the Court finds Wells Fargo Bank, N.A. is only a citizen of South  
4 Dakota, the state in which it has shown its main office is located.

5 Accordingly, as Wells Fargo Bank, N.A. is not a citizen of California, remand is not  
6 appropriate on the first of the two grounds on which Cooks relies.

7 **B. Fraudulent Joinder of Wells Fargo & Company**

8 Cooks next argues remand is appropriate because Wells Fargo Bank, N.A. has  
9 not met its burden of showing Wells Fargo & Company was fraudulently joined.

10 “Fraudulent joinder is a term of art.” McCabe v. Gen. Foods, Corp., 811 F.2d 1336,  
11 1339 (9th Cir. 1987). “If the plaintiff fails to state a cause of action against a resident  
12 defendant, and the failure is obvious according to the settled rules of the state, the joinder  
13 of the resident defendant is fraudulent.” Id. The burden is on the removing defendant to  
14 prove “by clear and convincing evidence” that the plaintiff cannot prevail against the non-  
15 diverse defendant. See Hamilton Materials Inc. v. Dow Chem. Corp., 494 F.3d 1203,  
16 1206 (9th Cir. 2007).

17 Here, the parties agree that Wells Fargo & Company is a California citizen and is  
18 the parent of Wells Fargo Bank, N.A. Nevertheless, Wells Fargo Bank, N.A. argues,  
19 Wells Fargo & Company is fraudulently joined because Cooks’ claims “arise from the  
20 Deed of Trust” she entered into with World Savings Bank, FSB, an entity which later  
21 “became part of Wells Fargo Bank, N.A.” (see Not. Removal at 4:25-27), and,  
22 consequently, Cooks’ pleadings include “no specific allegations that connect Wells Fargo  
23 & Company to [the] case” (see id. at 5:1-2).

24 In her motion, Cooks initially argued Wells Fargo & Company is properly named as  
25 a defendant because she “alleged the bad acts collectively against” the three named  
26 defendants and “is unable to distinguish between the entities as it relates to the servicing  
27 and handling of her loan.” (See Mot. at 7:18-23). After Wells Fargo Bank, N.A. filed its  
28 opposition, however, Cooks filed an Amended Complaint (“AC”), in which she alleges

1 each defendant acted as “an agent, representative, partner, and/or alter ego of its co-  
2 defendants” (see AC ¶ 11), that Wells Fargo & Company maintained a “policy of  
3 fraudulent behavior and business practices” (see id. ¶ 13), and that Wells Fargo &  
4 Company “is a corporate parent that actively participated in, and exercised control over,  
5 the operations of its subsidiary’s facility” (see id. ¶ 14).

6 Citing Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc., 159 F.3d 1209  
7 (9th Cir. 1998), Wells Fargo Bank, N.A. responds that “jurisdiction must be analyzed on  
8 the basis of the pleadings filed at the time of removal without reference to subsequent  
9 amendments.” See id. at 1213. Sparta, however, concerned federal question jurisdiction  
10 and a plaintiff’s post-removal effort to excise the federal question from its complaint. See  
11 id. (holding “a plaintiff may not compel remand by amending a complaint to eliminate the  
12 federal question upon which removal is based”). Here, by contrast, the amendments do  
13 not purport to remove the allegations on which removal was effectuated, but, rather, to  
14 provide additional support for those allegations. In particular, Cooks now alleges Wells  
15 Fargo & Company, as the “corporate parent” of Wells Fargo Bank, N.A., “exercised  
16 control over the operations” of its subsidiary. (See AC ¶ 14.) “[I]f a parent corporation  
17 exercises such a degree of control over its subsidiary corporation that the subsidiary can  
18 legitimately be described as only a means through which the parent acts, or nothing more  
19 than an incorporated department of the parent, the subsidiary will be deemed to be the  
20 agent of the parent.” Sonora Diamond Corp. v. Super. Ct., 83 Cal. App. 4th 523, 541  
21 (2000).

22 Wells Fargo Bank, N.A. next argues Cooks’ amended allegations, even if  
23 considered, lack sufficient factual support. A “merely defective statement of the plaintiff’s  
24 action,” however, “does not warrant removal,” as a failure to plead adequate facts “may  
25 be remedied by amendment.” See Albi v. Street & Smith Publ’ns, 140 F.2d 310, 312, 312  
26 n.4 (9th Cir. 1944). Although Wells Fargo Bank, N.A. argues Cooks’ failure to state a  
27 claim in her amended pleading shows she cannot plead the requisite facts, it has not  
28 demonstrated her inability to do so upon further leave or that the state court would not

1 afford her such leave. See, e.g., Schultz v. Harney, 27 Cal. App. 4th 1611, 1622 (1994)  
 2 (holding “a demurrer to a complaint should not be sustained without leave to amend if  
 3 there is a reasonable possibility that the defects can be cured by amendment”). In  
 4 particular, as set forth below, Wells Fargo Bank, N.A. has failed to meet its burden of  
 5 showing that Wells Fargo & Company “cannot be liable on any theory.” See Ritchey v.  
 6 Upjohn Drug Co., 139 F.3d 1313, 1318 (9th Cir. 1998).

7 A removing defendant is “entitled to present the facts showing the joinder to be  
 8 fraudulent,” see McCabe, 811 F.2d at 1339, and the Court, in ruling on that issue, may  
 9 “pierce the pleadings” to consider “summary judgment-type evidence such as affidavits  
 10 and deposition testimony,” see Morris v. Princess Cruises, Inc., 236 F.3d 1061, 1068 (9th  
 11 Cir. 2001). In that regard, Wells Fargo Bank, N.A. cites to Omega v. Wells Fargo & Co.,  
 12 No. C 11-02621 JSW, 2012 WL 685440 (N.D. Cal. Mar. 2, 2012), a case in which the  
 13 district court found the plaintiff in that case could not destroy diversity by bringing a claim  
 14 against Wells Fargo & Company. In Omega, however, Wells Fargo Bank, N.A. had  
 15 submitted a declaration from a Wells Fargo & Company employee, averring that Wells  
 16 Fargo & Company “does not make decisions on the operations” of Wells Fargo Bank,  
 17 N.A. and does not oversee “the loan modification process” or the “foreclosure process for  
 18 World Savings Bank, FSB originated loans.” See id. at \*8. Here, Wells Fargo Bank, N.A.  
 19 has submitted no such declaration.<sup>3</sup>

20 Accordingly, the Court finds Wells Fargo Bank, N.A. has failed to meet its burden  
 21 as to fraudulent joinder and, consequently, remand is appropriate.

22 **C. Rule 11 Sanctions**

23 Cooks asks the Court to impose Rule 11 sanctions on Wells Fargo Bank, N.A. by  
 24 awarding her the attorneys fees she incurred in bringing the instant motion. By including

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 26 <sup>3</sup> To the extent Wells Fargo Bank, N.A. may be arguing the record in Omega  
 27 shows Cooks will not be able to support her allegations as to Wells Fargo & Company’s  
 28 control over Wells Fargo Bank, N.A., the Court notes Omega was decided more than five  
 years ago, and Wells Fargo Bank, N.A. has offered no evidence demonstrating that the  
 relevant factual circumstances are unchanged.

1 her motion for sanctions as part of her motion for remand, however, Cooks has failed to  
2 comply with either Rule 11 or Civil Local Rule 7-8, both of which require motions for  
3 sanctions to be separately filed. (See Fed. R. Civ. P. 11(c)(2); Civil L.R. 7-8.)  
4 Additionally, Cooks has failed to comply with Rule 11's requirement that a motion for  
5 sanctions first must be served on the opposing party, and "must not be filed or presented  
6 to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or  
7 appropriately corrected within 21 days after service or within another time the court sets."  
8 See Fed. R. Civ. P. 11(c)(2).

9 Even if the above-noted procedural deficiencies were remedied by the Court's  
10 construing Cooks' motion for sanctions as one made under 28 U.S.C. § 1447(c), the  
11 motion nonetheless would be denied. Other than stating the Court should send "a strong  
12 and unambiguous message" to Wells Fargo Bank, N.A. for "misuse and abuse [of] the  
13 system" (see Mot. at 9:2-4), Cooks makes no effort to explain why sanctions are  
14 appropriate, and, given the above-discussed factual and legal issues, the Court finds the  
15 removal in this instance does not warrant the imposition of sanctions.

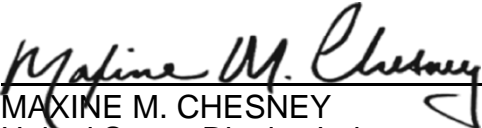
**CONCLUSION**

17 For the reasons set forth above, Cooks' motion to remand is hereby GRANTED,  
18 her request for sanctions is hereby DENIED, and the instant action is hereby  
19 REMANDED to the California Superior Court for the County of San Francisco.

20 The Clerk shall close the file.

22 **IT IS SO ORDERED.**

24 Dated: July 24, 2017

  
MAXINE M. CHESNEY  
United States District Judge