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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

10 MAHA SAKO, } Case No. 3:14-cv-15-GPC-JMA  
11 Plaintiff, }  
12 v. }  
13 WELLS FARGO BANK, N.A., }  
14 Defendant. }  
\_\_\_\_\_  
} **ORDER SUA SPONTE  
REMANDING CASE TO STATE  
COURT FOR LACK OF  
SUBJECT MATTER  
JURISDICTION**

## **INTRODUCTION**

On November 26, 2013, Plaintiff Maha Sako (“Plaintiff”), filed a complaint in the Superior Court of the State of California, County of San Diego against Defendant Wells Fargo Bank, National Association (“Defendant”). Plaintiff alleged six state causes of action: (1) wrongful termination of employment in violation of public policy; (2) discrimination in violation of the California Fair Employment and Housing Act; (3) intentional infliction of emotional distress; (4) unpaid wages in violation of California Labor Code section 201; (5) waiting time penalties in violation of California Labor Code section 203; and (6) unfair business practices in violation of California Business and Professions Code section 17200. (Dkt. No. 1, Compl. at 1.) On January 3, 2014, Defendant filed an answer to the complaint and removed the matter to this Court, asserting this Court has diversity jurisdiction. (Dkt. No. 1, Notice of Removal at 1-2.) Based on the reasoning set forth below, this Court finds that it lacks subject matter jurisdiction over the Complaint and, therefore, **SUA SPONTE REMANDS** the matter

1 to state court for all further proceedings.

2 **DISCUSSION**

3 **1. Legal Standard**

4 Federal courts are courts of limited jurisdiction. Gould v. Mutual Life Ins. Co.  
5 v. New York, 790 F.2d 769, 774 (9th Cir. 1986). As such, a federal court cannot reach  
6 the merits of any dispute until it confirms its own subject matter jurisdiction. See Steel  
7 Co. v. Citizens for a Better Environ., 523 U.S. 83, 93-94 (1998). Even when parties  
8 do not raise the issue of jurisdiction, this Court has an independent obligation to  
9 address *sua sponte* whether it has subject matter jurisdiction. Allstate Ins. Co. V.  
10 Hughes, 358 F.3d 1089, 1093 (9th Cir. 2004). Thus, at any time during the  
11 proceedings, a federal district court may *sua sponte* remand a case to state court if the  
12 court lacks subject matter jurisdiction over the case. 28 U.S.C. § 1447(c); see  
13 Brockman v. Merabank, 40 F.3d 1013, 1015-16 (9th Cir. 1994).

14 Removal jurisdiction is governed by 28 U.S.C. § 1441 *et seq.* “Except as  
15 otherwise expressly provided by Act of Congress, any civil action brought in a State  
16 court of which the district courts of the United States have original jurisdiction, may  
17 be removed by the defendant or the defendants, to the district court of the United States  
18 for the district and division embracing the place where such action is pending.” 28  
19 U.S.C. § 1441(a). “If at any time before final judgment, it appears that the district court  
20 lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).  
21 The Ninth Circuit “strictly construe[s] the removal statute against removal  
22 jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (citations  
23 omitted). Thus, “[f]ederal jurisdiction must be rejected if there is any doubt as to the  
24 right of removal in the first instance.” Id. (citation omitted). “The ‘strong  
25 presumption’ against removal jurisdiction means that the defendant always has the  
26 burden of establishing that removal is proper.” Id.; Abrego Abrego v. Dow Chemical  
27 Co., 443 F.3d 676, 685 (9th Cir. 2006) (citing Gaus, 980 F.2d at 566).

28 Removal jurisdiction may be based on the existence of a federal question or

1 diversity of citizenship. 28 U.S.C. § 1441. A federal question exists when either the  
2 federal law creates a cause of action alleged in the complaint or the plaintiff's right to  
3 relief necessarily depends on the resolution of substantial questions of federal law.  
4 Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1,  
5 27-28 (1983). Diversity exists when "the matter in controversy exceeds the sum or  
6 value of \$75,000" and when all parties to the action are "citizens of different states."  
7 28 U.S.C. § 1332(a). "A defendant attempting to remove a diversity case must show  
8 by a preponderance of the evidence that the amount-in-controversy requirement is  
9 satisfied." Gibson v. Chrysler Corp., 261 F.3d 927, 933 (9th Cir. 2001) (citations  
10 omitted). Complete diversity is present when all plaintiffs have citizenship different  
11 from all defendants. Caterpillar v. Lewis, 519 U.S. 61, 68 n.3 (1996) (citation omitted).

12 **2. Analysis**

13 Plaintiff filed a complaint in California state court, alleging six state causes of  
14 action arising out of her employment with Defendant Wells Fargo. (Dkt. No. 1, Compl.  
15 at 1.) Defendant Wells Fargo Bank, N.A., removed the action on the basis of diversity  
16 jurisdiction. (Dkt. No. 1, Notice of Removal at 1.) It is undisputed that Plaintiff is a  
17 citizen of California. (Dkt. No. 1, Compl. at 1-2; Notice of Removal at 2.) It is  
18 undisputed that Defendant Wells Fargo Bank, N.A. is a national banking association  
19 with its main office in South Dakota, and therefore is a citizen of that state. (Dkt. No.  
20 1, Notice of Removal at 2.) See Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 307  
21 (2006) (holding that a national bank "is a citizen of the State in which its main office,  
22 as set forth in its articles of association, is located").

23 The question before the Court is whether, for the purposes of diversity  
24 jurisdiction, Wells Fargo is *also* a citizen of California. In other cases, Wells Fargo  
25 has conceded that its principal place of business is in California. Grace v. Wells Fargo  
26 Bank, N.A., 926 F. Supp. 2d 1173, 1175 n. 1 (S.D. Cal. 2013) ("Wells Fargo does not  
27 contest that its principal place of business is in San Francisco, California."); Singer v.  
28 Wells Fargo Bank, N.A., No. SACV 12-801 JVS (JPRx), 2012 WL 2847790, at \*1

1 (C.D. Cal. July 11, 2012); Mount v. Wells Fargo Bank, N.A., No. CV 08-6298 GAF  
2 (MANx), 2008 WL 5046286, at \*1 (C.D.Cal. Nov. 24, 2008) (Wells Fargo “has  
3 regularly described its principal place of business as San Francisco, California.”).  
4 District courts in California are split on the issue of whether Wells Fargo is a citizen  
5 of both South Dakota, where its main office is located, and California, where its  
6 principal place of business is located. See Uriarte v. Wells Fargo Bank, N.A., No. 11-  
7 CV-2082-IEG (WVG), 2011 WL 5295285, at \*9 (S.D. Cal. Nov. 3, 2011) (holding that  
8 Wells Fargo is also a citizen of California, where it has its principal place of business);  
9 but see Flores v. Wells Fargo Bank, N.A., No. 3:11-CV-06619 JSC, 2012 WL 832546,  
10 at \*5 (N.D. Cal. Mar. 12, 2012) (finding that Wells Fargo is only a citizen of the state  
11 of their main office, South Dakota, and not also of the state of their principal place of  
12 business, California).

13 “All national banking associations shall, for the purposes of all other actions by  
14 or against them, be deemed citizens of the States in which they are respectively  
15 located.” 28 U.S.C. § 1348. While the Supreme Court held in Schmidt that a national  
16 bank is a citizen of the state in which its main office is located, it did not answer the  
17 question as to whether a bank is also “located” in, and therefore a citizen of, the state  
18 of principal place of business. See Schmidt, 546 U.S. at 307. The Court addresses that  
19 question here.

20 In its Notice of Removal, Defendant asks this Court to adopt a narrow  
21 interpretation of the Supreme Court decision in Schmidt, and find that a national  
22 banking association is a citizen *only* of the state in which it has designated its main  
23 office. Schmidt, 546 U.S. at 314. Defendant relies on the Eighth Circuit decision in  
24 Wells Fargo Bank, N.A. v. WMR e-PIN, LLC, 653 F.3d 702, 710 (8th Cir. 2011), and  
25 other district court opinions which reject the principal place of business test for  
26 purposes of diversity jurisdiction in §1348. Defendant Wells Fargo also cites the Ninth  
27 Circuit decision in Lowdermilk v. U.S. Bank, N.A., 479 F.3d 994, 997 (9th Cir. 2007)  
28 (citing Schmidt, 546 U.S. 305) (overruled on other grounds by Rodriguez v. AT&T

1 Mobility Serv. LLC, 728 F.3d 975, 977) (9th Cir. 2013)) as support that the Ninth  
2 Circuit will likely reject the principal place of business test.<sup>1</sup> (Dkt. No. 1, Notice of  
3 Removal at 5.) The Court finds these arguments unconvincing.

4 As the Supreme Court did not determine whether a national bank could also be  
5 a citizen where it has its principal place of business, the appellate and district courts  
6 have taken two different approaches on the issue. On one hand, the Eighth Circuit and  
7 certain district courts in California have held that “located” should be read narrowly  
8 to only include the place where the bank has its main office. Wells Fargo Bank, N.A.  
9 v. WMR e-PIN , LLC, 653 F.3d at 710 (“We reject appellants’ claim that Wells Fargo  
10 is a citizen of both South Dakota and California[.]”); Meyer v. Wells Fargo Bank, N.A.,  
11 No. C 13–03727 WHA, 2013 WL 6407516, at \*2 (N.D. Cal. Dec. 6, 2013) (“While our  
12 court of appeals has not addressed the issue since Schmidt, a majority of judges in this  
13 district, including the undersigned judge, have determined that for purposes of diversity  
14 jurisdiction, defendant Wells Fargo is a citizen of only South Dakota, the state in which  
15 its main office is located under its articles of association, and not California, where it  
16 has its principal place of business.”).<sup>2</sup> On the other hand, other district courts in  
17 California continue to affirm the decisions made by the Fifth and Seventh Circuits,  
18 which concluded that a national bank is a citizen of both the state in which its main  
19 office is located and the state of its principal place of business. Horton v. Bank One,  
20 N.A., 387 F.3d 426, 436 (5th Cir. 2004) (“We hold that the definition of ‘located’ is  
21 limited to the national bank’s principal place of business and the state listed in its  
22 organization certificate and its articles of association.”); Firststar Bank, N.A. v. Faul, 253

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24 <sup>1</sup> In Lowdermilk, the court identified the defendant bank as a citizen of Ohio because its main  
25 office was located in that state, without considering the principal place of business test. Lowdermilk,  
479 F.3d at 997.

26 <sup>2</sup> Many district courts in the Northern District of California have embraced the Eighth Circuit  
27 approach post-Schmidt. See Mitchell v. Wells Fargo Bank, N.A., No. CV 13-04017-KAW, 2013 WL  
5587819, at \*1 (N.D. Cal. Oct. 10, 2013); Alonzo v. Wells Fargo Bank, N.A., No. C 13-1604 PSG,  
2013 WL 3787298, at \*3 (N.D. Cal. July 18, 2013); Marshall v. Wells Fargo Bank, No. C-13-01747  
EDL, 2013 WL 3287687 at \*4 (N.D. Cal. June 27, 2013); Yong Chull Kim v. Wells Fargo Bank, N.A.,  
No. 5:12-CV-02066-EJD, 2012 WL 3155577, at \*2-3 (N.D. Cal. Aug. 2, 2012); DeLeon v. Wells  
Fargo Bank, N.A., 729 F. Supp. 2d 1119, 1123-24 (N.D. Cal. 2010).

1 F.3d 982, 994 (7th Cir. 2001) (“[W]e hold that for purposes of 28 U.S.C. § 1348 a  
2 national bank is ‘located’ in, and thus a citizen of, the state of its principal place of  
3 business and the state listed in its organization certificate.”). Although these decisions  
4 were made prior to Schmidt, numerous district courts have followed this approach,  
5 finding Firststar and Horton persuasive. See *Uriarte v. Wells Fargo Bank, N.A.*, No. 11-  
6 CV-2082-IEG (WVG), 2011 WL 5295285, at \*8 (S.D. Cal. Nov. 3, 2011) (“[T]he  
7 Court believes the approach advanced by the Fifth and Seventh Circuits, as well as by  
8 Judge Murphy’s dissent in WMR, is more consistent with § 1348’s legislative history  
9 and the Supreme Court’s decision in *Wachovia v. Schmidt*.”); *Bickoff v. Wells Fargo  
10 Bank, N.A.*, No. 11-CV-2452 BEN (WVG), 2013 WL 100323, at \*5 (S.D. Cal. Jan. 4,  
11 2013) (finding “a national banking association is a citizen of both a state where it has  
12 its main office and the state of its principal place of business”); see also *Taheny v.  
13 Wells Fargo Bank, N.A.*, 878 F. Supp. 2d 1093, 1098-1109 (E.D. Cal. Apr. 3, 2012)  
14 (providing persuasive detailed analysis of Firststar, Horton, and other case law in finding  
15 the principal place of business test applies to national banks).<sup>3</sup>

16 While the Court acknowledges there remains a split of opinion on the issue, the  
17 Court finds the approach in Firststar and Horton articulated by the Fifth and Seventh  
18 Circuits more persuasive, and reaffirms its holding in *Grace v. Wells Fargo, N.A.*, 926  
19 F. Supp. 2d 1173, 1178 (S.D. Cal. 2013), and *Ortiz v. Wells Fargo, N.A.*, No.  
20 13cv0060-GPC-BLM, 2013 WL 1702790 at \*4 (S.D. Cal. Apr. 19, 2013). In Grace  
21 and Ortiz, this Court held that a national banking association is a citizen of both the  
22 state where it has its main office and the state of its principal place of business.  
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24 <sup>3</sup> A number of district court opinions have discussed Horton and Firststar, holding that a national  
25 bank is also a citizen of the state where its principal place of business is. See Garcia v. Wells Fargo  
26 Bank, N.A., No. CV 13-9325 FMO (SHx), 2014 WL 29354, at \*7 (C.D. Cal. Jan. 3, 2014); Vargas v.  
27 Wells Fargo Bank N.A., No. 12-CV-02008-JST, 2013 WL 6235575, at \*8 (N.D. Cal. Dec. 2, 2013);  
Olson v. Wells Fargo Bank, N.A., No. CV 13-2906-GHK (AGRx), 2013 WL 4407495, at \*12 (C.D.  
Cal. Aug. 1, 2013); Martinez v. Wells Fargo Bank, 946 F. Supp. 2d 1010, 1024 (N.D. Cal. 2013);  
Rodriguez v. Wells Fargo Bank, Nat. Ass'n, No. 12-CV-469-BEN (BGS), 2012 WL 1940572, at\*4  
(S.D. Cal. May 25, 2012); Rouse v. Wachovia Mortgage, FSB, No. EDCV 11-00928 DMG (DTBx),  
2012 WL 174206, at \*12 (C.D. Cal. Jan. 13, 2012); Stewart v. Wachovia Mortgage Corp., No. CV 11-  
06108 MMM (AGRx), 2011 WL 3323115, at \*5 (C.D. Cal. Aug. 2, 2011)

1 Accordingly, as applied to this case, Wells Fargo is a citizen of California.

2 **CONCLUSION**

3 Upon review of Defendant's Notice of Removal and the attached Complaint, this  
4 Court finds it does not have subject matter jurisdiction over this case and therefore  
5 **SUA SPONTE REMANDS** the action to the Superior Court of the State of California,  
6 County of San Diego.

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8 DATED: February 11, 2014

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10 HON. GONZALO P. CURIEL  
11 United States District Judge

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