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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 NICHOLE KARD,

12 Plaintiff,

13 v.

14 GMAC MORTGAGE, LLC; REAL TIME
15 RESOLUTIONS; RRA CP
16 OPPORTUNITY TRUST 2; ZBS LAW
LLP; DOES 1-100,

17 Defendants.
18

Case No.: 3:23-cv-1780-W-DEB

**ORDER GRANTING MOTION TO
RECONSIDER, VACATING
REMAND ORDER, AND ORDERING
RECALL OF REMAND**

[Doc. 8]

19 On March 4, 2024, the Court remanded this case after finding that the removing
20 parties' allegation regarding the amount in controversy lacked plausibility in light of
21 counsel's declaration that the full amount of the lien at issue had been received. On
22 April 1, Defendants Real Time Resolutions, Inc. ("Real Time") and RRA CP Opportunity
23 Trust 2 ("RRA") filed a motion to reconsider and supplemented the evidence regarding
24 the amount in controversy. (*Motion* [Doc. 8]; *Stip.* [Doc. 8-3]). Plaintiff opposed. Real
25 Time and RRA replied. The Court decides the matter on the papers submitted and
26 without oral argument pursuant to Civil Local Rule 7.1.(d.1). For the following reasons,
27 the Court **GRANTS** the motion to reconsider (Doc. 8), **VACATES** its March 4, 2024,
28 remand order (Doc. 7), and **ORDERS** the remand recalled.

1 The Court has jurisdiction to reconsider its remand order here because after the
2 notice of removal there was not an opportunity for the removing parties to supplement
3 evidence of the amount in controversy. *Acad. of Country Music v. Cont'l Cas. Co.*, 991
4 F.3d 1059, 1070 (9th Cir. 2021) (citing *Dart Cherokee Basin Operating Co., LLC v.*
5 *Owens*, 574 U.S. 81 (2014); *Arias v. Residence Inn by Marriott*, 936 F.3d 920 (9th Cir.
6 2019)). A removing party's "notice of removal need include only a plausible allegation
7 that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee*
8 *Basin Operating Co., LLC*, 574 U.S. at 89. However, if there is a question regarding the
9 plausibility of the amount in controversy, "a district court must not remand [] without
10 first giving the defendant an opportunity to show by a preponderance of the evidence that
11 the jurisdictional requirements are satisfied." *Arias*, 936 F.3d at 924 (requiring vacatur of
12 remand). Remanding *sua sponte* without allowing the removing party to supplement its
13 notice of removal is not a colorable basis for remand. *Acad. of Country Music*, 991 F.3d
14 at 1070 (reading together 28 U.S.C. §§ 1447(c), 1447(d)).

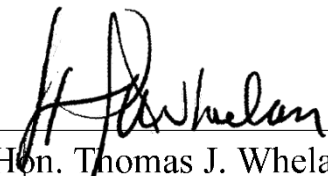
15 Real Time and RRA move for reconsideration subject to Federal Rules of Civil
16 Procedure 59 and 60. In relevant part, Rule 60 permits relief from a final judgment,
17 order, or proceeding based on mistake or any other reason that justifies relief. Fed. R.
18 Civ. P. 60(b)(1), (6). Real Time and RRA have demonstrated that *Acad. of Country*
19 *Music* requires relief from the prior remand order because the Court, on its own,
20 questioned the amount in controversy based on counsel's declaration but did not issue an
21 order to show cause or otherwise permit the removing parties to supplement evidence of
22 the controverted amount as required by *Acad. of Country Music*, 991 F.3d at 1069–70.
23 Accordingly, reconsideration is appropriate under Rule 60(b).

24 Having reconsidered its remand order, the notice of removal, the supplemental
25 evidence of the amount in controversy, and all of the record, the Court concludes that the
26 amount in controversy element is satisfied. First, Plaintiff's Complaint pleads a cause of
27 action, under Cal. Bus. & Prof. Code § 17200, that plausibly places in dispute the
28 \$275,822.11 amount owed on the loan, as well as any additional amount that allegedly

1 unjustly enriched defendants. (*Complt.* [Doc.1-4 at 12–15]). Second, during the
2 proceedings before the state court, the parties stipulated that the disputed loan’s payment
3 to the lender through escrow would allow the sale of the house but would not resolve the
4 dispute between the parties over the pay-off amount of \$287,463.94. (*Stip.* at 3–4.)¹
5 Third, although not required to do so, Plaintiff’s opposition to reconsideration does not
6 argue that less than \$75,000 remains in dispute but instead that the Court should not
7 reconsider its remand at all. (*Oppo.* at 2–4.) Plaintiff does not address the application of
8 *Acad. of Country Music* to this record. The Court concludes the amount in controversy
9 element of diversity jurisdiction is satisfied.

10 For these reasons, the Court must vacate its prior remand order in light of *Academy*
11 *of Country Music*. Having reconsidered the amount in controversy, the Court concludes
12 that the amount in controversy is satisfied. Accordingly, the Court **GRANTS** the motion
13 to reconsider, **VACATES** its prior remand order (Doc. 7), and **ORDERS** that the remand
14 be recalled. Further, the Court **ORDERS** the Clerk to notify the San Diego Superior
15 Court that this Court has resumed jurisdiction over the case as of the date of this Order’s
16 filing. To efficiently manage its docket, the Court reiterates that Plaintiff’s counsel has
17 not moved to withdraw as counsel before this Court. Unless and until such a request is
18 filed and granted, the duties of Plaintiff’s counsel to his client and the Court continue.

19 Dated: July 8, 2024

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21 
22 Hon. Thomas J. Whelan
23 United States District Judge
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26
27 ¹ Although this evidence and information was available at the time of removal but omitted from
28 the notice of removal, the Court agrees with the removing parties that the stipulation may be considered
now as evidence of the amount in controversy under the principles of supplemental evidence explained
in *Acad. of Country Music*, 991 F.3d at 1069–70, and *Arias*, 936 F.3d at 924.