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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

THOMAS E. VAUGHNS;
BESSIE M. VAUGHNS,

Plaintiff(s),

VS.

HOMEWARD RESIDENTIAL, INC.,
F/K/A AMERICAN HOME MORTGAGE
SERVICING, INC.; POWER DEFAULT
SERVICES, INC.; U.S. BANK
NATIONAL ASSOCIATION, AS
TRUSTEE FOR MASTR ADJUSTABLE
RATE MORTGAGES TRUST 2007-1,
MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2007-1; and
DOES 1 through 50, Inclusive,

Defendant(s).

Case No.: 3:13-cv-04846-MEJ

**PLAINTIFFS' MOTION TO REMAND
AND MEMORANDUM OF LAW IN
SUPPORT**

Plaintiffs, THOMAS E. VAUGHNS and BESSIE M. VAUGHNS (the "Plaintiffs"), by and through undersigned counsel and pursuant to 28 U.S.C. §1447, hereby moves this Court for entry of an order remanding the above referenced action to the Superior Court of the State of California, in and for County of Contra Costa, and states:

1. The Plaintiffs filed its Verified Complaint ("Complaint") in the Superior Court of the State of California, in and for County of Contra Costa on or about, September 23, 2013. In its

1 fourteen-count Complaint, the Plaintiffs sought damages, equitable accounting, and injunctive
2 relief pursuant solely to California common law against: the “Loan Servicer” HOMEWARD
3 RESIDENTIAL, INC. F/K/A AMERICAN HOME MORTGAGE SERVICING, INC.,
4 (“HOMEWARD”); “Purported Trustee” POWER DEFAULT SERVICES, INC., (“PDS”); and
5 “Purported Beneficiary” U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MASTR
6 ADJUSTABLE RATE MORTGAGES TRUST 2007-1, MORTGAGE PASS THROUGH
7 CERTIFICATES, SERIES 2007-1, (“US BANK”) Trustee for the MASTR ADJUSTABLE RATE
8 MORTGAGES TRUST 2007-1, (“MASTR TRUST 2007-1”), in its representative capacity, not
9 individually.

10 2. The Plaintiffs are citizens of the State of California.

11 3. HOMEWARD is a Delaware Corporation with its principal place of business in
12 Coppel, Texas; however, HOMEWARD regularly does business in the State of California.

13 4. PDS is also a Delaware Corporation with its principal place of business in Coppel,
14 Texas; however, PDS regularly does business in the State of California.

15 5. US BANK, the Trustee is a national banking association who maintains its
16 principal place of business in the state of Ohio; however, the Trustee regularly does business in the
17 State of California.

18 6. More importantly, however, the Trustee has been sued in this action in its
19 representative capacity as trustee of a trust for which has over 300 beneficiaries/bondholders.

20 7. On October 18, 2013, Defendants filed a Notice of Removal [DE #1] with the
21 Court, alleging that complete diversity exists, based solely on the averments of the citizenship of
22 the Plaintiffs and the Defendants. For the reasons discussed in the accompanying memorandum of
23 law, the citizenship of the members of the MASTR TRUST 2007-1 should not be disregarded in
24 the Court’s diversity of citizenship analysis.

25 8. Because this Court lacks subject-matter jurisdiction, this case should be remanded
26 pursuant to 28 U.S.C § 1447.

27 9. Additionally, the District requests that the Court require the moving Defendants to
28 pay Plaintiffs’ costs and expenses, including attorney’s fees, incurred as a result of the improper

1 removal of this action pursuant to 28 U.S.C §1447(c).

2 **MEMORANDUM OF LAW**

3 **I. Introduction**

4 This an action instituted by the Plaintiffs against Defendants, who are engaged in and
5 continue to engage in violations of California law including but, not limited to: California Civil
6 Code §§ 2924 et seq. 2923.5 et seq. and 2932.5, and unless restrained will continue to engage in
7 such misconduct, and that a public benefit necessitates that Defendants be restrained from such
8 conduct in the future.

9 The Securitized Trust, MASTR TRUST 2007-1 was formed by execution of the Pooling
10 and Servicing Agreement (“PSA”) governed by New York law, dated as of December 1, 2007.
11 Defendants, and each of them, violated the express terms of the PSA which is a Trust Agreement
12 and which, along with another document, the Mortgage Loan Purchase Agreement, is the
13 operative securitization document created by the finance and securitization industry to
14 memorialize a particular securitization transaction.

15 The State Court Action arose out of certain breaches of the parties’ trust agreement which
16 were undertaken by the Trustee, in its representative capacity and at the direction and for the
17 benefit of the bondholders who are the trust’s beneficiaries. Accordingly, by and through their
18 Complaint, the Plaintiffs seek relief pursuant to California law as against the trust itself by
19 instituting the action against the Trustee.

20 The Trustee’s removal of this action which was based solely on diversity pursuant to 28
21 U.S.C. §1332 is not well taken. As set forth more fully herein, the Plaintiffs are citizens of
22 California and the US BANK as Trustee is a citizen of Ohio, Defendants HOMEWARD and PDS
23 are citizens of Delaware, and regularly does business in the State of California. However, as the
24 trust at issue in this action is an unincorporated association, the citizenship of its members must be
25 used to determine the existence of complete diversity.

26 In light of the foregoing, this action lacks the requisite complete diversity of the parties,
27 and, as such, this Court lacks subject matter jurisdiction over this case, as a matter of law.
28 Accordingly, this action must be remanded to the Superior Court of the State of California, in and

1 for County of Contra Costa.

2 **II. Factual Background and Procedural History**

3 This is the case when the only “fault” of the Plaintiffs was to approach HOMEWARD with
4 a loan modification request. The rest of the alleged default was created and orchestrated by
5 HOMEWARD and PDS for the sole purpose of foreclosing on the property and collecting hefty
6 foreclosure-related fees along the way.

7 Plaintiffs defaulted on their loan on or about December 2011 due to experiencing
8 unforeseen financial hardship. They have been paying diligently for 21 years until downturn in
9 their monthly gross income. On or about January 2012 Plaintiffs immediately contacted and
10 initiated loan modification negotiation with HOMEWARD, they believed that their loan servicer
11 would be willing to avoid a foreclosure since they were willing to tender unconditionally but
12 needed the monthly payments restructured to reflect the downturn in their monthly gross income,
13 and reflect current market conditions.

14 On January 5, 2012, Plaintiffs submitted loan modification package to HOMEWARD, and
15 the receipt of said package was confirmed by HOMEWARD’s letters received by Plaintiffs in
16 January and February of 2012.

17 Each letter received by Plaintiffs requested additional documents from them for
18 HOMEWARD to consider them for the loan modification process. Each requested document was
19 timely sent to HOMEWARD per letters instructions.

20 From March 5 to March 26, 2012, Plaintiffs made countless phone calls, sent many
21 documents requested by HOMEWARD agents PAUL HOWARD, WILLIE BROWN, NATE
22 DOE, CHRIS DOE, claiming that the loan modification documents have been received by
23 HOMEWARD, the documents are in review process, everything is fine, and that Plaintiffs will
24 receive the modification.

25 Plaintiffs further allege, that even assured that all requested documents have been received
26 by HOMEWARD, they received letters in March in April of 2012, requesting same information’s
27 and documents to be sent all over again.

28 Plaintiffs complied to HOMEWARD’s requests, and sent once again documents requested

1 by HOMEWARD. Plaintiffs made numerous calls and spoke again with WILLIE BROWN,
2 CHRIS DOE, but all efforts made by Plaintiffs to avoid foreclosure have been stonewalled by the
3 same representatives, who claimed missing paperwork and one excuse after another, and
4 HOMEWARD has shown repeatedly that, although it purports to work with borrowers on loan
5 modifications, it is really only causing borrowers to send in the same prolific paperwork over and
6 over again only to deny the modification and move forward with foreclosure despite borrowers'
7 qualifications.

8 As a result, Plaintiffs were not provided with the specialized assistance and default loan
9 servicing that the lender/servicer was obligated to provide that comported with the Plaintiffs'
10 ability to pay and that served to assist Plaintiffs in their efforts to avoid the default and the
11 acceleration of the subject mortgage debt and foreclosure. Defendant HOMEWARD and/or its
12 agents failed, refused and/or neglected to evaluate the particular circumstances surrounding
13 Plaintiffs' claimed default; failed to evaluate Plaintiffs or the Subject Property; failed to determine
14 the Plaintiffs' capacity to pay the monthly payment or a modified payment amount; failed to
15 ascertain the reason for the Plaintiffs' claimed default, or the extent of the Plaintiffs' interest in
16 keeping the Subject Property.

17 Instead, the purported lender/servicer, was secretly was transferring the Deed of Trust and
18 then proceeding with foreclose of the "Subject Property", without notice to Plaintiffs, in violation
19 of California Civil Code §§ 2923.5, et seq., 2924, et seq., 2932.5.

20 Plaintiffs allege that those Defendants, and each of them, willfully, wrongfully and without
21 justification, and without privilege conducted an invalid foreclosure sale against the Plaintiffs'
22 Subject Property, thereby, slandering Plaintiffs' title thereto.

23 On or about March 29, 2013, Plaintiffs filed action against the Defendants in the Superior
24 Court of the State of California, in and for County of Contra Costa, Case No.: CIVMSC13-00755;
25 case was removed to the United States District Court, for the Northern District of California,
26 Oakland Davison on or about May 10, 2013, Case No.: 4:13-CV-02159 KAW; the Case was
27 dismissed by the Plaintiffs due to offer on the loan modification initiated by Defendants' counsel
28 at the time Mr. John P. Ward with HOUSER & ALLISON, APC.

1 Defendants once again failed and refuse to review Plaintiffs' loan application, which was
2 sent by their counsel in exchange of the dismissal of the previous action.

3 Plaintiffs did not have any other remedy, as they are facing eviction from their residence,
4 that file this instant action, which is once again removed by Defendants to this Court, on the sole
5 basis of alleged diversity jurisdiction under 28 U.S.C. §1332. [DE #1].

6 As set forth more fully below, however, complete diversity among the parties does not
7 exist and therefore remand is necessary and required pursuant to the prevailing statutes.

8 **III. Remand Of This Action To State Court Is Necessary and Proper**

9 **A. Standard for Remand**

10 The burden for establishing federal subject matter jurisdiction rests with the party bringing
11 the claim. *See, e.g., Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1247 (11th Cir.
12 2005). Moreover, on a motion to remand "the District Court must evaluate the factual allegations
13 in the light most favorable to the Plaintiff and resolve any uncertainties about state substantive law
14 in favor of Plaintiff." *Crowe v. Coleman*, 113 F. 3d 1536. 1538 (11th Cir. 1997). *See also*,
15 *University of South Alabama v. The American Tobacco Company*, 168 F.3d 405, 411 (11th
16 Cir.1999) (stating that due to federalism concerns Courts are to strictly construe removal statutes
17 resolving all doubts about jurisdiction in favor of remand to the State Court); and *Tran v. Waste*
18 *Management, Inc.*, 290 F.Supp. 1286, 1290 (M.D. Fla. 2003) (stating that the limited federal
19 jurisdiction of Courts warranted that *all* uncertainties concerning the propriety of removal
20 jurisdiction should be resolved in favor of remand, emphasis added).

21 The US BANK as "Trustee" has not and cannot satisfy this burden. Therefore, this action
22 should be remanded to the State Court.

23 **B. This Court Lacks Subject Matter Jurisdiction Over This Action**

24 Federal Courts are tribunals of limited subject matter jurisdiction. *See, e.g., Kirkland v.*
25 *Midland Mortg. Co.*, 243 F.3d 1277 (11th Cir. 2001). Most State Courts are Courts of general
26 jurisdiction, and the presumption is that they have subject matter jurisdiction over any controversy
27 unless a showing is made to the contrary. *See, e.g., Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1187-
28 1188 (2010) and *Underwriters at Lloyd's, London v. Osting-Schwinn*, 613 F.3d 1079, 1086 (11th

1 Cir. 2010). The Federal Courts, on the other hand, cannot be Courts of general jurisdiction. They
2 are empowered to hear only those cases that (1) are within the judicial power of the United States,
3 as defined in the Constitution, and (2) that have been entrusted to them by a jurisdictional grant by
4 Congress. *See, e.g., Sweet Pea Marine*, 411 F.3d at 1247.

5 As a matter of law, however, a State Court action may be removed to Federal Court where
6 the District Court has original jurisdiction – actions against foreign states, actions arising under the
7 Constitution, laws or treaties of the United States, and/or actions where the matter in controversy
8 exceeds the sum of \$75,000, exclusive of interest and costs, and is between, in pertinent part,
9 citizens of different states. *See* 28 U.S.C. §§ 1330, 1331, 1332, and 1441(a) (2011). The latter
10 ground for original jurisdiction by the Federal Courts, however, requires *complete* diversity
11 between the parties. *See Carden v. Arkoma Associates*, 494 U.S. 185, 187 (1990); *Bevels v.*
12 *American States Insurance Co.*, 100 F. Supp. 2d 1309, 1311 (M.D. Ala 2000). Specifically, if any
13 Defendant is a citizen of the same state as any Plaintiff, the parties are not sufficiently diverse to
14 support a claim of original jurisdiction by the federal courts under 28 U.S.C. §1332. *See*
15 *University of South Alabama*, 168 F.3d at 412.

16 In the case at hand, Defendant sought removal of this action pursuant to 28 U.S.C § 1332
17 alleging that the Court has original jurisdiction due to diversity among the parties and that the
18 amount in controversy exceeds \$75,000. [DE #1]. However, based on the facts as alleged in the
19 Complaint there is *not* complete diversity of citizenship among the parties. Therefore, this action
20 was improperly removed. As a result, remand by the Federal Court is necessary and proper given
21 the Court’s lack of subject matter jurisdiction *See* 28. U.S.C . § 1447 (c) (“If at any time before
22 final judgment it appears that the District Court lacks subject matter jurisdiction, the case *shall* be
23 remanded,” emphasis added).

24 **C. To Determine Diversity The Court Must Look To The Citizenship Of The**
25 **Bondholders, Not The Trustee**

26 The Supreme Court, in *Carden v. Arkoma Associates*, 494 U.S. 185, 195 (1990), held
27 unequivocally that citizenship of an entity other than a corporation is determined by the citizenship
28 of *every member* of the entity. The *Carden* Court addressed the question whether any other

1 artificial entity created under state law, other than a corporation, “may be considered a citizen of
2 the State under whose laws it was created.” *Id.* at 187. Justice Scalia, writing for the majority,
3 noted that the Supreme Court has long resisted extending the “citizenship status” afforded to
4 corporations to other artificial entities, relying instead on the citizenship of its all its members to
5 determine citizenship. *Id.* at 189. The Court declined to extend citizenship stating, “[w]e adhere to
6 our oft-repeated rule that diversity jurisdiction in a suit by or against the entity depends on the
7 citizenship of all the members.” *Id.* at 195-196 (citing *Chapman v. Barney*, 129 U.S. 677, 682
8 (1889)).

9 The Defendant in *Carden* attempted to argue that the Court’s ruling in *Navarro Savings*
10 *Ass’n v. Lee*, 446 U.S. 458 (1980) was an exception to this long standing rule and would permit
11 diversity jurisdiction to be determined by only certain members of an artificial entity. In rejecting
12 that proposition, Justice Scalia limited the *Navarro* holding to the facts of that case and implicitly
13 held that the unincorporated association rule equally applied to trusts. *See id.* at 191.

14 Thereafter, the unincorporated association rule was explicitly applied to a trust by the
15 Eleventh Circuit in *Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334 (11th Cir.
16 (Fla.) 2002). The *Riley* Court, relying on *Carden*, held that a business trust would be deemed, for
17 diversity purposes, a citizen of *each* state in which it had *at least one shareholder*. *See id.* at 1338.
18 Moreover, the *Riley* Court explicitly addressed the applicability of *Navarro* to the issue of
19 determining a trust’s citizenship for the purpose of diversity jurisdiction, and relying on *Carden*,
20 rejected its application to trusts. In the Eleventh Circuit¹, a business trust “is not to be accorded
21 the status of a corporation for diversity purposes. Instead like, the limited partnership in *Carden*,
22 it is to be treated as a citizen of each state in which one of its shareholders is a citizen. *Id.* at 1339.

23
24 ¹ The Eleventh Circuit, in *Lloyd’s*, 613 F.3d at 1087, *supra*, found that the Court in *Carden* provided “a
25 general rule: every association of a common-law jurisdiction other than a corporation is to be treated like a
26 partnership.” *Id.* (quoting *Indiana Gas Co. v. Home Ins. Co.*, 141 F.3d 314, 317 (7th Cir.1998) (emphasis in
27 original) and *Carden*, 494 U.S. at 190, 110 S.Ct. 1015). The *Lloyd’s* court found further that the rule applies
28 without regard to the corporation-like features or other business realities of the artificial entity. *Id.* at 1087-88
(citing *United Steel Workers of America, AFL-CIO v. R.H. Bouligny, Inc.*, 382 U.S. 145 at 149–51 (1965)).
Further, the Eleventh Circuit held that a federal court, therefore, *may not* avoid the *Carden* rule simply by
characterizing one member of an unincorporated association as the only “‘real party’ to the controversy,” an
approach advocated by the dissent in *Carden*, 494 U.S. at 200, 110 S.Ct. 1015 (O’Connor, J., dissenting), and
explicitly rejected by the majority. *Id.* at 1088 (quoting *Carden*, 494 U.S. at 188).

1 The *Carden* decision was again followed in *JMCC 2005-CIBC 12 Collins Lodging, LLC v.*
2 *Philips South Beach, LLC*, 2010 WL 4317000 (S.D. Fla. Oct. 22, 2010). In *Collins*, the Southern
3 District found that the Plaintiff, a special purpose entity, is an artificial entity other than a
4 corporation and as such its citizenship for purposes of determining diversity depends on the
5 citizens of its own members. The *Collins* Court confirmed that unincorporated associations, like
6 trusts, remain mere collections of individuals and each individual's citizenship determines and
7 potentially defeats diversity jurisdiction. *See id.* at *2.

8 The Plaintiffs maintain no claims against US BANK, individually. Rather, *all* of the
9 claims in the Complaint are brought against US BANK, *as Trustee*. In essence, these claims are
10 against the Indenture Trust, by and through its duly authorized representative – the Trustee – and
11 the Indenture Trust's citizenship is not wholly diverse from the Plaintiffs.

12 In light of the foregoing, it is clear that, for purposes of the diversity jurisdiction analysis;
13 this Court should look to the citizenship of the bondholders rather than that of the US BANK, *as*
14 *Trustee*.

15 For example, in *Argo Global Special Situations Fund v. Wells Fargo Bank, N.A.*, 2011 WL
16 3837079 *3-6 (D. Minn. Aug. 30, 2011), the District Court found the named trustee to be a
17 nominal defendant, and not a real party in interest, where plaintiffs' remedies would merely "flow
18 through" it as indenture trustee, and were trustee was named "solely to facilitate the mechanics of
19 the relief the Plaintiffs seek." In the present action, the Trustee is exactly such a conduit.

20 Yet even more recently, the Southern District of Alabama, found US BANK – the same
21 entity as is sued in its trustee capacity in this action – not to have been the real party in interest for
22 purposes of its diversity analysis. *See U.S. Bank Nat'l Ass'n v. Cooperative Dist. of the City of*
23 *Spanish Fort – Hgwy 98 Public Fac.*, 2011 WL 4499309 *5-6 (S.D. Ala. Sept. 29, 2011). In
24 support, the *Spanish Fort* Court found that US BANK's "authority to direct the bond issuer is both
25 hollow and derivative, inasmuch as US BANK serves as the mouthpiece of the certificate holders
26 and acts only at their affirmative direction." *Id.* at *6.

27 US BANK has cited *no* legal support for its proposition that a Plaintiffs' relationship with
28 beneficiaries of a HSI MASTR TRUST 2007-1 is a factor at all in determining whether a trustee

1 exerts significant control over the trust in order to ignore the citizenship of trust members.

2 In light of the foregoing, US BANK, *as Trustee* is a “naked trustee,” and therefore is not
3 the real party in interest in this action. Accordingly, this Court must still look to the citizenship of
4 the bondholders with respect to the completeness of diversity in this action.

5 **IV. Conclusion**

6 For the foregoing reasons, Plaintiffs’ Motion for Remand should be granted, and this
7 matter should be remanded to the Superior Court of the State of California, in and for County of
8 Contra Costa.

9 WHEREFORE, Plaintiffs, THOMAS E. VAUGHNS and BESSIE M. VAUGHNS,
10 respectfully request that the Court enter an order remanding this case to the Superior Court of the
11 State of California, in and for County of Contra Costa, for attorneys’ fees and costs incurred
12 because of the wrongful removal of this action, and for such other and further relief as this Court
13 deems just and proper.

14 Respectfully submitted,

15 DATED: October 31, 2013

LAW OFFICES OF TIMOTHY L. MCCANDLESS

16 /s/ Timothy L. McCandless
17 Timothy L. McCandless, Esq.
18 *Attorney for Plaintiff(s):*
Thomas E. Vaughns; Bessie M. Vaughns

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