NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

ANNE MERCY KAKARALA

Petitioner

v.

WELLS FARGO BANK N.A.

Respondent

On Petition for a Writ of Certiorari to the Ninth Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Vincent L. Rabago
Counsel of Record

VINCE RABAGO LAW OFC. PLC
2135 E. Grant Road
Tucson, AZ 85719
(520) 955-9038
(888) 371-4011 (fax)
Vince@VinceRabagoLaw.com

November 25, 2015

QUESTIONS PRESENTED

In *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 342 (1976), abrogated in part on other grounds by *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996), despite the clear language in 28 U.S.C. 1447(d) prohibiting appeals of District Court remand orders to state court, this Court interpreted the law to allow such appeals. The thorough dissent by former Chief Justice Rhenquist, joined by Justices Burger and Stewart, challenging the holding and rationale has not been answered. 517 U.S. at 354-361.

In *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009), Justice Scalia's concurring opinion expressed that the "decision in *Thermtron* was questionable in its day and is ripe for reconsideration in the appropriate case." 556 U.S. at 642. Justice Stewart's concurrence noted that if he "were writing on a clean slate, he would adhere to the statute's text." *Id.* Justice Breyer, joined by Justice Souter, cited the anomalous and harmful results caused by *Thermtron*, but instead suggested expert review and statutory revision to fix the problem. *Id.*

The questions presented are:

1. Whether this Court should reconsider and overrule the case *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 342 (1976), and its progeny, that allow for appeals of remand orders, in light of the express Congressional proscription of appeals of remands in 28 U.S.C. § 1447(d).

2. Whether District Courts should be able to remand a statutorily defective removal despite facially apparent diversity jurisdiction where the removing party has abandoned any claim of diversity by engaging in state court litigation for more than half a year while diverse, and the record suggests that the removal was abusive, dilatory forum shopping.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Anne Mercy Kakarala was the Appellee/Plaintiff below. Although born and raised in India, Ms. Kakarala immigrated to the United States and is a citizen and resident of Tucson, Arizona.

Respondent is Wells Fargo Bank N.A. ("Wells Fargo Bank"). Wells Fargo Bank N.A. is national banking association, with its main office in North Dakota for federal banking organizational purposes. Wells Fargo Bank states that it has a parent corporation, WFC Holdings Corporation, which Wells Fargo has stated is a privately held corporation, and that no parent corporation or publicly held corporation owns 10 percent or more of its stock.

TABLE OF CONTENTS Page

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Statutes

Rules

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioner Anne Mercy Kakarala respectfully requests this Court grant a Petition for a Writ of Certiorari to review the Ninth Circuit's decision reversing the District Court's order remanding her state claims to state court.

OPINIONS BELOW

The Ninth Circuit Court of Appeals' unpublished memorandum decision was decided on August 31, 2015, and appears in the Appendix ("App.") at 1a-5a.

JURISDICTION

The Ninth Circuit Court of Appeal's Memorandum Decision was issued on August 31, 2015. The Court has jurisdiction under 28 U.S.C. §1254(1). The Ninth Circuit claimed jurisdiction pursuant to 28 U.S.C. § 1291.

STATUTORY PROVISIONS

The federal statute 28 U.S.C. § 1447(d), prohibiting appeals of remand orders, is the primary issue here. This provision, reproduced in the Appendix, provides that:

> "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise."

STATEMENT OF THE CASE

Petitioner Anne Mercy Kakarala is a U.S. citizen who immigrated from India, and lives in Tucson, Arizona. In 2009, as a *pro-se* Plaintiff, Ms. Kakarala sued Wells Fargo Bank N.A. in state court in Arizona for unlawfully foreclosing and selling her home despite representing that it would not foreclose while she visited family in India, so long as she made some payments beforehand, which she did. The lawsuit alleged a variety of state law claims arising out of the unlawful foreclosure. Appendix ("App.") 13a-16a.

The parties Ms. Kakarala and Wells Fargo Bank N.A. were completely diverse at the outset of the state court lawsuit. App. 4a, 13a-16a, 38a-40a. Wells Fargo did not invoke federal removal jurisdiction on diversity grounds at the outset of the case as required by 28 U.S.C. § 1446(b).

Instead, Wells Fargo Bank answered the case and litigated for more than half of a year in state court. App. 8a, 11a, 17a-20a. The case was active during that time in state court, with over thirty (30) filings. App. 11a-12a.

After these months of litigation, Ms. Kakarala moved to amend the state lawsuit to add federal claims. App. 21a-23a. On March 31, 2010, Respondent Wells Fargo filed its response stating that it did not oppose the amendment and that it intended to move to dismiss the claims and would respond to the Amended Complaint once filed in state court. App. 24a-25a. The next day, April 1st, 2010, Respondent's counsel received a Trial Notice from the state court judge, which was filed on March 29, 2010. App. 26a-27a. After the state judge issued this order setting the case for trial, on April 12, 2010, and despite representing it

would respond in state court to the Amended Complaint with a motion to dismiss, Wells Fargo instead removed the case based solely on federal question grounds due to the proposed amendment, claiming the case was not removable when originally filed. App. 7a-11a, 26a-27a. Wells Fargo Bank did not invoke federal diversity jurisdiction grounds when removing to District Court. App. 7a-11a. Wells Fargo did not even wait for the Amended Complaint to be filed, and no Amended Complaint adding federal claims was ever filed in state court. App. 30, fn. 1; App. 34a.

After the case was removed, *pro-se* Petitioner Kakarala timely filed a motion to remand the case back to state court, asking the District Court to stop this "unjustice [sic],"and that Wells Fargo was removing the case to cause more delay and pain, and she would provide more details. App. 28a. Wells Fargo responded, opposing the motion for remand, claiming the plaintiff had not argued specific legal grounds. App. 29a-31a. Unfortunately, the District Court did not rule on the timely request. Federal litigation ensued with Ms. Kakarala representing herself until May 2011.

Ms. Kakarala moved to amend the lawsuit in federal court to add federal claims, noting her motion to amend in federal court was contingent on whether the court retained the case, explaining she had sought remand. App.32a. Wells Fargo opposed the motion because the Amended Complaint had not been filed, and in Petitioner's reply to the opposition explaining why an amended complaint had not been filed in either the state court or District Court, the Petitioner noted that she was still waiting on the District Court's order to see if the judge accepted her request to remand the case. App. 33a-34a.

In federal court, Robins Nest LLC appeared for the first time as a party, filed an answer before it was added as a party, and then later successfully moved for summary judgment to dismiss itself from the case. App. 40a-41a.

After Ms. Kakarala amended her *pro se* complaint, Wells Fargo moved to dismiss the case under Federal Rule of Civil Procedure 12(b)(6), on the basis the amended complaint failed to adequately state claims for relief. App. 5. Ms. Kakarala obtained counsel (Counsel of Record) to respond to the Motion to Dismiss. Initially, the District Court dismissed the entire Amended Complaint – both federal and state law claims. App. 5a-6a.

However, though counsel, Ms. Kakarala filed a partially successful Motion to Amend/Alter the Judgment under Rule 59(e) of the Federal Rules of Civil Procedure. Ms. Kakarala argued the District Court should: (1) reverse the order of dismissal as it had misapprehended the facts by not giving sufficient liberality to the *pro se* pleadings of a foreign-born plaintiff in her use of language; (2) withdraw dismissal of all state law claims and remand them to state court because the District Court had not yet ruled on a timely filed Motion to Remand; and (3) alter the judgment on at least the state law claims, and remand, as the complaint had adequately alleged valid state law claims, including contract claims, etc. App. 35a-36a.

The District Court granted the Rule 59(e) motion in part, remanding all state law claims on the basis Ms. Kakarala had presented a plausible argument the state claims should have been remanded. The District Court judge did not alter his judgment dismissing the federal claims. App. 5a-6a.

For the first time after nearly three years of litigation Wells Fargo now claimed that diversity jurisdiction existed, and this required the District Court to decide the state law claims, and that any remand order was an abuse of discretion if the parties were diverse. Wells Fargo appealed on these grounds. App. 1a-4a.

This Court may take judicial notice the state court case on remand is active and pending in Pima County Superior Court Case No. C20097602, with litigation postponed during Wells Fargo Bank's appeal and now awaiting resolution of this Petition for Writ of Certiorari.

Ms. Kakarala argued on appeal that the Ninth Circuit did not have jurisdiction, citing 28 U.S.C. 1447(d), and timely objecting that *Thermtron* and its progeny were wrongly decided, and that the appeal should be dismissed. Ms. Kakarala argued Wells Fargo Bank had waived the ability to belatedly invoke Diversity Jurisdiction in light of its affirmative choice to litigate in state court for more than half of a year before removal. Ms. Kakarala also argued the initial removal was defective, because Wells Fargo was required to seek removal when diversity jurisdiction first existed, and that the removal effort was merely abusive forum shopping against a *pro se* plaintiff -- prompted after the state judge set the case for trial. By declining to invoke diversity at the outset of the case when both parties were completely diverse – or later when removing the case – Wells Fargo Bank forfeited its claim of diversity raised after the District Court ordered a remand for the state law claims. Ms. Kakarala argued the law did not give Wells Fargo the right to seek a second bite at the removal apple under the circumstances. App. 37a-44a.

The Ninth Circuit held that it had jurisdiction under 28 U.S.C. § 1291, despite 28 U.S.C. §1447(d), concluding that *Carlsbad* (the progeny of *Thermtron*) holds appeals of remands are proscribed only in remands involving subject matter jurisdiction or defects in removal procedure. It held that an untimely removal was merely a procedural defect, not a jurisdictional one, and was waived. The Ninth Circuit faulted Ms. Kakarala for not raising in her timely motion for remand Wells Fargo's failure to remove on diversity at the outset of state litigation, holding the argument was now waived (even though Wells Fargo never broached diversity until years later). The Ninth Circuit ignored Petitioner's objection to the abusive and dilatory removal expressed in in her timely filed Motion to Remand. App. 1a-5a.

The Ninth Circuit concluded that diversity jurisdiction existed at the time the District Court dismissed federal claims, and because of this conclusion, determined that the District Court had no discretion whatsoever to remand the state law claims, and that the District Court was obligated to decide the state law claims. App. 1a-5a.

This timely Petition for Writ of Certiorari followed.

REASONS FOR GRANTING THE PETITION

RULE 10(c) of the Rules of the Supreme Court:

Rule 10(c), of the Rules of the Supreme Court of the United States, permits certiorari where:

[A] state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

I. THE *THERMTRON* CASE IS RIPE FOR RECONSIDERATION AND SHOULD BE OVERRULED: IT IS INCONSISTENT WITH THE PLAIN TEXT OF 28 U.S.C. § 1447(D), WAS ERRONEOUSLY DECIDED, LEADS TO ANOMALOUS RESULTS, AND THERE IS WIDESPREAD JUDICIAL CONFUSION ABOUT THE REVIEWABILITY OF REMANDS.

Petitioner respectfully seeks a Petition for a Writ of Certiorari to reconsider the erroneous precedent of *Thermtron* and its progeny, such as *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009), etc. *Thermtron* is ripe for reconsideration and should be overruled.

This Court should reconsider and overrule *Thermtron* because the holding is inconsistent with the plain statutory language of 28 U.S.C. § 1447(d) and its historical roots, and is contrary to the statutory purpose to prevent delay from appeals and interruption of litigation of the merits of a case. Instead of reducing the docket, *Thermtron* has increased appellate review of remand orders, and such appeals have only increased delay.

Thermtron has also muddied the law of removal and appellate jurisdiction, caused widespread judicial confusion and uncertainty regarding the reviewability of remands, and the holding leads to anomalous, unsatisfactory results.

In *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009), Justice Scalia's concurring opinion stated that the "decision in *Thermtron* was questionable in its day and is ripe for reconsideration in the appropriate case." 556 U.S. at 642. Justice Stewart's concurrence noted that if he "were writing on a clean slate, he would adhere to the

statute's text." *Id.* Justice Breyer, joined by Justice Souter, cited examples of anomalous results flowing from the *Thermtron* holding. Justice Breyer suggested expert review and statutory revision to fix the problem. *Id.* at 644-645.[1]

The time is ripe for reconsideration of *Thermtron* and its progeny. Enforcing the express statutory provision against allowing appeals of remand orders would restore the law to its correct place, and provide needed clarity on the reviewability of remand orders on a national level.

"There is widespread judicial confusion regarding reviewability of remand orders." Thomas Lamprecht, *How Can it Be So Wrong When it Feels So Right? Appellate Review of Remand Orders Under the Securities Litigation Uniform Standards* Act, 50 Villanova L. Rev. 305 (2005); see Thomas R. Hrdlick, *Appellate Review of Remand Orders: Are They Losing a Certain Appeal?* Marquette Law Review, Vol. 82, Issue 3 (Spring 1999). "'Straightforward' is about the last word judges attach to § 1447(d) these days…." *In re Amoco Pretroleum Additives Co.*, 964 F.2d 706, 708 (7th Cir. 1992). *Thermtron* has also opened:

> the docket of the intermediate appellate courts to a variety of new appeals. Defendants who wish to delay litigation on the merits by contesting remand and other collateral orders have shown a marked propensity to exploit opportunities for as-of-right appellate review.

---

[1] In *Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224 (2007), which concluded § 1447(d) precluded appeal, Justice Breyer's dissent, joined by Justice Stevens, acknowledged the argument of a § 1447(d) statutory bar to appellate review was a "strong one" but went on to note "the Court has found exceptions to § 1447's seemingly blanket prohibition," citing *Thermtron* and later cases.

James Pfander, *Collateral Review of Remand Orders: Reasserting the Supervisory Role of the Supreme Court,* Univ. of Penn. L. Rev., Vol. 159, No. 2 (Jan. 2011).

In the Seventh Circuit, Judge Richard Posner has suggested that the underlying method of interpretation in examining whether a remand was colorably based on subject matter jurisdiction – a rule on which *Thermtron* is based, "is semantically correct but reveals the limitations of literalism as a method of legal interpretation." Judge Posner further noted that this Court apparently has "qualms about the [*Thermtron*] rule." *Townsquare Media, Inc. v. Brill*, 652 F.3d 767, 772 (7th Cir. 2011). In that case, after a very complicated analysis had to be undertaken as to the basis for the remand, "at long last," that circuit court decided that an appeal of a remand in a bankruptcy context was not permitted. *Id.* at 776.

More recently in 2015, a different panel of the Seventh Circuit noted that *Thermtron* "and a few other decisions [of the Supreme Court] that went out of their way to find exceptions to § 1447(d) are not admired these days at the Supreme Court," and stated that the holding of *Thermtron* "is not supported by the text of § 1447(d) and does not fit comfortably with the current justices approach to statutory interpretation." *Junhong v. Boeing Co.*, 792 F.3d 805, 812 (7th Cir. 2015) (noting Supreme Court's "restiveness" with the latitude taken by *Thermtron*). In *Junhong*, 792 F.3d at 812, the court cited *Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224 (2007) as "strongly suggesting that *Thermtron* was wrongly decided" and *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009) for its "concurring opinions disparaging *Thermtron*."

The underlying case presents a compelling reason to conclude that 28 U.S.C. § 1447(d) means what it says.

Here, the Respondent was allowed to appeal a remand order using a belated claim of diversity jurisdiction despite having previously forfeited any such claim of diversity by litigating for more than half a year in state court while the parties were completely diverse. When Respondent removed the case on federal question grounds, it was untimely and statutorily improper, and the record suggested abusive forum shopping was occurring after the Respondent indicated it would continue litigating in state court after federal claims were added, but removed just after the case was set for trial. App. 24a-27a.

Although the removal was defective and should have been remanded at the outset, a timely motion to remand by the *pro se* Petitioner was overlooked. Petitioner argued the removal was abusive and dilatory. App. 28a. After the District Court initially dismissed all claims, it corrected the situation to amend its decision and while not altering its dismissal of federal claims, it amended the judgment to not dismiss the state claims and remanded them to state court on the basis of the plausible argument that the state claims should have been remanded. Only then did Respondent raise a claim of "diversity jurisdiction."

On appeal, the Ninth Circuit cited diversity at the end of the case as controlling, and ignored the untimely, abusive and dilatory removal violating the removal statutes in the first place. This is yet another example of a wrong and anomalous result from *Thermtron*, where an appeal was allowed, and the eventual appellate decision -- finding abuse of discretion in the remand order -- was an erroneous conclusion in an appeal that should have been precluded.

The Ninth Circuit appeal was thus based on a belated claim of diversity, an issue the Respondent forfeited due to its affirmative decision to litigate in state court, and in a case where the removal was defective and improper, and challenged, but not ruled upon until later. Respondent argued diversity jurisdiction – no matter what– could not be waived and that the District Court had an unflagging obligation to decide the case and could not remand.

What Respondent Wells Fargo and the Ninth Circuit ignore is that a party though its conduct can abandon or forfeit the ability to invoke a statutory right. Removal jurisdiction is a creature of statute.

When Wells Fargo did not timely seek removal based on diversity, it did not have the statutory right to remove because it had not removed within 30 days of the initial lawsuit where both parties were diverse. When removing, Wells Fargo falsely claimed the "case as stated by Plaintiff's Complaint dated September 18, 2009 was not removable. See Exhibits A-3 and A-5." App. 7b. A review of those exhibits proves otherwise. App. 26a-27a. When the District Court dismissed federal claims and revisited whether removal was proper, the District Court should have been empowered to look at the circumstances of the removal and decide the state claims should have been remanded.

The removal statute, 28 U.S.C. § 1441(a), requires that a case "be fit for federal adjudication at the time the removal petition is filed." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 73 (1996). The removability of a case "depends upon the state of the pleadings and the record at the time of the application for removal." *Francis v. Allstate Ins. Co.*, 709 F.3d 362, 367 (4th Cir. 2013) (quoting *Alabama Great S. Ry. Co. v. Thompson*, 200 U.S. 206, 216 (1906)). In

determining the question of removability, the reviewing Court must look at the situation as it existed at the time the petition for removal was presented in the State Court. *Madisonville Traction Co. v. Saint Bernard Mining Co.*, 196 U.S. 239, 244 (1905). Thus, it is the time of filing, and not later developments including the filing of amended complaints in federal court, that determine removability. *Pullman Co. v. Jenkins*, 305 U.S. 537, 538 (1939) (amended complaint should not have been considered by Ninth Circuit). The basis for federal jurisdiction must be apparent from the face of the plaintiff's properly pleaded complaint. *Caterpillar Inc. v. Williams*, 482 U.S. at 392.

The Ninth Circuit focused primarily on the diversity status of the parties at the time of dismissal, instead of fully examining jurisdiction at the time of removal.

The record at the time of filing showed not just an untimely, and thus, defective removal, it showed there was not even an actual complaint properly filed in state court alleging the federal grounds on which removal was purportedly based. Respondent not only litigated in state court for a substantial period despite obvious diversity, it even consented to the filing of federal claims in state court, and represented to the state court its intent to continue litigating there against any newly added federal claims with a motion to dismiss such claims. The removal came only after the state judge set the case for trial. This record showed abusive, dilatory forum shopping.

The Ninth Circuit ignored any argument or consideration of those facts, and cited the apparent "diversity jurisdiction" as controlling. This is yet another example of an anomalous result flowing from *Thermtron* where an appeal of a remand was allowed, and the

appellate decision -- finding abuse of discretion in the District Court's remand -- itself was an erroneous appellate conclusion in an appeal that should have been precluded.

Allowing for an appeal of the remand under these circumstances effectively sanctioned dilatory and abusive forum–shopping conduct against a *pro se* plaintiff, and upheld a defective removal by a sophisticated defendant.

The holdings of *Thermtron* and its progeny like *Carlsbad* have so restricted 28 U.S.C. 1447(d), as to allow for appeal of the remand in face of a dilatory and untimely removal against a *pro se* plaintiff. It has delayed the Petitioner's ability to seek justice, claims made by Petitioner at the time of removal years ago, effectively sanctioning delay from appeals of remand orders while increasing the appellate burden of the federal courts.

By allowing for an appeal of a remand order, the Ninth Circuit has also effectively sanctioned the ability of a defendant to obtain a second bite of the removal apple, where it later successfully claims on appeal that diversity jurisdiction always bars remand, even when the defendant forfeited any claim to remove based on diversity jurisdiction by litigating in state court when the parties were diverse.

Now, the Ninth Circuit concludes that a District Court has no discretion to remand state claims under such circumstances, and is obligated to resolve state claims. Despite Petitioner arguing that removal was abusive and for dilatory purposes, the Ninth Circuit did not properly evaluate jurisdiction at the time of removal.

The Ninth Circuit provided for an appeal, thus allowing a sophisticated defendant to entirely ignore complete diversity jurisdiction while in state court, instead

of filing for removal at the outset of the state lawsuit as the defendant was required to do, under 28 U.S.C. § 1446(b).

That provision sets forth a procedure for removal providing one of two thirty-day windows during which a case may be removed: 1) during the first thirty days after the defendant receives the initial pleading or 2) during the first thirty days after the defendant receives a paper from which it may first be ascertained that the case is one which is or has become removable, but **only if the case stated by the initial pleadings is not removable.** *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 692-695 (9th Cir. 2005) (emphasis in original) (citing 28 U.S.C. § 1446(b)).

In this case, the appeal could potentially determine whether Petitioner can seek any relief on her state claims. It is Wells Fargo's position that on returning to District Court from the Ninth Circuit, the entire case has already been decided against Petitioner as the result of the initial dismissal of the state claims, before the judge withdrew its judgment and amended the judgment to remand the state claims. Although Petitioner disagrees, it is Respondent's view that the case is effectively over, terminated in its favor. Whether an appeal is permitted may dictate whether the state case may proceed or whether any relief remains in District Court, if the Ninth Circuit's ruling stands.

Finally, one of the primary purposes of § 1447(d) is to prevent dilatory delay of consideration of the merits of claims by allowing appeal of remand orders to state court. *United States v. Rice*, 327 U.S. 742, 751 (1946) (noting purpose against "interrupt[ion] of the litigation of the merits of a removed cause by prolonged litigation of questions of jurisdiction").

Petitioner Kakarala filed suit in state court in October 2009 and Wells Fargo removed in April 12, 2010. In 2013, the offending forum shopper was allowed to appeal despite the clear language of 28 U.S.C. § 1447(d), and once again delay the plaintiff's quest for justice concerning her unlawful foreclosure. It is now 2015, more than 6 years after her *pro se* state tort case commenced. This dilatory abuse of forum shopping through removal is what Petitioner sought to avoid when she timely requested remand in 2010. The appeal delayed the case even more.

This additional delay from appellate litigation over remand and jurisdiction is the type of interruption of the consideration of a case on the merits that the § 1447(d) statutory bar to appeals was ostensibly designed to prevent. The Petition for Writ of Certiorari should be granted.

II. DISTRICT COURTS SHOULD BE ABLE TO REMAND BASED ON A STATURORILY DEFECTIVE REMOVAL DESPITE FACIALLY APPARENT DIVERSITY JURISDICTION WHERE A REMOVING PARTY ABANDONS ANY CLAIM OF DIVERSITY BY ENGAGING IN STATE LITIGATION FOR MORE THAN HALF A YEAR WHILE DIVERSE, AND THE RECORD SUGGESTS THE REMOVAL WAS ABUSIVE, DILATORY FORUM SHOPPING.

This Court should conclude District Courts can remand a statutorily defective removal despite facially apparent diversity jurisdiction where the removing party abandoned any claim of diversity, and the record suggests that the removal was abusive, dilatory forum shopping.

Here, a sophisticated corporate defendant completely diverse to a *pro-se* plaintiff chose to litigate in state court without seeking removal on diversity grounds. The defendant consented to the filing of a proposed amendment to include federal claims, noting it would move for dismissal there. Then, after the state judge set the case for trial, the defendant defectively removed in an untimely manner on federal question grounds, citing the proposed amendment.

This Court should clarify when a District Court may remand a case where diversity jurisdiction ostensibly exists but the party improperly invokes removal jurisdiction to forum shop, after previously consenting to state jurisdiction and litigating in state court despite complete diversity.

Despite this record, the Ninth Circuit concluded the arguments were waived and that the District Court abused its discretion to remand because diversity existed at the time of the remand, deciding the remand was appealable. The Ninth Circuit concluded a defective removal procedure barring appeal does not include the circumstances herein.

However, it is always a federal court's obligation to consider jurisdiction – with some exceptions – based on the time of filing of the removal when the case first appeared in federal court. *Wisc. Dept. of Corrs. v. Schacht*, 524 U.S. 381, 391 (1998). The Ninth Circuit only partly considered the remand motion, and did not consider the record at time of filing, as required, to determine if the remand was proper.

Caterpillar does not dictate against review. *Caterpillar* provided an "unremarkable application" of the established exception that when a non-diverse party is dismissed as a way of curing a jurisdictional defect, such an after-the-fact circumstance is an exception to the time-of-filing rule, and there an appeal was permitted, but did not

require dismissal in circumstances where the case had been tried to a verdict, using state rules of decision, making considerations of finality, efficiency, and economy overwhelming. *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U. S. 567, 573-575 (2004). That did not happen here, as there was no properly added non-diverse party destroying jurisdiction in state court at the time of removal.

Moreover, the case here was not tried to a verdict, and instead was dismissed on a motion to dismiss based on the bare allegations in an Amended Complaint. Ultimately, *Caterpillar* only resolved that a statutory defect in removal "did not *require* dismissal once there was no longer any jurisdictional defect." *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U. S. at 574. In contrast, this case presents the question of whether a district *may* remand after a statutorily defective and abusive, dilatory forum-shopping removal, and whether an appeal is permitted.

The Ninth Circuit's decision holds that district courts have no discretion to remand if the face of the record suggests diversity jurisdiction, irrespective of other circumstances like the ones presented here, apparently creating a new exception to the time-of-filing requirement.

However, *Things Remembered v. Petrarca*, 516 U.S. 124, illuminates here that an untimely removal in violation of the statutes is "precisely" the sort of defect for which remand may be ordered pursuant to § 1447(c). 516 U.S. at 128. *Things Remembered* held that this sort of defect may provide for remand, and if so, the case is not appealable. *Id.* Therefore, the Ninth Circuit erroneously concluded that an untimely removal is merely a procedural violation that was purportedly "waived" by a *pro se* Petitioner due to the lack of specific argumentation in her Motion for Remand.

In *Grupo Dataflux v. Atlas*, this Court quoted the rule articulated by Chief Justice Marshall in 1829: "[w]here there is *no* change in party [which thereafter makes a case diverse in federal court], a jurisdiction depending on the condition of the party is governed by that condition, at the time of the commencement of the suit." 541 U.S. at 574, quoting *Conolly v. Taylor*, 2 Pet. 556, 565 (1829) (emphasis added by the Court). At the commencement of the suit here, the parties were completely diverse, but Wells Fargo chose to abandon that basis for removal and instead litigated in state court. That was the condition of diversity jurisdiction at removal. This Court should grant certiorari.

CONCLUSION

Petitioner Kakarala respectfully requests the Court to grant the Petition for Writ of Certiorari. The time is ripe to reconsider and overrule *Thermtron* and its progeny. This Court should also conclude that District Courts can remand state law claims under the circumstances presented herein.

Respectfully submitted this 25th of November, 2015,

Vincent L. Rabago
Counsel of Record
VINCE RABAGO LAW OFC. PLC
2135 E. Grant Road
Tucson, AZ 85719
(520) 955-9038
(888) 371-4011 (fax)
Vince@VinceRabagoLaw.com

APPENDIX

APPENDIX A: NINTH CIRCUIT DECISION

FILED
August 31, 2015
Molly C. Dwyer, Clerk
U.S. Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Anne Mercy Kakarala, Plaintiff-Appellee, v. Wells Fargo Bank, N.A., Defendant-Appellant, v. Robin's Nest LLC, Defendant.	**No: 13-16176** **D.C. No. 4:10-cv-00208-FRZ** **MEMORANDUM*** Appeal from the United States District Court for the District of Arizona Frank Zapata, Senior Judge, Presiding Submitted August 31, 2015** San Francisco, California Before: REINHARDT, TASHIMA, and CALLAHAN, Circuit Judges

*The disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds the case suitable for decision without oral argument.

Defendant Wells Fargo Bank, NA ("Wells Fargo") appeals from the district court's order remanding Plaintiff Anne Kakarala's state law claims to Arizona state court. The matter was originally removed to federal court on the basis of federal question jurisdiction. The district court initially dismissed all of Kakarala's claims, but, on a motion for reconsideration, dismissed only Kakarala's federal law claims and remanded her state law claims to state court. We have jurisdiction under 28 U.S.C. § 1291, and we conclude that the district court erred in remanding Kakarala's state law claims because it possessed diversity jurisdiction. We therefore reverse the district court's remand order.

1. Kakarala contends that we lack appellate jurisdiction to review the district court's remand order. 28 U.S.C. § 1447(d) only bars appellate review of remand orders where the remand is based on a lack of subject matter jurisdiction. *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 638-39 (2009). Thus, "if a district court remands a case to state court for any reason other than lack of subject matter jurisdiction, its remand order is appealable under 28 U.S.C. § 1291." *Harmston v. City & Cty. of S.F.*, 627 F.3d 1273, 1277 (9th Cir. 2010). Here, the district court's remand order was based on a discretionary decision not to exercise supplemental jurisdiction over state law claims. Thus, the remand order is subject to appellate review. See *id.*

2. Kakarala contends that Wells Fargo's removal of this case from state court was untimely. Under 28 U.S.C. § 1447(c), a plaintiff must move to remand a case "on the basis of any defect other than lack of subject matter jurisdiction" within 30 days of the filing of a notice of removal. "[U]ntimely removal is a procedural rather than a jurisdictional defect," *Maniar v. FDIC*, 979 F.2d 782, 785

(9th Cir. 1992), and an objection to untimely removal "can be waived," *Kelton Arms Condo. Owners Ass'n, Inc. v. Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th Cir. 2003). To avoid waiver, the party seeking remand must raise the alleged defect in a motion filed within the 30-day window created by § 1447(c); merely filing some timely motion to remand will not preserve objections not explicitly raised. *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1038 (9th Cir. 1995). Although Kakarala filed a document titled "Opposing Removal" which could be construed as a motion to remand, she never raised untimeliness as a basis for remand until this appeal, well beyond § 1447(c)'s 30-day window. The issue of the timeliness of Wells Fargo's notice of removal is therefore waived.

3. Wells Fargo contends that the district court erred in remanding Kakarala's state law claims to state court. When a case is properly removed to federal court, the district court may exercise jurisdiction on all bases apparent from the complaint, not merely the basis raised in the removal notice. *Williams v. Costco Wholesale Corp.*, 471 F.3d 975, 976 (9th Cir. 2006) (*per curiam*). Moreover, if a court has diversity jurisdiction over a case, its "virtually unflagging obligation to exercise the jurisdiction conferred upon [it] by the coordinate branches of government and duly invoked by litigants," precludes it from remanding state law claims. Id. at 977 (quoting *United States v. Rubenstein*, 971 F.2d 288, 293 (9th Cir.1992) (alteration in original) (internal quotation marks omitted)). The fact that a non-diverse party was once joined in a case does not prevent a court from exercising diversity jurisdiction after the non-diverse party's dismissal. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 64 (1996).

At the time the district court issued its remand order, all the requirements for diversity jurisdiction were met. The only parties, Kakarala and Wells Fargo, were citizens of different states and the amount in controversy exceeded $75,000. Thus, the district court had diversity jurisdiction. See 28 U.S.C. § 1332(a)(1). That a non-diverse defendant – Robins Nest Properties, LLP – was present at an earlier point in the litigation is irrelevant. See Caterpillar, 519 U.S. at 64. Given that diversity jurisdiction existed over Kakarala's state law claims at the time of the district court's remand order, "[t]he district court had no discretion to remand these claims to state court." *Williams*, 471 F.3d at 977.

Because the district court had diversity jurisdiction, it erred in remanding Kakarala's state law claims to state court. The district court's order remanding Kakarala's state law claims to state court is reversed and the case is remanded for further proceedings consistent with this disposition.

REVERSED and REMANDED.

APPENDIX B – DISTRICT COURT ORDER PARTLY GRANTING RULE 59(e) MOTION AND REMANDING

FILED 2/20/2013

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Anne Mercy Kakarala, Plaintiff, v. Wells Fargo Bank, N.A.; Robins Nest, LLc Defendant.	**No: 13-16176** **No. CV 10-00208-TUC-FRZ** **Order**

This Court entered its Order granting Defendant Wells Fargo Bank, N.A.'s Motion to Dismiss Plaintiff's Amended Complaint; judgment was entered accordingly. (Docs 47 and 48).

Pending before the Court for consideration is Plaintiff's Motion to Alter/Amend the Judgment Pursuant to Fed.R.Civ.P. 59(e).

Upon review of Plaintiff's motion, Defendant's opposition thereto, and Plaintiff's reply, the Court finds that its analysis and ruling did not misapprehend the facts in regard to the federal claims as argued by Plaintiff.

The Court does find, however, that Plaintiff has presented a plausible argument that this matter should have been remanded to state court for consideration of the state law claims as presented on the merits.

Based on the foregoing, in light of the procedural history of this action, originally filed by Plaintiff pro se in state court, and the fact that Plaintiff now has the benefit of the representation of counsel to present her state law claims, the Court will remand this matter to state court for consideration of Plaintiff's pendant state claims. Accordingly,

IT IS ORDERED that Plaintiff's Motion to Alter/Amend the Judgment Pursuant to Fed.R.Civ.P. 59(e) (Doc. 50) is denied in part and granted in part;

IT IS FURTHER ORDERED that the Court's Order (Doc. 48) and Judgment (Doc. 49) are amended to reflect that this matter shall be REMANDED to the Superior Court of the State of Arizona for the County of Pima to allow Plaintiff the opportunity to present her state law claims.

DATED this 20th Day of February, 2013.

/s/ Frank R. Zapata
Frank R. Zapata

Senior United States District Judge

APPENDIX C - NOTICE OF REMOVAL

District Court Case No 4:10-cv-00208-FRZ Filed 04/12/10

Gregory J. Marshall (019886)
Melissa A. Marcus (025209)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Telephone: (602) 382-6000
Facsimile: (602) 382-6070
gmarshall@swlaw.com
mmarcus@swlaw.com

Attorneys for Defendant Wells Fargo Bank, N.A.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Anne Mercy Kakarala, Plaintiff, v. Wells Fargo Bank, N.A.; Defendant.	No: _____ **NOTICE OF REMOVAL**

TO: THE HONORABLE JUDGES AND CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Wells Fargo Bank, N.A. ("Wells Fargo") hereby files this Notice of Removal of the state court civil action filed against it that is described below. The grounds for removal are the following:

1. Anne Mercy Kakarala ("Plaintiff"), with the filing of the Complaint, commenced this action in the Superior Court of the State of Arizona for the County of Pima on September 18, 2009 in Case Number C20097602 (the "Superior Court Action").
See Exhibit A-3.

2. The case as stated by Plaintiff's Complaint dated September 18, 2009 was not removable. See Exhibits A-3 and A-5.

3. On March 12, 2010, the Plaintiff filed a Motion To Amend Complaint and proposed Amended Complaint. See Exhibits A-29 and A-30. Wells Fargo obtained copies of the Motion To Amend Complaint and proposed Amended Complaint from the Clerk of the Superior Court of the State of Arizona for the County of Pima on March 16, 2010. The Court granted Plaintiff's Motion To Amend on April 7, 2010.

4. The proposed Amended Complaint alleges federal question claims against Wells Fargo arising under: (1) the Truth-in-Lending Act; and (2) the Housing and Economic Recovery Act. See Exhibit A-30. Under 28 U.S.C. § 1331, this court has original jurisdiction over these claims because they arise under the Constitution, laws, or treaties of the United States.

5. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over all other claims in the Superior Court Action because they are so related to the claims over which this Court has original jurisdiction under 28 U.S.C. § 1331 that they form part of the same case or controversy.

6. Removal is timely under 28 U.S.C. § 1446(b), because this Notice is filed within 30 days after receipt by Wells Fargo of a copy of the paper from which it could first be ascertained that this case has become removable, and within one year of the commencement of the action.

7. Under 28 U.S.C. § 1441, this Court is the appropriate forum in which to file this Notice of Removal because the United States District Court for the District of Arizona, Tucson Division, is the federal district embracing Pima County, Arizona, the county in which the superior Court Action was filed.

8. Pursuant to 28 U.S.C. § 1446 and LRCiv. 3.7(a), counsel for Wells Fargo has caused a copy of a Notice of Removal to be filed with the Clerk of the Superior Court of the State of Arizona in and for the County of Pima, a copy of which is attached hereto as Exhibit B.

9. Pursuant to 28 U.S.C. § 1446, copies of all other documents filed in Superior Court are attached hereto as Exhibit A.

WHEREFORE, Defendant Wells Fargo Bank, N.A., respectfully requests that this Notice of Removal be filed, the Superior Court Action be removed to and proceed hereafter in this Court, and no further proceedings be had in the Superior Court of Pima County, State of Arizona.

DATED this 12th day of April, 2010.

SNELL & WILMER L.L.P.

By: s/ Melissa A. Marcus
Gregory Marshall

Melissa A. Marcus
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Attorneys for Defendant
Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on April 12th, 2010, I served the foregoing document and any attachments by mail on the following, who are not registered participants of the CM/ECF System:

Anne Mercy Kakarala
2510 East Grant Road, Ste. 100
Tucson, Arizona 85716
Plaintiff pro per
s/ Bonnie Stevens

11410507

ANNE MERCY KAKARALA v.
WELLS FARGO BANK N.A.

INDEX OF EXHIBITS TO NOTICE OF REMOVAL

EXHIBIT A

Description	**Number**
Order for/of Deferral or Waiver	1
Application for Deferral or Waiver of Court Cost/Fees/Service	2
Petition & Complaint	3
Certificate of Compulsory Arbitration	4
Complaint	5
Answer/Response to Complaint	6
Complaint	7
Notice of Lis Pendens	8
Affidavit of Service by Mail on Wells Fargo Home Mortgage. Inc.	9
Affidavit of Service by Mail	10
Motion to Set & Certificate of Readiness	11
Motion to Set & Certificate of Readiness	12
Disclosure Statement	13
Amended Complaint	14
Notice re Striking Motion to Set	15
Notice re Striking Motion to Set	16
Motion to Set and Certificate of Readiness	17
Notice of Service of Wells Fargo Bank's Initial Disclosure Statement	18
Motion to Strike Amended Complaint	19
Motion to Set & Certificate of Readiness	20
Plaintiffs Response to Defendant's Motion to Strike Amended Complaint	21
Defendants Reply in Support of its Motion to Strike Plaintiffs Amended Complaint	22

Defendants Controverting Certificate of Readiness & Request for Rule 16 Conference	23
In Chambers: Defendants Controverting Certificate of Readiness and Request for Rule 16 Conference	24
In Chambers Ruling	25
Supplemental Disclosures	26
Joint Pretrial Memorandum	27
Minute Entry re Status Conference	28
Motion to Amend Complaint	29
Amended Complaint	30
In Chambers Trial Notice	31
Defendant's Response to Plaintiffs Motion to Amend	32
Order Permitting Filing of Amended Complaint	33

APPENDIX D: EXCERPT OF EXH. A-3 ATTACHED TO THE NOTICE OF REMOVAL (HANDWRITTEN)

ANNE MERCY KAKARALA
2510 E. GRANT ROAD, STE. 100,
TUCSON, AZ 85716
520-881-2786

SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

ANNE MERCY KAKARALA
PLAINTIFF

C2009-7602

WELLS FARGO BANK N.A.
DEFENDANT.

COMPLAINT

TED B. BOREK

I want to sue the above bank for selling my house fraudulently by giving misleading information. I want my house back.

/s/ Anne Mercy Kakarala

~~10/2~~

9/18/09

9/18/09

TO
Superior Court
Tucson, Arizona

FROM
ANNE MERCY KAKARALA
2510 E. GRANT ROAD, STE. 100 C2009-7602
TUCSON, AZ 85716

Dear Sir/Madam,

I am filing a case against my bank Wells Fargo, N.A.. This Bank fraudulently sold my property without my notice. I had my house for 12 years, due to difficult financial troubles I am little behind my payments, I called them and told them the situation. They agreed and gave me time in 3 months, I paid in two months. At the end of 2nd month without my knowledge even we still have contract of 3 months time they sold my property of 1152 North Thunder Ridge Drive, Tucson, AZ 85745. Please help me to get back my house which was fraudulently sold by Wells Fargo Bank. I was their customer since last 15 years, they called us and asked for hardship letter and financial position which was just to mislead us. When we sent the next day they sold this house. Please help me by doing justice.

Thanking you,

/s/ Anne Mercy Kakarala

APPENDIX E: EXHIBIT A-5 ATTACHED TO NOTICE OF REMOVAL (OCT. 13, 2009 STATE COMPLAINT)

MICHAEL REISER

FILED

09 OCT 13 PM 12:33
PATRICIA NOLAND
CLERK, SUPERIOR COURT
BY _____
DEPUTY CLERK

ANNE MERCY KAKARALA
2510 E. GRANT RODAD, STE. 100
TUCSON, AZ 85716
520-881-2786

SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

ANNE MERCY KAKARALA
PLAINTIFF

C2009-7602

WELLS FARGO BANK N.A.
DEFENDANT.

COMPLAINT

I am challenging the sale of my house by Wells Fargo Bank, N.A., which was located at the 1152 N Thunder Ridge Drive, Tucson, AZ 85745, on 28th of July 2009 without giving me any notice of sale. I paid my mortgage on May 28th 2009 through the Wells Fargo Fast Pay. Wells Fargo Bank employees told me to send paper work to re-modify my mortgage loan it will take up about 2 months. While I am waiting for that time, they sold this house without giving me any kind of information. I want to get my house back with damages of $150,000 for my credit. I went to India to take care of my family issues and my health condition, while I was away, my house was sold without any kind of notice. Banks are getting lot of money from the Government to help homeowners who were struggling to pay their mortgages like me. I am a minority woman small business owner trying to meet my demands. I am behind on my payments, but I am communicating with them giving details of my situation and having good terms with the bank as they said they are willing to modify my loan. Giving such information fraudulently and turning back on their word and sold the house without giving me any notice. Please help me to get back my house and also damages as my credit went very low because of their actions of selling my house.

Thank you, Oct 13 2009

Anne Mercy Kakarala.

/s/ Anne M Kakarala

APPENDIX F: EXH. A-6 ATTACHED TO NOTICE OF REMOVAL (ANSWER FILED 11/2/09 -STATE COURT)

Gregory J. Marshall (019886)
Melissa A. Marcus (025209)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Telephone: (602) 382-6000
Facsimile: (602) 382-6070
gmarshall@swlaw.com
mmarcus@swlaw.com
Attorneys for Defendant Wells Fargo Bank, N.A.

IN THE SUPERIOR COURT FOR PIMA COUNTY

FOR THE STATE OF ARIZONA

Anne Mercy Kakarala, Plaintiff, v. Wells Fargo Bank, N.A.; Defendant.	No: C2009-7602 **ANSWER**

Wells Fargo Bank, N.A. ("Wells Fargo"), for its Answer to Plaintiff's Amended Complaint, admits, denies and alleges as follows:

1. Wells Fargo admits the trustee sold the property located at 1150 2 N. Thunder Ridge Dr., Tucson, AZ 85745 (the "Property") on July 28, 2009 pursuant to the Deed of Trust and Arizona law, but denies selling the property without the requisite notice.

2. Wells Fargo's investigation of this matter is beginning, and Wells Fargo lacks knowledge and information sufficient to form a belief as to the truth of whether plaintiff made a mortgage payment on May 28, 2009 through Wells Fargo Fast Pay at this time, and therefore denies same.

3. Wells Fargo's investigation of this matter is beginning, and Wells Fargo lacks knowledge information sufficient to form a belief regarding Plaintiffs alleged communications with unidentified Wells Fargo employees at this time, and therefore deny same.

4. Wells Fargo denies all allegations not specially admitted or otherwise responded to herein.

AFFIRMATIVE DEFENSES

5. Pursuant to Ariz. R.Civ.P. 12(b)(6), Plaintiff's Amended Complaint fails to state claims upon which relief can be granted against Wells Fargo.

6. Pursuant to Ariz. R.Civ.P. 12(b)(7) and 19, Plaintiffs amended complaint fails to join indispensable parties.

7. Wells Fargo performed all the statutory notice obligations pursuant to A.R.S. § 33–801, *et seq.*, and otherwise, and acquired the trustees deed lawfully.

8. Wells Fargo asserts all avoidance and defenses established by the note, deeds of trust, and other agreements referenced herein.

9. Wells Fargo asserts the following Rule 8 defenses that may apply: estoppel, failure of consideration, fraud,

latches, payment, release, statute of frauds, statute of limitations, and waiver.

10. Wells Fargo reserves the right to assert additional avoidances and affirmative defenses including, without limitation, those matters set forth in Ariz. Civ.R.P. 8 and 12, as discovery and investigations reveal to be applicable.

WHEREFORE, having fully replied to Plaintiff's Amended Complaint, Wells Fargo asks that this Court enter judgment as follows:

A. That the Plaintiff's Amended Complaint be dismissed with prejudice and that the Plaintiff take nothing thereby;

B. That Wells Fargo recover its attorney's fees and costs incurred herein pursuing to A.R.S. 12–§ 341.01 and 12–349 and has provided in the agreements referenced herein; and

C. For such other and further relief as the Court deems just and appropriate.

Dated this 2nd day of November, 2009.

By: /s/ Melissa A. Marcus
Gregory Marshall
Melissa A. Marcus
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Attorneys for Defendant
Wells Fargo Bank, N.A.

Original filed with the Clerk of the Pima County Superior Court and copy mailed via US mail the 2nd of November,

2009 to: Honorable Ted B. Borek, Pima county Superior Court, 110 W. Congress Tucson, AZ 85701

Copy of the foregoing mailed 2nd November 2009 to: Anne Mercy Kakarala, 2510 E. Grant Rd., Suite 100 Tucson, AZ 85716

/s/ .

APPENDIX G: EXCERPT OF EXH. A-29 TO NOTICE OF REMOVAL (Motion to Amend Complaint)

FILED

10 MAR 12 PM 4:47
PATRICIA NOLAND
CLERK, SUPERIOR COURT
BY /S/ Michael Muske
DEPUTY

Anne Mercy Kakarala
Address 2510 E. Grant Road, Ste # 100
City, state, zip TUCSON, AZ 85716
Phone (520) 881-2786
In Pro Per

IN THE SUPERIOR COURT FOR THE STATE OF ARIZ.
IN AND FOR THE COUNTY OF PIMA

Anne Mercey Kakarala	)	
Plaintiff	)	C2009-7602
	)	
Wells Fargo Bank, and	)	MOTION TO AMEND
Robins Nest Properties LLC	)	COMPLAINT
Defendants.	)	

Anne Mercy Kakarala comes before this Court and requests permission to amend her complaint even though the usual time for amendment has passed. This request is made because time was given on 1st March, 2010, at pretrial conference by honorable Judge Ted B. Borek.

Respectfully submitted this _12th _day of March __2010, by
/s/Anne Mercy Kakarala
Anne Mercy Kakarala.

APPENDIX H: EXH. A-30 TO NOTICE OF REMOVAL
(Proposed Amendment to Complaint in State Court)

FILED

10 MAR 12 PM 4:47
PATRICIA NOLAND
CLERK, SUPERIOR COURT
BY /S/ Michael Muske
DEPUTY

Anne Mercy Kakarala
Address 2510 E. Grant Road, Ste # 100
Tucson, AZ 85716 Phone # 520-881-2786

CASE NUMBER C2009-7602

SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND OUT FOR THE COUNTY OF PIMA

Anne Mercey Kakarala	)	
Plaintiff	)	C2009-7602
	)	
Wells Fargo Bank, and	)	
3476 Statview Blvd.,	)	
Fort Mill SC 29716	)	
	)	
Robins Nest Properties LLC	)	
2871 N. TOMAHAWK TRL,	)	
TUCSON, AZ 85749	)	
Defendants.	)	

AMENDED COMPLAINT

I am challenging the sale of my house by Wells Fargo Bank, N.A., which was located at 1152 N. Thunder Ridge Drive, Tucson AZ 85745, on 28th of July 2009. I never received original loan documents from Wells Fargo Bank. I borrowed money from First Magnus Financial Corporation. I received only payment coupons from Wells Fargo Bank, which doesn't constitute any liability on me as per real estate law. I want to see the original loan documents that were signed by me to borrow money from Wells Fargo Bank. Otherwise, Wells Fargo Bank doesn't have any right to sell my property. Wells Fargo Bank fraudulently sold my property after agreeing to modify my loan and after receiving my mortgage payments until June 09. Also the mortgage was covered by HUD, which violates the sale of this loan to investors. Also TILA violated. H.R. 3221, AHRAFPA, HAERA-2008 violated. Inadequate price with irregularities in the conduct of the sale was occurred. Trustee's sale was carried out without proper notice requirements. Bank employees lied to me. Taking of property without notice and prior hearing violates the fundamental principles of procedural process. "Sniadach Vs Family Finance Corporation", Pp. 395 U.S. 339-342. I was deprived of my right of reinstatement. I want to get back my house with damages of $150,000. New owner of my house Robins Nest Properties LLC., agreed to sell the house back to me with 150,000 through a realtor named by Nancy Socolof Zeldin. Wells Fargo Bank can purchase my house back from the aforesaid owner and give back to me with damages of $150,000.

Thank you, /s/Anne Mercy Kakarala

Anne Mercy Kakarala.

APPENDIX I: EXH. A-32 ATTACHED TO THE NOTICE OF REMOVAL (RESPONSE TO MOTION TO AMEND IN STATE COURT)

Gregory J. Marshall (019886)
Melissa A. Marcus (025209)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Telephone: (602) 382-6000
Facsimile: (602) 382-6070
gmarshall@swlaw.com
mmarcus@swlaw.com
Attorneys for Defendant Wells Fargo Bank, N.A.

IN THE SUPERIOR COURT FOR PIMA COUNTY

FOR THE STATE OF ARIZONA

Anne Mercy Kakarala, Plaintiff, v. Wells Fargo Bank, N.A.; Defendant.	No: C2009-7602 **WELLS FARGO BANK'S RESPONSE TO PLAINTIFF'S MOTION TO AMEND** (Assigned to Hon. Ted B. Borek)

Wells Fargo Bank, N.A. ("Wells Fargo) responds to the Plaintiff's Motion to Amend and states that while the proposed Amended Complaint fails to state claims upon which relief can be granted against Wells Fargo under Rules 8 and 12(b)(6) and Wells Fargo intends to move to dismiss them as a result, Wells Fargo nonetheless does not oppose the filing of the Amended Complaint. Wells Fargo

will respond to the Amended Complaint upon this Court granting Plaintiff's Motion, and the Plaintiff thereafter lodging the Amended Complaint with this Court.

Dated this 31st day of March, 2010.

By: /s/ Melissa Marcus
Gregory Marshall
Melissa A. Marcus
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Attorneys for Defendant
Wells Fargo Bank, N.A.

Original filed with the Clerk of the Pima County Superior Court and copy mailed via US mail the 31st of March, 2010 to: Honorable Ted B. Borek, Pima county Superior Court, 110 W. Congress Tucson, AZ 85701

Copy of the foregoing mailed 31st of March 2010 to: Anne Mercy Kakarala, 2510 E. Grant Rd., Suite 100 Tucson, AZ 85716

/s/ .

11347964.1

APPENDIX J: EXH. A-31 ATTACHED TO THE NOTICE OF REMOVAL (TRIAL NOTICE ORDER: PIMA COUNTY SUPERIOR COURT, ARIZONA)

FILED

10 MAR 29 PM 2:48
PATRICIA NOLAND
CLERK, SUPERIOR COURT
BY /s/ R. St. Germaine
DEPUTY CLERK

JUDGE TED B. BOREK CASE NUMBER C20097602
COURT REPORTER: None DATE: March 26, 2010

ANNE MERCY KAKARALA
PLAINTIFF,

RECEIVED
April 1, 2010

v.

SNELL & WILMER

WELLS FARGO BANK N.A.
DEFENDANTS.

Trial Notice

IN CHAMBERS:

IT IS ORDERED setting a jury trial on **October 13, 2010** at 9:00 a.m. in Division 24, estimated length of trial is **three (3) days**. Counsel will appear in chambers at 8:30 a.m.

IT IS FURTHER ORDERED setting a status conference in Division 24 on **July 12, 2010 @ 10:00 a.m. (30 minutes) and September 27, 2010 @ 9:00 a.m. (15 minutes).**

IT IS FURTHER ORDERED that discovery and disclosure will be made in accordance with Rule 26.1, Ariz. R. Civ. P., and Ariz. R.Civ. P. unless modified by the Court; the following pretrial deadlines apply:

· Disclose expert opinions and reports not later than July 13, 2010.

· Disclose rebuttal expert opinions not later than August 13, 2010.

· Disclose non-expert witnesses not later than July 30,2010.

· Filing of Pretrial motions and Dispositive motions not later than July 14, 2010

· File Dispositive Motions not later than August 13, 2010

· Complete discovery not later than August 30, 2010

· Complete disclosure not later than June 30, 2010

· File motion(s) in limine (per Rule 7.2) not later than

· September 13, 2010, and responses due not later than September 20, 2010. No replies permitted.

· File joint pretrial statement per Rule 16(d), and proposed voir dire, verdict forms, and jury instructions not later than October 5, 2010.

· Have all exhibits marked week before trial.

cc: Anne Mercy Kakarala, Plaintiff Pro Per
Gregory J. Marshall, Esq./Melissa Marcus, Esq., SNELL & WILMER

BY /s/ Joyce Burbridge
Judicial Administrative Assistant

APPENDIX K: MOTION FOR REMAND

Filed
April 20, 2010
Clerk, U.S. District Court
District of Arizona
By Deputy

FROM
ANNE MERCY KAKARALA
2510 E. GRANT ROAD, STE. 100
Phone # 520-881-2786
TUCSON, AZ 85716
Pro Se (Plaintiff)

Sub: Opposing Removal of Case # C20097602 from Superior Court, Tucson, AZ, Kakarala v. Wells Fargo Bank, N.A.

Case # 10-CV-208- FRG

I am requesting the court to deny this filing because this case was handled by Superior Court since September 2009 and as the core details are material to the case then were amended. Wells Fargo Bank does not like the outcome of amended case approval, they are removing from Superior Court to cause more delay and pain to me. Please stop this unjustice [sic] and order to continue my case in Superior Court. I will [provide] more details and continue to oppose this action which is coersing [sic] me more financial and technical problems.

Thanking you,

/s/Anne Mercy Kakarala
(Anne Mercy Kakarala)

Date 4/20/2010

APPENDIX L: OPPOSTION TO MOTION TOREMAND

District Court Case No 4:10-cv-00208-FRZ Filed 05/04/10

Gregory J. Marshall (019886)
Melissa A. Marcus (025209)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Telephone: (602) 382-6000
Facsimile: (602) 382-6070
gmarshall@swlaw.com
mmarcus@swlaw.com

Attorneys for Defendant Wells Fargo Bank, N.A.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Anne Mercy Kakarala, Plaintiff, v. Wells Fargo Bank, N.A.; Defendant.	No: CV 10-00208 –TUC-FRZ **WELLS FARGO BANK N.A.'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION "OPPOSING REMOVAL OF CASE FROM SUPERIOR COURT, TUCSON, AZ"**

Defendant Wells Fargo Bank, N.A. ("Wells Fargo") responds in opposition to Plaintiff's Motion "Opposing Removal of Case # C20097602 From Superior Court, Tucson, Az" [Dkt. No. 8] ("Plaintiff's Motion"), which is in substance a motion to remand. Because Wells Fargo's removal was proper, and because Plaintiff's Motion

offers no legal basis to remand, this Court should deny Plaintiff's Motion. Wells Fargo's Response is supported by the following Memorandum of Points and Authorities and the Court's record.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Plaintiff filed this action in the Superior Court on September 18, 2009, but did not allege any federal claims. On March 12, 2010, Plaintiff filed a Motion To Amend Complaint and proposed Amended Complaint alleging, for the first time, federal question claims against Wells Fargo arising under the Truth-in-Lending Act ("TILA") and the Housing and Economic Recovery Act ("HERA"). Wells Fargo did not oppose Plaintiff's Motion to Amend, and the Court subsequently granted it on April 7, 2010.[Fn.1] Wells Fargo timely and properly removed the action to this Court on April 12, 2010, pursuant to 28 U.S.C. § 1331.

II. ARGUMENT

While Plaintiff appears to seek remand, her Motion is devoid of any legal argument favoring remand. For example, Plaintiff speculates that Wells Fargo removed this action because "Wells Fargo does not like the outcome of [sic] amended case approved" and Wells Fargo "is removing from Superior Court to cause more delay and pain to [her]." Although neither of these arguments present any legal cause favoring remand, the record reveals that Wells Fargo did not oppose Plaintiff's motion to amend her Complaint, nor did Wells Fargo's conduct, as opposed to Plaintiff's serial amendments to her Complaint, cause any undue delay.

---

1. Plaintiff has not lodged her Amended Complaint with either the Superior Court or this Court. Wells Fargo will respond to the Amended Complaint pursuant to the Rules after Plaintiff lodges it.

Indeed, this action became removable to this Court only because Plaintiff moved to add federal claims to her Complaint by filing her Motion to Amend and proposed Amended Complaint on March 12, 2010. See Hummel v. Smith, 2009 WL 3423034, at *2–*3 (W.D. Wash. Oct. 22, 2009) ("Despite the clear assertions she chose to make in her complaint, plaintiff nevertheless claims that defendants improperly removed this case. . . . She has forced defendants to incur needless costs opposing her frivolous motion to remand."). Regardless, because Wells Fargo's removal was timely and proper pursuant 28 U.S.C. §§ 1331, 1367, 1441, 1446(b), this Court should deny Plaintiff's Motion and retain jurisdiction.

III. CONCLUSION

For these reasons, Wells Fargo requests that this Court deny Plaintiff's Motion "Opposing Removal of Case # C20097602 From Superior Court, Tucson, Az" [Dkt. No. 8].

RESPECTFULLY SUBMITTED this 4th day of May, 2010.

SNELL & WILMER L.L.P.
By: s/ Melissa A. Marcus
Gregory Marshall
Melissa A. Marcus
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Attorneys for Defendant
Wells Fargo Bank, N.A.

APPENDIX M: MOTION TO AMEND COMPLAINT IN DISTRICT COURT (Excerpt)

Anne Mercy Kakarala
2510 E. Grant Road, Ste # 100
Phone # 520-881-2786
TUCSON, AZ 85716
520-881-2786
In Pro Per

IN THE DISTRICT FEDERAL COURT, TUCSON, ARIZONA

CASE # 10-CV-208-FRZ

Anne Mercey Kakarala	)	
	)	
Plaintiff	)	
Wells Fargo Bank, and	)	MOTION TO AMEND
Robins Nest Properties LLC	)	COMPLAINT
	)	
Defendants.	)	

Anne Mercy Kakarala comes before this Court and requests permission to amend her new complaint in addition to the old one as new material facts were found in the case. This request is made if the case was retained by the order of the judge in district court as I have already requested to move back my case to the superior court. .

Respectfully submitted this _10 _day of May __2010, by

/s/Anne M Kakarala
~~Anne Kakarala~~
Anne Mercy Kakarala

APPENDIX N: PETITIONER'S REPLY TO WELLS FARGO'S OPPOSITION TO MOTION TO AMEND

Anne Mercy Kakarala
2510 E. Grant Road, Ste # 100
Phone # 520-881-2786
TUCSON, AZ 85716
520-881-2786

FILED
June 1, 2010
Clerk, US. District Court
District of Arizona
By Deputy

IN THE UNITED STATES DISTRICT FEDERAL COURT,
FOR THE DISTRICT OF ARIZONA

CASE # 10-CV-208-FRZ

Anne Mercey Kakarala, Plaintiff

Wells Fargo Bank, N.A.

Robins Nest Properties LLC

Defendants

In response to Wells Fargo Bank, N.A., request to deny plaintiff's motion to amend complaint on 5-27-10, plaintiff asks the court not to deny her motion to amend the complaint because, plaintiff is still waiting on Judge's Order to see if the Judge accepted her request to move her case back to superior court where the litigation was initiated. If federal court orders to keep the case at federal court contrary to the opposition filed by plaintiff, then plaintiff requested the court to amend the complaint because case points were presented in detail. Proposed amended complaint was mistakenly not attached to the

motion to amend the complaint. Since no order was issued since this case was moved from superior court, plaintiff is requesting the court to grant the motion to amend the complaint. The reason why plaintiff did not file superior court's granted amended complaint was, Superior Court granted to amend the complaint on 4-7-10. Plaintiff received the order on 4-10-10. Proposed amended complaint was attached at that time of filing the motion and also sent to the defendants. Before filing amended complaint with the Superior Court plaintiff went to superior court and wanted to file amended complaint. But, she was told that, the case was moved to federal court, from then on case papers should be filed with federal court. By 4-12-10, defendant moved the case to District Federal Court. By April 17th, 2010 plaintiff requested the court to oppose their case transfer. Since plaintiff is still waiting for the outcome of her request, no amended complaint filed. Plaintiff respectfully requests an order to file amended complaint. Proposed amended complaint was attached to the motion to amend the complaint.

/s/ Anne Mercy Kakarala

Anne Mercy Kakarala

APPENDIX O – EXCERPT OF PLAINTIFF'S MOTION TO ALTER/AMEND THE JUDGMENT PURSUANT TO FED. R. CIV.PROC. 59(e)

District Court Case No. 4:10-cv-00208-FRZ Filed 05/25/12

VINCE RABAGO, Esq. (Bar No. 015522)
VINCE RABAGO LAW OFFICE
500 N. Tucson Blvd., Ste. 100
Tucson, AZ 85716
Telephone: (520) 955-9038 – Facsimile (888) 371-4011
Email: vince.rabago@azbar.org
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Anne Mercy Kakarala, Plaintiff, v. Wells Fargo Bank, N.A.; Defendant.	Case No: 4:10-cv-00208-FRZ PLAINTIFF'S MOTION TO ALTER/AMEND THE JUDGMENT PURSUANT TO FED. R. CIV.PROC. 59(e)

Plaintiff respectfully moves to amend/alter the Court's April 27, 2012 judgment pursuant to Fed. R. Civ. Proc. 59(e) for the following reasons: First, it would be a manifest injustice to Plaintiff, a foreign-born resident whose native language is not English, for this Court to resolve her allegations by relying on her limited English word choices in how this allegation was written as a pro se plaintiff (i.e., the allegation that they "would work with her"). Second, the Court should have remanded pendant state law claims for such claims to be decided by the state

court instead of ruling on the merits of such state law claims, and should remanded state law claims back to state court, especially since Plaintiff opposed removal and filed a timely opposition which has not yet been decided. Finally, there is clear error regarding Claim Three, as this Court has not considered that the HUD rules and regulations were incorporated into the Deed of Trust in the instant case, and thus provides a private cause of action as a contractual (private law) matter.

APPENDIX P: EXCERPTS OF PETITIONER'S 9TH CIRCUIT ANSWERING BRIEF

FILED 12/30/13 IN NINTH CIRCUIT CASE NO. 13-16176
Beginning at Page 1 of Ms. Kakarala's Answering Brief

I. STATEMENT OF JURISDICTION

As explained below, Appellee Anne Kakarala contests jurisdiction. Appellee contends Appellant Wells Fargo waived federal jurisdiction by failing to remove at the first required opportunity since diversity jurisdiction was present on the face of the initial pleadings, thus Wells Fargo's subsequent removal on federal question grounds was defective and improper, as well as all ensuing federal jurisdiction, and therefore also this appeal pursuant to 28 U.S.C. § 1291. The central issue on appeal is the District Court's Order remanding state claims to state court. Congress prohibited the appeal of remand orders (28 U.S.C. § 1447(d)), with exceptions not applicable here, although later Supreme Court cases have created limited exceptions to this law. One circumstance that is not subject to any exception is when remand is ordered to address a defect in removal procedure or an absence of subject matter jurisdiction, as occurred here. As such, the Order is not reviewable.

II. STATEMENT OF ISSUES FOR REVIEW

1. Whether jurisdiction exists to appeal a District Court order remanding state claims to the state court from which it was removed, particularly when the removal was defective, and also when Congress has enacted federal law stating that remand orders are not reviewable on appeal, except for limited situations not present here?

2. Whether Wells Fargo's removal based on proposed amended state pleadings raising federal issues was improper and defective when Wells Fargo ignored its statutory obligation to remove when initial pleadings provided for federal diversity jurisdiction at the outset, and Wells Fargo chose instead to litigate in State Court for over half a year, representing to the State Court that it did not oppose amending the complaint (to add federal claims), and also represented to the State Court that it would continue litigating in state court with a motion to dismiss after amendment, thus ignoring and waiving any claim to federal jurisdiction?

3. Whether the District Court abused its discretion by remanding state law claims based on a timely filed motion for remand that had not been ruled upon by the Court, which ultimately concluded that the case "should have been remanded"?

. . .

. . .

. . .

V. INTRODUCTION & SUMMARY

Diversity jurisdiction is one of the oldest jurisdictional rules in our system of government. Judiciary Act of 1789. The founders felt strongly that federal courts must be given power to hear conflicts between citizens of different states lest nonresidents be subject to biased judgments by plaintiffs' home courts. Early on, however, corporate defendants would petition for removal to federal courts in order to gain an advantage because the federal court was farther away from the plaintiff's home, or was

more pro-business than the state court. See Purcell, Edward A., *Federal Diversity Jurisdiction in Industrial America*, 1870 - 1958 (1992). In order to prevent corporate game-playing, Congress placed the burden on the party desiring a federal forum to remove properly and promptly. *Rains v. Criterion Systems, Inc.*, 80 F.3d 339, 342 (9th Cir. 1996). Congress has also enacted federal law expressly precluding appellate review for an order remanding a case to a State court from which it was removed as not being reviewable on appeal or otherwise, except for certain civil rights or federal officer cases. See 28 U.S.C. 1447(d).

Here, Appellee Kakarala consistently expressed her desire for a state forum, and her objection to a federal forum. Appellant Wells Fargo is the corporate Defendant here, who presumably feels that the state forum is biased in favor of Appellee. However, instead of removing at the first opportunity, when Appellant received the initial pleadings providing for federal diversity jurisdiction, Appellant actively litigated in state court for over six months, and represented to the State Court that they intended to continue litigating in state court even after Appellee proposed to amend to include federal claims. These actions do not speak of a fear of the state forum, but rather an affinity for a federal forum: the exact kind of corporate game-playing that Congress sought to prevent by insisting on prompt, proper removal, and accordingly, courts resolve doubts in favor of remand.

Appellant presents an edited version of events that transpired below, as well as applicable case law, ignoring or mis-stating those details pointing to their errors which mandate affirming the remand of Appellee's state claims to the state court.

First, appeal of remand orders is clearly disfavored

in the language of 28 U.S.C. 1447(d), to avoid exactly this type of unnecessary appeal of a collateral issue, particularly when the removal obtained was defective in the first instance.

Second, Appellee's opposition to removal was timely filed, but not timely ruled on. Wells Fargo seeks to present a picture where removal was proper, and all motions properly decided (except, of course, the Order remanding state claims, which is the subject of this appeal). However, Appellant ignores the fact that Mrs. Kakarala did timely object to removal, and they responded, but the court did not rule until she obtained counsel, who successfully argued that state law claims should have been remanded had the court timely ruled on her motion for remand.

Third, Wells Fargo waived federal jurisdiction, and ignores the fact that diversity jurisdiction was present within the four corners of the initial pleadings, and ignores the "hornbook" case law that jurisdiction is established by the status of the parties at the start of the case, not later. Wells Fargo falsely claims diversity jurisdiction existed and attached only after the case had been removed to federal court, however, diversity jurisdiction was present at the outset, long before Robins Nest was added in Appellee's amended federal Complaint. If Appellant desired a federal forum, they were obligated to remove at the first opportunity, before the state court and the parties invested resources, not simply when it suited them. Appellant contorts the record to try to preserve their improper removal on federal question grounds by saying diversity has now attached. The opposite is true: diversity jurisdiction was available at the outset when initial pleadings were filed Oct.13, 2009, but Wells Fargo chose not to remove, thus waiving a federal forum.

Throughout their Opening Brief, Wells Fargo bases their arguments on the time elapsed in federal court, suggesting the case was being actively litigated the entire time, and therefore the resources expended mandate federal jurisdiction over all claims for the sake of judicial economy. The reality is that the District Court did not issue a single order until almost a year after the case was removed, when it dealt with Robins Nest's Motion for Summary Judgment but failed to address the remand motion. The next event was Appellant's Motion to Dismiss on April 18, 2011, which was also not ruled on for over a year. Then, nearly another year passed after the Motion to Alter/Amend Judgment, until the District Court ruled it should have remanded the state claims. Thus, Appellee has not "sat back and waited" (Appellant's Opening Brief (AOB), at 11) as claimed, and the case did not consume significant resources for three years after removal. Further, any resources expended in District Court were improper, in light of the finding that the case should have been remanded, before federal resources were expended; the case was also more actively litigated in state court before removal, including discovery.

In short, removal was improper, no federal jurisdiction was ever properly obtained, and the District Court's remand order is non-reviewable.

VI. ARGUMENT

A. THE DISTRICT COURT REMAND ORDER IS NON-REVIEWABLE.

Appellee Kakarala asserts that remand orders are not reviewable on appeal, with limited statutory exceptions not applicable here. 28 U.S.C. § 1447(d) states:

> An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

Neither Section § 1442 (federal officers, etc.) nor § 1443 (civil rights) apply here.

In *Thermtron Prods., Inc. v. Hermansdorfer*, the U.S. Supreme Court held that the restriction on appellate review applies only to remands ordered to address a defect in removal procedure or an absence of subject matter jurisdiction. 423 U.S. 336, 342 (1976), abrogated in part on other grounds by *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996). Despite the express Congressional restriction, the Court has since created other exceptions to review of remand orders, thus opening:

> the docket of the intermediate appellate courts to a variety of new appeals. Defendants who wish to delay litigation on the merits by contesting remand and other collateral orders have shown a marked propensity to exploit opportunities for as-of-right appellate review.

James E. Pfander, *Collateral Review of Remand Orders: Reasserting the Supervisory Role of the Supreme Court*, 159 U. Pa. L. Rev. 493, 496 (2010).

Congress intended to restrict jurisdiction of the federal courts on removal, and so the statute is strictly construed against removal. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-109, 61 S.Ct. 868, 872 (1941) (superseded by statute on other grounds): *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691, 697 (2003));

Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996). Federal jurisdiction "must be rejected if there is any doubt as to the right of removal in the first instance." *Duncan*, 76 F.3d at 1485; *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Courts "must consider whether federal jurisdiction exists, even if no objection is made to removal, and even if both parties stipulate to federal jurisdiction." *Rains v. Criterion Systems, Inc.*, 80 F.3d 339, 342 (9th Cir. 1996) (citations omitted); *Porter v. Dir. of Dep't of Corr.* (E.D. Cal., 2013).

The plain language of § 1447(d) precludes review. To the extent *Thermtron* interpreted § 1447(d) to allow some appeals (Appellee respectfully contends that *Thermtron* was erroneously decided along with its progeny), this appeal should be rejected as non-reviewable because the remand "address[es] a defect in removal procedure or an absence of subject matter jurisdiction", and is non-reviewable under *Thermtron*. As explained below, Wells Fargo slept on its right of removal in the first instance in State Court, thus waiving their right to a federal forum, then removed improperly. This also distinguishes *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640 (2009), where, in contrast, "It [was]undisputed that when [the] case was removed" that the District Court had original jurisdiction. Here, after the District Court was alerted to the error and remanded to State Court as should have been done in the first place when Appellee Kakarala timely objected, Wells Fargo seeks review of the remand. This case underscores the reason for Congressional intent to restrict review of such remand orders. Wells Fargo is manipulating the record to cover its improper and defective removal, and now wastes more resources by appealing a non-reviewable remand order.

....

....

....

VII. CONCLUSION

Appellee Anne Kakarala respectfully asks this Court to dismiss the appeal as non-reviewable. Alternatively, this Court should affirm the Order because Wells Fargo improperly and defectively removed after choosing to litigate in state court despite its legal obligation to remove for diversity jurisdiction when initially presented, thus waiving any federal jurisdiction and a federal forum, including any claim of diversity jurisdiction. This Court should affirm (and, if required, order all claims remanded if it deems removal and jurisdiction were improperly obtained).

APPENDIX Q: STATUTORY PROVISIONS

28 U.S.C. § 1447 – Procedure after removal generally:

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.