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9 Attorneys for Defendant
10 BANK OF AMERICA CORPORATION

11 UNITED STATES DISTRICT COURT

12 EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

13 EDWARD SCOTT HELMER,

14 Plaintiff,

15 vs.

16 BANK OF AMERICA CORPORATION and
DOES 1 through 100, Inclusive,

17 Defendants.

Temporary Case No.: 2:12-at-00364

NOTICE OF REMOVAL

28 U.S.C. §1332 (Diversity Jurisdiction)

[Sutter County Superior Court Case No.
CVCS 12-0348]

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFF, HIS COUNSEL, AND ALL OTHER
3 INTERESTED PARTIES:

4 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, defendant
5 Bank of America Corporation hereby removes the above-captioned action from the Superior
6 Court of California, County of Sutter, to the United States District Court for the Eastern District
7 of California. Defendant is entitled to removal pursuant to 28 U.S.C. § 1332 based on diversity of
8 citizenship, as follows:

9 **Timeliness and Venue**

10 1. Plaintiff Edward Scott Helmer filed a civil action against Bank of America
11 Corporation in the Superior Court of California for the County of Sutter on February 17, 2012,
12 asserting six causes of action: breach of the covenant of good faith and fair dealing,
13 promissory estoppel, wrongful foreclosure – violation of California Civil Code sections 2924,
14 *et seq.*, intentional infliction of emotional distress, unfair competition – violation of Business and
15 Professions Code sections 17200, *et seq.*, and to quiet title to the real property located at 135
16 Montana Court in Yuba City, California (the “Subject Property”). The Sutter County Superior
17 Court assigned this matter its case number CVCS 12-0348 (the “State Court Action”).

18 2. Plaintiff served defendant Bank of America Corporation with process in the
19 State Court Action on February 21, 2012.

20 3. This notice of removal is filed within thirty days of service and within one year of
21 the filing of the complaint. Therefore, this notice of removal is timely under 28 U.S.C. § 1446(b)
22 and Federal Rule of Civil Procedure 6(a)(3).

23 4. This Court has subject matter jurisdiction over this action and all claims asserted
24 against the defendant pursuant to 28 U.S.C. § 1332(a) and removal is proper pursuant to
25 28 U.S.C. § 1441.

26 5. Venue in this Court is proper pursuant to 28 U.S.C. §§ 84(c) and 1441(a) because
27 the United States District Court for the Eastern District of California, Sacramento Division, is the
28

1 federal judicial district and division embracing the Superior Court of California for the County of
2 Sutter, where plaintiff filed the State Court Action.

3 **Diversity of Citizenship**

4 6. Plaintiff is and at all times relevant was a citizen of California. *See* Complaint,
5 ¶ 51 (“The [Subject] Property is Plaintiff’s home.”)

6 7. Bank of America Corporation is and at all times relevant was a citizen of the states
7 of Delaware, under whose laws it is organized, and North Carolina, where its principal place of
8 business is located. *See* 28 U.S.C. § 1332(c)(1).

9 8. The only other defendants identified in the complaint are fictitiously named
10 defendants, Does 1 through 100. For removal purposes, the citizenship of defendants sued under
11 fictitious names is disregarded. 28 U.S.C. § 1441(a).

12 9. Defendant and plaintiff are citizens of different states. Therefore, there is diversity
13 of citizenship between the parties. 28 U.S.C. § 1332(a)(1).

14 **Amount in Controversy**

15 10. Plaintiff seeks to invalidate and set aside the foreclosure sale of the Subject
16 Property, which was security for a loan in the amount of “approximately \$340,000.” *See*
17 Complaint, ¶ 10. In an action seeking equitable relief, the amount in controversy is measured by
18 the value of the object of the litigation. *Chapman v. Deutsche Bank National Trust Company*,
19 651 F.3d 1039, n. 2 (2011). Plaintiff also seeks attorneys’ fees, which count toward the amount
20 in controversy. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696 (9th Cir. 2007).
21 Therefore, the amount-in-controversy requirement is satisfied.

22 **Notice to Plaintiff (Cal. Code Civ. Proc. § 286)**

23 11. Plaintiff’s original counsel of record, Matthew Mellen, is presently suspended
24 from the practice of law in California.¹ Defendant satisfied the notice requirement of California
25 Code of Civil Procedure section 286 before filing this notice of removal. Defendant is informed
26 and believes that plaintiff is now represented by attorney Michael Mercado.

27 _____
28 ¹ *See* <http://members.calbar.ca.gov/fal/Member/Detail/233350> (official web site of the
State Bar of California.)

Service of Notice

12. Pursuant to 28 U.S.C. §§ 1446(d), defendant is serving a copy on plaintiff's new counsel and filing a copy with the Superior Court of California for the County of Sutter.

Copies of Pleadings and Orders from the State Court Action

13. Copies of the pleadings served on defendant in the State Court Action are attached hereto as follows:

- a. Exhibit A: Civil Case Cover Sheet
- b. Exhibit B: Complaint
- c. Exhibit C: General Minute Order (Civil)
- d. Exhibit D: Summons
- e. Exhibit E: Notice of Pendency of Action
- f. Exhibit F: Notice to Plaintiff of His Counsel's Suspension (Code Civ. Proc. § 286)

Dated: March 22, 2012

SEVERSON & WERSON
A Professional Corporation

/s/ Daska P. Babcock

By: _____
Daska P. Babcock

Attorneys for Defendant
BANK OF AMERICA CORPORATION

PROOF OF SERVICE

Helmer v. Bank of America Corporation

U.S. District Court for the Eastern District of California, Sacramento Division
Temp. Case No. 12-364

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Severson & Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

NOTICE OF REMOVAL

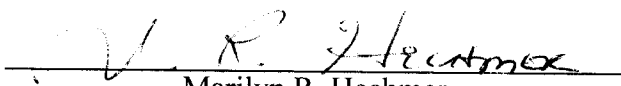
on all interested parties in said case addressed as follows:

Michael Mercado
411 Borel Avenue, Suite 230
San Mateo, CA 94402
Tel. (650) 638-0120

Attorney for Plaintiff
Edward Scott Helmer

☒ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in San Francisco, California in sealed envelopes with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed in San Francisco, California, on March 22, 2012.


Marilyn R. Hechmer