

CAUSE NO. 41159

**DAVID MCCRAE AND BARBARA
MCCRAE**

Plaintiffs,

v.

PHH MORTGAGE

Defendant

§ **IN THE DISTRICT COURT**
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§ **424TH JUDICIAL DISTRICT**
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§ **BURNET COUNTY, TEXAS**

NOTICE OF NOTICE OF REMOVAL

PLEASE TAKE NOTICE that on August 5, 2014, PHH Mortgage Corporation filed in the United States District Court for the Western District of Texas, Austin Division, a Notice of Removal of this matter. A copy of the Notice of Removal is attached as **Exhibit "A"**.

Respectfully submitted,

McGLINCHEY STAFFORD, PLLC

By: /s/ Nathan T. Anderson

S. DAVID SMITH
State Bar No. 18682550
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NATHAN T. ANDERSON
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McGlinchey Stafford, PLLC
2711 North Haskell Ave., Suite 2750, LB 25
Dallas, Texas 75204
Telephone: (214) 445-2445
Facsimile: (214) 445-2450

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a correct copy of the foregoing has been forwarded to the following in accordance with the Texas Rules of Civil Procedure on this 5th day of August 2014 as follows:

Via Certified Mail Return Receipt Requested No. 7196 9008 9111 2892 2641

David McCrae
Barbara McCrae
350 Cee Run
Bertram, Texas 78605

Plaintiffs Pro Se

/s/ Nathan T. Anderson
Nathan T. Anderson

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DAVID MCCRAE AND BARBARA
MCCRAE,

Plaintiff,

v.

PHH MORTGAGE

Defendant

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CIVIL ACTION NO. _____

DEFENDANT'S NOTICE OF REMOVAL

Defendant PHH Mortgage Corporation, incorrectly named as PHH Mortgage, ("Defendant"), hereby files this Notice of Removal of this action to the United States District Court for the Western District of Texas, Austin Division, and in support thereof would show unto the Court the following:

I. INTRODUCTION

1. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders and other papers filed in the state court action and obtained by Defendant are attached hereto and marked as composite **Exhibit "A"** and incorporated herein by reference

II. TIMELINESS OF NOTICE OF REMOVAL

2. Defendant has not been served with citation of Plaintiffs' Original Petition nor has any such citation been requested. Therefore, this notice is timely.

III. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

3. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) because this action is between citizens of different states and the amount of controversy exceeds \$75,000.00.

A. Complete Diversity Exists.

4. Complete diversity exists because Plaintiffs and Defendant are citizens of different states.

5. On information and belief, Plaintiffs are citizens of Texas.

6. Defendant is a New Jersey corporation with its principal place of business in New Jersey. Accordingly, Defendant is a citizen of New Jersey for purposes of diversity jurisdiction.

7. Inasmuch as Plaintiffs are citizens of Texas and Defendant is a citizen of New Jersey, complete diversity exists.

B. The Amount in Controversy Exceeds \$75,000.00.

8. Plaintiffs' Original Petition does not seek a specified amount of monetary relief. However, on or about June 13, 2014, Plaintiffs send to Defendant a demand letter requesting compensation in the form of 457 "bit-coins".¹ A defendant may rely on demands outside of the petition in support of establishing the amount in controversy.² As of the date of removal, the United States Dollar equivalency of such a demand is \$271,001.00.

9. Therefore, based on the value of the relief Plaintiffs seek in their demand letter to Defendant, the amount in controversy exceeds \$75,000.00.

IV. BASIS FOR REMOVAL: FEDERAL QUESTION

10. Alternatively, removal is proper because this case is a civil action involving a federal question. Plaintiffs purport to assert claims for violations of the Real Estate Settlement Procedures Act ("RESPA") under 12 U.S.C. § 2601, *et seq.*, and for violations of the Servicemembers Civil Relief Act ("SCRA") under 50 U.S.A. App. § 501, *et seq.* over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331.

¹ See correspondence from Plaintiffs attached hereto as **Exhibit "B"**.

² *De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993).

11. This Court has supplemental jurisdiction over Plaintiffs' common law claims because they form part of the same case or controversy as their claims under SCRA and RESPA. See 28 U.S.C. § 1367(a).³

V. VENUE

12. Venue for this Removal is proper in the U.S. District Court for the Western District of Texas, Austin Division because this district and division includes Burnet County, Texas—the location of the pending state court action.⁴

VI. ADDITIONAL REQUIREMENTS

13. Written Notice of Removal will be provided to Plaintiffs and filed with the District Clerk of Burnet County, Texas.

14. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. See 28 U.S.C. § 1446(a).

15. Plaintiffs did not demand a jury in their state court action.

16. Pursuant to Section 1016 of the Judicial Improvements and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal. Pursuant to Section 1016 of the Act, this Notice need not be verified.

17. In the event that Plaintiffs seek to remand this case, or the Court considers remand *sua sponte*, Defendant respectfully requests the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

³ See *Enochs v. Lamps Cnty.*, 641 F.3d 155, 158 (5th Cir. 2011); see also *Palmer v. Hosp. Auth. of Randolph County*, 22 F.3d 1559, 1566-69 (11th Cir. 1994) (discussing the power of the federal courts to exercise supplemental jurisdiction over state law claims under Section 1367(a)).

⁴ See 28 U.S.C. § 124(d)(1) (stating that the Austin Division of the Western District includes Burnet County).

18. WHEREFORE, having satisfied the requirements for removal, Defendant gives notice that Cause No. 41159 now pending in the 424th Judicial District Court of Burnet County, Texas has been removed to this Court.

Respectfully submitted,

By: /s/ Nathan T. Anderson

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ATTORNEYS FOR DEFENDANT

CERTIFICATE AND NOTICE OF FILING

I certify that on August 5, 2014 this Notice of Removal was sent to the District Clerk of Burnet County, Texas, and that written notice of filing of the Notice of Removal was served via certified mail, return receipt requested, upon Plaintiffs pro se.

/s/ Nathan T. Anderson
Nathan T. Anderson

CERTIFICATE OF SERVICE

I certify that a correct copy of the foregoing has been forwarded to the following in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on this 5th day of August, 2014 as follows:

Via Certified Mail Return Receipt Requested No. 7196 9008 9111 2892 2641

David McCrae
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424TH JUDICIAL DISTRICT

BURNET COUNTY, TEXAS

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