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**United States District Court  
Central District of California**

10 ILAN AVNIELI, an individual, and  
11 HEATHER AVNIELI, an individual,  
12 Plaintiffs,

13 v.

14 RESIDENTIAL CREDIT SOLUTIONS,  
15 INC., a corporation; THE BANK OF  
16 NEW YORK MELLON/K/A THE  
17 BANK OF NEW YORK AS TRUSTEE  
18 FOR THE BENEFIT OF THE  
19 CERTIFICATE HOLDERS OF THE  
20 CWALT, INC, ALTERNATIVE LOAN  
21 TRUST 2004-20T1, MORTGAGE  
22 PASSTHROUGH CERTIFICATES,  
23 SERIES 2004-20T1, an unknown business  
24 entity; FIRST AMERICAN TITLE  
25 INSURANCE COMPANY, a corporation;  
26 and DOES 1through 20, inclusive,  
27 Defendants.

Case No. 5:15-cv-02877-ODW-PJW

**ORDER INSTRUCTING  
DEFENDANTS TO SUBMIT  
SUPPLEMENTAL  
JURISDICTIONAL BRIEFING AND  
DENYING AS MOOT  
DEFENDANTS' MOTION TO  
DISMISS [11]**

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**I. JURISDICTION**

On April 17, 2015, Residential Credit Solutions, Inc. and The Bank of New York Mellon (“Defendants”) removed this action to federal court. (ECF No. 1.) On June 3, 2015, Defendants filed a Motion to Dismiss (ECF No. 11) in response to which Plaintiff filed a First Amended Complaint (“FAC”) on June 24, 2015 (ECF No.

1 13). Upon review of the Motion and the pleadings, the Court reexamined jurisdiction  
2 and now questions whether it has federal subject-matter jurisdiction.

3 There are two ways a party can bring a case within the jurisdiction of federal  
4 courts: (1) federal question under 28 U.S.C. § 1331, and (2) diversity of citizenship  
5 under 28 U.S.C. § 1332. Federal courts have diversity jurisdiction over civil actions  
6 where the amount in controversy exceeds \$75,000, exclusive of interest and costs, and  
7 the case is between citizens of different states. *Id.* “If at any time before final  
8 judgment it appears that the district court lacks subject matter jurisdiction, the case  
9 shall be remanded.” 28 U.S.C. § 1447(c); *see also* Federal Rule of Civil Procedure  
10 12(h)(3) (providing that a court may raise the question of subject matter jurisdiction,  
11 *sua sponte*, at any time).

12 However, there is an exception to the diversity analysis for a nominal party.  
13 The Ninth Circuit has held that courts should “ignore the citizenship of nominal or  
14 formal parties who have no interest in the action, and are merely joined to perform the  
15 ministerial act of conveying the title if adjudged to the complainant.” *Prudential Real*  
16 *Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 873 (9th Cir. 2000) (finding  
17 that managing shareholders were essentially constructive trustees with no stake in the  
18 outcome of the litigation). The removing party bears the burden of demonstrating that  
19 a defendant is a nominal party. *Silva v. Wells Fargo Bank, N.A.*, CV 11–3200–GAF  
20 (JCGx), 2011 WL 2437514, \*3 (C.D. Cal. June 16, 2011). Thus, in this case, that  
21 burden is on Defendants. (ECF No. 1.)

22 Defendants did not allege First American Title’s (“FAT”) citizenship in the  
23 Notice of Removal (“NOR”) or FAT’s *federal* nominal defendant status. (ECF No.  
24 1.) Defendants relied solely on FAT having filed a Declaration of Nonmonetary  
25 Status (“DNMS”) in accordance with California Civil Code section 2924l in order to  
26 claim that FAT is a nominal party. *Erie R.R. Co. v. Tompkins* held that *federal* courts  
27 with diversity jurisdiction are bound by *state substantive law* and follow *federal*  
28 *procedural law*. *Hanna v. Plumer*, 380 U.S. 460, 465 (1965).

1 California Civil Code section 2924l is a state procedural device designed to  
2 eliminate the need for a nominal party to participate in an action as it sets the  
3 procedure for filing and serving, the time for objections, and result of a party's failure  
4 to timely object. Cal. Civ. Code § 2924l. California procedure requires no actual  
5 showing that the filing party is nominal and only declares that the party has a  
6 "reasonable belief" that it "has been named in the action or proceeding solely in its  
7 capacity as trustee, and not arising out of any wrongful acts or omissions on its part in  
8 the performance of its duties as trustee." *Segura v. Wells Fargo, N.A.*, No. CV-14-  
9 04195-MWF (AJWx), 2014 WL 4798890, \*3 (C.D. Cal. Sept. 26, 2014), quoting Cal.  
10 Civ. Code § 2924l(a). Because it is well established that *federal* courts apply *federal*  
11 *procedure* (see *Erie R.R. Co.*, 304 U.S. 64 (1938)), this Court is not bound by the  
12 mechanism of a DNMS. See *Segura*, 2014 WL 4798890, at \*3.

13 Defendants cite two California district court cases to support their conclusion  
14 that FAT is a nominal party pursuant to state procedure. (ECF No. 1.) Defendants did  
15 not show that FAT is a nominal party pursuant to federal procedure, nor did they show  
16 that the district court cases cited correctly interpreted the nominal party exception to  
17 diversity jurisdiction. This is insufficient and creates doubt that the case was properly  
18 removed to federal court.<sup>1</sup> In addition, the Complaint and FAC state claims directly  
19 against FAT pertaining to its acts or omissions. Thus, this Court requires information  
20 at to FAT's citizenship or nominal status.

21 Therefore, the Court **ORDERS** Defendants to submit supplemental briefing,  
22 not to exceed three pages, by **Friday, July 17, 2015**, alleging the citizenship of First  
23 American Title or establishing why First American Title's citizenship should not be  
24 considered for the purpose of determining diversity jurisdiction under federal law.  
25 Failure to timely and adequately respond will result in remand of the present action.

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27 <sup>1</sup> If there is any doubt regarding the existence of subject-matter jurisdiction, the court must resolve  
28 those doubts in favor of remanding the action to state court. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566  
(9th Cir. 1992) ("Federal jurisdiction must be rejected if there is any doubt as to the right of removal  
in the first instance.").

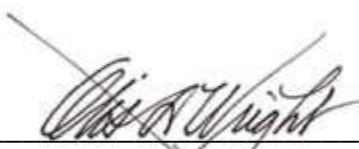
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**II. MOTION TO DISMISS**

Defendants filed a Motion to Dismiss (“MTD”) the Complaint on June 3, 2015. (ECF No. 11.) Plaintiffs subsequently filed a FAC on June 24, 2015 in lieu of an opposition to the MTD. (ECF No. 13.) Defendants are not required to file a new MTD simply because an amended complaint was introduced while their MTD was pending. Section 1476 Effect of an Amended Pleading, 6 Fed. Prac. & Proc. Civ. § 1476 (3d ed.). However, Plaintiffs’ FAC seems to directly address the arguments asserted in Defendants’ MTD. (*See generally* ECF No. 13.) Therefore, the Court **DENIES AS MOOT** Defendants’ Motion to Dismiss. (ECF No. 11.) Pending the result of the supplemental briefing, Defendants may file a new motion to dismiss Plaintiffs’ FAC.

**IT IS SO ORDERED.**

July 7, 2015



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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**