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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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MELANIE I. CORNELL
Plaintiff,

v.

NO. CIV. 2:12-330 WBS CKD

MEMORANDUM AND ORDER RE:
MOTION TO REMAND; MOTION TO
STRIKE RESPONSIVE BRIEF

That Certain Instrument Entitled
"Deed of Trust," under Recorder's
Document Number 20110015747
originally dated August 8, 2005
and filed in Nevada County; That
Certain "Corporate Assignment of
Deed of Trust," under Recorder's
Document Number 20110015748 dated
June 14, 2011 and filed in Nevada
County; That Certain Instrument
Entitled "Deed of Trust," under
Recorder's Document Number DOC-
2005-0111849 originally dated
August 8, 2005 and filed in
Placer County; NEW CENTURY
MORTGAGE CORPORATION; U.S BANK
NATIONAL ASSOCIATION, alleged
trustee; CHICAGO TITLE COMPANY
(erroneously named as CHICAGO
TITLE INSURANCE COMPANY),

Defendants.

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1 Plaintiff Melanie I. Cornell brought this action
2 against defendants New Century Mortgage Corporation ("New
3 Century"), U.S. Bank National Association ("U.S. Bank"), and
4 Chicago Title Company ("Chicago Title"), a California
5 corporation, arising from defendants' allegedly fraudulent
6 filings regarding plaintiff's home. (Docket No. 2-1.) After
7 plaintiff originally filed this action in Nevada County Superior
8 Court, defendants removed the case to this court on the basis of
9 diversity jurisdiction and listed Chicago Title Insurance Company
10 ("Chicago Title Insurance"), a Florida corporation, as a
11 defendant in lieu of Chicago Title. (Docket No. 2.) Plaintiff
12 now moves¹ to remand the case to Nevada County Superior Court
13 pursuant to 28 U.S.C. § 1447, or, in the alternative, to dismiss
14 the action without prejudice pursuant to Federal Rules of Civil
15 Procedure 41(a)(2) and 41(b), on the basis that plaintiff is not
16 diverse from Chicago Title. (Docket No. 56.)²

17 Although federal courts are courts of limited
18 jurisdiction, Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S.
19 375, 377 (1994), they have a "virtually unflagging obligation" to
20 exercise jurisdiction when it is proper. Colo. River Water Dist.
21 v. United States, 424 U.S. 800, 817 (1976). Federal courts have
22 original jurisdiction over civil actions between citizens of

23
24 ¹ Plaintiff has also filed a motion to strike defendants'
25 Opposition to the Motion to Remand for failing to strictly reply
26 to the arguments put forth in support of the motion for remand.
(Docket No. 64.) Because plaintiff's arguments in support of
this motion are duplicative of her arguments in support of her
original motion to remand, the court will deny this motion.

27 ² Because the parties have requested not to hold oral
28 argument, the court orders this matter submitted on the briefs.
The hearing set for October 21, 2013 is vacated.

1 different states in which the amount in controversy exceeds
2 \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332.
3 "Section 1332 requires complete diversity of citizenship; each of
4 the plaintiffs must be a citizen of a different state than each
5 of the defendants." Morris v. Princess Cruises, Inc., 236 F.3d
6 1061, 1067 (9th Cir. 2001) (citing Caterpillar Inc. v. Lewis, 519
7 U.S. 61, 68 (1996)).

8 In assessing diversity, however, "[a] federal court
9 must disregard nominal or formal parties and rest jurisdiction
10 only upon the citizenship of real parties to the controversy."
11 Kuntz v. Lamar Corp., 385 F.3d 1177, 1183 (9th Cir. 2004)
12 (quoting Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 461 (1980)
13 (internal quotation marks omitted)). A nominal party is one who
14 has no interest in the action and is joined merely to perform a
15 ministerial act. Prudential Real Estate Affiliates, Inc. v. PPR
16 Realty, Inc., 204 F.3d 867, 873 (9th Cir. 2000). "The
17 paradigmatic nominal defendant is a trustee, agent, or depository
18 who is joined merely as a means of facilitating collection."
19 Sec. & Exch. Comm'n v. Colello, 139 F.3d 674, 676 (9th Cir. 1998)
20 (citation and internal quotation marks omitted).

21 Chicago Title's citizenship does not affect the court's
22 diversity jurisdiction because it is a nominal party to this
23 action. Plaintiff named Chicago Title "as the trustee named in
24 the disputed exhibits 'A' and 'C'," corresponding to the disputed
25 deed of trust instruments. (Compl. ¶ 7.) The complaint includes
26 no substantive allegations against Chicago Title and asserts no
27 claims for money damages against Chicago Title in its capacity as
28 trustee of the disputed instruments. See Perez v. Wells Fargo,

1 929 F. Supp. 2d 988, 1002 (N.D. Cal. 2013) (holding that
2 "trustees are more than nominal defendants" if these conditions
3 are satisfied). Rather, plaintiff sued Chicago Title "solely in
4 its capacity as trustee and not because of any wrongdoing."
5 Hafiz v. Greenpoint Mortg. Funding, Inc., 652 F. Supp. 2d 1050,
6 1052 (N.D. Cal. 2009).³

7 Plaintiff cites a recent California Court of Appeal
8 case, Glaski v. Bank of America N.A., 218 Cal. App. 4th 1079 (5th
9 Dist. 2013), in support of the proposition that Chicago Title is
10 not a nominal party. (Pl.'s Reply 4-5 (Docket No. 67).)
11 Plaintiff argues that the assignment of the deed of trust was
12 void, and that, as a result, Chicago Title had an independent
13 duty to prevent U.S. Bank from initiating a nonjudicial
14 foreclosure proceeding that it had no authority to initiate.
15 (Id.)

16 Although Glaski appears to reflect a minority view, see
17 Newman v. Bank of N.Y. Mellon, No. 1:12-CV-1629 AWI GSA, 2013 WL
18 5603316, at *3 n.2 (E.D. Cal. Oct. 11, 2013), the court need not
19 reach the merits of plaintiff's argument because she has not
20 brought any claim against Chicago Title arising out of its own
21

22 ³ Although Hafiz involved a defendant who submitted a
23 Declaration of Non-Monetary Status pursuant to California Civil
24 Code § 29241, the court cannot consider Chicago Title's
25 Declaration of Non-Monetary Status in this case because it was
26 filed in state court on February 15, 2012, eight days after the
27 case was removed. See Williams v. Costco Wholesale Corp., 471
28 F.3d 975, 976 (9th Cir. 2006) (noting that "post-removal
pleadings have no bearing on whether the removal was proper").
Nonetheless, Hafiz still stands for the broader proposition that
a defendant who is sued solely in his capacity as trustee, like
Chicago Title, is a nominal party whose inclusion does not
destroy diversity. See 652 F. Supp. 2d at 1052.

1 acts or omissions. Rather, plaintiff sued Chicago Title
2 exclusively "in its capacity as Trustee in the . . . deed of
3 trust instruments." (Compl. ¶ 7.) Chicago Title is therefore a
4 nominal party whose inclusion in the action does not destroy
5 diversity. Kuntz, 385 F.3d at 1183. Accordingly, the court must
6 deny plaintiff's motion to remand or to dismiss the action.⁴

7 IT IS THEREFORE ORDERED that:

8 (1) plaintiff's motion to strike defendants' Opposition be, and
9 the same hereby is, DENIED; and

10 (2) plaintiff's motion to remand or to dismiss the action be,
11 and the same hereby is, DENIED.

12
13 ⁴ Plaintiff raises two unrelated arguments against
14 jurisdiction for the first time in her Reply. (See Docket No.
15 67.) First, plaintiff argues that defendants do not satisfy the
16 amount in controversy requirement set forth by 28 U.S.C. § 1332
17 because the instruments she seeks to cancel do not have any
18 monetary value themselves. (Reply at 2-3.) This argument borders
19 on frivolity. "In actions seeking declaratory or injunctive
20 relief, it is well established that the amount in controversy is
21 measured by the value of the object of the litigation." Hunt v.
22 Wash. State Apple Adver. Comm'n, 432 U.S. 333, 347 (1977). Here,
23 the enforceability of the deed of trust instruments "goes to the
24 merits and is itself 'the object of the litigation.'" Sekhon v.
25 BAC Home Loan Servicing LP, 519 Fed. App'x 971, 972 (9th Cir.
26 2013). Accordingly, the amount in controversy is satisfied
27 because the underlying property is worth \$335,000. (See Notice
28 of Removal ¶ 12.)

22 Second, plaintiff argues that defendants' removal of
23 the action was invalid because Chicago Title never consented to
24 the Notice of Removal, (Reply at 7-8), and because the removal
25 violated the "voluntary-involuntary rule" set forth by Self v.
26 Gen. Motors Corp., 588 F.2d 655 (9th Cir. 1978). (Reply at 6.)
27 28 U.S.C. § 1447(c) precludes these objections because they were
28 raised more than 30 days after the Notice of Removal and do not
dispute the court's underlying subject matter jurisdiction. See
Lively v. Wild Oats Markets, Inc., 456 F.3d 933, 942 (9th Cir.
2006) (holding that a procedural defect in removal "constitutes a
waivable non-jurisdictional defect subject to the 30-day time
limit imposed by § 1447(c).")

1 Dated: October 18, 2013

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WILLIAM B. SHUBB

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UNITED STATES DISTRICT JUDGE

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