



1 “Defendants”). On July 15, 2014, Defendants removed the action to this Court pursuant  
2 to 28 U.S.C. § 1441(b) and subsequently filed a Motion to Dismiss (ECF No. 4). On  
3 August 14, 2014, Plaintiff filed a Motion to Remand, arguing that this Court lacks  
4 jurisdiction to hear the case. For the following reasons, Plaintiff’s Motion to Remand  
5 (ECF No. 12) is GRANTED, and Defendants’ Motion to Dismiss is DENIED as moot.<sup>1</sup>  
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## 7 BACKGROUND

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9 On June 16, 2014, Plaintiff initiated this lawsuit by filing a verified complaint in  
10 San Joaquin Superior Court. ECF No. 1-2. The Complaint asserts state law causes of  
11 action for declaratory relief, violation of Cal. Civil Code section 2923.6(c) and (d),  
12 violation of Cal. Civil Code section 2923.7, violation of Bus. & Profs. Code section 17200  
13 et seq., negligence, fraud, unjust enrichment, and intentional/negligent infliction of  
14 emotional distress. Id. Plaintiff contends that none of the named Defendants have  
15 standing to sell his house in foreclosure or to collect monthly mortgage payments from  
16 him. Id. at 3. In addition, Plaintiff alleges that Defendants unlawfully participated in  
17 “dual-tracking” by pursuing loan modifications with Plaintiff and simultaneously pursuing  
18 foreclosure activity. Id.

19 On June 20, 2014, while the case was still pending in San Joaquin Superior  
20 Court, Defendant Sage Point Lender Services, LLC (“Sage Point”) filed a Declaration of  
21 non-Monetary Status (“DNMS”) pursuant to Cal. Civil Code section 2924I. See ECF  
22 No. 1-3. In the DNMS, Defendant Sage Point contended it had been named in the state  
23 court action solely in its capacity as Trustee. Id. at 3. On July 9, 2014, Plaintiff filed an  
24 Opposition to the DNMS. ECF No. 1-4. Subsequently, on July 15, 2014, Defendants  
25 removed the action to this Court pursuant to 28 U.S.C. § 1441(b), asserting diversity  
26 jurisdiction. Plaintiff filed his Motion to Remand on August 14, 2014, arguing that

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28 <sup>1</sup> Because oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

1 complete diversity does not exist because Defendant Sage Point and Plaintiff are both  
2 citizens of California. ECF No. 12 at 11. Plaintiff's Motion to Remand is GRANTED.

### 3 4 STANDARD

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6 When a case "of which the district courts of the United States have original  
7 jurisdiction" is initially brought in state court, the defendant may remove it to federal court  
8 "embracing the place where such action is pending." 28 U.S.C. § 1441(a). There are  
9 two bases for federal subject matter jurisdiction: (1) federal question jurisdiction under  
10 28 U.S.C. § 1331; and (2) diversity jurisdiction under 28 U.S.C. § 1332. A district court  
11 has federal question jurisdiction in "all civil actions arising under the Constitution, laws,  
12 or treaties of the United States." *Id.* § 1331. A district court has diversity jurisdiction  
13 "where the matter in controversy exceeds the sum or value of \$75,000, . . . and is  
14 between citizens of different states, or citizens of a State and citizens or subjects of a  
15 foreign state . . . ." *Id.* § 1332(a)(1)-(2). Diversity jurisdiction requires complete diversity  
16 of citizenship, with each plaintiff being a citizen of a different state from each defendant.  
17 *Id.*; Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 (1996) (stating that complete diversity of  
18 citizenship is required).

19 A defendant may remove any civil action from state court to federal district court if  
20 the district court has original jurisdiction over the matter. 28 U.S.C. § 1441(a). "The  
21 party invoking the removal statute bears the burden of establishing federal jurisdiction."  
22 Ethridge v. Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988) (citing Williams v.  
23 Caterpillar Tractor Co., 786 F.2d 928, 940 (9th Cir. 1986)). Courts "strictly construe the  
24 removal statute against removal jurisdiction." Gaus v. Miles, Inc., 980 F.2d 564, 566  
25 (9th Cir. 1992) (internal citations omitted). "[I]f there is any doubt as to the right of  
26 removal in the first instance," the motion for remand must be granted. *Id.* Therefore, "[i]f  
27 at any time before final judgment it appears that the district court lacks subject matter  
28 jurisdiction, the case shall be remanded" to state court. 28 U.S.C. § 1447(c).

## ANALYSIS

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3 Plaintiff brings his motion to remand on the grounds that he and Defendant Sage  
4 Point are both citizens of California and that consequently diversity of citizenship is  
5 lacking. Defendants disagree, taking the position that Defendant Sage Point's filing of  
6 the DNMS in state court means that Sage Point's citizenship should be disregarded in  
7 determining diversity. Alternatively, according to Defendants, Sage Point was added as  
8 a sham or fraudulent defendant in any event, with its citizenship properly disregarded on  
9 that basis as well. In response, Plaintiff argues that Sage Point's DNMS should be  
10 ignored because, rather than being sued solely in its capacity as a trustee, Sage Point is  
11 instead being sued directly for its own misconduct. ECF No. 12 at 7. Plaintiff therefore  
12 contends that Sage Point's inclusion as a defendant was neither a sham nor fraudulent.  
13 As set forth below, Plaintiff offers the more persuasive argument.

### A. DNMS

14  
15 Under California Civil Code section 2924I, a party may file a DNMS in state court  
16 if the party is a trustee under a deed of trust, if the party has been named in an action in  
17 which the deed of trust is the subject, and if the party reasonably believes that it has  
18 been named solely in its capacity as trustee. Cal. Civ. Code § 2924I. Any party who  
19 opposes the declaration has 15 days to object, and if there is no timely objection, then  
20 the trustee shall be deemed a "nominal" party. Id. In assessing diversity, "federal  
21 court[s] must disregard "nominal" or formal parties and rest jurisdiction only upon the  
22 citizenship of real parties to the controversy." Kuntz v. Lamar Corp., 385 F.3d 1177,  
23 1183 (9th Cir.2004) (quoting Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 461, 100 S. Ct.  
24 1779, 64 L. Ed. 2d 425 (1980)).

25 Plaintiff initially argues that, even apart from whether it confers nominal party  
26 status in state court, Sage Point's DNMS has no bearing on determining diversity in this  
27 matter because it was filed pursuant to a state procedural mechanism, not a substantive  
28 state law. ECF No. 12 at 5. Defendant, on the other hand, argues that, since Plaintiff

1 did not timely file an opposition to the DNMS, Sage Point automatically became a  
2 nominal party in the superior court and so remains one here. ECF No. 14 at 17.  
3 Consequently, according to Defendants, Sage Point’s citizenship should not be taken  
4 into account for the purpose of determining diversity jurisdiction. Id.

5 Because California Civil Code section 2924I’s directive with regard to the impact  
6 of a DNMS on nominal party status is a state procedural mechanism for establishing  
7 nominal party status, approaches to its application by federal courts vary. Some federal  
8 courts have recognized nominal party status when a DNMA has been filed in state court  
9 by the party at issue and has not been opposed. See Pardo v. Sage Point Lender  
10 Servs. LLC, 14–CV–305, 2014 WL 3503095, at \*2 (S.D. Cal. July 14, 2014) (explaining  
11 that “several district courts in California have disregarded a trustee defendant’s  
12 citizenship as being that of a ‘nominal’ defendant when that trustee defendant has  
13 properly filed a Declaration of Non–Monetary Status in state court prior to removal”).  
14 However, when a party attempts to initially file a DNMS in federal court, district courts  
15 tend to refuse to automatically deem that defendant a nominal party. See Tran v.  
16 Washington Mut. Bank, No. CIV S-09-3277 LKK/DA, 2010 WL 520878, at \*1 (E.D. Cal.  
17 Feb. 11, 2010). Other district courts have concluded that the filing of a DNMS, even in  
18 state court, is not dispositive of nonmonetary status and that an independent evaluation  
19 of the party’s status is required. See Segura v. Wells Fargo Bank, N.A., CV-14-04195-  
20 MWF AJWX, 2014 WL 4798890 (C.D. Cal. Sept. 26, 2014); Lawrence v. Aurora Loan  
21 Servs. LLC, 109CV01598LJODLB, 2010 WL 449734 (E.D. Cal. Feb. 8, 2010); Hershcu  
22 v. Wells Fargo Bank, N.A., 12–CV–00096, 2012 WL 439698, at \*2 (S.D. Cal. Feb.10,  
23 2012) (refusing to view Cal–Western’s DNMS as conclusive of nominal party status);  
24 Kendall v. Wells Fargo, No. CV 12–7229–DSF (PJWx), 2012 WL 10649162, at \* 1 (C.D.  
25 Cal. Aug. 30, 2012) (denying trustees nominal party status on the basis of a DNMS  
26 because no actual showing had been made that they were nominal parties).

27 This Court agrees with the latter decisions, which evaluate a party’s status under  
28 federal law as opposed to state procedural rules, and therefore finds that the filing of a

1 DNMS is a state procedural requirement not controlling for purposes of determining  
2 diversity.<sup>2</sup> Indeed, “[a] DNMS under California Civil Code section 2924I has no corollary  
3 in federal law, and does not result in a substantive finding by a court that a trustee is a  
4 nominal party. Filing a DNMS requires no showing by the filing party and only represents  
5 that the party has a ‘reasonable belief’ that it ‘has been named in the action or  
6 proceeding solely in its capacity as trustee, and not arising out of any wrongful acts or  
7 omissions on its part in the performance of its duties as trustee.” Segura, 2014 WL  
8 4798890 at \*3. This Court thus “understands a DNMS to be a California procedural  
9 device more than a matter of substantive California law” and “under Erie R. Co. v.  
10 Tompkins, 304 U.S. 64 (1938), [t]is not bound by the mechanism.” Id. Accordingly,  
11 Sage Point will not be considered a nominal Defendant based solely on the filing of a  
12 DNMS.

13 **B. Sage Point as Nominal and/or Fraudulently Joined Party**

14 Defendants alternatively argue that, even aside from its DNMS argument set forth  
15 above, Sage Point must still be considered a sham and/or fraudulent defendant in this  
16 action because Plaintiff has not alleged any facts that demonstrate wrongdoing sufficient  
17 to support an actionable claim. ECF No. 14 at 7. Plaintiff, of course, disagrees and  
18 contends that the Complaint contains numerous allegations of wrongdoing by Sage  
19 Point. ECF No. 12 at 7.

20 As indicated above, “federal court[s] must disregard nominal or formal parties and  
21 rest jurisdiction only upon the citizenship of real parties to the controversy.” Kuntz v.  
22 Lamar Corp., 385 F.3d at 1183. Indeed, “[c]ircuit law teaches that courts should ‘ignore  
23 the citizenship of nominal or formal parties who have no interest in the action, and are  
24 merely joined to perform the ministerial act of conveying the title if adjudged to the

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26 <sup>2</sup> Since the Court will not consider the DNMS, it is irrelevant that Plaintiff’s objections were  
27 untimely. Moreover, even if a Plaintiff fails to timely oppose a DNMS, the state procedural rules permit a  
28 Plaintiff to file a motion to force a defendant who has filed a declaration to nonetheless participate in the  
action. Cal. Civ. Code § 2924I(e). Accordingly, even assuming the state court rules governing non-  
monetary status applied here, Plaintiff should be given the chance to raise arguments as to why Sage  
Point is not a nominal party, which he has done in his Motion to Remand.

1 complainant.” Silva v. Wells Fargo Bank, NA, 2011 WL 2437514, \*3 (C.D. Cal.)  
2 (quoting Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc., 304 F.3d 867, 873  
3 (9th Cir. 2000)). Removing Defendants bear the burden of proving a defendant is a  
4 nominal party. Id. (internal quotations and citations omitted). Defendants have not met  
5 their burden here.

6 Defendants first contend that Sage Point is a nominal defendant because it was  
7 simply the trustee on the DOT. ECF No. 14 at 8. However, Sage Point’s status as a  
8 trustee is not itself sufficient to render it a nominal party. Couture v. Wells Fargo Bank,  
9 N.A., 2011 WL 3489955, \*3 (S.D. Cal.).

10 Defendants next argue that Sage Point’s statutory immunities provide a sufficient  
11 basis for finding that Sage Point is a nominal party. ECF No. 14 at 8-9. However, “such  
12 statutory immunity is not absolute; a finding of malice would permit Plaintiff’s claims to  
13 proceed.” Latino v. Wells Fargo Bank, N.A., 2:11-CV-02037-MCE, 2011 WL 4928880  
14 (E.D. Cal. Oct. 17, 2011). In the complaint, Plaintiff alleges, among other things, that  
15 Sage Point “was notified that Plaintiff submitted a complete loan modification application  
16 to Ocwen before Sage Point filed the June 20, 2014 NOD . . . .” ECF No. 1-2 at 33.  
17 Such allegations, among others, support claims for wrongdoing against Sage Point such  
18 that its citizenship should not be disregarded.

19 Finally, Defendants contend that Sage Point has been fraudulently joined by  
20 Plaintiff solely to destroy diversity. “Joinder of a non-diverse defendant is deemed  
21 fraudulent, and the defendant’s presence in the lawsuit is ignored for purposes of  
22 determining diversity, ‘[i]f the plaintiff fails to state a cause of action against a resident  
23 defendant, and the failure is obvious according to the settled rules of the state.’” Morris  
24 v. Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001) (quoting McCabe v.  
25 General Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987)). In this circuit, there is a  
26 “general presumption against fraudulent joinder,” and defendant’s burden of proof is  
27 “heavy.” Hunter v. Philip Morris USA, 582 F.3d 1039, 1046 (9th Cir. 2009). Simply  
28 alleging that Plaintiff has failed to state a claim pursuant to the Federal Rules of Civil

1 Procedure is not enough. See Watson v. Gish, 2011 WL 2160924, \*3 (N.D. Cal.).  
2 Instead, “[i]n the Ninth Circuit, a non-diverse defendant is deemed to be fraudulently  
3 joined [only] if, after all disputed questions of fact and all ambiguities in the controlling  
4 state law are resolved in the plaintiff's favor, the plaintiff could not possibly recover  
5 against the party whose joinder is questioned.” Sun v. Bank of American Corp., 2010  
6 WL 454720, \*3 (C.D. Cal.) (citing Kruso v. Int'l Tel. & Tel. Corp., 872 F.2d 1416, 1426  
7 (9th Cir. 1989)).

8 “A court may look beyond the pleadings to determine if a defendant is fraudulently  
9 joined, but a plaintiff need only have one potentially valid claim against a non-diverse  
10 defendant to survive a fraudulent joinder challenge.” Id. (internal citations and  
11 quotations omitted). “Accordingly, a defendant seeking removal based on an alleged  
12 fraudulent joinder must do more than show that the complaint at the time of removal fails  
13 to state a claim against the non-diverse defendant.” Id. To the contrary, “[r]emand must  
14 be granted unless the defendant shows that the plaintiff would not be afforded leave to  
15 amend his complaint to cure [the] purported deficiency.” Id. (internal quotations and  
16 citations omitted).

17 Defendants in this case thus bear the burden of showing that it is “obvious” that  
18 Plaintiff cannot possibly state a claim against Sage Point. On balance, Defendants  
19 cannot meet this burden. Plaintiff’s allegations that Sage Point was on notice of  
20 Plaintiff’s loan modification process, and that Defendants acted “fraudulently” and  
21 knowingly, and “with oppression, fraud and malice” toward Plaintiff, support claims for  
22 wrongdoing against Sage Point. See ECF No. 1-2 at 28. Since Defendants have failed  
23 to meet their burden of showing there is no possibility Plaintiff could establish a cause of  
24 action against Sage Point, they have not shown that Sage Point’s joinder was fraudulent.  
25 Accordingly, because Defendants have failed to show that Plaintiff and Sage Point are  
26 non-diverse, Plaintiff’s Motion to Remand is GRANTED.

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1 **CONCLUSION**

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3 For the reasons just stated, Plaintiff's Motion to Remand (ECF No. 12) is

4 GRANTED. Defendant's Motion to Dismiss (ECF No. 4) is DENIED as moot. The Clerk

5 of the Court is directed to remand this case to the originating state court, the Superior

6 Court of the State of California in and for the County of San Joaquin, for final

7 adjudication and to close this case.

8 IT IS SO ORDERED.

9 Dated: November 18, 2014

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11 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
12 UNITED STATES DISTRICT COURT

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