

1 that the California citizenship of the remaining Defendant, Clear Recon Corporation
2 (“Clear Recon”) should be disregarded for diversity purposes since, as a mere
3 foreclosure trustee, Clear Recon should be viewed as a nominal defendant whose
4 presence is irrelevant to a diversity analysis. Plaintiffs disagree with that
5 characterization and now move to remand the case back to state court on grounds that
6 the requisite diversity of citizenship is not present, both because Clear Recon’s
7 citizenship should be considered and because Chase should be deemed to be a citizen
8 of California in any event, thus destroying diversity on that ground as well.¹ For the
9 reasons set forth below, Plaintiffs’ Motion to Remand (ECF No. 17) is DENIED.²

11 STANDARD

13 When a case “of which the district courts of the United States have original
14 jurisdiction” is initially brought in state court, the defendant may remove it to a federal
15 court “embracing the place where such action is pending.” 28 U.S.C. § 1441(a). There
16 are two bases for federal subject matter jurisdiction: (1) federal question jurisdiction
17 under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C. § 1332. A district
18 court has federal question jurisdiction in “all civil actions arising under the Constitution,
19 laws, or treaties of the United States.” *Id.* § 1331. A district court has diversity
20 jurisdiction “where the matter in controversy exceeds the sum or value of
21 \$75,000, . . . and is between citizens of different states, or citizens of a State and citizens
22 or subjects of a foreign state” *Id.* § 1332(a)(1)-(2).

24 ¹ Plaintiffs also urge the Court to remand on ground that Chase failed to obtain the consent of
25 Clear Recon prior to removal, citing case law requiring unanimity of consent in removal cases involving
26 multiple defendants. See, e.g., *Russell Corp. v. American Home Assur. Co.*, 264 F.3d 1040 1050 (11th
27 Cir. 2001). As set forth below, however, because the Court concludes that Clear Recon was a nominal
28 defendant, its consent to removal was not required. See *Emrich v. Touche Ross & Co.*, 846 F.2d 1190,
1193 n.1 (9th Cir. 1988) (“Ordinarily, under 28 U.S.C. § 1146(a), all defendants in a state action must join
in the petition for removal, except for nominal, unknown, or fraudulently joined parties.”).

² Having concluded that oral argument was not of material assistance, the Court submitted this
matter on the briefs in accordance with Local Rule 230(g).

1 A defendant may remove any civil action from state court to federal district court if
2 the district court has original jurisdiction over the matter. 28 U.S.C. § 1441(a). “The
3 party invoking the removal statute bears the burden of establishing federal jurisdiction.”
4 Ethridge v. Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988) (citing Williams v.
5 Caterpillar Tractor Co., 786 F.2d 928, 940 (9th Cir. 1986)). Courts “strictly construe the
6 removal statute against removal jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566
7 (9th Cir. 1992) (internal citations omitted). “[I]f there is any doubt as to the right of
8 removal in the first instance,” the motion for remand must be granted. Id. Therefore, “[i]f
9 at any time before final judgment it appears that the district court lacks subject matter
10 jurisdiction, the case shall be remanded” to state court. 28 U.S.C. § 1447(c).

11

12 ANALYSIS

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14 In order to obtain diversity jurisdiction, each plaintiff must be of different
15 citizenship than each defendant. 28 U.S.C. § 1332(a); Athena Automotive, Inc. v.
16 DiGregorio, 166 F.3d 288, 290 (4th Cir. 1999). The requisite citizenship determination
17 must be made at the time the action is filed. Grupo Dataflux v. Atlas Global Group, LP,
18 541 U.S. 567, 570-71 (2004). Even if the controversy is primarily between citizens of
19 different states, if a properly joined defendant is a citizen of the same state as one of the
20 plaintiffs, complete diversity is not present and no federal jurisdiction accrues. See
21 Exxon Mobil Corp. v. Allapattah Servs, Inc., 545 U.S. 546, 562 (2005) (inclusion of non-
22 diverse party “contaminates” complaint).

23 According to the Complaint, Plaintiffs are California residents. Compl, ECF
24 No. 1-1, ¶ 1. Under the above-stated analysis, then, diversity is present only if all of the
25 Defendants are not deemed citizens of the State of California. While Plaintiffs’
26 Complaint states that Clear Recon is a Washington corporation with its principal place of
27 business in Washington, Plaintiffs now allege that Clear Recon is registered with the
28 State of California and consequently must be deemed a California resident. In removing

1 the action, Chase simply states that because Clear Recon's only role in this matter is as
2 trustee of the Deed of Trust encumbering Plaintiffs' property, it must be deemed a
3 nominal defendant whose location is irrelevant to the diversity analysis. Defs.' Notice of
4 Removal, ECF No. 1, ¶ 13. Chase argues that Plaintiffs make no specific allegations of
5 wrongdoing against Clear Recon, instead alleging only that Clear Recon recorded a
6 Notice of Trustee's Sale and subsequently issued a letter postponing that sale. Pls.'
7 Comp., ¶¶ 16-17.³ Where the allegations against the trustee turn on the loan servicer's
8 conduct as opposed to the trustee's, the trustee should be considered a "sham
9 defendant whose naming does not defeat diversity jurisdiction." Rieger v. Wells Fargo
10 Nat'l Ass'n, No. 3:13:0749-JSC, 2013 WL 1748045 at *6 (N.D. Cal. Apr. 23, 2013).

11 In the present matter, there are no allegations that Clear Recon did anything other
12 than conduct the ministerial duties of a trustee under the operable Deed of Trust.
13 Moreover, in serving as a foreclosure Trustee, Clear Recon was immune from liability
14 under state law because it was not a creditor and lacked any beneficial interest in the
15 deed of trust. See Cal. Civ Code § 2924(b),(d).⁴ Clear Recon's inclusion in Plaintiffs'
16 Complaint must therefore be considered nominal. A nominal party with no real interest
17 in the controversy is disregarded and cannot constitute the basis for removal. Roth v.
18 Davis, 231 F.3d 681, 683 (9th Cir. 1956) ("Jurisdiction is not ousted by the joinder or
19 non-joinder of mere formal parties); see also Strotek Corp v. Air Transp. Ass'n of Am.,
20 300 F.3d 1129 (9th Cir. 2000) (ignoring nominal trustee's citizenship). A foreclosure

21 ³ While Plaintiffs claim that Clear Recon is liable for violating a restraining order issued by the
22 state court prior to removal, there are numerous problems with that argument. First, Plaintiffs' Complaint
23 contains no such allegations. In addition, Plaintiffs have cited no authority to the effect that the state
24 court's order remained in effect once this Court assumed jurisdiction. Finally, to the extent that Clear
25 Recon postponed the Trustee's Sale on the property in response to the state court's temporary restraining
order, there is no indication that such conduct was a violation of the order in any event. The state court's
order prohibited actual sale or foreclosure and did not state that a sale could not be postponed or
continued.

26 ⁴ The Court recognizes Plaintiffs' argument that Clear Recon could have filed a Declaration of
27 Non-Monetary Status under California Code of Civil Procedure 2924l in the event it believed its inclusion in
28 the lawsuit was solely because of its status as trustee. Since the statute by its terms is permissive ("the
trustee **may** file a declaration of non-monetary status"), and because there are no allegations in the
Complaint of any independent liability on Clear Recon's part in any event, Clear Recon's failure to file such
a Declaration is not dispositive.

1 trustee with “no interest in the outcome of the litigation” has nominal status and “its
2 citizenship is not considered for the purpose of establishing diversity jurisdiction.”
3 Prasad v. Wells Fargo Bank, N.A., No. C11-894-RSM, 2011 WL 4074300 at *3 (W.D.
4 Wash. Sept. 13, 2011).

5 Plaintiffs’ remaining argument, that Chase should be considered a citizen of
6 California for diversity purposes, is no more persuasive. Chase is a federally chartered
7 “national banking association” organized and existing under the National Bank Act,
8 12 U.S.C. § 21, et seq. For purposes of diversity jurisdiction under 28 U.S.C. §§ 1332
9 and 1348, a national banking association is a citizen of the state in which its main office
10 is located, as identified in its articles of association. Wachovia Bank N.A. v. Schmidt,
11 546 U.S. 303, 318 (2006) (rejecting argument that national banking association is citizen
12 of every state in which it operates); Rouse v. Wachovia Mortg. FSB, 747 F.3d 707, 709
13 (9th Cir. 2014) (reversing remand, finding complete diversity between homeowners and
14 national bank because bank is citizen only of state in which its main office is located).

15 Chase’s Articles of Association designate its main office as being located in
16 Columbus, Ohio. See Notice of Removal, ECF No. 1, ¶ 11, EX. D; see also Decl. of
17 Mary McNeill, ECF No. 26, Ex. A at 1 (“The main office of [Chase] shall be in the city of
18 Columbus, County of Delaware, State of Ohio.”). As the Central District has recognized,
19 “[b]ecause [Chase’s] main office is located in Columbus, Ohio, it is a citizen only of
20 Ohio.” Matute v. JPMorgan Chase & Co., 2016 WL 3092124 at *4 (C.D. Cal. May 31,
21 2016). Chase therefore is an Ohio citizen for diversity purposes.

22 In urging the Court to reach a different conclusion, Plaintiffs largely rely on an
23 unsupported allegation that based on the “muscle test,” Chase’s “principal place of
24 business” should be deemed to be in San Francisco, California. Plaintiffs do not even
25 define what their purported “muscle test” is, let alone distinguish the clear authority
26 described above which stands for the proposition that as a national banking association
27 with its main office in Ohio, Chase is deemed an Ohio citizen in determining diversity.

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1 Because the Court concludes that complete diversity is indeed present under the
2 circumstances of this matter, and because the parties do not dispute that the \$75,000
3 amount in controversy requirement is satisfied, this Court has diversity jurisdiction,
4 removal was proper, and the instant motion to remand fails.

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CONCLUSION

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8 Based on all the foregoing, Plaintiffs' Motion to Remand (ECF No. 17) is DENIED.
9 Having determined that removal was proper, the Court declines to award any attorneys'
10 fees and costs occasioned by the removal as sought by Plaintiffs.

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IT IS SO ORDERED.

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Dated: February 22, 2017

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

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