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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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KATIE WAY, an individual, JOHN WAY,
an individual, and EDDY WAY, and
individual,

No. 2:16-cv-02244-TLN-KJN

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Plaintiffs,

**ORDER DENYING PLAINTIFFS'
MOTION TO REMAND**

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v.

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JP MORGAN CHASE BANK, N.A.,
CALIBER HOME LOANS, INC., U.S.
BANK, N.A., as trustee for LSF9
MASTER PARTICIPATION TRUST, and
MTC FINANCIAL INC., dba TRUSTEE
CORPS,

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Defendants.

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This matter is before the Court on Plaintiffs Katie Way, John Way and Eddy Way's (collectively "Plaintiffs") Motion to Remand. (ECF No. 14.) Defendant JP Morgan Chase Bank, N.A. ("Chase") opposes the motion.¹ (ECF No. 34.) Having reviewed the briefing filed by both parties and for the reasons set forth below, the Court hereby DENIES Plaintiff's Motion to Remand (ECF No. 14).

I. FACTUAL AND PROCEDURAL BACKGROUND

This action involves real property located at 16 Nob Court, Sacramento, California 95826.

¹ Defendants Caliber Home Loans, Inc. and U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust join Chase's opposition. (ECF No. 35.)

1 (ECF No. 21.) Plaintiffs commenced this lawsuit in the Superior Court of California, County of
2 Sacramento on August 16, 2016. (ECF No. 1.) Plaintiffs assert six claims against all Defendants
3 alleging as follows: (1) Breach of Contract; (2) Breach of Implied Covenant of Good Faith and
4 Fair Dealing; (3) Intentional Infliction of Emotional Distress; (4) Violation of California Civil
5 Code § 2923.55; (5) Negligence; and (6) Violation of Business and Professions Code § 17200.
6 (ECF No. 21.) Defendants removed the action on September 21, 2016. (ECF No. 1.) Plaintiffs
7 filed their motion to remand on October 21, 2016. (ECF No. 14.)

8 II. STANDARD OF LAW

9 “[A]ny civil action brought in a State court of which the district courts of the United
10 States have original jurisdiction, may be removed by the defendant or the defendants, to the
11 district court of the United States for the district and division embracing the place where such
12 action is pending.” 28 U.S.C. § 1441(a). The district court has original jurisdiction over civil
13 actions between citizens of different states in which the alleged damages exceed \$75,000. 28
14 U.S.C. § 1332(a)(1). An action otherwise removable shall not be removed if any of the parties
15 properly joined and served as defendants is a citizen of the state in which such action is brought.
16 28 U.S.C. § 1441(b)(2). The party asserting federal jurisdiction bears the burden of proving
17 diversity. *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986) (citing *Resnik v. La Paz Guest Ranch*,
18 289 F.2d 814, 819 (9th Cir. 1961)). Diversity is determined as of the time the complaint is filed
19 and removal effected. *Strotek Corp. v. Air Transp. Ass’n of Am.*, 300 F.3d 1129, 1131 (9th Cir.
20 2002). Removal statutes are to be strictly construed against removal. *Gaus v. Miles, Inc.*, 980
21 F.2d 564, 566 (9th Cir. 1992).

22 The amount in controversy is determined by reference to the complaint itself and includes
23 the amount of damages in dispute, as well as attorney’s fees, if authorized by statute or contract.
24 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). Where the complaint does not
25 pray for damages in a specific amount, the defendant must prove by a preponderance of the
26 evidence that the amount in controversy exceeds \$75,000. *Singer v. State Farm Mut. Auto. Ins.*
27 *Co.*, 116 F.3d 373, 376 (9th Cir. 1997) (citing *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d
28 398, 404 (9th Cir. 1996)). If the amount is not facially apparent from the complaint, the Court

1 may “require parties to submit summary-judgment-type evidence relevant to the amount in
2 controversy at the time of removal.” *Id.* (citing *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326,
3 1335–56 (5th Cir. 1995)).

4 Removal based on diversity requires that the citizenship of each plaintiff be diverse from
5 the citizenship of each defendant (i.e. complete diversity). *Caterpillar Inc. v. Lewis*, 519 U.S. 61,
6 68 (1996). For purposes of diversity, a limited liability company (LLC) is a citizen of every state
7 in which its “owners/members” are citizens. *Johnson v. Columbia Prop. Anchorage, LP*, 437
8 F.3d 894, 899 (9th Cir. 2006) (explaining that courts are to treat LLCs like partnerships, which
9 have the citizenships of all of their members). A corporation is a citizen of any state in which it is
10 incorporated and any state in which it maintains its principal place of business. 28 U.S.C. §
11 1332(c)(1).

12 **III. ANALYSIS**

13 Plaintiff argues this Court does not have subject matter jurisdiction because Defendant
14 MTC Financial Inc., doing business as Trustee Corps (“Trustee Corps”) is a citizen of California
15 and therefore complete diversity does not exist. (ECF No. 14 at 6.) Chase argues Trustee Corps
16 is a nominal defendant and should not count toward determining diversity. (ECF No. 34 at 2–3.)
17 Plaintiff further asserts it is not clear that the amount in controversy exceeds \$75,000 because the
18 entire loan is not in controversy. (ECF No. 14 at 7.) Chase counters the indebtedness owed or
19 the fair market value of the property is the appropriate amount in controversy. (ECF No. 34 at 4.)

20 **A. Trustee Corps is a Nominal Defendant**

21 When assessing diversity, “court[s] must disregard nominal or formal parties and rest
22 jurisdiction only upon the citizenship of real parties to the controversy.” *Kuntz v. Lamar Corp.*,
23 385 F.3d 1177, 1183 (9th Cir. 2004.) A nominal party has no interest in the action and is joined
24 to “perform a ministerial act.” *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204
25 F.3d 867, 873 (9th Cir. 2000). The quintessential nominal defendants are trustees, agents, or
26 depositories who are joined merely to facilitate collection. *S.E.C. v. Colello*, 139 F.3d 674, 676
27 (9th Cir. 1998). However, a trustee may not be a nominal defendant where the complaint
28 includes “substantive allegations and asserts claims for money damages against the trustee.”

1 Perez v. Wells Fargo Bank, N.A., 929 F. Supp. 2d 988, 1002 (N.D. Cal. 2013).

2 Here, Plaintiffs do not assert any substantive allegations against Trustee Corps. (See
3 generally ECF No. 21.) In fact, Plaintiffs qualify each claim raised against Trustee Corps with
4 the same sentence.

5 Trustee Corps is the foreclosure trustee to the Loan who would
6 conduct a foreclosure sale of the Subject Property if ordered by the
7 Loan's owner and servicer. As such, this cause of action is directed
at Trustee Corps only to the extent that they are a necessary party to
Plaintiffs' prayer for injunctive relief.

8 (ECF No. 21 ¶¶ 30, 38, 43, 53, 59 & 66.) Plaintiffs explicitly acknowledge in their first amended
9 complaint that they do not assert any claims against Trustee Corps for monetary damages.

10 Plaintiffs attempt to make an argument that Trustee Corps is not a nominal defendant
11 because it did not file a declaration of non-monetary status. (ECF No. 14 at 6.) However, while
12 some courts have conferred nominal defendant status on a defendant who has filed a declaration
13 of non-monetary status, Plaintiff has presented no case law requiring a party to file such a
14 declaration in order to be eligible for nominal defendant status. See Pardo v. Sage point Lender
15 Servs. LLC, No. 14-CV-305, 2014 WL 3503095, at * 2 (E.D. Cal. July 14, 2014). The Court
16 finds Plaintiffs have failed to make substantive allegations against Trustee Corps and admittedly
17 asserts each claim against Trustee Corps only as a necessary party for injunctive relief.
18 Accordingly, Trustee Corps does not destroy complete diversity as they are added solely to
19 effectuate sale of the property.

20 The parties do not dispute that the remaining Defendants are diverse from all Plaintiffs.
21 Accordingly, complete diversity exists between the parties.

22 B. The Amount in Controversy Exceeds \$75,000

23 It is well established that in actions seeking injunctive or declaratory relief, the amount in
24 controversy is measured by the value of the object in litigation. Cohn v. Petsmart Inc., 281 F.3d
25 837, 840 (9th Cir. 2002). Courts have found that when the fair market value of the property was
26 appraised in excess of \$75,000 the amount in controversy requirement has been met. See
27 Garfinkle v. Wells Fargo Bank, 483 F.2d 1074, 1076 (9th Cir. 1973) (treating entire value of real
28 property as amount in controversy in action to enjoin foreclosure sale); Woodside v. Ciceroni, 93

1 F. 1, 4 (9th Cir. 1899) (“In a suit to quiet title, or to remove a cloud therefrom, it is not the value
2 of the defendant’s claim which is the amount in controversy, but it is the whole of the real estate
3 to which the claim extends.”).

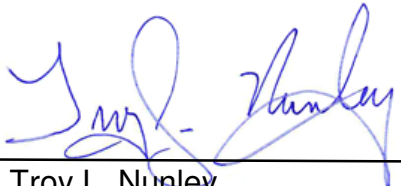
4 Here, the parties do not dispute the value of the property is measured by the note at
5 \$280,000. (ECF No. 21-2, Ex. A.) Further, the modified loan amount in dispute is \$269,713.60.
6 (ECF No. 21-2, Ex. B.) As both numbers are in excess of \$75,000, the amount in controversy
7 requirement is met.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Chase has established diversity jurisdiction. Accordingly, the
10 Court finds it has jurisdiction over this action. Plaintiffs’ Motion to Remand (ECF No. 14) is
11 hereby DENIED.

12 IT IS SO ORDERED.

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14 Dated: September 5, 2017

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18 Troy L. Nunley
19 United States District Judge
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