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IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEWART INIGUEZ and SHERRILL
INIGUEZ,

Plaintiffs,

v.

VANTIUM CAPITAL, INC. a/k/a ACQURA
LOAN SERVICES, ALSO AS ATTORNEY-IN-
FACT FOR CASTLE PEAK 2010-1 LOAN
TRUST; CITIMORTGAGE INC.; MORTGAGE
MASTER, INC. d/b/a MORTGAGE MASTER
PACIFIC; FIRST AMERICAN TITLE
COMPANY; QUALITY LOAN SERVICE
CORPORATION; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and DOES
1-100 INCLUSIVE,

Defendants.

No. C 13-00037 WHA

**ORDER DENYING
 MOTION TO REMAND
 WITH INSTRUCTIONS
 TO AMEND, AND
 DENYING REQUEST
 FOR ATTORNEY'S
 FEES AND COSTS**

INTRODUCTION

In this foreclosure action, plaintiffs have filed a motion to remand this action to state court. For the reasons stated below, plaintiffs' motion to remand is **DENIED WITH INSTRUCTIONS TO AMEND**. Plaintiffs' request for attorney's fees and costs is **DENIED**.

STATEMENT

In February 2007, plaintiffs Stewart and Sherrill Iniguez obtained a loan from Mortgage Master, Inc. secured by their California residential property. Plaintiffs executed a promissory note and a deed of trust identifying Mortgage Master as the lender, First American Title

1 Company as the trustee, and Mortgage Electronic Registration Systems, Inc. (MERS) as the
2 beneficiary and nominee for the lender.

3 Four years later, in April and May 2011, two assignments of deed of trust were signed
4 and recorded in Sonoma County in which MERS granted, assigned, and transferred all beneficial
5 interest and rights accrued under the deed of trust from Mortgage Master to Castle Peak 2010-1
6 Loan Trust. After the assignments were executed, a substitution of trustee was also signed and
7 recorded in which Castle Peak transferred trustee rights from First American Title to Quality
8 Loan Service Corporation.

9 After plaintiffs failed to make mortgage payments, Quality Loan recorded a notice of
10 default on plaintiffs' property. Quality Loan foreclosed on the property and sold it to Castle
11 Peak. Then, Castle Peak instituted an unlawful detainer action against plaintiffs in the Sonoma
12 County Superior Court.

13 While the unlawful detainer action was underway, plaintiffs proceeded pro se and
14 commenced the present action in Sonoma County Superior Court against defendants. In the
15 unlawful detainer action, the parties entered a stipulated judgment against plaintiffs.

16 Herein, plaintiffs allege: (1) violation of California Civil Code Section 2923.5,
17 (2) wrongful foreclosure, (3) declaratory relief, (4) quiet title, (5) breach of contract, (6)
18 violation of Business and Professions Code Section 17200, and (7) injunctive relief. In January
19 2013, defendants removed the present action to federal court. Shortly after, Acqura Loan
20 Services/MERS, CitiMortgage, Inc., and First American Title filed motions to dismiss.
21 Plaintiffs then retained counsel and filed a motion to remand this action back to state court.

22 On the day before the March 21 hearing, defendant CitiMortgage revealed that plaintiffs
23 have a concurrent state action against CitiMortgage alleging the same claims and stemming from
24 the same transaction (Dkt. No. 47).

25 **ANALYSIS**

26 **1. MOTION TO REMAND.**

27 A defendant may remove a civil action from state court to federal court if original
28 jurisdiction would have existed at the time the complaint was filed. 28 U.S.C. 1441(a).

1 “The strong presumption against removal jurisdiction means that the defendant always has the
2 burden of establishing that removal is proper, and that the court resolves all ambiguity in favor
3 of remand to state court.” *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009)
4 (internal quotations and citations omitted).

5 **A. Diversity Jurisdiction.**

6 **(1) Section 2924l Declarations of**
7 **Non-Monetary Status.**

8 Defendants Quality Loan and First American Title are the only non-diverse parties in the
9 present action. Each filed a declaration of non-monetary status pursuant to California Civil Code
10 Section 2924l, contending that they are nominal defendants and should thus be excluded when
11 determining diversity jurisdiction. Our court of appeals has not ruled on whether a Section 2924l
12 declaration has any effect in federal court. The undersigned Judge, however, has previously
13 held that although Section 2924l declarations are generally not valid in federal court
14 proceedings, a defendant can be treated as a nominal defendant where the parties have stipulated
15 to non-monetary status. *Perez v. Am. Home Mortgage Servicing*, No. C-12-00932 WHA, Dkt.
16 No. 34 at 2 (Sept. 4, 2012). See *Kennedy v. PLM Lender Servs., Inc.*, 2012 WL 1038632 at *2
17 (N.D. Cal. Mar. 27, 2012); *Avila v. Wells Fargo Bank*, No. C-12-01237 WHA, Dkt. No. 22 at 2
18 (May 21, 2012).

19 Here, plaintiffs have objected to defendants’ Section 2924l declarations, arguing that it is
20 a state procedural issue not granted in federal court. Without a stipulation, this order agrees.
21 The requests for non-monetary status, therefore, cannot be deemed to reduce the diverse parties
22 to non-entities.

23 **(2) Fraudulent Joinder.**

24 If defendants establish fraudulent joinder, the citizenship of fraudulently joined parties
25 will not defeat diversity. To prove fraudulent joinder, a defendant must show that “the plaintiff
26 fail[ed] to state a cause of action against a resident defendant, and the failure is obvious
27 according to settled rules of the state.” *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339
28 (9th Cir. 1987). The removing party bears the burden of establishing fraudulent joinder and “is
entitled to present the facts showing the joinder to be fraudulent.” *Ibid*. There is a general

1 presumption against fraudulent joinder, such that the removing party must negate every possible
2 scenario within the ambit of a well-pled claim. *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313,
3 1319–20 (9th Cir. 1998).

4 First American Title alternatively argues that it was fraudulently joined into the present
5 action, and thus its citizenship should not be considered when determining diversity jurisdiction.
6 It argues that it did nothing relevant to plaintiffs’ claims and that its involvement is due solely to
7 its former status as trustee (Dkt. No. 37 at 1–2). In its brief, First American Title conducted a
8 fraudulent joinder analysis as it related only to First American Title.

9 First American Title also stated in its brief that Quality Loan “conducted the foreclosure
10 at issue” and then concluded that Quality Loan was also fraudulently joined (*id.* at 1, 5).
11 Quality Loan has made no assertions of fraudulent joinder neither in its briefs nor at the
12 March 21 hearing, in which counsel failed to appear. No defendant has shown that Quality
13 Loan has been fraudulently joined, and thus the burden by the removing party has not been met.
14 Quality Loan, therefore, will not be considered for fraudulent joinder.

15 As to First American Title, even if it were true that it was fraudulently joined, Quality
16 Loan remains a non-diverse party. With at least one defendant remaining a non-diverse party,
17 there is no diversity jurisdiction.

18 **B. Federal-Question Jurisdiction.**

19 Removal is permitted for actions involving a federal question over which the district
20 court would have had original jurisdiction pursuant to 28 U.S.C. 1331. The “well-pleaded
21 complaint rule provides that federal jurisdiction exists only when a federal question is presented
22 on the fact of the plaintiff’s properly pleaded complaint.” *Hunter*, 582 F.3d at 1042.
23 “[T]he mere presence of a federal issue in a state cause of action does not automatically confer
24 federal-question jurisdiction.” *Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1040
25 (9th Cir. 2003) (internal quotations and citations omitted).

26 The two sides disagree over whether the pleading seeks relief based on federal claims.
27 The undersigned has read the pleading himself. In paragraph 17 of the complaint, plaintiffs
28 “allege that [d]efendant Acqura has violated the [federal] Fair Credit Debt Collections Practices

1 Act . . . Defendant Acqura does not have a right to possession of the property as a result of the
2 fraudulently executed Assignments of Deed of Trust, thus causing [d]efendant to be in violation
3 of the Fair Credit Debt Collections Practices Act.” In addition, the complaint makes reference to
4 other federal law: R.E.M.I.C., 26 U.S.C. 850–852; the SEC; various federal agencies and agency
5 cease and desist orders (Compl. ¶¶ 33, 35, 47). So, these snippets seem to assert federal claims
6 for relief.

7 On the other hand, the complaint is organized around state causes of action, none of
8 which is federal. For example, the complaint references the Fair Credit Debt Collections
9 Practices Act under general allegations, which extend over 12 pages, until finally the first claim
10 for relief is stated, which is a claim under California Civil Code Section 2923.5. In like manner,
11 the subsequent claims for relief are wrongful foreclosure, declaratory relief, quiet title (of which
12 the page is missing in the complaint), breach of contract, violation of Business and Professions
13 Code Section 17200, and injunctive relief.

14 The aforementioned federal statutes are not referenced again under state claims.
15 However, under the last claim for injunctive relief, further federal statutes are invoked.
16 Specifically, paragraph 104 states that plaintiffs are entitled to injunctive relief because
17 “Mortgage Master violated the Truth in Lending Act [and] the Real Estate Settlement and
18 Procedures Act.” In other words, the pleading is a masterpiece of trying to have it both ways.
19 For purposes of defeating removal, the pleader purported to allege only state law claims focusing
20 on overall organization for claim for relief. For purposes of adding federal strings to a state bow,
21 however, the pleader embedded alleged federal violations throughout the document.

22 The proper analysis is that the complaint must be deemed to allege federal claims for
23 relief and thus satisfies federal removal jurisdiction. If, however, plaintiffs dismiss all federal
24 claims with prejudice in an *unambiguous* pleading and limit the relief sought to state law claims,
25 then the Court will remand the case. The motion to remand is, therefore, **DENIED WITH LEAVE**
26 **TO SO CLARIFY.**

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2. REQUEST FOR ATTORNEY’S FEES AND COSTS.


Pursuant to 28 U.S.C. 1447, plaintiffs request an award of “just costs and any actual expenses, including attorney fees, incurred as a result of the removal,” in the amount of \$2,100 (Br. 17). This request is ridiculous given the federal question woven into the pleading. Plaintiffs’ request is **DENIED**.

CONCLUSION

Based on the foregoing analysis, plaintiffs’ motion to remand this action is **DENIED WITH INSTRUCTIONS TO AMEND**. Plaintiffs have leave to file an unambiguous pleading dismissing all federal claims with prejudice by **APRIL 1 AT NOON**. Plaintiffs’ request for attorney’s fees and costs is **DENIED**.

IT IS SO ORDERED.

Dated: March 25, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE