

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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5 DENNIS THOMPSON,

6 Plaintiff,

7 v.

8 GENON ENERGY SERVICES, LLC,
9 et al.,

10 Defendant.

NO. C13-0187 TEH

ORDER RE MARCH 4
HEARING

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12 This case will come before the Court on March 4, 2013, on Plaintiff's motion to
13 remand to state court. Defendants argue that this Court has diversity jurisdiction based on
14 the fraudulent joinder of two individual in-state defendants. The Court now orders the
15 parties to be prepared to address the following questions at oral argument:

16 1) The Ninth Circuit has stated that:

17 [W]hen, on a motion to remand, a showing that compels a holding that
18 there is no reasonable basis for predicting that state law would allow the
19 plaintiff to recover against the in-state defendant necessarily compels the
20 same result for the nonresident defendant, there is no improper joinder;
there is only a lawsuit lacking in merit. In such cases, it makes little sense
to single out the in-state defendants as "sham" defendants and call their
joinder improper.

21 *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1044 (9th Cir. 2009) (quoting *Smallwood v.*
22 *Illinois Central R.R. Co.*, 385 F.3d 568, 574 (5th Cir.2004) (en banc)). Should this analysis
23 be applied here?

24 2) Do Defendants' arguments regarding exhaustion (§ III.B.), preemption of privacy claims
25 (§ III.D.), and failure to state a claim for privacy violations (§ III.E.) apply to all of the
26 defendants, including out-of-state defendants? If so, does *Hunter* suggest that these
27 arguments are improperly cloaked as fraudulent joinder arguments?
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If the parties wish to file supplemental briefs on this issue, they shall file any such briefs of no more than five pages in length by **Thursday, February 28 at 12:00 pm.**

IT IS SO ORDERED.



Dated: 2/22/13

THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT