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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROSE MAGNO,
Plaintiff,
v.
UNUM GROUP, et al.,
Defendants.


Case No. [14-cv-05041-VC](#)
ORDER OF REMAND
Re: Dkt. Nos. 9, 13

The motion to remand the case to San Francisco Superior Court is granted. Although it appears the plaintiff's decision to include the mandamus claim against the Insurance Commissioner was motivated by a desire to defeat diversity jurisdiction, the test for whether the Commissioner is a "sham defendant" whose presence may not defeat diversity jurisdiction is an objective one, involving an inquiry into whether the plaintiff has clearly and obviously failed to state a claim against the alleged sham defendant. And in this case, although UNUM has submitted evidence which seems to indicate that the Commissioner reviewed and approved the provisions of the policy at issue in the mandamus claim (which would likely defeat the mandamus claim), the answer filed by the Commissioner creates confusion on that point. Specifically, in Paragraph 44 of the answer the Commissioner appears to allege that he reviewed the provisions, but he goes on to deny, in Paragraphs 45 and 46, that he approved the policy. In light of the confusion created by the Commissioner's answer, the Court cannot be assured that the plaintiff has failed to state a mandamus claim against the Commissioner. Accordingly, the case must be remanded.

The Clerk is directed to remand the case to San Francisco Superior Court.

IT IS SO ORDERED.

Dated: January 14, 2015



VINCE CHHABRIA
United States District Judge