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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FRANCISCO S. PARDO, M.D.,

Plaintiff,

vs.
SAGE POINT LENDER SERVICES
LLC, RESIDENTIAL CREDIT
SOLUTIONS, INC., BANK OF
AMERICA, NA, THE BANK OF
NEW YORK MELLON, As Trustee
for the Certificateholders of CWMBS,
Inc., CHL Mortgage Pass-Through
Trust 2005-15, formerly known as
THE BANK OF NEW YORK,

Defendants.

CASE NO. 14cv305-WQH-DHB
ORDER

HAYES, Judge:

The matter before the Court is the Motion to Remand filed by Plaintiff Francisco Pardo, M.D. (ECF No. 11).

BACKGROUND

On January 3, 2014, Plaintiff Francisco Pardo, M.D. (“Plaintiff”), proceeding *pro se*, commenced this action by filing the Complaint in the Superior Court of California, County of San Diego (ECF No. 1-2). The Complaint alleges violation of California Business & Professions Code § 17200, retaliation in violation of public policy, intentional interference with business relationships, sexual orientation discrimination, and intentional infliction of emotional distress, all arising from loan modification

1 negotiations and foreclosure activity in connection with a residential mortgage.
2 Residential Credit Solutions, Inc. (“RCS”), Bank of America, N.A. (“Bank of
3 America”), Bank of New York Mellon (“BNYM”), and Sage Point Lender Services,
4 LLC (“Sage Point”) (collectively “Defendants”) are named as defendants. The
5 Complaint alleges that Plaintiff is a resident of San Diego County, but does not allege
6 the citizenship of any of the defendants. *Id.* at 2.

7 On February 10, 2014, Defendants RCS, Bank of America, and BNYM removed
8 the action to this Court pursuant to 28 U.S.C. § 1441(b) and 28 U.S.C. § 1332 on the
9 basis of diversity of citizenship. (ECF No. 1). On February 11, 2014, Defendant Sage
10 Point joined in the Notice of Removal. (ECF No. 4). The Notice of Removal states
11 that RCS is a citizen of Delaware and Texas, Bank of America is a citizen of North
12 Carolina, BNYM is a citizen of New York and Delaware, and Sage Point is a citizen of
13 California. (ECF No. 1 at 4). Despite a lack of diversity between Plaintiff and Sage
14 Point, Defendants removed on the ground that Sage Point’s citizenship should be
15 disregarded because Sage Point is a “nominal party.” *Id.*

16 On March 5, 2014, Plaintiff filed a Motion to Remand to state court on the basis
17 of a lack of diversity jurisdiction. (ECF No. 11). On March 26, 2014, Defendants RCS,
18 Bank of America, and BNYM filed an opposition. (ECF No. 14). Defendant Sage
19 Point has not filed an opposition to the Motion to Remand. On April 16, 2014, Plaintiff
20 filed a reply. (ECF No. 23).

21 DISCUSSION

22 28 U.S.C. section 1332 authorizes district courts to exercise original jurisdiction
23 in cases in which the amount in controversy exceeds the sum or value of \$75,000.00
24 and the parties are citizens of different states. 28 U.S.C. § 1332. Diversity jurisdiction
25 requires complete diversity, meaning every plaintiff must be diverse from every
26 defendant. *Id.* Pursuant to the removal statute, “any civil action brought in a State
27 court of which the district courts of the United States have original jurisdiction, may be
28 removed by the defendant or the defendants to the district court of the United States for

1 the district and division embracing the place where such action is pending.” 28 U.S.C.
2 § 1441(a). Federal jurisdiction must exist at the time the complaint is filed and at the
3 time removal is effected. *Strotek Corp. v. Air Transp. Ass’n of Am.*, 300 F.3d 1129,
4 1131 (9th Cir. 2002). There is a “strong presumption against removal” such that the
5 removing party “always has the burden of establishing that removal is proper.” *Gaus*
6 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected
7 if there is any doubt as to the right of removal in the first instance.” *Id.*

8 Plaintiff contends that Defendants have not met their burden in establishing that
9 Sage Point is a nominal party in this action. (ECF No. 11 at 7). Plaintiff asserts that
10 Sage Point was negligent in its duties as a trustee, including those duties surrounding
11 “initiation and maintenance” of the foreclosure process. *Id.* at 8. Plaintiff contends that
12 Sage Point faces “joint and several liability” with the other defendants, as provided by
13 various California Civil Code provisions and the California Homeowner’s Bill of
14 Rights. *Id.* at 8-10. Finally, Plaintiff maintains that he sued Sage Point in “good faith”
15 for damages. *Id.* at 15.

16 Defendants contend that there is diversity jurisdiction because Sage Point is a
17 nominal party. Defendants assert: (1) Sage Point filed a Declaration of Non-Monetary
18 Status in state court “asserting that they [sic] are a nominal defendant,” (2) Sage Point
19 was only sued “purely in its capacity as trustee,” and (3) no claims are alleged against
20 Sage Point. (ECF No. 1 at 4-5). Defendants also raise three new grounds for removal
21 not stated in the Notice of Removal: (1) Sage Point is a nominal defendant because it
22 is immune from liability under California law for conducting a foreclosure, (2) Sage
23 Point’s citizenship can be disregarded because it was fraudulently joined, and (3) any
24 claims against Sage Point have been mooted by cancellation of the foreclosure sale. *Id.*
25 at 6-7.

26 **1. Sage Point’s Declaration of Non-Monetary Status**

27 California Civil Code section 2924l provides a procedure by which the trustee
28 under a deed of trust named in an “action or proceeding in which that deed of trust is

1 the subject” may avoid participation in that lawsuit altogether through filing a
2 “declaration of nonmonetary status.” Cal. Civ. Code § 2924l. The trustee must file the
3 declaration with a “reasonable belief that it has been named in the action or proceeding
4 solely in its capacity as trustee, and not arising out of any wrongful acts or omissions
5 on its part in the performance of its duties as trustee,” and if there is no objection by the
6 plaintiff after fifteen days, then the trustee does not have to participate in the action and
7 “shall not be subject to any monetary awards.” *Id.* If there is an objection, the trustee
8 must participate in the lawsuit. *Id.* The Ninth Circuit has not addressed the effect that
9 the section 2924l procedure has in federal court. However, several district courts in
10 California have disregarded a trustee defendant’s citizenship as being that of a
11 “nominal” defendant when that trustee defendant has properly filed a Declaration of
12 Non-Monetary Status in state court prior to removal. *See, e.g., Figueiredo v. Aurora*
13 *Loan*, No. C 09-4784, 2009 WL 5184472, at *1 (N.D. Cal. Dec. 22, 2009); *Hafiz v.*
14 *Greenpoint Mortg. Funding, Inc.*, 652 F. Supp. 2d 1050, 1052 (N.D. Cal. 2009); *Amaro*
15 *v. Option One Mortg. Corp.*, No. EDCV 08-1498, 2009 WL 103302, at *1 (C.D. Cal.
16 Jan. 14, 2009).

17 Defendants contend that the filing of a Declaration of Non-Monetary Status
18 “confirm[s]” a defendant’s “nominal” status. (ECF No. 14 at 5). Plaintiff contends that
19 the Declaration is “far from proof” that Sage Point lacks an interest in this action. (ECF
20 No. 11 at 9). Even assuming that this California procedure may affect a defendant’s
21 status in federal court, Sage Point did not avail itself of this provision prior to removal
22 to this Court. Section 2924l requires that fifteen days pass without objection before the
23 Declaration of Non-Monetary Status takes effect, excusing the trustee defendant from
24 participation in the lawsuit and shielding him from liability. *See* Cal. Civ. Code §
25 2924l(d). Sage Point filed its Declaration on February 4, 2014 in the San Diego County
26 Superior Court. (ECF No. 1-3). Defendants removed to this court only six days later
27 on February 10, 2014. (ECF No. 1). Because Sage Point’s Declaration of Non-
28 Monetary Status was of no effect at the time of removal, the Declaration does not

1 establish that Sage Point is a nominal defendant.¹ *See Strotek*, 300 F.3d at 1131 (stating
2 that federal removal jurisdiction based on diversity requires that diversity exist “as of
3 the time the complaint is filed and removal is effected”).

4 **2. Other Grounds for Finding Sage Point a “Nominal” Defendant**

5 “[A] federal court must disregard nominal or formal parties and rest jurisdiction
6 only upon the citizenship of real parties to the controversy.” *Navarro Sav. Ass’n v. Lee*,
7 446 U.S. 458, 461 (1980); *see also Lumbermen’s Mut. Cas. Co. v. Elbert*, 348 U.S. 48,
8 51 (1954). The Ninth Circuit has described a “nominal” defendant as follows:

9 A nominal defendant is a person who ‘holds the subject matter of
10 the litigation in a subordinate or possessory capacity as to which there is
11 no dispute.’ [Citation]. The paradigmatic nominal defendant is ‘a trustee,
12 agent, or depository . . . [who is] joined purely as a means of facilitating
13 collection.’ [Citation]. As the nominal defendant has no legitimate claim
14 to the disputed property, he is not a real party in interest. *Id.* Accordingly,
15 ‘there is no claim against him and it is unnecessary to obtain subject
16 matter over him once jurisdiction of the defendant is established.’

17 *S.E.C. v. Colello*, 139 F.3d 674, 676 (9th Cir. 1998) (citing *S.E.C. v. Cherif*, 933 F.2d
18 403, 414 (7th Cir. 1991)).

19 A nominal defendant has further been described as a party with “nothing at stake”
20 or one who has “no interest in the action” and is “merely joined to perform the
21 ministerial act of conveying the title if adjudged to the complainant.” *Prudential Real
22 Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 873 (9th Cir. 2000); *Strotek*,
23 300 F.3d at 1133.

24 Defendants contend that Sage Point is a nominal defendant because it was named
25 in this action “purely in its capacity as trustee,” and trustees are “often” nominal parties.
26 (ECF No. 1 at 5; ECF No. 14 at 6 (citing *Reynoso v. Paul Fin., LLC*, No. 09-3225, 2009

27 ¹ Other district courts of the opinion that section 2924l can transform a trustee
28 defendant into a “nominal” party have similarly required that, prior to removal, a
Declaration of Non-Monetary Status be filed in state court and fifteen days pass in order
for section 2924l to have any effect in federal court. *See, e.g., Sun v. Bank of Am.
Corp.*, No. 10-0004, 2010 WL 454720, at *2 (C.D. Cal. Feb. 8, 2010); *Silva v. Wells
Fargo Bank NA*, No. CV 11-3200, 2011 WL 2437514, at *4 (C.D. Cal. June 16, 2011);
Wise v. Suntrust Mortg., Inc., No. 11-CV-01360, 2011 WL 1466153 (N.D. Cal. Apr. 18,
2011).

1 WL 3833494, at *1 (N.D. Cal. Nov. 16, 2009); *Hafiz*, 652 F. Supp. 2d at 1052)).
2 Defendants also contend that the Complaint fails to allege facts or claims against Sage
3 Point. (ECF No. 1 at 5). Plaintiff contends that he has sued Sage Point for damages
4 along with the other defendants on a theory of “joint and several liability,” and he has
5 sued Sage Point for its negligence in carrying out its duties as trustee, including
6 foreclosure. (ECF No. 11 at 7-10, 15).

7 The Court concludes that Defendants have not met their heavy burden of
8 establishing that Sage Point is a nominal defendant with no real interest in this lawsuit.
9 *See Gaus*, 980 F.2d at 566; *cf. Hunter v. Philip Morris USA*, 582 F.3d 1039, 1044-45
10 (9th Cir. 2009) (agreeing with the Fifth Circuit that the party seeking removal bears a
11 “heavy burden” of proving that the joinder of the in-state party was improper) (citing
12 *Smallwood v. Illinois Central R.R. Co.*, 385 F.3d 568, 574 (5th Cir. 2004)). First, Sage
13 Point’s status as trustee is only determinative if Sage Point is being sued solely in its
14 role as trustee and “merely to perform [a] ministerial act.” *Prudential Real Estate*, 204
15 F.3d at 873. There is no rule that a party’s status as a trustee renders him or her a
16 nominal party. *See Couture v. Wells Fargo Bank, N.A.*, No. 11-CV-1096, 2011 WL
17 3489955, at *3 (S.D. Cal. Aug. 9, 2011) (“[The defendant’s] status as a trustee is not
18 itself sufficient to render [the defendant] a nominal party.”). Lower courts have merely
19 noted that, *e.g.*, “the trustee on a deed of trust is often a nominal party.” *Silva*, 2011
20 WL 2437514, at *5. It is not evident from the Complaint that Sage Point is being sued
21 in its capacity as trustee. In fact, Plaintiff refers to Sage Point as RCS’s “legal
22 representative” and “attorney.” (ECF No. 1-2 at 3, 8).

23 Second, Plaintiff is actually suing Sage Point for wrongdoing, not merely as a
24 formal party in order to facilitate collection. *Colello*, 139 F.3d at 676. Plaintiff notes
25 at the outset of his Complaint that the four defendants would be “collectively referred
26 to as ‘Defendant,’” and Sage Point, along with RCS’s other unnamed agents, would be
27 “collectively referred to as ‘Defendants.’” (ECF No. 1-2 at 2-3). Plaintiff makes
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1 several allegations against Defendants collectively. For example, Plaintiff alleges that
2 Defendants have “purposefully and willfully harassed Plaintiff” by “trespassing” and
3 putting the house up for sale, despite him qualifying for a loan modification. *Id.* at 7.
4 Plaintiff also alleges that “Defendant and its agents increased public knowledge of
5 Plaintiff’s economic status in reckless and harassing [sic] manner.” *Id.* at 11. As to
6 Sage Point specifically, Plaintiff alleges that he received a notice of a foreclosure sale
7 of his home in retaliation for his complaining to Defendants about his rights as a
8 California homeowner. *Id.* at 6. This notice, attached to the Complaint as Exhibit I,
9 was signed by a representative of Sage Point. *Id.* at 110. A fair construction of the
10 Complaint demonstrates at this point in the proceedings that Sage Point is being sued
11 for wrongdoing and not merely as a party from whom to “facilitate collection.”²
12 Defendants have not met their “heavy burden” by pointing out Plaintiff’s pleading
13 deficiencies. *See Gaus*, 980 F.2d at 566; *cf. Hunter*, 582 F.3d at 1044-45.

14 **3. Defendants’ Other Contentions**

15 Defendants’ remaining contentions were raised for the first time in opposition to
16 Plaintiff’s Motion to Remand. All grounds for removal must be stated in the notice of
17 removal, and amendments to notices of removal are not permitted after thirty days have
18 passed. *Arco Env’tl. Remediation, L.L.C. v. Dep’t of Health and Env’tl. Quality of Mont.*,
19 213 F.3d 1108, 1117 (9th Cir. 2000); *see also Azubuike v. Wells Fargo Bank NA*, No.
20 CV 11-04665, 2011 WL 3664264, at *1 n.2 (C.D. Cal. Aug. 19, 2011) (declining to
21 consider fraudulent joinder arguments raised for the first time in opposition to a
22 plaintiff’s motion to remand). The Court does not consider the presence of diversity
23 based on a foreclosing trustee’s immunity, fraudulent joinder, or mootness of Plaintiff’s
24 claims against Sagepoint.


25
26 ² Pleading deficiencies that may exist as to allegations against Sage Point are
27 more properly raised in a motion to dismiss. *See, e.g., Newman v. Select Portfolio*
28 *Servicing, Inc.*, No. C-13-03685, 2013 WL 5708200, at *4 (N.D. Cal. Oct. 21, 2013)
 (“The mere failure to state a claim is not sufficient to invoke fraudulent joinder or
 nominal party status.”).

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CONCLUSION

IT IS HEREBY ORDERED that the Motion for Remand is GRANTED. (ECF No. 11). Pursuant to 28 U.S.C. § 1447(c), this action is REMANDED to San Diego County Superior Court, where it was originally filed and assigned case number 37-2014-00082092-CU-OR-CTL.

DATED: July 14, 2014


WILLIAM Q. HAYES
United States District Judge