

1 **II. Legal Standard**

2 Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district
3 courts of the United States have original jurisdiction, may be removed by the defendant or the
4 defendants, to the district court of the United States for the district and division embracing the
5 place where such action is pending.” 28 U.S.C. § 1441(a).

6 Removal of a case to a United States district court may be challenged by motion. 28 U.S.C.
7 § 1441(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal
8 statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock*
9 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
10 (9th Cir. 1992). On a motion to remand, the removing defendant faces a strong presumption against
11 removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67;
12 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

13 **III. Discussion**

14 A district court has original jurisdiction over civil actions where the suit is between citizens
15 of different states and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.
16 28 U.S.C. § 1332(a). Further, an action based on diversity jurisdiction is “removable only if none of
17 the parties in interest properly joined and served as defendants is a citizen of the state in which such
18 action is brought.” 28 U.S.C. § 1441(b). Here, defendants argue that there is complete diversity
19 between the parties because non-diverse defendant United Title of Nevada, Inc. (“United”) is a
20 fraudulently joined defendant whose Nevada citizenship cannot be used to defeat the exercise of
21 diversity jurisdiction.

22 A fraudulently joined defendant does not “defeat removal on diversity grounds.” *Ritchey v.*
23 *Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). Fraudulent joinder “occurs when a plaintiff
24 fails to state a cause of action against a resident defendant, and the failure is obvious according to
25 the settled rules of the state.” *Ritchey*, 139 F.3d at 1318; *see also McCabe v. General Foods Corp.*,

1 811 F.2d 1336, 1339 (9th Cir. 1987); *Kruso v. International Tel. & Tel. Corp.*, 872 F.2d 1416,
2 1426-27 (9th Cir. 1989); *Gasnik v. State Farm Ins. Co.*, 825 F.Supp. 245, 247 (E.D. Cal. 1992). In
3 determining whether a cause of action is stated against a non-diverse defendant, courts look only to
4 a plaintiff's pleadings. *Gardner v. UICI*, 508 F.3d 559, 561 n.3 (9th Cir. 2007).

5 Nevada is a notice-pleading jurisdiction which liberally construes pleadings. *Chavez v.*
6 *Robberson Steel Co.*, 584 P.2d 159, 160 (Nev. 1978). The allegations of a complaint are sufficient
7 to assert a claim for relief when the allegations "give fair notice of the nature and basis" for a claim.
8 *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 874 P.2d 744, 746 (Nev. 1994).

9 In his complaint, Frausto's only allegation against United is that it was the original trustee
10 on the deed of trust. However, United was substituted out as the trustee prior to Frausto's default
11 and Frausto has failed to allege that United took any action in furthering the allegedly wrongful
12 foreclosure on the underlying property. Based on the allegations in the complaint, the court finds
13 that non-diverse defendant United is a fraudulently joined defendant whose citizenship does not
14 defeat the exercise of diversity jurisdiction. Accordingly, the court finds that there is complete
15 diversity between the parties and that the exercise of diversity jurisdiction is appropriate.

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17 IT IS THEREFORE ORDERED that plaintiff's motion to remand (Doc. #25) is DENIED.

18 IT IS SO ORDERED.

19 DATED this 17th day of May, 2012.



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22 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE