

1 1.²) Named as defendants are Countrywide Home Loans, Inc., (“Countrywide”), Mortgage
2 Electronic Registration Systems, Inc., (“MERS”), and Bank of New York Mellon FKA The Bank
3 of New York as Trustee for Certificateholder of the CWABS, Inc., Asset-Backed
4 Certificates, Series 2005-3, (“BNYM”) (collectively “Defendants”).

5 On May 6, 2015, plaintiff filed a motion for notice of lis pendens but did not notice that
6 motion for a hearing. (ECF No. 5.) On June 12, 2015, defendant BNYM filed a motion to
7 dismiss plaintiff’s complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure
8 (“Rule”) and noticed that motion for hearing before the previously assigned Magistrate Judge.
9 (ECF No. 9.) On July 17, 2015, defendants Countrywide and MERS filed a motion to dismiss
10 plaintiff’s complaint pursuant to Rule 12(b)(1) and 12(b)(6) and also noticed that motion for
11 hearing before the previously assigned Magistrate Judge. (ECF No. 13.)

12 On October 19, 2015, plaintiff filed a proposed amended complaint.³ (ECF No. 23.) On
13 October 19, 2015, plaintiff filed a motion to strike the motion to dismiss filed by defendant
14 BNYM but did not notice that motion for a hearing. (ECF No. 24.) On November 6, 2015, this
15 action was reassigned from the previously assigned Magistrate Judge to the undersigned. (ECF
16 No. 26.) On December 2, 2015, defendants filed a motion to strike plaintiff’s proposed amended
17 complaint and noticed that motion for hearing before the undersigned on February 10, 2016.
18 (ECF No. 29.)

19 STANDARDS

20 I. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(1)

21 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to raise the defense, by
22 motion, that the court lacks jurisdiction over the subject matter of an entire action or of specific

23 ² Page number citations such as this one are to the page numbers reflected on the court’s
24 CM/ECF system and not to page numbers assigned by the parties.

25 ³ Under Rule 15 of the Federal Rules of Civil Procedure, a plaintiff may amend his complaint
26 once as a matter of course within twenty-one days after serving it or twenty-one days after service
27 of a responsive pleading or motion pursuant to Rule 12(b). In all other cases, a plaintiff may
28 amend his complaint with defendants’ written consent or the court’s leave. See FED. R. CIV. P.
15. Here, plaintiff filed his proposed amended complaint several months after defendants filed
their motions to dismiss. Moreover, plaintiff did not obtain defendants’ written consent or the
court’s leave to file an amended complaint.

1 claims alleged in the action. “A motion to dismiss for lack of subject matter jurisdiction may
2 either attack the allegations of the complaint or may be made as a ‘speaking motion’ attacking the
3 existence of subject matter jurisdiction in fact.” Thornhill Publ’g Co. v. Gen. Tel. & Elecs. Corp.,
4 594 F.2d 730, 733 (9th Cir. 1979).

5 When a party brings a facial attack to subject matter jurisdiction, that party contends that
6 the allegations of jurisdiction contained in the complaint are insufficient on their face to
7 demonstrate the existence of jurisdiction. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039
8 (9th Cir. 2004). In a Rule 12(b)(1) motion of this type, the plaintiff is entitled to safeguards
9 similar to those applicable when a Rule 12(b)(6) motion is made. See Sea Vessel Inc. v. Reyes,
10 23 F.3d 345, 347 (11th Cir. 1994); Osborn v. United States, 918 F.2d 724, 729 n. 6 (8th Cir.
11 1990). The factual allegations of the complaint are presumed to be true, and the motion is granted
12 only if the plaintiff fails to allege an element necessary for subject matter jurisdiction. Savage v.
13 Glendale Union High Sch. Dist. No. 205, 343 F.3d 1036, 1039 n. 1 (9th Cir. 2003); Miranda v.
14 Renó, 238 F.3d 1156, 1157 n. 1 (9th Cir. 2001). Nonetheless, district courts “may review
15 evidence beyond the complaint without converting the motion to dismiss into a motion for
16 summary judgment” when resolving a facial attack. Safe Air for Everyone, 373 F.3d at 1039.

17 When a Rule 12(b)(1) motion attacks the existence of subject matter jurisdiction, no
18 presumption of truthfulness attaches to the plaintiff’s allegations. Thornhill Publ’g Co., 594 F.2d
19 at 733. “[T]he district court is not restricted to the face of the pleadings, but may review any
20 evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of
21 jurisdiction.” McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988). When a Rule
22 12(b)(1) motion attacks the existence of subject matter jurisdiction in fact, plaintiff has the burden
23 of establishing that such jurisdiction does in fact exist. Thornhill Publ’g Co., 594 F.2d at 733.

24 II. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(6)

25 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
26 sufficiency of the complaint. N. Star Int’l v. Ariz. Corp. Comm’n, 720 F.2d 578, 581 (9th Cir.
27 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of
28 sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t, 901

1 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to
2 relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A
3 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
4 the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v.
5 Iqbal, 556 U.S. 662, 678 (2009).

6 In determining whether a complaint states a claim on which relief may be granted, the
7 court accepts as true the allegations in the complaint and construes the allegations in the light
8 most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Love v.
9 United States, 915 F.2d 1242, 1245 (9th Cir. 1989). In general, pro se complaints are held to less
10 stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519,
11 520-21 (1972). However, the court need not assume the truth of legal conclusions cast in the
12 form of factual allegations. United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th
13 Cir. 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than
14 an unadorned, the defendant-unlawfully-harmed-me accusation.” Iqbal, 556 U.S. at 678. A
15 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the
16 elements of a cause of action.” Twombly, 550 U.S. at 555. See also Iqbal, 556 U.S. at 676
17 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
18 statements, do not suffice.”). Moreover, it is inappropriate to assume that the plaintiff “can prove
19 facts which it has not alleged or that the defendants have violated the . . . laws in ways that have
20 not been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters,
21 459 U.S. 519, 526 (1983).

22 In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court is permitted
23 to consider material which is properly submitted as part of the complaint, documents that are not
24 physically attached to the complaint if their authenticity is not contested and the plaintiff’s
25 complaint necessarily relies on them, and matters of public record. Lee v. City of Los Angeles,
26 250 F.3d 668, 688-89 (9th Cir. 2001).

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1 ANALYSIS

2 Jurisdiction is a threshold inquiry that must precede the adjudication of any case before
3 the district court. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d
4 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited jurisdiction and may adjudicate
5 only those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375,
6 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992). “Federal courts are presumed
7 to lack jurisdiction, ‘unless the contrary appears affirmatively from the record.’” Casey v. Lewis,
8 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,
9 546 (1986)).

10 Lack of subject matter jurisdiction may be raised by the court at any time during the
11 proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir.
12 1996). A federal court “ha[s] an independent obligation to address sua sponte whether [it] has
13 subject-matter jurisdiction.” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
14 obligation of the district court “to be alert to jurisdictional requirements.” Grupo Dataflux v.
15 Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court
16 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

17 The burden of establishing jurisdiction rests upon plaintiff as the party asserting
18 jurisdiction. Kokkonen, 511 U.S. at 377; see also Hagans v. Lavine, 415 U.S. 528, 543 (1974)
19 (acknowledging that a claim may be dismissed for lack of jurisdiction if it is “so insubstantial,
20 implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy
21 within the jurisdiction of the District Court”); Bell v. Hood, 327 U.S. 678, 682-83 (1946)
22 (recognizing that a claim is subject to dismissal for want of jurisdiction where it is “wholly
23 insubstantial and frivolous” and so patently without merit as to justify dismissal for lack of
24 jurisdiction); Franklin v. Murphy, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984) (holding that even
25 “[a] paid complaint that is ‘obviously frivolous’ does not confer federal subject matter jurisdiction
26 . . . and may be dismissed sua sponte before service of process.”).

27 Here, plaintiff’s complaint alleges that the court has subject matter jurisdiction over this
28 action pursuant to 28 U.S.C. § 1332. (Compl. (ECF No. 1) at 2.) 28 U.S.C. § 1332 provides that

1 district courts have diversity jurisdiction over “all civil actions where the matter in controversy
2 exceeds the sum or value of \$75,000, exclusive of interest and costs,” and the action is between:
3 “(1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state;
4 (3) citizens of different States and in which citizens or subjects of a foreign state are additional
5 parties; and (4) a foreign state ... as plaintiff and citizens of a State or of different States.”

6 “Diversity jurisdiction requires complete diversity between the parties—each defendant must be a
7 citizen of a different state from each plaintiff.” In re Digimarc Corp. Derivative Litigation, 549
8 F.3d 1223, 1234 (9th Cir. 2008).

9 Plaintiff’s complaint, however, also alleges that defendant Countrywide has its
10 headquarters in Calabasas, California. (Compl. (ECF No. 1) at 2.) A corporation is “a citizen of
11 any State in which it has been incorporated and of the State where it has its principal place of
12 business.” 28 U.S.C. § 1332(c)(1). A corporation’s “principal place of business is best read as
13 referring to the place where a corporation’s officers direct, control, and coordinate the
14 corporation’s activities” and is typically “the place where the corporation maintains its
15 headquarters” Hertz Corp. v. Friend, 559 U.S. 77, 92-93 (2010).

16 In this regard, plaintiff’s complaint alleges that plaintiff and defendant Countrywide are
17 citizens of the same state. The allegations found in plaintiff’s complaint, therefore, fail to
18 establish that this court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
19 1332. Accordingly, defendants MERS and Countrywide’s motion to dismiss for lack of subject
20 matter jurisdiction should be granted.

21 LEAVE TO AMEND

22 The undersigned has carefully considered whether plaintiff may amend his pleading to
23 establish the court’s jurisdiction over this action.⁴ “Valid reasons for denying leave to amend

24 _____
25 ⁴ On October 19, 2015, after defendants moved to dismiss plaintiff’s complaint for a lack of
26 subject matter jurisdiction, plaintiff filed a proposed amended complaint. (ECF No. 23.)
27 Although plaintiff’s filing failed to comply with Rule 15 of the Federal Rules of Civil Procedure,
28 the undersigned has reviewed the proposed amended complaint in evaluating whether granting
leave to amend would be futile. As is true of the original complaint, plaintiff’s proposed
amended complaint also alleges that defendant Countrywide “has its headquarters in Calabasas,
California.” (ECF No. 23 at 2.) Moreover, at the December 16, 2015 hearing plaintiff conceded

1 include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v.
2 Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also Klamath-Lake Pharm. Ass’n
3 v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to
4 amend shall be freely given, the court does not have to allow futile amendments). In light of
5 allegations found in plaintiff’s complaint, the undersigned finds that it would be futile to grant
6 plaintiff leave to amend in this case.

7 CONCLUSION

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff’s May 6, 2015 motion for notice of lis pendens (ECF No. 5) is denied
10 without prejudice;
- 11 2. Plaintiff’s October 19, 2015 motion to strike (ECF No. 24) is denied without
12 prejudice; and
- 13 3. Defendants’ December 2, 2015 motion to strike (ECF No. 29) is denied without
14 prejudice and the February 10, 2016 hearing is vacated.⁵

15 Also, IT IS HEREBY RECOMMENDED that:

- 16 1. Defendants MERS and Countrywide’s July 17, 2015 motion to dismiss (ECF
17 No. 13) be granted in part;
- 18 2. Plaintiff’s April 20, 2015 complaint (ECF No. 1) be dismissed without
19 prejudice for a lack of subject matter jurisdiction; and
- 20 3. This action be closed.

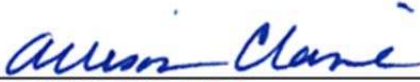
21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
23 after being served with these findings and recommendations, any party may file written
24 objections with the court and serve a copy on all parties. Such a document should be captioned
25 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections

26 that he was unaware of the requirements related to diversity jurisdiction and has no information to
27 support an allegation that Countrywide is a citizen of another state.

28 ⁵ The parties may re-notice any of their motions in the event the assigned District Judge does not
adopt these findings and recommendations.

1 shall be served and filed within seven days after service of the objections. The parties are advised
2 that failure to file objections within the specified time may waive the right to appeal the District
3 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 DATED: January 13, 2016

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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