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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EDISON CORTEZ, et al.,

Plaintiffs,

v.

WELLS FARGO, N.A., et al.,

Defendants.

Case No. 1:14-cv-01060-LJO-SAB

ORDER REQUIRING PLAINTIFFS TO
FILE MEMORANDUM DEMONSTRATING
WHY THEIR COMPLAINT SHOULD NOT
BE DISMISSED

DEADLINE: August 13, 2014

Plaintiffs Edison Cortez and Severina Cortez (“Plaintiffs”) filed the complaint in this action on July 8, 2014. (ECF No. 1.) For the reasons set forth below, the Court finds that Plaintiffs’ complaint fails to state any federal claims and the Court lacks jurisdiction over any other state law claims raised by Plaintiffs.

I.

SUA SPONTE DISMISSAL FOR FAILURE TO STATE A CLAIM AND LACK OF JURISDICTION

District courts may dismiss a claim sua sponte under Federal Rule of Civil Procedure 12(b)(6) if the Court gives notice of its intention to dismiss and afford plaintiffs an opportunity to at least submit a written memorandum in opposition to such motion. Lee v. City of Los Angeles, 250 F.3d 668, 683 n.7 (9th Cir. 2001) (quoting Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th Cir. 1987); Wong v. Bell, 642 F.2d 359, 362 (9th Cir. 1981)). Moreover, district courts

1 have authority to dismiss actions sua sponte for lack of jurisdiction. Franklin v. State of Or.,
2 State Welfare Division, 662 F.2d 1337, 1342 (9th Cir. 1981). “[F]ederal courts are without
3 power to entertain claims otherwise within their jurisdiction if they are so attenuated and
4 unsubstantial as to be absolutely devoid of merit” and are “obviously frivolous.” Hagans v.
5 Lavine, 415 U.S. 528, 536-37 (1974) (internal quotations and citations omitted).

6 **II.**

7 **PLAINTIFF’S COMPLAINT**

8 Plaintiffs are proceeding pro se in this action. Although unclear, it appears that their
9 complaint purports to assert causes of action under California Civil Code § 2924 and 18 U.S.C. §
10 1001. Plaintiff also alleges violations of 18 U.S.C. § 1341 and 1343. Plaintiffs name Ric Juarez,
11 Barrett Daffin Frappier Treder & Weiss, LLP, and Wells Fargo, N.A. as defendants. The caption
12 of the Complaint also lists Orchard Terrace Estates, LLC as a “Third-Party Defendant,” but it is
13 unclear what Plaintiffs intended is using this designation.¹

14 Plaintiffs’ complaint appears to allege some form of wrongful foreclosure. Plaintiffs
15 contend that Defendants foreclosed upon Plaintiffs’ home “using the fraudulent forged,
16 fabricated Substitution of Trustee.” (Compl. 2.) Plaintiffs allege that Defendant Ric Juarez
17 “pretended to be the ‘Assistant Vice President’/Foreclosure Operation of Wells Fargo” and had
18 “no right to execute or sign the fabricated document, (Substitution of Trustee).” (Compl. 2.)
19 Plaintiffs further allege that Juarez “pretended to be the ‘Associate Director’ of BARRETT
20 DAFFINE FRAPPIER & WEISS, LLP as Trustee, while he never had been associated with this
21 firm.” (Compl. 2-3.) Plaintiffs further contend that Defendants “have lack of standing to
22 foreclose on the subject property, as they are not the Note holders of the subject property.”
23 (Compl. 3.) Plaintiffs contend that “[a]ny assignment of Deed of Trust between the original
24 lenders is voided because it violated the Trust agreement by exceeding the limitations of the
25 required **90 day closing**.” (Compl. 4 (emphasis in original).)

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28 ¹ Orchard Terrace Estates, LLC is not mentioned anywhere in the body of the complaint.

1 **III.**

2 **DISCUSSION**

3 **A. 18 U.S.C. § 1001, 1341, and 1343 Claims**

4 Plaintiffs' complaint alleges violations of 18 U.S.C. § 1001, 1341, and 1343. However,
5 18 U.S.C. § 1001 is a federal criminal statute that punishes fraudulent statements made in the
6 context of a matter within the executive, legislative, or judicial branches. Plaintiffs may have
7 alleged that Defendants made fraudulent statements, but Plaintiffs have not alleged that those
8 fraudulent statements were made in the context of a matter before the executive, legislative, or
9 judicial branches of the federal government. Moreover, 18 U.S.C. § 1001 does not provide for
10 an express or implied right of action, meaning Plaintiff has no authority to initiate a civil lawsuit
11 for damages based upon a violation of Section 1001. See Rundgren v. Bank of New York
12 Mellon, 777 F. Supp. 2d 1224, 1233 (D. Haw. 2011) (and cases cited therein); Dowdell v.
13 Sacramento Housing & Redevelopment Agency, No. 2:11-cv-00409 JAM KJN PS, 2011 WL
14 837046, at *2 (E.D. Cal. Mar. 8, 2011) (and cases cited therein).

15 Similarly, 18 U.S.C. § 1341 and 1343 are criminal statutes prohibiting mail or wire fraud.
16 See Miller v. Yokohama Tire Corp., 358 F.3d 616, 620 (9th Cir. 2004); U.S. v. McNeil, 320 F.3d
17 1034, 1040 (9th Cir. 2003). Plaintiff alleges no facts involving the use of the United States mail
18 or wire to further a scheme to defraud. Moreover, neither Section 1341 nor Section 1343
19 authorizes a private right of action. Wilcox v. First Interstate Bank of Oregon, N.A., 815 F.2d
20 522, 533 n.1 (9th Cir. 1987); see also Wisdom v. First Midwest Bank, of Poplar Bluff, 167 F.3d
21 402, 407-409 (8th Cir. 1999); Idowu v. Astheimer, No. C 10-02672 SBA, 2011 WL 89965, at *2
22 (N.D. Cal. Jan. 11, 2011); Ambler v. Parks, No. CIV S-08-0884 RRB DAD PS, 2009 WL
23 545989, at *9-10, 12-13 (E.D. Cal. Mar. 4, 2009).

24 Since Plaintiffs allege no facts supporting a violation of any of these criminal statutes and
25 none of these criminal statutes authorize a private right of action allowing Plaintiffs to filed a
26 civil suit for damages, Plaintiffs claims must be dismissed.

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1 Accordingly, it is HEREBY ORDERED that, on or before August 13, 2014, Plaintiffs
2 shall file a written memorandum opposing dismissal along with a proposed amended complaint.

3 IT IS FURTHER ORDERED THAT the Clerk of the Court is directed to not issue a
4 summons until further order of the Court.

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6 IT IS SO ORDERED.

7 Dated: July 11, 2014


UNITED STATES MAGISTRATE JUDGE

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