

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

ELMER RAMONES and MARIE PAZ
VALDEZ,

Plaintiffs,

v.

WACHOVIA MORTGAGE SERVICES,
CAL-WESTERN RECONVEYANCE
CORPORATION, and IMEDA
FACTORA,

Defendants.

Civ. No. S-10-3450 FCD/GGH

MEMORANDUM AND ORDER

-----oo0oo-----

This matter is before the court on the motions of defendant Wachovia Mortgage ("Wachovia") to dismiss and to strike plaintiffs Elmer Ramones and Marie Paz Valdez's ("plaintiffs") complaint, pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(f).¹ Wachovia moves to dismiss on the grounds that

¹ Because oral argument will not be of material assistance, the court orders these matters submitted on the briefs. E.D. Cal. L.R. 230(g).

1) plaintiffs' claims lack clarity and specificity violating the pleading requirements of Rule 8; 2) the Home Owners' Loan Act and the National Bank Act preempt plaintiffs' state law claims; 3) plaintiffs' claim for violation of California Business and Professions Code § 17200 fails to allege sufficient facts demonstrating that Wachovia engaged in an unlawful business practice; 4) plaintiffs' wrongful foreclosure claims lack the requisite allegation of a tender of the indebtedness; 5) California Civil Code § 2924 does not provide plaintiff with relief in the form of damages; 6) there is no private right of action for violation of 18 U.S.C. § 1956; and 6) plaintiffs' claim for declaratory relief is not appropriate because the claims have not ripened into legal or equitable claims. (Def.'s Mot. to Dismiss ["MTD"], filed Dec. 30, 2010 [Docket # 6], at 1.) Additionally, Wachovia argues that plaintiff Maria Paz Valdez has no standing in this action because she was not a borrower under the subject mortgage loan. (Id.) Finally, Wachovia moves to strike portions of plaintiffs' complaint on the grounds that 1) plaintiffs are not entitled to punitive damages; 2) plaintiffs are not entitled to recover damages for a Section 17200 claim; and (3) plaintiffs are not entitled to set aside a foreclosure because plaintiffs fail to allege a full tender of the indebtedness. (Def.'s Mot. to Strike ["MTS"], filed Dec. 30, 2010 [Docket # 8], at 2.)

Plaintiffs oppose the motions. Specifically, plaintiffs argue that 1) they have properly plead a cause of action for violation of California Business and Professions Code § 17200 because Wachovia allegedly made false and misleading statements

1 to plaintiff Elmer Ramones to induce him to enter into a loan
2 with unfavorable terms; 2) requiring plaintiffs to tender the
3 amount owed to satisfy their loan would be inequitable because
4 plaintiffs are victims of fraud; and 3) a cause of action for
5 declaratory relief has been properly plead because the complaint
6 sets forth an actual controversy relating to the legal rights and
7 duties of the parties under the loan. (Opp'n, filed March 11,
8 2011 [Docket # 15], at 4-6.) Plaintiffs do not address
9 defendants' other arguments.

10 Jurisdiction is a threshold inquiry before the adjudication
11 of any case before the court. See Morongo Band of Mission
12 Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380
13 (9th Cir. 1988). Without jurisdiction, this court cannot
14 adjudicate the merits of this case or order any relief. See id.
15 ("If the district court had no jurisdiction over the subject
16 matter, the action should have been dismissed, regardless of the
17 parties' preference of an adjudication in federal court.").

18 On December 23, 2010, Wachovia removed this case to the
19 United States District Court for the Eastern District of
20 California under 28 U.S.C. §§ 1441 and 1331 based on federal
21 question jurisdiction. (Def.'s Notice of Removal ["DNR"], filed
22 Dec. 23, 2010 [Docket # 1], ¶ 2.) Plaintiffs' complaint alleges
23 a single federal claim for violation of 18 U.S.C. § 1956. (DNR,
24 Ex. A ¶¶ 30-32.) However, there is no private right of action
25 for recovery of civil damages under this criminal statute
26 addressing laundering of monetary instruments. de Pacheco v.
27 Martinez, 515 F. Supp. 2d 773, 787 (S.D. Tex. June 29, 2007)
28 (citing Dubai Islamic Bank v. Citibank, N.A., 126 F. Supp. 2d

1 659, 668 (S.D.N.Y. 2000)); Phillips v. Deutsche Bank Nat. Trust
2 Co., No. CV 10-5883 AHM, 2010 WL 5246032, at *1 (C.D. Cal. Dec.
3 16, 2010). Indeed, plaintiffs fail to respond to defendant's
4 motion to dismiss on this issue. As such, plaintiffs' claim for
5 violation of 18 U.S.C. § 1956 is properly dismissed with
6 prejudice.

7 Dismissal of plaintiffs' claim for violation of 18 U.S.C.
8 § 1956 leaves the complaint devoid of any federal claims. The
9 remaining claims are state law claims for violation of California
10 Business and Professions Code § 17200 et seq., wrongful
11 foreclosure, violation of California Civil Code § 2924, and
12 declaratory relief. (DNR, Ex. A ¶¶ 19-34.)

13 Subject to the conditions set forth in 28 U.S.C. § 1367(c),
14 district courts may decline to exercise supplemental jurisdiction
15 over state law claims. See Acri v. Varian Assoc., Inc., 114
16 F.3d 999, 1000 (9th Cir. 1997) (en banc). The court's decision
17 whether to exercise supplemental jurisdiction should be informed
18 by values of "economy, convenience, fairness, and comity." Id.
19 at 1001 (citations omitted). Further, primary responsibility for
20 developing and applying state law rests with the state courts.
21 Therefore, when federal claims are eliminated before trial,
22 district courts should usually decline to exercise supplemental
23 jurisdiction. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343,
24 350 (1988); Gini v. Las Vegas Metro. Police Dept., 40 F.3d 1041,
25 1046 (9th Cir. 1994) ("In the usual case in which federal-law
26 claims are eliminated before trial, the balance of factors . . .
27 will point toward declining to exercise jurisdiction over the
28 remaining state law claims.") (internal quotations and citations

1 omitted). As such, the court declines to exercise supplemental
2 jurisdiction over plaintiffs' remaining state law claims.²

3 Accordingly, plaintiffs' complaint is REMANDED to the
4 Superior Court of the State of California for the County of San
5 Joaquin.³

6 IT IS SO ORDERED.

7 DATED: April 5, 2011.



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22

23 ² On March 21, 2011, plaintiffs filed a motion for leave
24 to amend their complaint. (Mot. for Leave to Amend Compl., filed
25 March 21, 2011 [Docket #21].) Plaintiffs' proposed first amended
26 complaint, attached to the aforementioned motion, fails to allege
any federal claims. (Id., Ex. A.) However, because the court
remands plaintiffs' complaint to state court, plaintiffs' motion
is denied as moot.

27 ³ Because the court grants in part defendant's motion to
28 dismiss, it need not reach defendant's motion to strike and
denies that motion as moot.