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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES KEY, et al.,

Plaintiff,

No. CIV S-11-650 GEB GGH (TEMP) PS

vs.

INDYMAC BANK, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiffs are proceeding pro se in this action, referred to the undersigned pursuant to Local Rule 72-302(c)(21). Defendant IMS’s motion to dismiss for lack of subject matter jurisdiction is presently noticed for hearing on the June 23, 2011 law and motion calendar of the undersigned.¹ Opposition to motions, or a statement of non-opposition thereto, must be filed fourteen days preceding the noticed hearing date. E.D. Cal. L. R. 78-230(c). Court records reflect that plaintiff failed to file opposition or a statement of non-opposition to the motion.

Plaintiffs filed this action on March 10, 2011. The complaint is stylized as a “negative averment” and the body of the complaint sets forth information pertaining to a residential home and parcel of land located in Linden, California. No causes of action are pled and no assertion of subject matter jurisdiction is made in the complaint. The subject property

¹ Because oral argument is not of material assistance, this matter is submitted on the briefs. E.D. Cal. L.R. 230(g).

1 was sold at a trustee's sale on March 21, 2011. Defendant's Request for Judicial Notice
2 ("DRJN"), dkt. no 15, Ex. D.

3 Defendant contends this court lacks subject matter jurisdiction. A federal court is
4 a court of limited jurisdiction, and may adjudicate only those cases authorized by the
5 Constitution and by Congress. See Kokkonen v. Guardian Life Ins. Co, 511 U.S. 375, 377, 114
6 S. Ct. 1673, 1675 (1994). U.S. Const. Art. III, § 1 provides that the judicial power of the United
7 States is vested in the Supreme Court, "and in such inferior Courts as the Congress may from
8 time to time ordain and establish." Congress therefore confers jurisdiction upon federal district
9 courts, as limited by U.S. Const. Art. III, § 2. See Ankenbrandt v. Richards, 504 U.S. 689, 697-
10 99, 112 S. Ct. 2206, 2212 (1992). Lack of subject matter jurisdiction may be raised at any time
11 by either party or by the court. See Attorneys Trust v. Videotape Computer Products, Inc., 93
12 F.3d 593, 594-95 (9th Cir. 1996).

13 The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer "federal
14 question" and "diversity" jurisdiction, respectively. Statutes which regulate specific subject
15 matter may also confer federal jurisdiction. See generally, W.W. Schwarzer, A.W. Tashima & J.
16 Wagstaffe, Federal Civil Procedure Before Trial § 2:5. Unless a complaint presents a plausible
17 assertion of a substantial federal right, a federal court does not have jurisdiction. See Bell v.
18 Hood, 327 U.S. 678, 682, 66 S. Ct. 773, 776 (1945). A federal claim which is so insubstantial as
19 to be patently without merit cannot serve as the basis for federal jurisdiction. See Hagans v.
20 Lavine, 415 U.S. 528, 537-38, 94 S. Ct. 1372, 1379-80 (1974).

21 For diversity jurisdiction pursuant to 28 U.S.C. § 1332, each plaintiff must be
22 diverse from each defendant, and the amount in controversy must exceed \$75,000. For federal
23 question jurisdiction pursuant to 28 U.S.C. § 1331, the complaint must either (1) arise under a
24 federal law or the United States Constitution, (2) allege a "case or controversy" within the
25 meaning of Article III, section 2, or (3) be authorized by a jurisdiction statute. Baker v. Carr, 369
26 U.S. 186, 198, 82 S. Ct. 691, 699-700, 7 L. Ed. 2d 663 (1962).

1 Here, plaintiffs have alleged no federal claims whatsoever. Plaintiffs do not even
2 assert a basis for subject matter jurisdiction nor is there any basis evident in the complaint. It
3 appears plaintiffs cannot assert diversity jurisdiction in that they are citizens of California and
4 one of the named defendants in the herein action, Aztec Foreclosure Corporation, is also a citizen
5 of California. DRJN to Defendant Opposition to Plaintiff's Motion, dkt. no. 16, Ex. I. Because
6 there is no basis for subject matter jurisdiction, the case should be dismissed.

7 Accordingly, IT IS HEREBY ORDERED that the hearing date of June 23, 2011
8 on defendant's motion to dismiss is vacated; and

9 IT IS HEREBY RECOMMENDED that:

10 1. The motion to dismiss for lack of subject matter jurisdiction (dkt. no. 15) be
11 granted;

12 2. This action be dismissed for lack of subject matter jurisdiction.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
15 fourteen (14) days after being served with these findings and recommendations, any party may
16 file written objections with the court and serve a copy on all parties. Such a document should be
17 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
18 objections shall be served and filed within fourteen (14) days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: June 9, 2011

22 /s/ Gregory G. Hollows
23 U.S. MAGISTRATE JUDGE

24 JMM
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