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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HERIBERTO PONCE & ALMA
PONCE,

Plaintiffs,

v.

WELLS FARGO, SPECIALIZED
LOAN SERVICING, LLC,
CARVAL INVESTORS, RESIDENTIAL
INVESTMENTS, LLC, AMERICAN
RESIDENTIAL REALTY, and
DOES 1 through 100, inclusive,

Defendants.

NO. CIV. S-13-0498 LKK/DAD PS

O R D E R

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Defendants have moved, pursuant to Fed. R. Civ. P. 12(b)(6),
to dismiss plaintiffs' First Amended Complaint (the "Complaint")
on the grounds that it fails to state a claim upon which relief can
be granted. The motion is scheduled to be heard on June 17, 2013.
For the reasons that follow, the hearing will be vacated, and
plaintiffs will be ordered to show cause why this case should not

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1 be dismissed for lack of federal jurisdiction.¹

2 **1. Federal Question.**

3 The Complaint alleges that the case "arises under the laws of
4 the United States and presents a federal question within this
5 court's jurisdiction to hear this matter pursuant to the Emergency
6 Economic Stabilization Act of 2008, Troubled Asset Relief Program
7 (TARP) and 28 U.S.C. § 1331." However, the remainder of the
8 complaint alleges only state law causes of action.² Although some
9 of the claims assert as part of their factual predicate that
10 defendants did not comply with federal guidelines meant to avoid
11 foreclosures - the "Making Home Affordable (MHA) program," and the
12 "Home Affordable Modification Program (HAMP)" - the Complaint does
13 not assert or describe any federal cause of action.³ Accordingly,

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15 ¹ This court has an independent obligation to examine its
16 jurisdiction, and to so sua sponte if neither side addresses it.
17 See, e.g., Demery v. Kupperman, 735 F.2d 1139, 1149 (9th
18 Cir. 1984), cert. denied, 469 U.S. 1127 (1985) ("Even when neither
19 party has raised an objection to a federal court's subject-matter
20 jurisdiction, the court has an obligation to consider the issue sua
21 sponte, and to consider it fully"); Elsaas v. County of Placer, 35
22 F. Supp. 2d 757, 759 (E.D. Cal. 1999) (Karlton, J.) (same).

23 ² The state claims are: (1) wrongful foreclosure; (2) breach
24 of contract; (3) breach of implied-in-fact contract; (4) promissory
25 estoppel; (5) fraud; (6) negligent misrepresentation; (7)
26 negligence; and (8) unfair business practices under Cal. Bus. &
Prof. Code § 17200.

³ See, e.g., Akil v. Carrington Mortg. Services, LLC, 2012 WL
3231330 at * (E.D. Cal. 2012) (Burrell, J.) ("no federal question
[is] presented merely because [some of Plaintiffs'] state law
claims may incorporate or turn upon allegations of HAMP
violations'"), quoting Carlos v. Bank of America Home Loans, 2011
WL 166343, at *1 (C.D. Cal. 2011); Oliver v. U.S. Bank, N.A., 2012
WL 2376677 at *2 (N.D. Cal. 2012) ("This Court has previously held
that state-law contract claims alleging violations of HAMP
Guidelines do not create federal question jurisdiction").

1 there appears to be no federal question jurisdiction.

2 **2. Diversity.**

3 The Complaint alleges that the court may exercise diversity
4 jurisdiction in this case under 28 U.S.C. § 1332. Complaint ¶ 2.
5 Diversity jurisdiction depends upon the citizenship of all the
6 parties. See 28 U.S.C. § 1332. However, defendant fails to allege
7 the citizenship of the defendants, Wells Fargo (defendant
8 identifies itself as "Wells Fargo Bank, N.A."), or Specialized Loan
9 Servicing, LLC.⁴ As for plaintiff Heriberto Ponce, the Complaint
10 alleges that he has a residence in California. See Complaint ¶ 4.

11 The court is unable to determine from the allegations of the
12 Complaint that complete diversity exists between the parties.⁵

13 **3. Order To Show Cause.**

14 For the reasons stated above,

15 a. The June 17, 2013 hearing on defendant's Rule
16 12(b)(6) motion to dismiss is hereby **VACATED**;

17 b. Plaintiffs are **Ordered To Show Cause** - no later than
18 June 26, 2013 at 4:30 p.m., in a writing not to exceed fifteen (15)

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20 ⁴ However, this court has previously held that Wells Fargo
21 Bank, N.A., is a citizen of California (as well as North Dakota).
22 See, e.g., Taheny v. Wells Fargo Bank, N.A., 878 F. Supp. 2d 1093,
23 1109 (E.D. Cal. 2012) (Karlton, J.); see also, Rouse v. Wachovia
Mortg., FSB, 2012 WL 174206 (C.D. Cal. 2012) (same), appeal
docketed, No. 12-55278 (9th Cir. Feb. 9, 2012).

24 ⁵ The Complaint also asserts that this court "has jurisdiction
25 under the Administrative Procedures Act ["APA"], 5 U.S.C. § 702."
26 Complaint ¶ 3. The APA provides for judicial review "of agency
action." 5 U.S.C. § 702. The Complaint, however, fails to allege
any agency action, and accordingly, there appears to be no federal
jurisdiction under this provision.

1 pages - why this case should not be dismissed for lack of federal
2 jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

3 IT IS SO ORDERED.

4 DATED: June 12, 2013.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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