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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUNG MYN PARK, MIN SOOK SUH,

Plaintiffs,

v.

BANK OF AMERICA; BANK OF
AMERICA, N.A.; BRIAN T.
MOYNIHAN, DAVID C. DARNELL;
GARY G. LYNCH; THOMAS K.
MONTAG and Does 1-XXXX, et
al.,

Defendants.

No. CIV. S-13-1717 LKK/DAD

ORDER

I. BACKGROUND

This is a mortgage foreclosure case. Plaintiffs sue Bank of America, and its officers, for violations of California law only. Complaint (ECF No. 1). The Complaint contains no statement of federal jurisdiction, although such a statement is required by Fed. R. Civ. P. 8(a)(1) (the complaint must contain "a short and plain statement of the grounds for the court's jurisdiction").

Defendants have noticed a motion to dismiss for lack of federal jurisdiction, and on other grounds. ECF No. 7. Plaintiffs oppose the motion on the grounds that the complaint

1 pleads facts showing that diversity jurisdiction exists. ECF
2 No. 15.

3 The complaint will be dismissed with leave to amend. The
4 court finds that the motion can be decided on the submitted
5 papers, and accordingly **VACATES** the January 13, 2014 hearing.

6 **II. ANALYSIS - DIVERSITY JURISDICTION**

7 **A. Citizenship**

8 One requirement for diversity jurisdiction is that the
9 lawsuit must be between citizens of different states. 28 U.S.C.
10 § 1332(a)(1). The complaint does not allege the citizenship of
11 the plaintiffs at all, and insufficiently alleges the citizenship
12 of defendants "Bank of America aka Bank of America Home Loans"
13 (alleged to be a corporation), and Bank of America, N.A. Thus
14 the Complaint fails to allege the required jurisdictional facts.¹

15 The Complaint does not adequately allege the citizenship of
16 Bank of America, N.A., since it is a citizen not only of the
17 state of its principal place of business, but also where its
18 "main office" is located. See Wachovia Bank v. Schmidt, 546 U.S.
19 303, 307 (2006) ("we hold that a national bank, for § 1348
20 purposes, is a citizen of the State in which its main office, as
21 set forth in its articles of association, is located"); Guinto v.
22 Wells Fargo Bank, 2011 WL 4738519 at *3 (E.D. Cal. 2011)
23 (Karlton, J.) (the national bank "has its principal place of
24 business in California. Accordingly, it is a citizen of

25 ¹ Plaintiffs appear to have sufficiently alleged the citizenship
26 of the individual defendants by alleging their state of domicile.
27 Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001)
28 ("The natural person's state citizenship is ... determined by her
state of domicile").

1 California"). Plaintiffs have not alleged the location of the
2 Bank's main office.

3 The Complaint insufficiently alleges the citizenship of Bank
4 of America aka Bank of America Home Loans because it is a citizen
5 not only of the state where it has its principal place of
6 business, but also where it is incorporated. 28 U.S.C.
7 § 1331(c)(1). The Complaint does not allege where this defendant
8 is incorporated.

9 **B. Amount in Controversy.**

10 Another requirement for diversity jurisdiction is that the
11 "amount in controversy" must exceed "the sum or value of \$75,000,
12 exclusive of interest and costs." 28 U.S.C. § 1332(a).
13 Plaintiffs allege that they are entitled to statutory damages of
14 \$50,000, and in addition, that they are entitled to trebled
15 statutory damages of \$150,000. Complaint ¶ 21. Plaintiffs'
16 "citation" for these assertions is "923.5." The citation does
17 not specify in which of the thirty-four or so California Codes
18 "923.5" can be found.

19 The court assumes that plaintiffs, who are represented by
20 counsel, are actually referring to "Cal. Civ. Code § 2923.5,"
21 which appears to address the alleged practices plaintiffs
22 challenge in the Complaint. However, "Civil Code section 2923.5
23 does not provide for damages ... The statute was 'carefully
24 drafted to avoid bumping into federal law' regulating home loans.
25 As a result, the sole available remedy is 'more time' before a
26 foreclosure sale occurs"). Stebley v. Litton Loan Servicing,
27 LLP, 202 Cal. App. 4th 522, 526 (3rd Dist. 2011) (citation
28 omitted).

1 Scouring the California Codes for the source of plaintiffs'
2 assertion that they are entitled to \$50,000 in statutory damages,
3 the court finds Cal. Civil Code § 2924.12, which provides for
4 \$50,000 in statutory damages for a "material violation of Section
5 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, or 2924.17."
6 Alternatively, it provides for treble "actual damages."

7 Assuming this is the legal basis for plaintiffs' assertion
8 of statutory damages and trebled damages, plaintiffs appear to
9 have misinterpreted the plain language of the statute. It does
10 not provide for treble statutory damages as plaintiffs seem to
11 believe, but rather, for treble actual damages. See Jolley v.
12 Chase Home Finance, LLC, 213 Cal. App. 4th 872, 905 (1st
13 Dist. 2013) ("those who have lost their homes may seek treble
14 actual damages or statutory damages of \$50,000, whichever is
15 greater"). At best, then, plaintiffs, who have not alleged any
16 amount of actual damages, have alleged \$50,000 as the amount in
17 controversy. This is not enough to satisfy the jurisdictional
18 amount.

19 III. SUMMARY

20 For the reasons stated above, defendants' motion to dismiss
21 the Complaint is **GRANTED**, and the Complaint is hereby **DISMISSED**
22 for lack of federal jurisdiction, with leave to amend. If
23 plaintiffs choose to amend their Complaint, (1) they shall do so
24 no later than thirty (30) days from the date of this order,
25 (2) the amended complaint shall contain a separate, short and
26 plain statement of federal jurisdiction, and (3) the amended
27 complaint shall, in all other ways, comply with Fed. R. Civ. P. 8
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1 and 11, and all other applicable rules.²

2 IT IS SO ORDERED.

3 DATED: December 20, 2013.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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25 ² Plaintiffs, having filed this state law based lawsuit directly
26 in federal district court, should be aware that if they
27 successfully plead the jurisdictional amount but fail to recover
28 at least \$75,000 in a final judgment, "the district court may
deny costs to the plaintiff and, in addition, may impose costs on
the plaintiff." 28 U.S.C. § 1332(b).