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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAKENNETH MICHAEL WOODALL,
Plaintiff,
v.
WELLS FARGO & COMPANY, et al.,
Defendants.

Case No. 15-cv-05347-JST

**ORDER DISMISSING SECOND
AMENDED COMPLAINT WITH
PREJUDICE**

Re: Dkt. No. 30

Plaintiff brings this action challenging the conduct of several banks and loan servicing companies in connection with the foreclosure of his home. Because the Plaintiff's Second Amended Complaint fails to properly allege federal subject matter jurisdiction, the Court now dismisses the case with prejudice.

I. BACKGROUND

On November 23, 2015, Plaintiff Kenneth Michael Woodall filed a complaint against Wells Fargo & Company and Wells Fargo Bank ("Defendants") for misconduct related to the foreclosure of the Plaintiff's home. ECF No. 1. On December 14, 2015, the Court granted leave for Woodall to proceed in forma pauperis. ECF No. 4. However, after screening Woodall's complaint pursuant to § 1915(e)(2), the magistrate judge recommended that the Court dismiss the complaint with prejudice, finding that the complaint failed to state a claim upon which relief could be granted. ECF No. 9. This Court adopted that recommendation in part, but granted Woodall leave to file an amended complaint. ECF No. 20. Woodall filed a First Amended Complaint on May 18, 2016. ECF No. 23. The Court reviewed Woodall's First Amended Complaint, but could not discern any basis for federal subject matter jurisdiction. ECF No. 28. The Court therefore dismissed the First Amended Complaint for lack of subject matter jurisdiction, again granting the Plaintiff leave to file an amended complaint to cure the deficiencies. Id.

United States District Court
Northern District of California

1 Woodall filed his Second Amended Complaint on July 11, 2016.¹ ECF No. 30. Therein,
2 Woodall generally alleges that several banks and loan servicing companies provided false and
3 misleading information to him regarding his mortgage and wrongfully foreclosed on his home.
4 See generally, id. Woodall asserts claims against Wells Fargo & Company, Wells Fargo Bank (a
5 subsidiary of Wells Fargo & Company), Homeq Servicing, Quality Loan Service Corp, and Does
6 1-100 (collectively, “the Defendants”). Id. Woodall alleges that Wells Fargo Bank is a Delaware
7 corporation that is headquartered in California. Id. at 2. Woodall provides no information about
8 the citizenship of the other Defendants.² Despite alleging commonality of citizenship between
9 himself and at least one of the Defendants, Woodall nonetheless asserts that “there exists diversity
10 of citizenship and the amount of damages may well exceed several hundred thousand dollars,
11 sufficient to satisfy the minimum required.” Id. at 3.

12 Woodall also asserts that this Court has subject matter jurisdiction over this action “to the
13 extent the claims arise under the False Claims Act, 31 U.S.C. § 3729.” Id. Woodall alleges later
14 in his complaint that the Defendants “prepar[ed] or present[ed] false or misleading documents,
15 fil[ed] false and misleading documents with courts and government agencies, or otherwise [used]
16 false or misleading documents as part of the foreclosure process. . . .” Id. at 11. Woodall also
17 alleges that the Defendants failed to follow FHA regulations relating to foreclosure. Id. at 7-8, 10,
18 23 (citing 24 C.F.R. § 203.500). In addition, Woodall alleges that the Defendants did not act in
19 accordance with several federal stimulus programs related to mortgage refinancing, such as the
20 Home Affordable Modification Program (“HAMP”). Id. at 12. Despite these general references
21 to federal law and federal regulations, Woodall explicitly asserts only state law causes of action—
22 for negligence, unfair competition, unjust enrichment, negligent misrepresentation, and fraud. Id.
23 at 12-26. He also references California’s state consumer protection laws throughout his
24 complaint. Id. at 2, 6, 10, 11.

26 ¹ In light of the Plaintiff’s pro se status, the Court considers the Second Amended Complaint even
27 though it was filed three days late. See ECF No. 28 (ordering that the amended complaint be filed
28 within thirty days of the Court’s order, by July 8, 2016).

² Although Plaintiff alleges that Wells Fargo is the successor in interest to Wachovia, which the
Plaintiff alleges is headquartered in North Carolina, Wachovia is not a defendant in this action. Id.

1 **II. LEGAL STANDARD**

2 Because the Court previously permitted Plaintiff to proceed in forma pauperis, his
3 complaint is subject to screening under 28 U.S.C. § 1915(e). Under Section 1915(e), the Court
4 must dismiss an in forma pauperis complaint before service of process if it is “frivolous or
5 malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief
6 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). The Court
7 retains discretion over the terms of dismissal, including whether to grant leave to amend. Lopez v.
8 Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

9 Federal Rule of Civil Procedure 8(a) requires all complaints filed in federal district courts
10 to contain “a short and plain statement of the grounds for the court’s jurisdiction” And a case
11 must be dismissed if the court determines “at any time” that federal subject matter jurisdiction is
12 lacking. Fed. R. Civ. P. 12(h)(3). Federal courts have subject matter jurisdiction over a case only
13 if there is diversity or a federal question. See Deutsche Bank Nat’l Trust Co. v. Duenas, C 13–
14 00738 RS, 2013 WL 1662437 (N.D.Cal. Apr. 17, 2013). The presumption is that federal courts
15 lack jurisdiction over civil actions, and the burden to establish the contrary rests upon the party
16 asserting jurisdiction. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994).

17 **III. DISCUSSION**

18 Even when liberally construed in accordance with Plaintiff’s pro se status, the Second
19 Amended Complaint fails properly to invoke this Court’s subject matter jurisdiction.

20 First, the complaint does not allege diversity jurisdiction under 28 U.S.C. § 1332(a).
21 Woodall alleges that one of the Defendants—Wells Fargo Bank—is headquartered in California,
22 thus making it a California citizen for the purposes of diversity jurisdiction. See Am. Sur. Co. v.
23 Bank of California, 133 F.2d 160, 162 (9th Cir. 1943) (holding that the defendant bank was a
24 California citizen because it had its principal place of business in California). Because Woodall is
25 also a citizen of California, this allegation destroys complete diversity and, thus, any potential
26 diversity jurisdiction. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978)
27 (“[D]iversity jurisdiction is not to be available when any plaintiff is a citizen of the same State as
28 any defendant.”).

1 Second, the complaint does not sufficiently allege a federal question arising under the
2 Constitution or federal law because Woodall does not have standing to assert those causes of
3 action. Although Woodall generally alleges that the Defendants violated FHA regulations, he
4 does not have a private right of action to enforce those guidelines. Fed. Nat’l Mortg. Ass’n v.
5 LeCrone, 868 F.2d 190, 193 (6th Cir. 1989) (“[N]o express or implied right of action in favor of
6 the mortgagor exists for violation of HUD mortgage servicing policies.”) (citing United States v.
7 Neustadt, 366 U.S. 696, 709 (1961)). Nor does he have a private right of action to enforce federal
8 stimulus programs such as HAMP. See Kichatov v. Nationstar Mortgage, Inc., No. 3:13-CV-
9 00103-BR, 2013 WL 3025981, at *6–9 (D. Or. June 14, 2013) (summarizing several cases in
10 which courts in the Ninth Circuit have held that HAMP does not provide a private right of action
11 against lenders and concluding that the Plaintiffs could not bring a claim for violation of HAMP);
12 Simon v. Bank of Am., N.A., 2010 WL 2609436 at *7 (D. Nev., June 23, 2010) (“[C]ourts have
13 consistently held that [HAMP] does not provide borrowers with a private cause of action against
14 lenders for failing to consider their application for loan modification, or even to modify an eligible
15 loan.”).

16 The only other federal law mentioned in Woodall’s complaint is the False Claims Act, and
17 a pro se plaintiff such as Woodall is not entitled to prosecute a False Claims Act violation on
18 behalf of the government. Stoner v. Santa Clara Cty. Office of Educ., 502 F.3d 1116, 1126–27
19 (9th Cir. 2007). In other words, even if Stoner could establish the elements of a False Claims Act
20 case as a relator – and he has not come close to doing so – he would be unable to prosecute that
21 case on a pro se basis. Id. (“Because qui tam relators are not prosecuting only their “own case”
22 but also representing the United States and binding it to any adverse judgment the relators may
23 obtain, we cannot interpret § 1654 as authorizing qui tam relators to proceed pro se in FCA
24 actions.”).³

25
26 ³ Even if Woodall could proceed pro se on behalf of the government, his complaint fails to state a
27 claim under the False Claims Act for two reasons. First, his claims do not fall within the scope of
28 the False Claims Act because he asserts allegations in his private capacity against a private entity.
See, e.g., Williams v. Bank of Am., No. 2:12-cv-2513 JAM AC PS, 2013 WL 1906529, at *3
(E.D. Cal. May 7, 2013); David v. GMAC Mortg., No. C 11-6320 PJH, 2012 WL 851506, at *1

