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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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7 DWAYNE WILLIAM MACK, doing
8 business as Kingsway Capital
9 Partners; NATHANIEL BASOLA
10 SOBAYO, doing business as
11 Kingsway Capital Partners,

12 Plaintiffs,

13 v.

14 PNC BANK; NATIONAL CITY MORTGAGE,
15 a division of National City Bank;
16 BANK OF AMERICA, N.A.; BLUE
17 MOUNTAIN HOMES, LLC; WILL LUJAN,
18 as agent for a purported owner;
19 CAL-WESTERN RECONVEYANCE
20 CORPORATION; POLYMATHIC
21 PROPERTIES, INC.; CHARLES B. WOOD
22 III, SBN 163146, attorney at law;
23 MATTIC LAW OFFICES; and DOES 1
24 THROUGH 50, inclusive,

25 Defendants.
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No. C 11-3850 CW

ORDER DENYING
PLAINTIFF SOBAYO'S
MOTION TO PAY
FILING FEE IN
INSTALLMENTS AND
DISMISSING FIRST
AMENDED COMPLAINT
WITHOUT LEAVE TO
AMEND

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31 Pro se Plaintiffs Dwayne William Mack and Nathaniel Basola
32 Sobayo filed this action on August 5, 2011. They both filed
33 motions to proceed in forma pauperis (IFP). On October 20, 2011,
34 the Court issued an Order Denying Without Prejudice Plaintiff
35 Sobayo's Application to Proceed IFP, Granting Plaintiff Mack's
36 Application and Dismissing Complaint Without Prejudice to refileing
37 an amended complaint. The Court explained that Plaintiff Sobayo's
38 IFP application was incomplete and granted him leave to supplement

1 it. On November 2, 2011, Plaintiffs filed an amended complaint
2 and Plaintiff Sobayo filed a motion to pay the filing fee in seven
3 installments.

4 In support of his motion, Plaintiff Sobayo merely states that
5 he "is currently insolvent as a result of the current economic
6 conditions in this country." The Court granted Plaintiff Sobayo
7 leave to file a supplemental IFP application to explain his
8 financial situation. If he is insolvent, a completed IFP
9 application would document this. However, because he chose not to
10 complete an IFP application and does not submit evidence in
11 support of his statement that he is insolvent, the Court denies
12 his motion to pay the filing fee in seven installments. However,
13 the issue may be moot because the Court dismisses the case.

14 The Court's October 20, 2011 Order explained that, because
15 Plaintiffs alleged only state law claims, there was no federal
16 jurisdiction, but noted that Plaintiffs appeared to allege a cause
17 of action under the federal Fair Debt Collection Practices Act
18 (FDCPA), 15 U.S.C. § 1692 et seq. The Court granted leave to
19 amend to state such a claim, if Plaintiffs could truthfully do so.
20 In their amended complaint, Plaintiffs attempt to allege a claim
21 based on a violation of the FDCPA. However, they only list the
22 provisions of the statute; they do not allege facts to show how
23 each Defendant sued under this statute engaged in conduct that
24 violated the statute.

25 A complaint must contain a "short and plain statement of the
26 claim showing that the pleader is entitled to relief." Fed. R.
27 Civ. P. 8. "Threadbare recitals of the elements of a cause of
28 action, supported by mere conclusory statements," are insufficient

1 to state a claim. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50
2 (2009).

3 CONCLUSION

4 Plaintiffs' first amended complaint is dismissed without
5 leave to amend. The state law claims are dismissed without
6 prejudice to refiling in state court.

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8 IT IS SO ORDERED.

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10 Dated: 12/1/2011

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12 CLAUDIA WILKEN
13 United States District Judge
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