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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4 DWAYNE WILLIAM MACK and NATHANIEL
5 BASOLA SOBAYO, dba KINGSWAY CAPITAL
6 PARTNERS,

7 Plaintiffs,

8 v.

9 PNC MORTGAGE, et al.,

10 Defendants.

No. 11-03850 CW

ORDER DENYING
WITHOUT PREJUDICE
PLAINTIFF SOBAYO'S
APPLICATION TO
PROCEED IN FORMA
PAUPERIS, GRANTING
PLAINTIFF MACK'S
APPLICATION TO
PROCEED IN FORMA
PAUPERIS AND
DISMISSING COMPLAINT
WITH LEAVE TO AMEND

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12 Plaintiffs Dwayne William Mack and Nathaniel Basola Sobayo,
13 dba Kingsway Capital Partners, file applications for leave to
14 proceed in forma pauperis (IFP). The matter was decided on the
15 papers. Having considered the papers filed by Plaintiffs, the
16 Court denies Plaintiff Sobayo's application to proceed IFP, grants
17 Plaintiff Mack's application to proceed IFP and dismisses the
18 complaint with leave to amend.

19 A court may authorize a plaintiff to prosecute an action in
20 federal court without prepayment of fees or security if the
21 plaintiff submits an affidavit showing that he or she is unable to
22 pay such fees or provide such security. See 28 U.S.C. § 1915(a).

23 A review of Plaintiff Sobayo's application to proceed IFP
24 shows that it is incomplete. Mr. Sobayo's application indicates
25 that he has no income, no assets and one monthly expense consisting
26 of a \$295.00 car payment. Clearly, Mr. Sobayo has other expenses
27 that he has not listed and income from some source that he has not
28

1 listed.

2 Therefore, Plaintiff Sobayo's application to proceed IFP is
3 denied. However, he is granted leave to supplement his
4 application. If he chooses to supplement his application, he must
5 do so within fourteen days from the date of this order. If he does
6 not file a supplemental application within this time, his claims
7 will be dismissed for failure to prosecute.

8 Furthermore, Plaintiffs' complaint alleges state law claims,
9 over which the Court does not have jurisdiction. However, within
10 the first cause of action to set aside the trustee's sale,
11 Plaintiffs appear to allege a claim under the Fair Debt Collections
12 Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., over which this
13 Court would have federal question jurisdiction. Therefore, if
14 Plaintiffs wish to bring a cause of action for violation of the
15 FDCPA, they must submit an amended complaint alleging, as a
16 separate cause of action, the FDCPA claim. They must file the
17 amended complaint within fourteen days of the date of this order.
18 If they do not submit an amended complaint within this time period,
19 their case will be dismissed without prejudice to refile in state
20 court.

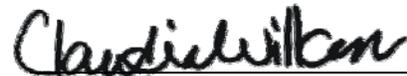
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22 IT IS SO ORDERED.

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24 Dated: 10/20/2011

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CLAUDIA WILKEN
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DWAYNE WILLIAM MACK et al,

Case Number: CV11-03850 CW

5 Plaintiff,

CERTIFICATE OF SERVICE

6 v.

7 PNC MORTGAGE et al,

8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on October 20, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Dwayne William Mack
16 2148 University Avenue
17 East Palo Alto, CA 94303

18 Nathaniel Basola Sobayo
19 2148 University Avenue
20 East Palo Alto, CA 94303

21 Dated: October 20, 2011

22 Richard W. Wieking, Clerk
23 By: Nikki Riley, Deputy Clerk
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