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E-FILED: May 17, 2013

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NOT FOR CITATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

11

BERNABE MORA; STEVEN MORA,

No. C13-01528 HRL

12

Plaintiffs,

**ORDER FINDING AS MOOT
APPLICATION TO PROCEED IN
FORMA PAUPERIS**

13

v.

14

**ORDER REFERRING THIS CASE TO
JUDGE KOH FOR A RELATED CASE
DETERMINATION**

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RICHARD MCMANAHAN; COLDWELL
BANKER; ALEX BALONI; QUALITY
LOANS; LITTON; NEW CENTURY; ALL
PERSONS CLAIMING LEGAL ABILITY;
DOES 1-30; NEW CENTURY MORTGAGE
CORPORATION; GAY DALES INC
REALTORS; ROY C. GUNTER III,

**REPORT AND RECOMMENDATION RE
DISMISSAL FOR LACK OF SUBJECT
MATTER JURISDICTION**

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Defendants.

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Bernabe and Steven Mora filed this action, alleging that real property located at 15061 Meridian Road in Castroville, California was wrongfully sold at a foreclosure sale.¹ They also appear to take issue with a state court order issued in eviction proceedings.

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The Moras seek leave to proceed in forma pauperis (IFP). However, only Bernabe Mora submitted an affidavit as to his finances. On April 10, 2013, this court issued an order directing

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¹ The court's records indicate that the alleged wrongful foreclosure of this same property has been the subject of at least four other lawsuits filed by either Bernabe Mora or Steven Mora (or both) in this court. See Case No. C10-02854 LHK (HRL) *Mora v. Litton Loan Servicing, et al.*; Case No. C10-02855 LHK (HRL) *Mora v. State Bar of California, et al.*; Case No. C11-02319 LHK (HRL) *Mora v. Litton Loan Servicing, et al.*; and Case No. C12-03259 LHK (HRL) *Mora v. Coldwell Banker, et al.*

1 Steven Mora to file, no later than April 24, 2013, an affidavit attesting to his finances. (Dkt.
2 No. 4). That deadline has passed, and to date, the court has received no financial affidavit from
3 him. Indeed, there has been no activity on the docket since the court issued its April 10, 2013
4 order. On the record presented, this court is unable to determine whether the Moras properly
5 may proceed without paying the filing fee necessary to pursue this action. But, in any event,
6 having reviewed the complaint, the court denies as moot the IFP application because there are
7 no allegations giving rise to federal jurisdiction.

8 This case is referred to Judge Koh for a determination whether it is related to Case No.
9 C11-02319 LHK *Mora v. Litton Loan Servicing, et al.* within the meaning of Civil Local Rule
10 3-12.

11 The undersigned further recommends² that this action be dismissed for lack of subject
12 matter jurisdiction, without prejudice to the Moras to pursue their claims in state court. Federal
13 courts have original jurisdiction over civil actions “arising under the Constitution, laws, or
14 treaties of the United States.” 28 U.S.C. § 1331. A claim “arises under” federal law if, based
15 on the “well-pleaded complaint rule,” the plaintiff alleges a federal claim for relief. Vaden v.
16 Discovery Bank, 129 S. Ct. 1262, 1272 (2009). Here, the caption of the complaint lists state
17 law claims for quiet title, misrepresentation, unlawful and/or forcible entry, unlawful holding of
18 real property, as well for “other relief.” Although the complaint goes on to assert that this court
19 has “supplemental jurisdiction,” the pleading identifies no federal claim for relief. The
20 allegations indicate that there is no diversity jurisdiction under 28 U.S.C. § 1332. Thus, the
21 complaint fails to identify any basis for the court to exercise jurisdiction over the Moras’
22 claims. And, without any basis for federal jurisdiction, there is no ground for the exercise of
23 supplemental jurisdiction.

24 Any party may serve and file objections to this Report and Recommendation within
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28 ² The Moras openly announced their declination of magistrate judge jurisdiction in the caption of their complaint: “Request for District Judge Not Magistrate Judge.”

United States District Court
For the Northern District of California

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fourteen days after being served. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

Dated: May 17, 2013



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

United States District Court
For the Northern District of California

1 5:13-cv-01528-HRL Notice sent by U.S. Mail on May 17, 2013 to:

2 Bernabe Mora
3 11305 Del Monte Court #18
4 Castroville, CA 95012

5 Steven Mora
6 11305 Del Monte Court #18
7 Castroville, CA 95012

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