

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RAUL LUNA; AND NATALIA
LUNA,

Plaintiffs,

vs.

GREENLIGHT FINANCIAL
SERVICES, M.E.R.S., NDEX WEST,
LLC/AMERICAS SERVICING;
BANK OF AMERICA NATIONAL
ASSOCIATION AS SUCCESSOR
BY MERGER TO LASALLE BANK
NATIONAL ASSOCIATION,
UNIDENTIFIED JOHN AND JANE
DOES,

Defendants.

CASE NO. 13cv623-GPC(JMA)

**ORDER DENYING PLAINTIFFS'
MOTION TO PROCEED *IN
FORMA PAUPERIS* AND *SUA
SPONTE* DISMISSING CASE FOR
LACK OF SUBJECT MATTER
JURISDICTION**

[Dkt. No. 2.]

Plaintiffs Raul Luna and Natalia Luna, proceeding *pro se*, commenced this action against Defendants regarding the wrongful foreclosure of their home. Plaintiffs concurrently filed a motion to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915(a). For the following reasons, the Court DENIES Plaintiffs’ motion to proceed IFP, but *sua sponte* DISMISSES their suit for lack of jurisdiction.

Discussion

I. Motion to Proceed IFP

Plaintiffs move to proceed IFP under 28 U.S.C. § 1915(a). Section 1915(a) allows a court to authorize a lawsuit's commencement without payment of the filing fee

1 if the plaintiff submits an affidavit demonstrating his or her inability to pay the filing
2 fee. Such affidavit must include a complete statement of the plaintiff's assets. Here,
3 Plaintiffs submit a declaration of their assets. Based on the answers, it appears that
4 they are able to pay the filing fee. One of the plaintiffs is currently employed and
5 makes \$3000 per month, owns a car and has no debt. However, Plaintiffs do have
6 monthly payments to support their family. Plaintiffs also provide conflicting
7 information. While they state that they do not own any real estate, they state that they
8 have a \$1800 mortgage payment. Accordingly, the Court concludes that Plaintiffs fail
9 to meet the requirements to proceed IFP and DENIES their request to proceed IFP.

10 **II. *Sua Sponte* Dismissal for Lack of Subject Matter Jurisdiction**

11 It is well-established that a federal court cannot reach the merits of any dispute
12 until it confirms that it retains subject matter jurisdiction to adjudicate the issues
13 presented. See Steel Co. v. Citizens for a Better Environ., 523 U.S. 83, 94-95 (1998).
14 Accordingly, federal courts are under a continuing duty to confirm their jurisdictional
15 power and are “obliged to inquire *sua sponte* whenever a doubt arises as to [its]
16 existence” Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278
17 (1977) (citations omitted).

18 Federal courts are courts of limited jurisdiction. Unlike state courts, they have
19 no “inherent” or “general” subject matter jurisdiction. They can adjudicate only those
20 cases which the Constitution and Congress authorize them to adjudicate, i.e. those
21 involving diversity of citizenship, a federal question, or to which the United States is
22 a party. See Finley v. United States, 490 U.S. 545 (1989). Federal courts are
23 presumptively without jurisdiction over civil actions and the burden of establishing the
24 contrary rests upon the party asserting jurisdiction. See Kokkonen v. Guardian Life
25 Ins. Co., 511 U.S. 375, 377 (1994).

26 Here, Plaintiffs allege that their “deed of trust violates due process as a contract
27 of adhesion;” “deed of trust violates due process as a cognovit note”; and they seek
28 relief under the Declaratory Judgment Act. In the complaint, Plaintiffs cite the due

1 process provision in the California Constitution. Based on the allegations in the
2 complaint, it is not clear whether Plaintiff is asserting a violation under federal or state
3 law. As a result, these allegations do not give rise to a federal question or diversity
4 jurisdiction. Moreover, the United States is not a party to this case. Plaintiffs do not
5 state a sufficient basis for federal subject matter jurisdiction over his case. Accordingly
6 the Court *sua sponte* DISMISSES the complaint for lack of subject matter jurisdiction.

7 **Conclusion**

8 For the reasons set forth above, the Court DENIES Plaintiffs' motion to proceed
9 IFP and *sua sponte* DISMISSES the Complaint for lack of subject matter jurisdiction.
10 The Court GRANTS Plaintiffs 45 days from the date this Order is stamped "Filed" to
11 file an amended complaint that addresses the deficiencies of pleading set forth above.
12 Plaintiffs' amended complaint must be complete in itself without reference to the
13 superseded pleading. Defendants not named and all claims not re-alleged in the
14 amended complaint will be deemed to have been waived. See King v. Atiyeh, 814 F.2d
15 565, 567 (9th Cir. 1987).

16 IT IS SO ORDERED.

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18 DATED: May 15, 2013

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20 HON. GONZALO P. CURIEL
21 United States District Judge
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