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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 PERLITA NEWMAN, and GEORGE
12 NEWMAN,
13 Plaintiffs,
14 v.
15 CALIBER HOME LOANS, INC. et al.,
16 Defendants.

Case No.: 16-CV-2053-JLS (NLS)

**ORDER: (1) DENYING REQUEST
TO REOPEN CASE; (2) GRANTING
LEAVE TO FILE SECOND
AMENDED COMPLAINT**
(ECF No. 13)

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18 On September 30, 2016, the Court granted Plaintiffs' Motion to Proceed In Forma
19 Pauperis, screened the Complaint, and dismissed the Complaint without prejudice. (ECF
20 No. 3.) The Court found that Plaintiffs' Complaint failed to state a legal claim upon which
21 relief could be granted because it had only conclusory assertions stating that Defendant
22 Caliber Home Loans "violated Plaintiffs' rights under the Constitution and federal and state
23 law governing real estate foreclosures." (*Id.* at 4.) The Court also found that Plaintiffs had
24 not proven that this Court had subject matter jurisdiction over the action. (*Id.* at 5.)
25 Plaintiffs then filed an Amended Complaint. (ECF No. 5.)¹
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28 ¹ Plaintiffs' Amended Complaint lists two Defendants: Caliber Home Loans and Quality Loan Service
Corporation. Plaintiffs then filed a form titled "Proof of Service by First-Class Mail." (ECF No. 5.) The
form Plaintiffs filed was created for the Superior Court of California. Plaintiffs crossed out "Superior

1 On April 9, 2018, the Court closed this case for failure to prosecute pursuant to Civil
2 Local Rule 41.1. (ECF No. 12.) Plaintiffs have filed a request that the dismissal be set
3 aside and the case be reopened. (ECF No. 13.) Plaintiffs state Defendant has never
4 responded to the Complaint and requests the Court enter orders against Defendant and
5 award damages to Plaintiffs. (*Id.* at 2.)

6 In reviewing Plaintiffs' First Amended Complaint, the Court finds it must again
7 dismiss Plaintiff's Complaint. Plaintiffs state Defendant lacks standing to sell or foreclose
8 on Plaintiffs' property and is violating Plaintiffs' right to quiet enjoyment of their property.
9 (ECF No. 5, at 5, 7, 10.). Plaintiffs state Defendants engaged in "fraudulent foreclosures"
10 which is a felony under the California Penal Code. (*Id.* at 10, 13–14.) Plaintiffs state
11 Defendants are violating Federal and "California Department of Real Estate laws." (*Id.* at
12 16.) Plaintiffs' first cause of action is for "fraud" and is based on Defendants' alleged
13 misrepresentation and filing false documents. (*Id.* at 19.) Plaintiffs' second cause of action
14 is for "violations of federal, and California state laws regarding real property foreclosures."
15 It appears the laws Plaintiffs refer to for this cause of action are "US Code Chapter 47,
16 # 1021, and the California Penal Code, Section 115.5." (*Id.* at 20.) Plaintiffs' third cause
17 of action is financial elder abuse under "California Welfare and Institutions Code, Article
18 15610.3-.70." (*Id.* at 19–20.)

19 It is still unclear to the Court whether subject matter jurisdiction exists over
20 Plaintiffs' action. Additionally, Plaintiffs have not proven or even alleged that the Court
21 has personal jurisdiction over Defendants. The Court refers Plaintiffs' to page 5 of the
22 Court's prior order (docket number 3) wherein the Court laid out the bases for subject
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25 Court of California" and wrote in "US District Court." The form also clearly states: "Do not use this Proof
26 of Service to show service of a Summons and Complaint." This proof of service is therefore inadequate.
27 However, as detailed below, the Court permits Plaintiffs to file a second amended complaint. Because
28 Plaintiffs have been granted permission to proceed IFP, the Court will order the United States Marshals
to serve the complaint if it passes the Court's screening. *See* 28 U.S.C. § 1915(e)(2) (the court must review
an action filed pursuant to the IFP provisions of § 1915 and rule on its own motion to dismiss before
directing the Marshal to effect service pursuant to Federal Rule of Civil Procedure 4(c)(3)).

1 matter jurisdiction: diversity jurisdiction and federal question jurisdiction. The Court
2 found Plaintiffs had not proven that either basis for subject matter jurisdiction existed.
3 (ECF No. 3, at 5.) The First Amended Complaint does not cure this deficiency.

4 As to diversity jurisdiction, Plaintiffs request damages of \$500,000 from each
5 Defendant; thus, the amount in controversy is met. However, Plaintiffs provide no
6 information as to the citizenship of either Defendant and the Court is unable to determine
7 if the Parties are diverse. Diversity of citizenship jurisdiction exists when all plaintiffs are
8 diverse from all defendants, *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373
9 (1978). Without any information as to the citizenship of either Defendant, the Court is
10 unable to determine whether diversity jurisdiction exists.

11 As to federal question jurisdiction, the only federal law Plaintiff refers to is “US
12 Code Chapter 47, # 1021.” If this is a reference to 47 U.S.C. § 1021, the Court is unable
13 to determine how this statute, titled “Department of Justice Telecommunications Carrier
14 Compliance Fund” relates to Plaintiffs’ allegations. Federal question jurisdiction exists
15 with “all civil actions arising under the Constitution, laws, or treaties of the United States.”
16 28 U.S.C. § 1331. Plaintiffs have not stated how their Complaint arises under any federal
17 law. *See Levy v. Ryan Seacrest Prods.*, No. 2:13-CV-0070 KJM KJN, 2013 WL 418291,
18 at *4 (E.D. Cal. Jan. 30, 2013) (“A ‘bare citation to’ federal statutes or the U.S.
19 Constitution fails to establish the requisite subject matter jurisdiction.” (citing *Denton v.*
20 *Agents of Or.*, No. 3:12-CV-00022-HZ, 2012 WL 6617389, at *2 (D. Or. Dec. 19, 2012))).
21 And, as the Court noted previously, merely asserting that Defendant violated Plaintiffs’
22 rights under the Constitution “is not sufficient to apprise either the Court or the named
23 Defendant as to the claims at issue in this case. Plaintiffs would need to, at a minimum,
24 list specific statutory or constitutional provisions Defendant violated in order to cure this
25 deficiency.” (ECF No. 3, at 4–5.)

26 Thus, Plaintiffs have not established that subject matter jurisdiction exists over this
27 case. Further, Plaintiffs have not proven that this Court has personal jurisdiction over
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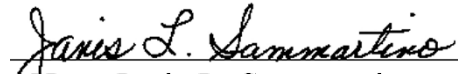
1 Defendants because Plaintiffs have provided no information as to whether Defendants are
2 located in this state, conduct any business in this state, or have any contacts in this state.

3 The Court **DENIES** Plaintiffs' request to reopen the case. However, the Court
4 **GRANTS** Plaintiffs an opportunity to file a second amended complaint. The Complaint
5 is to specify not only Plaintiffs' causes of action, but the specific laws that Plaintiffs allege
6 Defendants violated. The Complaint must also detail why this Court has subject matter
7 jurisdiction over this matter and personal jurisdiction over Defendants.

8 Plaintiffs **SHALL** file a second amended complaint on or before June 25, 2018. If
9 Plaintiffs file a second amended complaint, their case will be reopened. The Court will
10 again screen Plaintiffs' Complaint and will direct the U.S. Marshals to serve the Complaint
11 if it passes screening. *If Plaintiffs fail to file a second amended complaint by this date,*
12 *their case will remain closed.*

13 **IT IS SO ORDERED.**

14 Dated: May 10, 2018


15 Hon. Janis L. Sammartino
16 United States District Judge
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