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

ANNA MARIE EVANS,

Plaintiff,

v.

STATE OF CALIFORNIA, *et al.*,

Defendants.

Case No. 17-cv-00531-BAS-BGS
ORDER:
**(1) GRANTING DEFENDANTS
OLD REPUBLIC DEFAULT
MANAGEMENT SERVICES AND
ZIEVE, BRODNAX & STEELE,
LLP’S MOTION TO DISMISS
(ECF No. 6); AND**
**(2) TERMINATING AS MOOT
REMAINING PENDING
MOTIONS (ECF Nos. 8, 15, 18, 24)**

Plaintiff Anna Marie Evans commenced this action against numerous Defendants allegedly involved in a foreclosure sale of her property. Presently before the Court is Defendants Old Republic Default Management Services, a Division of Old Republic National Title Insurance Co., and Zieve, Brodnax & Steele, LLP (“Moving Defendants”)’s motion to dismiss Plaintiff’s action for lack of subject matter jurisdiction and for failure to state a claim.

Plaintiff has not filed an opposition to Moving Defendants’ motion. The Court nevertheless addresses the merits of the motion and does not deem Plaintiff’s failure

1 to respond as consent to the granting of the motion. *See* Civ. L.R. 7.1(f)(3)(c). The
2 Court also finds this motion suitable for decision on the papers submitted and
3 without oral argument. *See id.* 7.1(d)(1). For the following reasons, the Court
4 concludes it lacks subject matter jurisdiction and therefore **GRANTS** Moving
5 Defendants’ motion to dismiss. Accordingly, the Court also **TERMINATES AS**
6 **MOOT** the remaining motions pending in this action.

7
8 **I. LEGAL STANDARD**

9 Under Rule 12 of the Federal Rules of Civil Procedure, a party may move to
10 dismiss an action based on a lack of subject matter jurisdiction. Fed. R. Civ. P.
11 12(b)(1). “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian*
12 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power
13 authorized by Constitution and statute, which is not to be expanded by judicial
14 decree.” *Id.* (citations omitted). “It is to be presumed that a cause lies outside this
15 limited jurisdiction, and the burden of establishing the contrary rests upon the party
16 asserting jurisdiction.” *Id.* (citations omitted). Thus, “[w]hen subject matter
17 jurisdiction is challenged under Federal Rule of Procedure 12(b)(1), the plaintiff has
18 the burden of proving jurisdiction in order to survive the motion.” *Kingman Reef*
19 *Atoll Invs., L.L.C. v. United States*, 541 F.3d 1189, 1197 (9th Cir. 2008) (citing *Tosco*
20 *Corp. v. Comtys. for a Better Env’t*, 236 F.3d 495, 499 (9th Cir. 2001)).

21
22 **II. ANALYSIS**

23 Moving Defendants argue the Court lacks diversity or federal question
24 jurisdiction over Plaintiff’s suit. (Mot. 2:12–4:28.) The Court will address each
25 possible basis for jurisdiction.

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1 **A. Diversity Jurisdiction**

2 To invoke a court’s diversity jurisdiction, the amount in controversy must
3 exceed \$75,000 and there must be complete diversity of citizenship between the
4 parties. 28 U.S.C. § 1332(a); *see also, e.g., Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68
5 (1996). Complete diversity means the citizenship of each plaintiff must be diverse
6 from the citizenship of each defendant. *E.g., Lewis*, 519 U.S. at 68. Moreover, the
7 party invoking diversity jurisdiction has the burden to plead and prove that these
8 requirements are satisfied. *See, e.g., Bautista v. Pan Am. World Airlines, Inc.*, 828
9 F.2d 546, 552 (9th Cir. 1987).

10 Under the diversity statute, “a corporation shall be deemed to be a citizen of
11 every State and foreign state by which it has been incorporated and of the State or
12 foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).
13 Meaning, a corporation incorporated in one state with its principal place of business
14 in another state is a citizen of both states. *Id.* A corporation’s principal place of
15 business is where it has its nerve center, which is typically its headquarters. *See Hertz*
16 *Corp. v. Friend*, 559 U.S. 77, 81 (2010). If a company has dual citizenship, it can sue
17 or be sued in diversity actions only if no opposing party is a citizen of *either* state.
18 *See Bank of Cal. Nat. Ass’n v. Twin Harbors Lumber Co.*, 465 F.2d 489, 492 (9th
19 Cir. 1972) (holding complaint needed to allege for the defendant corporation both (i)
20 the place of incorporation and (ii) the principal place of business to preclude the
21 possibility that the corporation was a citizen of the same state as the plaintiff).

22 In addition, the citizenship of a limited liability company is determined by the
23 citizenship of all of its members. *Johnson v. Columbia Props. Anchorage, LP*, 437
24 F.3d 894, 899 (9th Cir. 2006). “[A]n LLC is a citizen of every state of which its
25 owners/members are citizens.” *Id.* Further, “a partnership is a citizen of all states of
26 which its partners are citizens.” *Id.* Similarly, a limited partnership is deemed to be a
27 citizen of every state of which any of its general or limited partners is a citizen. *Id.*;
28 *see also Carden v. Arkoma Assocs.*, 494 U.S. 185, 195–96 (1990) (holding

1 citizenship of limited partners must be taken into account to determine diversity of
2 citizenship).

3 Moving Defendants argue diversity jurisdiction is lacking because Plaintiff
4 does not demonstrate complete diversity of citizenship. (Mot. 4:19–20.) The Court
5 agrees. It is unclear if Plaintiff is seeking to invoke diversity jurisdiction. However,
6 even if she is, Plaintiff does not do so successfully. Her pleading does not contain
7 allegations regarding each Defendant’s citizenship. (See Compl. ¶¶ 1–14.) Thus, she
8 does not demonstrate that her citizenship is diverse from the citizenship of each
9 Defendant. See, e.g., *Lewis*, 519 U.S. at 68. To establish complete citizenship,
10 Plaintiff must include in her Complaint an allegation regarding not only her
11 citizenship, which is presumably California given her address, but also the
12 citizenship of each Defendant. For those Defendants that are corporations, Plaintiff
13 must also allege the (i) place of incorporation and (ii) principal place of business for
14 each corporation. Further, for those Defendants that are limited liability companies
15 or limited partnerships, Plaintiff must allege the place of citizenship of each member
16 of the limited liability company or partner of the limited partnership. She has not
17 done so.

18 Accordingly, because Plaintiff has not satisfied her burden to plead that the
19 requirements for diversity jurisdiction are satisfied, the Court concludes it lacks
20 diversity jurisdiction.

21 22 **B. Federal Question Jurisdiction**

23 A district court derives its federal question jurisdiction from 28 U.S.C. § 1331.
24 Section 1331 provides that “district courts shall have original jurisdiction of all civil
25 actions arising under the Constitution, laws, or treaties of the United States.” “[T]he
26 presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded
27 complaint rule,’ which provides that federal jurisdiction exists only when a federal
28 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Rivet*

1 *v. Regions Bank of La.*, 522 U.S. 470, 475 (1998) (quoting *Caterpillar Inc. v.*
2 *Williams*, 482 U.S. 386, 392 (1987)). A federal “defense is not part of a plaintiff’s
3 properly pleaded statement of his or her claim.” *Id.* (citing *Metropolitan Life Ins. Co.*
4 *v. Taylor*, 481 U.S. 58, (1987)). Notwithstanding the well-pleaded complaint rule,
5 federal question jurisdiction may also exist “if a state-law claim ‘necessarily raise[s]
6 a stated federal issue, actually disputed and substantial, which a federal forum may
7 entertain without disturbing any congressionally-approved balance of federal and
8 state judicial responsibilities.’” *Provincial Gov’t of Marinduque v. Placer Dome,*
9 *Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009) (quoting *Grable & Sons Metal Prod., Inc.*
10 *v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005)). “Such a federal issue must be ‘a
11 substantial one, indicating a serious federal interest in claiming the advantages
12 thought to be inherent in a federal forum.’” *Id.* at 1086–87 (quoting *Grable & Sons,*
13 545 U.S. at 313).

14 Moving Defendants contend federal question jurisdiction is lacking because
15 Plaintiff does not allege a cause of action arising under federal law. (Mot. 3:19–20.)
16 The Court concurs. There is no federal question on the face of Plaintiff’s pleading.
17 Plaintiff includes no discussion of subject matter jurisdiction in her Complaint.
18 Further, Plaintiff’s claims are labelled “Trespass” or “trespass on the Case.” (Compl.
19 ¶¶ 1–40.) These are common law theories, not federal claims. *See generally Inter-*
20 *Ins. Exch. of Auto. Club of S. Cal. v. Lopez*, 238 Cal. App. 2d 441, 445–46 (1965)
21 (distinguishing between trespass and trespass on the case). In addition, having
22 reviewed Plaintiff’s allegations, the Court broadly construes them as attempting to
23 raise state law foreclosure claims. These claims do not present a federal issue and
24 consequently do not provide the Court with federal question jurisdiction.

25 Accordingly, because Plaintiff’s Complaint does not establish the Court has
26 either diversity or federal question jurisdiction over this case, her Complaint is
27 subject to dismissal under Rule 12(b)(1). *See, e.g., Nordblad v. Deutsche Bank Nat.*
28 *Tr. Co.*, No. CV 13-07542 DDP VBKX, 2013 WL 6859273, at *1–*2 (C.D. Cal.


1 Dec. 30, 2013) (dismissing action arising out of foreclosure for lack of subject matter
2 jurisdiction), *aff'd*, 667 Fed. App'x 239. In addition, because the Court lacks subject
3 matter jurisdiction under Rule 12(b)(1), it does not reach Moving Defendants'
4 arguments under Rule 12(b)(6) based on a failure to state a claim.

5
6 **III. CONCLUSION**

7 For the foregoing reasons, the Court **GRANTS** Moving Defendants' motion
8 to dismiss (ECF No. 6). The Court **DISMISSES WITHOUT PREJUDICE**
9 Plaintiff's Complaint for lack of subject matter jurisdiction. Further, because the
10 Court has dismissed Plaintiff's Complaint, the Court **TERMINATES AS MOOT**
11 the remaining motions that are pending in this case (ECF Nos. 8, 15, 18, 24).

12 **IT IS SO ORDERED.**

13
14 **DATED: August 21, 2017**


Hon. Cynthia Bashant
United States District Judge