

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD B. WHEELER,

Plaintiff,

v.

SPECIALIZED LOAN SERVICES;
MORTGAGE LAW FIRM PLC,

Defendants.

Case No.: 17cv1267-JLS (JMA)

**ORDER (1) VACATING HEARING
AND TAKING MOTION FOR MORE
DEFINITE STATEMENT UNDER
SUBMISSION AND (2) GRANTING
MOTION**
(ECF No. 2)

Presently before the Court is Defendant’s Motion for a More Definite Statement (the “Motion”). (ECF No. 2.) Plaintiff has not opposed the Motion. Accordingly, the Court **VACATES** the hearing on the matter, currently set for August 24, 2017, and takes the matter under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1).

Federal Rule of Civil Procedure 12(e) provides that: “A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of

1 and the details desired.” “A Rule 12(e) motion is proper only if the complaint is so
2 indefinite that the defendant cannot ascertain the nature of the claim being asserted, i.e., so
3 vague that the defendant cannot begin to frame a response.” *Jensen v. Quality Loan Serv.*
4 *Corp.*, 702 F. Supp. 2d 1183, 1188 (E.D. Cal. 2010) (citing *Famolare, Inc. v. Edison Bros.*
5 *Stores, Inc.*, 525 F. Supp. 940, 949 (E.D. Cal. 1981)).

6 The instant case was removed from state Small Claims Court, in which Plaintiff
7 alleged only “[v]iolation of CA C.C.P. 2924.11 and 12 C.F.R. 1024.41, mortgage servicers
8 are restricted from advancing foreclosure process if homeowner is securing a
9 foreclosure[,]” and noted that he had “requeste[d] postponement of 5/17/17 foreclosure
10 auction date in lieu of monetary damages for violation of CA CCP 2924 11” (Notice
11 of Removal Ex. 1, ECF No. 1-2.) This is insufficient to put Defendant on notice of
12 Plaintiff’s specific claims against it. *Cf. Famolare, Inc. v. Edison Bros. Stores*, 525 F. Supp.
13 940, 949 (E.D. Cal. 1981) (noting that “[a] motion for a more definite statement should not
14 be granted unless the defendant cannot frame a responsive pleading” and contrasting that
15 circumstance with when “the information sought by the moving party is available and/or
16 properly sought through discovery”); (*see also* Mot. for More Definite Statement 3
17 (“Defendant does not know the actual claims at issue, when the actions occurred that gave
18 rise to these claims, and cannot reasonably prepare a response.”).) Accordingly, the Court
19 **GRANTS** Defendant’s request and **ORDERS** Plaintiff to, within thirty days of the date on
20 which Plaintiff receives this Order, to file an Amended Complaint which complies with
21 Federal Rule of Civil Procedure 8, the pleading standard announced in *Bell Atlantic Corp.*
22 *v. Twombly*, 550 U.S. 544 (2007) and expanded in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009),
23 and at a minimum states:

- 24 • A description of the alleged events upon which Plaintiff is bringing suit.
- 25 • The details of the alleged violation(s) of Cal. Civ. Code § 2924.11 and 12
- 26 C.F.R. §1024.41.
- 27 • The details concerning the nature of Plaintiff’s debt, including the type of
- 28 • Any information concerning how Defendant’s acts or omissions caused

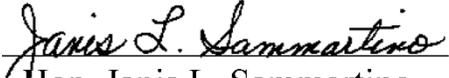
1 Plaintiff's alleged harm.

- 2 • The details concerning the amount of damages Plaintiff claims to have
3 incurred as a result of Defendant's alleged wrongful conduct.

4 (Mot. for More Definite Statement 3.)

5 **IT IS SO ORDERED.**

6 Dated: August 21, 2017

7 
8 Hon. Janis L. Sammartino
9 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28