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8 **United States District Court**
9 **Central District of California**
10 **Western Division**
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12 MARTIN KIMANI, *et al.*,

13 Plaintiffs,

14 v.

15 SELECT PORTFOLIO SERVICING,
16 INC., *et al.*,

17 Defendants.

CV 16-02252 TJH (KKx)

**Order
and
Judgment**

JS-6

18
19 The Court has considered Defendants' motion for judgment on the pleadings,
20 together with the moving and opposing papers.

21 Plaintiffs' first claim for wrongful foreclosure is not ripe as Plaintiffs failed to
22 allege that Defendants have completed the foreclosure process. *See Saterbak v. JP*
23 *Morgan Chase Bank NA*, 245 Cal. App. 4th 808, 814 (2016). Indeed, the parties agree
24 that Plaintiffs' property has not yet been foreclosed. Accordingly, because the Court
25 lacks subject matter jurisdiction, this claim must be dismissed without prejudice.
26 However, the Court has jurisdiction to consider the remaining claims because they
27 relate to pre-foreclosure activities.

28 In 2007, Plaintiffs obtained a mortgage secured by a deed of trust. In 2010, the

1 deed of trust was assigned, and the assignment was recorded. In this action, filed in
2 2016, Plaintiffs challenge the legal sufficiency of the assignment. However, in 2013,
3 Plaintiffs filed for bankruptcy protection, but failed to identify the claims asserted in this
4 action, despite having an obligation to disclose all contingent and unliquidated claims.
5 *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 775 (9th Cir. 2001).

6 Plaintiffs argue that they did not know about their right to assert the pre-
7 foreclosure claims until the California Supreme Court issued its opinion in *Yvanova v.*
8 *New Century Mortgage Corp.*, 62 Cal 4th 919 (2016). However, Plaintiffs should have
9 known of their potential claims as early as 2010, when the assignment was recorded.
10 Prior to *Yvanova*, the law was unsettled, but that did not prevent Plaintiffs from
11 asserting their claims earlier, or identifying them as potential claims when they sought
12 bankruptcy protection.

13 Accordingly, Plaintiffs are judicially estopped from asserting their pre-foreclosure
14 claims. *See Hamilton*.

15 **It is Ordered** that Plaintiffs' wrongful foreclosure claim be, and hereby is,
16 **Dismissed** without prejudice.

17 **It is further Ordered, Adjudged and Decreed** that Judgment be, and hereby
18 is, **Entered** in favor of Defendants and against Plaintiffs as to the remaining claims.

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20 Date: April 14, 2017

21 
22 **Terry J. Hatter, Jr.**
23 **Senior United States District Judge**