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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIA TERESA G. MACAWILE AND NO. 2:12-CV-00567-MCE-DAD
ROBERT H. MACAWILE,

Plaintiffs,

v.

MEMORANDUM AND ORDER

PRO30 FUNDING, et al.,
Defendants.

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Before the Court is Defendant U.S. Bank N.A., as Trustee,
and Mortgage Electronic Registration Systems, Inc.'s Motion to
Dismiss Plaintiffs' Complaint (ECF No. 4) ("MTD").¹ For the
reasons that follow, Defendants' Motion to Dismiss is GRANTED
with leave to amend.

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¹ Because oral argument would not be of material assistance,
the Court ordered this matter submitted on the briefing. E.D.
Cal. R. 230(g).

1 **BACKGROUND²**

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3 In June 2006, Plaintiffs obtained, from defendant Pro30
4 Funding ("Pro 30"), first and second mortgages on real property
5 located in Sacramento, California. (Compl. ¶¶ 4, 10 35.) The
6 amount of the loan was apparently \$384,000, although Plaintiffs
7 apparently deny that Pro 30 loaned them that specific amount and
8 contend the promissory note is a forgery. (Id. ¶¶ 69-73.) On or
9 about January 20, 2010, Plaintiffs defaulted on their loan. (Id.
10 ¶ 47.) At some point thereafter, a Notice of Default and Notice
11 of Trustee's Sale were apparently recorded. (Id. ¶ 48.)

12 On or about December 7, 2011, Plaintiffs, at the time
13 proceeding pro se, filed suit against various mortgage business
14 related entities in Sacramento's Superior Court alleging:
15 (1) violation of the California Rosenthal Act; (2) negligence;
16 (3) breach of fiduciary duty; (4) fraud; (5) violations of Cal.
17 Bus. & Prof. Code § 17200; and (6) breach of the implied covenant
18 of good faith and fair dealing.³ (Id. at p. 1.)

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23 ² The following facts are taken from Plaintiffs' Complaint
24 (ECF No. 1, Ex. 1) ("Compl.") All page references to documents
25 filed in this action will be to the Court's ECF pagination. For
the purposes of this Motion, the Court accepts Plaintiffs' facts
as true and makes all inferences in the light most favorable to
Plaintiffs.

26 ³ Plaintiffs are now represented by counsel. Notably,
27 Plaintiffs' counsel chose not to amend Plaintiffs' original
28 pro se complaint and filed an Opposition to Defendants' Motion to
Dismiss in which counsel defended the sufficiency of that
complaint.

1 On March 2, 2012, Defendants removed on the basis of federal
2 question jurisdiction - Plaintiffs' state law claims invoked
3 various federal statutes - and they filed the instant Motion to
4 Dismiss on March 9.⁴

5
6 **STANDARD FOR 12(b)(6) MOTION TO DISMISS**
7

8 On a motion to dismiss for failure to state a claim under
9 Rule 12(b)(6), all allegations of material fact must be accepted
10 as true and construed in the light most favorable to the
11 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
12 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and
13 plain statement of the claim showing that the pleader is entitled
14 to relief" in order to "give the defendant fair notice of what
15 the . . . claim is and the grounds upon which it rests." Bell
16 Atl. Corp. v. Twombly, 550 U.S. 544, 554-55 (2007) (internal
17 citations and quotations omitted).

18 Though "a complaint attacked by a Rule 12(b)(6) motion to
19 dismiss does not need detailed factual allegations, a plaintiff's
20 obligation to provide the 'grounds' of his 'entitlement to
21 relief' requires more than labels and conclusions, and a
22 formulaic recitation of the elements of a cause of action will
23 not do." Id. at 555 (internal citations and quotations omitted).

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27 ⁴ Although Defendants are correct that Plaintiffs failed to
28 timely file their Opposition (see ECF No. 8), the Court has
nonetheless reviewed this document.

1 A plaintiff's factual allegations must be enough to raise a right
2 to relief above the speculative level. Id. (citing 5 C. Wright &
3 A. Miller, Federal Practice and Procedure § 1216, pp. 235-36
4 (3d ed. 2004) ("The pleading must contain something more. . .
5 than . . . a statement of facts that merely creates a suspicion
6 [of] a legally cognizable right of action").

7 Moreover, "Rule 8(a)(2) . . . requires a 'showing,' rather
8 than a blanket assertion of entitlement to relief. Without some
9 factual allegation in the complaint, it is hard to see how a
10 claimant could satisfy the requirements of providing not only
11 'fair notice' of the nature of the claim, but also 'grounds' on
12 which the claim rests." Twombly, 550 U.S. at 555, n.3 (internal
13 citations omitted). A pleading must contain "only enough facts
14 to state a claim to relief that is plausible on its face." Id.
15 at 570; see also Ashcroft v. Iqbal, 556 U.S. 662, 677-679 (2009).
16 If the "plaintiffs . . . have not nudged their claims across the
17 line from conceivable to plausible, their complaint must be
18 dismissed." Twombly, 550 U.S. at 570; Iqbal, 556 U.S. at 680.

19 A court granting a motion to dismiss a complaint must then
20 decide whether to grant leave to amend. Rule 15(a) empowers the
21 court to freely grant leave to amend when there is no "undue
22 delay, bad faith[,] dilatory motive on the part of the movant,
23 . . . undue prejudice to the opposing party by virtue of . . .
24 the amendment, [or] futility of the amendment. . . ." Foman v.
25 Davis, 371 U.S. 178, 182 (1962). Leave to amend is generally
26 denied when it is clear the deficiencies of the complaint cannot
27 be cured by amendment.

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1 DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir.
2 1992); Balistieri v. Pacifica Police Dept., 901 F. 2d 696, 699
3 (9th Cir. 1990) ("A complaint should not be dismissed under Rule
4 12(b)(6) unless it appears beyond doubt that the plaintiff can
5 prove no set of facts in support of his claim which would entitle
6 him to relief.") (internal citations omitted).

7
8 **ANALYSIS**
9

10 Although the Court takes into account Plaintiffs' pro se
11 status at the time they filed their Complaint in Sacramento's
12 Superior Court, the Court nevertheless holds that the Complaint
13 must be dismissed for failure to state a claim. As stated above,
14 to survive a 12(b)(6) motion to dismiss, a Complaint must allege
15 sufficient facts that, taken as true, make a plausible showing
16 that the plaintiff is entitled to legal relief. Twombly,
17 550 U.S. at 554-55; Iqbal, 556 U.S. at 677-679.

18 Here, Plaintiffs' Complaint contains eighty-six paragraphs
19 of "facts," followed by another fifty-eight paragraphs of legal
20 claims, but fails to provide virtually any information about the
21 specific parties or transactions at issue here, and the claims
22 against the Defendants appear to be baselessly accusatory and
23 conclusory. At this time, the Court will not address the
24 specifics of Plaintiffs' factual allegations and causes of
25 action, as the Complaint simply fails to adhere to the basic
26 pleading requirements of Rule 8(a), as well as the heightened
27 pleading standard of 9(b), in almost every material respect.

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1 As a general matter, Plaintiffs' fail to sufficiently state
2 facts in support of any of their claims.⁵ In particular, they
3 fail to allege critical facts concerning their loan transaction
4 and subsequent servicing, such as the amount of the loan, the
5 amount of their monthly loan payments, how and why they
6 apparently defaulted on that loan, what the current status of the
7 property is, and whether they ever tendered payment.⁶
8 Furthermore, the Complaint raises various conclusory allegations
9 about "foreclosure mills" (Compl. ¶ 13), "robo-signers" (id.
10 ¶ 38), and the securitization of loans nationwide (see, e.g., id.
11 ¶¶ 28-62), but it fails to sufficiently tie these accusations to
12 specific actions taken by the specific defendants sued herein.

14 ⁵ Notably, Plaintiffs have also not included any documents
15 that might support their claims as exhibits to their Complaint.
16 Defendants, however, have attached several relevant documents and
17 ask this Court to take judicial notice of them. Pursuant to
18 Federal Rules of Evidence 201(b) (authorizing judicial notice of
19 adjudicative facts "capable of accurate and ready determination
20 by resort to sources whose accuracy cannot be reasonably
21 questioned"), Defendants request the Court take judicial notice
22 of several documents. (Request for Judicial Notice ("RJN") (ECF
23 No. 5, Exs. A-HB.) Specifically, Defendants ask the Court to
24 take judicial notice of: (1) Deeds of Trust signed by Plaintiffs
25 in June 2006 (Exs. A and B); (2) The Assignment of Deed of Trust
and Substitution of Trustee recorded April 5, 2010 (Exs. C and
D); (3) Notices of Default recorded in January 2010 (Exs. E and
F); and (4) Notices of Trustee's Sale recorded in April 2010.
Defendants' requests are unopposed and are the proper subject of
judicial notice. See, e.g., Champlaie v. BAC Home Loans
Servicing, LP, 706 F. Supp. 2d 1029, 1040 (E.D. Cal. 2009); Lee
v. County of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001)
(court may take judicial notice of matters of public record).
Accordingly, Defendants' Request for Judicial Notice (ECF No. 5)
is granted.

26 ⁶ Plaintiffs' Complaint appears to be a form complaint, into
27 which certain information relevant to the present parties has
28 been added. This may account for why references to federal
statutes, such as the Truth in Lending Act remain, despite the
fact that the Complaint omitted federal causes of action when it
was filed in the Superior Court. (Compl. ¶¶ 78-81.)

1 To the extent that Plaintiffs allege various acts of fraud
2 and forgery, they fail to do so with the specificity required by
3 Rule 9(b). For example, to the extent that Plaintiffs are
4 alleging fraud in relation to their accusations that documents
5 were forged (see, e.g., id. ¶¶ 67-77), the Complaint fails to
6 provide sufficient details as to the circumstances constituting
7 the fraud, the details as to when they discovered the forgery, or
8 information about why Plaintiffs believe the documents were
9 forged (e.g., they allege the loan amounts were not what they
10 agreed to, but they do not state what they agreed to or attach
11 any documents that might support their forgery or fraud claims).⁷
12 See, e.g., Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th
13 Cir. 2009) (The heightened pleading requirements of Rule 9(b)
14 require a plaintiff to plead facts as to the "who, what, when,
15 where, and how" of the alleged fraud).

16 Finally, each of Plaintiffs' causes of action merely recite,
17 in the most conclusory fashion, the elements for the particular
18 claim, without specifying any specific facts about these
19 particular parties that might support their claims. The Court is
20 not inclined to sift through a multitude of paragraphs it has
21 already found fail to comply with the federal rules to search for
22 support to unsupported legal claims. (Id. ¶¶ 87-145.)

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25 ⁷ Given that they are now represented by counsel, in the
26 event that Plaintiffs choose to amend their complaint, counsel is
27 reminded that, in addition to complying with the pleading
28 requirements of Rules 8(a) and 9(b), that every pleading, motion,
or other paper filed in this Court is also subject to the
requirements of Rule 11(b) and failure to adhere to Rule 11(b)
will result in sanctions.

1 It has been said before, but it bears saying again, "judges are
2 not like pigs, hunting for truffles buried in briefs." Guatay
3 Christian Fellowship v. County of San Diego, 670 F.3d 957, 987
4 (9th Cir. 2011). Therefore, Plaintiffs are given leave to amend
5 their brief but must do so in a manner that is consistent with
6 the federal rules. Failure to do so will result in summary
7 dismissal.

8 In sum, Defendants' Motion to Dismiss is granted with leave
9 to amend. In addition, because the Court has concluded that
10 Plaintiffs have failed to sufficiently allege facts to support
11 any of their claims, the Court sua sponte dismisses for failure
12 to state a claim as to all remaining Defendants. Pursuant to
13 Rule 12(b)(6), a court may dismiss a claim sua sponte for failure
14 to state a claim when the plaintiff "cannot possibly win relief."
15 Omar v. Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987)
16 (citing Wong v. Bell, 642 F.2d 359, 361-62 (9th Cir. 1981)). A
17 court may do so even when the defendant has not made a motion to
18 dismiss. Id.; Ricotta v. State of California, 4 F. Supp. 2d 961,
19 968 (S.D. Cal. 1998), aff'd. 173 F.3d 861 (9th Cir. 1999).

20
21 **CONCLUSION**

22
23 As a matter of law, and for the reasons set forth above,
24 Defendant U.S. Bank N.A., as Trustee, and Mortgage Electronic
25 Registration Systems, Inc.'s Motion to Dismiss Plaintiffs'
26 Complaint (ECF No. 4) is GRANTED with leave to amend.

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1 In addition, the Court sua sponte DISMISSES, with leave to amend,
2 Plaintiffs' claims against all remaining Defendants for failure
3 to state a claim. Plaintiffs shall file any amended complaint
4 within twenty (20) days of the filing of this order
5 electronically.

6 IT IS SO ORDERED.

7 Dated: July 13, 2012

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10 MORRISON C. ENGLAND, JR.
11 UNITED STATES DISTRICT JUDGE
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