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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUNG HYUN CHO, et al.,  
Plaintiffs,  
v.  
SELECT PORTFOLIO SERVICING,  
INC., et al.,  
Defendants.

No. 2:17-cv-01073-CKD

ORDER

Presently pending before the court are defendants’ motions to dismiss (ECF Nos. 106, 107, 109, 112, 115, 116) and plaintiffs’ motion to compel discovery (ECF No. 126).<sup>1</sup> Plaintiffs have opposed the motions to dismiss and defendants have replied. (ECF Nos. 127–30, 132, 139, 142–46, 148.) Defendants have opposed plaintiffs’ motion to compel and plaintiffs have replied. (ECF Nos. 131, 133–36, 141, 149, 152–57.) These matters came on for hearing before the undersigned on August 1, 2018 at 10:00 a.m. Present at the hearing were pro se plaintiffs Jung Hyun Cho, Kyu Hwang Cho, Eun Sook Cho, and Eui Hyun Cho. Nicholas R. Shepard was present for defendant Solano County Tax Assessor (“Solano County”). Present telephonically for

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<sup>1</sup> This action proceeds before the undersigned pursuant to the parties’ consent to the jurisdiction of a United States Magistrate Judge for all further proceedings in this case, including the entry of final judgment, pursuant to 28 U.S.C. § 636(c)(1). (See ECF Nos. 7–10, 15, 18, 20, 46, 64, 75–77, 158–59, 161.)

1 defendants were Brett T. Carmody for Select Portfolio Servicing, Inc. (“SPS”) and Deutsche  
2 Bank National Trust Company (“Deutsche”); Joel Spann for Bank of America, N.A. (“BOA”);  
3 Jamie Ackerman for WMC Mortgage LLC (“WMC”); Christine Howson for The Wolf Firm; and  
4 Lindsey Casillas for Ronald Lee and Juan Gomez. Upon review of the documents in support and  
5 opposition, upon hearing the arguments of counsel, and good cause appearing therefor, THE  
6 COURT FINDS AS FOLLOWS:

7 I. BACKGROUND

8 A. Relevant Factual Background<sup>2</sup>

9 On September 14, 2004, plaintiff Jung Hyun Cho obtained two loans from WMC for  
10 \$472,000 and \$118,000, to acquire the property located at 681 Tuscany Court, Fairfield,  
11 California 94534. (ECF No. 33 at 5–21, 23–33.) Notices of Default were recorded on September  
12 11, 2009 (ECF No. 24 at 23–25), March 21, 2012 (ECF No. 24 at 29–32), and August 28, 2014  
13 (ECF Nos. 24 at 36–39). On October 31, 2016, Deutsche purchased the property at 681 Tuscany  
14 Court through a trustee’s sale. (See ECF Nos. 24 at 41–42; 33 at 43–45.)

15 Deutsche subsequently filed an action for unlawful detainer against the Chos on April 6,  
16 2017 in state court, based upon their failure to vacate the property after allegedly receiving a 90  
17 day Notice to Quit. Deutsche Bank National Trust Company v. Cho, et al., (Solano Cty. Super.  
18 Ct.) FCM154163, Complaint. On July 5, 2017, the Chos attempted to remove the case to federal  
19 court. Deutsche Bank National Trust Company v. Cho, et al., (E.D. Cal.) 2:17-cv-01357-MCE-  
20 DB, Notice of Removal. United States District Judge Morrison C. England remanded the matter  
21 to Solano County Superior Court for lack of federal subject matter jurisdiction. Id., Order dated  
22 July 11, 2017.

23 On August 2, 2017, plaintiffs filed a quiet title action in Solano County Superior Court  
24 (Case No. FCS049317), which they sought to consolidate with the remanded unlawful detainer  
25 action. (ECF No. 103 at 7.) Solano County Superior Court denied the motion to consolidate and  
26 granted summary judgment in favor of Deutsche in the unlawful detainer action, on August 3,

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27 <sup>2</sup> The court previously took judicial notice of certain documents related to the mortgages at issue  
28 in this case, as well as other court orders relevant to this matter. (See ECF Nos. 24, 33, 56, 84.)

1 2017. (ECF Nos. 56-1; 103 at 7.) On November 21, 2017, defendants' demurer was sustained in  
2 the state court quiet title action, and the case was dismissed without leave to amend. (ECF No.  
3 103 at 8.) Plaintiffs have appeals pending in state court in both the unlawful detainer and quiet  
4 title actions. (Id.)

5 B. Relevant Procedural History

6 Plaintiffs, who proceed pro se, commenced this action on May 22, 2017, alleging various  
7 claims related to the two mortgages obtained in 2004 and the subsequent state court proceedings.  
8 (ECF No. 1.)

9 Liberally construed, plaintiffs' initial complaint appeared to raise the following claims  
10 against defendants: (1) violation of plaintiffs' civil rights against discrimination in housing and  
11 unreasonable searches and seizures; (2) violation of the Racketeering Influenced and Corruption  
12 Organizations Act ("RICO"); (3) violation of the Home Affordable Modification Program  
13 ("HAMP"); (4) violations of the False Claims Act (FCA); (5) violation of California Civil Code §  
14 2923.7; (6) wrongful foreclosure; (7) improperly assessing property tax; (8) unfair business  
15 practices; (9) breach of contract; (10) breach of fiduciary duty; (11) fraud; (12) undue influence;  
16 (13) negligence; (14) negligent infliction of emotional distress; (15) intentional infliction of  
17 emotional distress; (16) invasion of privacy; (17) vandalism/theft; and (18) trespass. (See ECF  
18 No. 1 at 4–20.)

19 Defendants filed numerous motions to dismiss. (ECF Nos. 17, 19, 22, 23, 30, 32.) A  
20 hearing was held on these motions, and on September 6, 2017, the undersigned recommended  
21 granting the motions and dismissing the complaint without leave to amend. (ECF No. 84.)

22 On January 16, 2018, United States District Court Judge Kimberly J. Mueller adopted the  
23 September 6, 2017 findings and recommendations (ECF No 84) and granted defendants' motions  
24 to dismiss. (ECF No. 91.) At the same time, Judge Mueller afforded plaintiffs limited leave  
25 amend. Specifically, Judge Mueller ordered that:

26 Plaintiffs' complaint (ECF No. 1) is DISMISSED:

27 a. Dismissal is with prejudice as to claims 2-6 and 8-13 to extent  
28 they are brought by plaintiffs Kyu Hwang Cho, Eun Sook Cho, and  
Eui Hyun Cho, because they are not borrowers on the mortgage and

1 so have no standing to bring claims based on it;

2 b. Dismissal is with prejudice as to all claims brought under the False  
3 Claims Act or the Home Affordable Modification Program because  
neither statute provides plaintiffs a private right of action;

4 c. Dismissal is with leave to amend as to all remaining claims. Any  
5 amendment shall be filed within fourteen days of this order.

6 (ECF No. 91 at 2.)

7 Plaintiffs failed to file an amended complaint within fourteen days of the order. Rather,  
8 on February 8, 2018, plaintiffs filed an interlocutory appeal of the January 16, 2018 order. (See  
9 ECF Nos. 93, 94.)

10 On February 22, 2018, the court advised plaintiffs that their interlocutory appeal did not  
11 automatically stay the proceedings in this matter, and plaintiffs were afforded an additional 14-  
12 day extension to file an amended complaint, consistent with the court's January 16, 2018 order.  
13 (ECF No. 96 at 1–2.) Plaintiffs were explicitly advised that failure to file an amended complaint  
14 “may result in monetary sanctions, or a recommendation to dismiss this action for failure to  
15 prosecute.” (Id. at 2.) Plaintiffs again failed to comply with the court's order.

16 Thereafter, on April 5, 2018, the undersigned recommended dismissal of this matter,  
17 pursuant to Federal Rule of Civil Procedure 41(b). (ECF No. 100.) On April 17, 2018, plaintiffs  
18 filed objections to the undersigned's recommendations. (ECF No. 101.) However, plaintiffs did  
19 not file an amended complaint or request any additional time to do so. Instead, plaintiffs  
20 appeared to move for reconsideration of the court's January 16, 2018 order dismissing the  
21 complaint with leave to amend. (See ECF No. 101.) The court denied that request as plaintiffs  
22 did not demonstrate any relevant change to the law or facts to warrant reconsideration. (ECF No.  
23 102.)

24 The court also afforded plaintiffs yet another opportunity to file an amended complaint  
25 that complied with the terms of the court's January 16, 2018 order, no later than May 10, 2018.  
26 (ECF No. 102.) On May 11, 2018, one day past the court's deadline, plaintiffs filed a first  
27 amended complaint (“FAC”), which is mistakenly captioned as the second amended complaint.  
28 (ECF No. 103.)

1 C. First Amended Complaint

2 Plaintiffs' FAC is sixty-six pages long, rambling, and difficult to follow. (See ECF No.  
3 103.) Early in the FAC, plaintiffs apparently invoke federal question subject matter jurisdiction  
4 as the basis for this court's jurisdiction. (ECF No. 103 at 1, see 28 U.S.C. § 1331.) According to  
5 plaintiffs, "[t]he rationale for federal question underscores the long-term undue influence and  
6 malpractice causing both mental and physical injuries to not only Jung, the borrower, but also his  
7 family Kyu, Eun, and Eui so broad enough to invoke standing to RICO offenses premised on  
8 FHA violations." (ECF No. 103 at 1.)

9 Liberally construed, the FAC appears to raise the following claims: (1) violations of FCA;  
10 (2) violations of HAMP; (3) RICO violations; (4) violations of the Fair Housing Act of 1968  
11 ("FHA"); (5) violation of the Real Estate Settlement Procedures Act ("RESPA"); (6) violation of  
12 the Sarbanes-Oxley Act of 2002 ("SOX"); as well as (7) several claims based on California state  
13 law—fraud, wrongful foreclosure, invasion of privacy, trespass, conversion, adverse possession,  
14 economic duress, negligence, collusion, and violation of California Civil Code §§ 2923.6 and  
15 2923.7. (See Id. at 22–23; 25-53.) Plaintiffs also added a new defendant, Juan Gomez, in the  
16 amended pleading. (Id. at 1.)

17 II. LEGAL STANDARDS

18 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to raise the defense, by  
19 motion, that the court lacks jurisdiction over the subject matter of an entire action or of specific  
20 claims alleged in the action. A federal court has an independent duty to assess whether federal  
21 subject matter jurisdiction exists, whether or not the parties raise the issue. See United Investors  
22 Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that "the district  
23 court had a duty to establish subject matter jurisdiction over the removed action *sua sponte*,  
24 whether the parties raised the issue or not"); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342  
25 (9th Cir. 1996). The court must *sua sponte* dismiss the case if, at any time, it determines that it  
26 lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3).

27 A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6)  
28 challenges the sufficiency of the pleadings set forth in the complaint. Vega v. JPMorgan Chase

1 Bank, N.A., 654 F. Supp. 2d 1104, 1109 (E.D. Cal. 2009). Under the “notice pleading” standard  
2 of the Federal Rules of Civil Procedure, a plaintiff’s complaint must provide, in part, a “short and  
3 plain statement” of plaintiff’s claims showing entitlement to relief. Fed. R. Civ. P. 8(a)(2); see  
4 also Paulsen v. CNF, Inc., 559 F.3d 1061, 1071 (9th Cir. 2009). “To survive a motion to dismiss,  
5 a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that  
6 is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v.  
7 Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads  
8 factual content that allows the court to draw the reasonable inference that the defendant is liable  
9 for the misconduct alleged.” Id.

10 In considering a motion to dismiss for failure to state a claim, the court accepts all of the  
11 well-pled factual allegations in the complaint as true and construes them in the light most  
12 favorable to the plaintiff. Corrie v. Caterpillar, Inc., 503 F.3d 974, 977 (9th Cir. 2007). The court  
13 is “not, however, required to accept as true conclusory allegations that are contradicted by  
14 documents referred to in the complaint, and [the court does] not necessarily assume the truth of  
15 legal conclusions merely because they are cast in the form of factual allegations.” Paulsen, 559  
16 F.3d at 1071.

### 17 III. ANALYSIS

#### 18 A. Rooker-Feldman Doctrine

19 In this matter, plaintiffs essentially seek to relitigate and unwind the state court  
20 foreclosure, unlawful detainer, and quiet title actions. Specifically, the FAC seeks relief in the  
21 form of “recission [sic] of the wrongful foreclosure and reconveyance of Property” to plaintiffs,  
22 as well as monetary damages. (ECF No. 103 at 53.) As explained, plaintiffs have state court  
23 appeals pending in the unlawful detainer and quiet title actions. (See ECF No. 103 at 8.)

24 A federal district court does not have jurisdiction to review errors in state court decisions  
25 in civil cases. Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker  
26 v. Fidelity Trust Co., 263 U.S. 413, 415 (1923). “The district court lacks subject matter  
27 jurisdiction either to conduct a direct review of a state court judgment or to scrutinize the state  
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1 court's application of various rules and procedures pertaining to the state case." Samuel v.  
2 Michaud, 980 F. Supp. 1381, 1411–12 (D. Idaho 1996), aff'd, 129 F.3d 127 (9th Cir. 1997); see  
3 also Branson v. Nott, 62 F.3d 287, 291-92 (9th Cir. 1995) (finding no subject matter jurisdiction  
4 over section 1983 claim seeking, inter alia, implicit reversal of state trial court action). That the  
5 federal district court action alleges the state court's action was unconstitutional does not change  
6 the rule. Feldman, 460 U.S. at 486. In sum, "a state court's application of its rules and  
7 procedures is unreviewable by a federal district court. The federal district court only has  
8 jurisdiction to hear general challenges to state rules or claims that are based on the investigation  
9 of a new case arising upon new facts." Samuel, 980 F. Supp. at 1412–13.

10 Stripped to its essence, this action is one for federal court review of state court  
11 proceedings—proceedings that are currently pending on appeal in state court. Accordingly, this  
12 action is subject to dismissal for lack of subject matter jurisdiction based on the Rooker-Feldman  
13 doctrine.

14 B. Failure to State a Claim

15 Even if plaintiffs' claims were not barred by Rooker-Feldman, dismissal is nonetheless  
16 appropriate because plaintiffs have failed to state any federal claim. Plaintiffs' FAC, while  
17 lengthy, simply does not state sufficient factual matter to state any claim to relief that is plausible  
18 on its face. See Iqbal, 556 U.S. at 678. Broadly, the FAC claims that defendants have conspired  
19 together to defraud plaintiffs, to fraudulently induce them into signing mortgage documents, and  
20 to racially discriminate against them. (See generally ECF No. 103.) However, the FAC lacks any  
21 factual allegations beyond plaintiffs' baseless and conclusory allegations.

22 Specifically, the court finds that the FAC has failed to correct the issues previously  
23 identified with the purported RICO claims (see ECF No. 84 at 10–11) as well as plaintiffs'  
24 allegations regarding the County of Solano's property tax assessment (see id. at 6–7).

25 Moreover, to the extent that plaintiffs' claims are predicated on allegations of fraud, the  
26 pleading is wholly insufficient. As the FAC lacks sufficient particularity to state any claim, it is  
27 even more lacking in the particularity necessary to state a claim of fraud. Fed. R. Civ. P. 9 ("In  
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1 alleging fraud or mistake, a party must state with particularity the circumstances constituting  
2 fraud or mistake”).

3 C. Leave to Amend

4 The court has carefully considered whether plaintiffs should be provided with an  
5 additional opportunity to amend their complaint, especially in light of their pro se status. The  
6 court concludes that further leave to amend would be futile. Plaintiffs have continually failed to  
7 follow the courts’ orders. Plaintiffs missed multiple deadlines to submit an amended complaint  
8 and never requested additional time to submit such a pleading. (See ECF Nos. 91, 96, 100, 102.)  
9 Nonetheless, plaintiffs were provided three opportunities to file an amended complaint. (Id.)  
10 Moreover, the amended pleading plaintiffs eventually filed failed to comply with the court’s prior  
11 orders.

12 First, the FAC was filed after the final deadline provided by the court. (See ECF Nos.  
13 102, 103.) Second, Kyu Hwang Cho, Eun Sook Cho, and Eui Hyun Cho attempt to state claims  
14 related to the mortgages in question, even though the court has already determined that they lack  
15 standing to bring any such claims. (See ECF Nos. 91, 103.) Third, plaintiffs attempt to reassert  
16 claims under FCA and HAMP, even though the court has previously dismissed such claims with  
17 prejudice. (See ECF Nos. 91, 103.) Fourth, as explained, the FAC lacks sufficient factual  
18 material to state any claim, even though the court previously advised plaintiffs of their failure to  
19 sufficiently state a claim in the initial complaint. (See ECF Nos. 84, 91, 103.)

20 Further leave to amend would only prejudice defendants and strain the court’s resources,  
21 as plaintiffs have demonstrated that they are unable to state a claim in this matter or follow the  
22 court’s orders.

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Defendant’s motions to dismiss (ECF Nos. 106, 107, 109, 112, 115, 116) are  
25 GRANTED.
- 26 2. The action is DISMISSED as to all defendants with prejudice.
- 27 3. Plaintiffs’ motion to compel (ECF No. 126) is DENIED as moot.

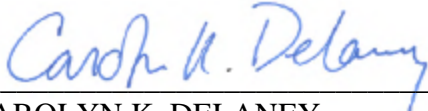
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4. The Clerk of Court shall close this case.

Dated: August 14, 2018

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE