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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA

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6 **ANTON A. RIVERA AND DENISE A. RIVERA,**

7 Plaintiffs,

8 v.

9 **JPMORGAN CHASE BANK, N.A. et al.,**

10 Defendants.

Case No. 16-cv-00636 YGR

**ORDER ON MOTION TO REMAND; SETTING  
COMPLIANCE HEARING; VACATING CASE  
MANAGEMENT CONFERENCE**

Re: Dkt. No. 15

11 Plaintiffs Anton Rivera and Denise Rivera filed the instant action in the Superior Court for the  
12 State of California, County of Contra Costa, against defendants Deutsche Bank National Trust  
13 Company, JPMorgan Chase Bank, N.A., and MTC Financial d/b/a Trustee Corps (collectively,  
14 “defendants”) bringing various causes of action against defendants in connection with the foreclosure  
15 of plaintiffs’ mortgage. Plaintiffs bring thirteen causes of action under California State law and a  
16 fourteenth claim against all defendants for civil Racketeer Influenced and Corrupt Organizations Act  
17 (“RICO”). On February 8, 2016, defendants removed the action based on federal question  
18 jurisdiction, 28 U.S.C. section 1331, by virtue of the RICO claim. (Dkt. No. 1.)

19 Currently pending before the Court is plaintiffs’ motion to remand. (Dkt. No. 15.)<sup>1</sup> Plaintiffs  
20 argue that the Court should decline jurisdiction over the entire case given that the RICO claim is the  
21 only federal cause of action in the first amended complaint (“FAC”). Defendants do not contest that  
22 the Court has original jurisdiction over the RICO claim only. With respect to the other thirteen causes  
23 of action, defendants contend that the Court may exercise supplemental jurisdiction under 28 U.S.C.  
24 section 1367(a). The Court agrees with the parties that the only ground on which this Court may  
25 exercise subject matter jurisdiction is its original jurisdiction to adjudicate plaintiffs’ RICO claim.

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27 <sup>1</sup> Also pending before the Court are defendants’ motions to dismiss (Dkt. Nos. 8, 9) and to  
28 expunge *lis pendens* (Dkt. No. 10) as well as plaintiffs’ motion for leave to file a late opposition to  
defendant MTC’s motion to dismiss (Dkt. No. 38). In light of the Court’s Order today, those motions  
(Dkt. Nos. 8, 9, 10, 38) are **DENIED AS MOOT** to be renewed later if appropriate.

1 See 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction over all civil actions under  
2 the...laws...of the United States”); 28 U.S.C. § 1367(a) (“the district courts shall have supplemental  
3 jurisdiction over all other claims that are so related to claims in the action with such original  
4 jurisdiction that they form part of the same case or controversy....”). For the reasons discussed  
5 below, however, the Court finds that the FAC fails to allege a plausible RICO claim. Accordingly,  
6 there is not an adequate jurisdictional showing at this juncture.

7 RICO, 18 U.S.C. section 1962(c), makes it “unlawful for any person employed by or  
8 associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of  
9 such enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c). To state a  
10 claim, Plaintiffs must allege: “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering  
11 activity.” *Odom v. Microsoft Corp.*, 486 F.3d 541, 547 (9th Cir. 2007) (*en banc*) (quoting *Sedima,*  
12 *S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985)). Section 1962(c) requires plaintiffs to allege  
13 two distinct entities: a “person” and an “enterprise.” *Cedric Kushner Promotions, Ltd. v. King*, 533  
14 U.S. 158, 161, 166 (2001). Section 1962(c) liability “depends on showing that the defendants  
15 conducted or participated in the conduct of the ‘enterprise’s affairs,’ not just their *own* affairs.” *Id.* at  
16 163 (quoting *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993)). An enterprise that is not a legal  
17 entity, such as a corporation, is commonly known as an “association-in-fact” enterprise. *Mitsui*  
18 *O.S.K. Lines, Ltd. v. Seamaster Logistics, Inc.*, 871 F. Supp. 2d 933, 939 n.6 (N.D. Cal. 2012). The  
19 Ninth Circuit holds “an association-in-fact enterprise is ‘a group of persons associated together for a  
20 common purpose of engaging in a course of conduct.’” *Odom*, 486 F.3d at 552 (quoting *United States*  
21 *v. Turkette*, 452 U.S. 576, 583 (1981)); *Boyle v. United States*, 556 U.S. 939, 944 (2009). To show an  
22 association-in-fact enterprise, plaintiffs must allege facts to establish three elements: (1) a common  
23 purpose of engaging in a course of conduct; (2) an ongoing organization, either formal or informal;  
24 and (3) facts that provide sufficient evidence the associates function as a continuing unit. *Odom*, 486  
25 F.3d at 553 (citing *Turkette*, 452 U.S. at 583).

26 Here, plaintiffs allege that defendants engaged in mail fraud with respect to several fraudulent  
27 acts, namely: the misapplication of mortgage payments; assignment of false instruments; and  
28 recordation of instruments containing false representations. (FAC ¶¶ 344-348.) Plaintiffs also allege

1 that defendants conspired together in doing the same. (*Id.* ¶¶ 356-357.) The FAC further alleges that  
2 defendants collectively “are an ‘association-in-fact enterprise’ associated together for the common  
3 purpose of depriving homeowners of their property.” (FAC ¶ 356.)

4 The Court finds that plaintiffs’ allegations in the FAC are insufficient to state a civil RICO  
5 claim. *See* Fed.R.Civ.P. 8(a)(2) (a complaint must contain “a short and plain statement of the claim  
6 showing that the pleader is entitled to relief”); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555  
7 (2007) (“a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than  
8 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do”).  
9 First, the FAC provides insufficient facts to substantiate the common purpose for the association-in-  
10 fact enterprise as alleged therein. Plaintiffs offer no factual allegations to render plausible their claim  
11 that defendants actually knew of the alleged common purpose, or that they “formed” the enterprise to  
12 participate in “depriving homeowners of their property” – much less that defendants “conspired  
13 together” to effectuate those fraudulent purposes. (FAC ¶¶ 355-57.) Thus, the FAC lacks allegations  
14 to support plaintiffs’ conclusory assertion that defendants shared the alleged common purpose of the  
15 enterprise. In addition, the FAC lacks any allegation that defendants engaged in enterprise affairs  
16 outside of their own business affairs.

17 As such, the RICO claim is not pled adequately in the FAC. Given the nature of the  
18 allegations, the Court is skeptical that plaintiffs can allege a RICO claim. However, out of an  
19 abundance of caution, plaintiffs are afforded until **May 16, 2016** to file either a (i) dismissal the RICO  
20 claim, or (ii) second amended complaint which includes additional allegations to support a RICO  
21 claim. Should plaintiffs dismiss their RICO claim, the Court will remand the remainder of the action  
22 to the Contra Costa Superior Court. *See Jones v. Community Redevelopment Agency of City of Los*  
23 *Angeles*, 733 F.2d 646, 651 (9th Cir. 1984) (where “federal claims are dismissed before  
24 trial...pendant state claims also should be dismissed”). On the other hand, should plaintiffs file a  
25 second amended complaint, the Court will determine whether additional briefing on the sufficiency of  
26 the RICO allegations is necessary and issue a further order thereon. Counsel for plaintiffs is reminded  
27 of his Rule 11 obligations in filing any second amended complaint.

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The Court **SETS** a Compliance Hearing regarding plaintiffs' filing to be held on **Friday, May 20, 2016 at 9:01 a.m.** in the Federal Courthouse located at 1301 Clay Street in Oakland, California, Courtroom 1. If plaintiffs have timely filed a dismissal of the RICO claim or a second amended complaint, the hearing may be taken off calendar and no appearance may be required. Failure to do so may result in sanctions to plaintiffs.

In light of this Order, the Case Management Conference currently set for Monday, May 9, 2016, is hereby **VACATED** to be reset if necessary.

This Order terminates Docket Numbers 8, 9, 10, 38.

**IT IS SO ORDERED.**

Dated: May 3, 2016

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE