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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

VICTORIA A. AMELINA, an individual; and A.A.; D.S. and B.S., each individuals and minors by and through their Guardian Ad Litem, Victoria A. Amelina,

Plaintiffs,

vs.

MANUFACTURERS AND TRADERS TRUST COMPANY aka M&T BANK; SAFEGUARD PROPERTIES, LLC; and THE WOLF LAW FIRM, A Law Corporation,

Defendants.

CASE NO. 14cv1906-WQH-NLS

ORDER

HAYES, Judge:

The matters before the Court are (1) the Motion to Dismiss Plaintiffs' First Amended Complaint (ECF No. 18), filed by Defendant Manufacturers and Traders Trust Company ("M&T"), (2) the Motion to Dismiss Plaintiffs' First Amended Complaint (ECF No. 20), filed by Defendant Safeguard Properties, LLC ("Safeguard"), and (3) the Motion to Dismiss Plaintiffs' First Amended Complaint (ECF No. 28), filed by Defendant Wolf Law Firm.

BACKGROUND

On August 13, 2014, Plaintiff Victoria Amelina, and Plaintiffs A.A., D.S., and B.S., each minors by and through their Guardian Ad Litem, Victoria Amelina, initiated this action by filing a Complaint in this Court. (ECF No. 1).

1 On October 27, 2014, Plaintiffs filed a joint motion for leave to file a first
2 amended complaint (ECF No. 11), and a proposed first amended complaint (ECF No.
3 12). On October 30, 2014, the Court issued an Order granting the joint motion for leave
4 to file a first amended complaint, and the proposed first amended complaint (ECF No.
5 12), became the operative pleading. (ECF No. 13).

6 On November 13, 2014, Defendant M&T filed the Motion to Dismiss Plaintiffs'
7 First Amended Complaint. (ECF No. 18). On December 1, 2014, Plaintiffs filed an
8 opposition. (ECF No. 22). On December 8, 2014, Defendant M&T filed a reply. (ECF
9 No. 27).

10 On November 13, 2014, Defendant Safeguard filed the Motion to Dismiss
11 Plaintiffs' First Amended Complaint. (ECF No. 20). On December 1, 2014, Plaintiffs
12 filed an opposition. (ECF No. 23). On December 8, 2014, Defendant Safeguard filed
13 a reply. (ECF No. 26).

14 On December 12, 2014, Defendant Wolf Law Firm filed the Motion to Dismiss
15 Plaintiffs' First Amended Complaint. (ECF No. 28). On December 29, 2014, Plaintiffs
16 filed an opposition. (ECF No. 32). On January 5, 2014, Defendant Wolf Law Firm
17 filed a reply. (ECF No. 33).

18 ALLEGATIONS OF COMPLAINT

19 "Sometime before July 25, 2013, [Plaintiff Victoria Amelina] is alleged to have
20 incurred certain financial obligations for a home mortgage account with Bank of
21 America." (ECF No. 12 ¶ 30). "Sometime thereafter, but before July 25, 2013,
22 [Plaintiff Victoria Amelina] allegedly fell behind in the payments allegedly owed on the
23 alleged debt." *Id.* ¶ 33. "[T]he alleged debt was assigned, placed, or otherwise
24 transferred to Lakeview Loan Servicing who subsequently assigned, placed, or
25 otherwise transferred the debt to M&T Bank for collection." *Id.* ¶ 34.

26 "On or about July 25, 2013, M&T Bank mailed a letter to [Plaintiff Victoria
27 Amelina]" which "expressed that the 'servicing' of [Plaintiff Victoria Amelina's]
28 mortgage loan account was being transferred from Bank of America to M&T Bank,

1 effective on or about August 2, 2013; that ‘Bank of America will stop accepting
2 payments on August 1, 2013;’ and ‘[M&T Bank] will begin accepting payments from
3 [Plaintiff Victoria Amelina] effective August 2, 2013.’” *Id.* ¶ 35-36. “After Lakeview
4 Loan Servicing transferred the account to M&T Bank for collection, Plaintiff began
5 receiving collection letters from M&T Bank.” *Id.* ¶ 37.

6 “On or about August 14, 2013, M&T Bank mailed a letter to [Plaintiff Victoria
7 Amelina].” *Id.* ¶ 38. The letter stated, in part:

- 8 1) M&T Bank was now servicing [Plaintiff Victoria Amelina’s] mortgage;
- 9 2) The amount of debt in connection with the mortgage was
10 ‘\$236,704.14;’
- 11 3) Pursuant to the FDCPA, [Plaintiff Victoria Amelina] had thirty days to
12 dispute the amount of debt and request a verification of the alleged debt;
13 and
- 14 4) The name of the creditor to whom the debt was owed was a company
15 called ‘Lakeview Loan Servicing’

16 *Id.* ¶ 41. “Twenty three days later, on September 9, 2013, [Plaintiff Victoria Amelina]
17 disputed the debt, in writing, with M&T Bank, consistent with the thirty day time
18 requirement of the FDCPA and California’s Rosenthal Act for disputing debt.” *Id.* ¶
19 43. “Consequently, pursuant to 15 U.S.C. § 1692g(b), and Cal. Civ. Code § 1788.17,
20 M&T Bank was now required to cease collection of the debt until [] it obtained
21 verification of the debt and produced that verification to [Plaintiff Victoria Amelina],
22 in writing.” *Id.* ¶ 44.

23 “[F]rom September 17, 2013 through February 5, 2014, M&T Bank sent multiple
24 collection letters to [Plaintiff Victoria Amelina], each time demanding payment, and
25 each time violating the FDCPA and California’s Rosenthal Act in that they were
26 collecting without verification.” *Id.* ¶ 46. “By communicating with [Plaintiff Victoria
27 Amelina] by mail before validating the debt, as required pursuant to 15 U.S.C. §
28 1692g(b), M&T Bank violated 15 U.S.C. § 1692g and Cal. Civ. Code § 1788.17.” *Id.*
¶ 47. “[T]he natural consequence of [the letters] was to harass, oppress, or abuse a
person in connection with the collection of a debt.” *Id.* ¶ 48. “Throughout these letters,

1 M&T Bank repeated, and falsely, stated, and implied, that M&T Bank was about to
2 foreclose on [Plaintiff Victoria Amelina’s] property when that was not their actual
3 intent.” *Id.* ¶ 51. “M&T Bank initiated this onslaught of letters as to Plaintiff in an
4 effort to abusively mislead and coerce her into paying more than was actually owed to
5 M&T Bank.” *Id.* ¶ 52. “During all relevant times, M&T Bank refused to provide
6 validation or fully explain who ‘Lakeview Loan Servicing’ was and the relationship
7 between the different entities listed in the letters.” *Id.* ¶ 53.

8 “Subsequently, at the instruction of M&T, Safeguard Properties, LLC sent
9 [Plaintiff Victoria Amelina] a pink postcard with printing clearly visible on both sides
10 to anyone who had access to Plaintiff’s mail or processed it.” *Id.* ¶ 54. “This Postcard
11 was sent to [Plaintiff Victoria Amelina] for the purpose of conveying of information
12 regarding a debt directly or indirectly to [Plaintiff Victoria Amelina], and was also for
13 the purpose of collect [sic] this alleged debt.” *Id.* ¶ 56. The postcard stated the
14 following:

15 Dear Property Resident

16 Safeguard Properties, LLC is conducting a monthly audit on behalf of
17 M&T Bank in order to verify the occupancy of your property.

18 Please contact our Special Operator at 866-969-9859 to confirm only that
19 you are presently residing at this property.

19 Thank You.

20 Mortgager: You are entitled to contact M&T Bank regarding a face to face
21 interview at our Buffalo NY Office. 800-724-1633.

21 *Id.* ¶ 57. “The purposes [of] this communication with [Plaintiff Victoria Amelina] was
22 to convey information regarding a debt directly or indirectly to [Plaintiff Victoria
23 Amelina], specifically, the name and telephone number of M&T Bank to encourage
24 [Plaintiff Victoria Amelina] to contact M&T Bank so that M&T Bank could collect the
25 debt to be owed, in violation of the FDCPA and California’s Rosenthal Act.” *Id.* ¶ 58.
26 “Plaintiff was startled, confused, and embarrassed by this postcard.” *Id.* ¶ 60.

27 “On January 4, 2014, Safeguard, at the instruction of M&T Bank sent an agent
28 to Plaintiffs’ home.” *Id.* ¶ 64. “At the instruction of Safeguard and M&T [B]ank, the

1 intruder attempted to physically enter the home of [Plaintiff Victoria Amelina] and her
2 minor children.” *Id.* ¶ 65. “[Plaintiff Victoria Amelina] was not home during the
3 incident, however, her children, A.A.; D.S.; and B.S., who were nine, twelve, and
4 seventeen years of age, respectively, were at home.” *Id.* ¶ 66. “During this incident,
5 the intruder attempted to force entry into [the] home.” *Id.* ¶ 67. “A.A. repeatedly asked
6 who was at the door, and the intruder failed to identify himself, responding only by
7 demanding that A.A. open the door and allow him immediate entry into the property.”
8 *Id.* ¶ 69. “The intruder then continued to batter on the door with more force and
9 eventually told A.A. that if she did not open the door immediately, her parents would
10 ‘be in big trouble.’” *Id.* ¶ 71.

11 “[Plaintiff Victoria Amelina] returned home shortly thereafter and found that the
12 children were in shock due to M&T Bank’s actions.” *Id.* ¶ 76. “[Plaintiff Victoria
13 Amelina’s] 9 year old daughter, A.A. was particularly traumatized by this incident, and
14 unable to speak.” *Id.* ¶ 77. “A.A. was also having difficulty breathing due to the anxiety
15 and stress caused by M&T Bank’s agent.” *Id.* ¶ 78. “At one point, A.A. stated to
16 Victoria that she feared for her safety, and the safety of her parents, because she was
17 told that if she did not open the door to M&T Bank’s agent, her parents would be in ‘big
18 trouble.’” *Id.* ¶ 79.

19 “Subsequently, on January 28, 2014, M&T Bank sent another letter to [Plaintiff
20 Victoria Amelina], in an attempt to collect a debt, still without verify [sic] the alleged
21 debt.” *Id.* ¶ 83. “This letter stated, in part, that [Plaintiff Victoria Amelina’s] ‘mortgage
22 documents have been forwarded to our attorney’s office for foreclosure proceedings’
23 and that ‘All communications concerning the mortgage must now be directed to: Wolf
24 Law Firm...’” *Id.* ¶ 85. “Through this conduct, M&T Bank threatened to take action
25 that cannot legally be taken or that was not intended to be taken, in violation of 15
26 U.S.C. § 1692e(5) and Cal. Civ. Code § 1788.17.” *Id.* ¶ 86. “Through this conduct,
27 M&T Bank took or threatened to take any nonjudicial action to effect dispossession or
28 disablement of property when there was no present intention to take possession of the

1 property in violation of 15 U.S.C. § 1692f(6)(B) and Cal. Civ. Code § 1788.17.” *Id.* ¶
2 87.

3 “Subsequently, on January 30, 2014, M&T Bank sent two more letters to
4 [Plaintiff], stating that the foreclosure process has begun but [Plaintiff Victoria
5 Amelina] still had alternatives if she contacted M&T Bank, even though [Plaintiff
6 Victoria Amelina] had previously been told not to contact M&T Bank but contact only
7 Wolf Law Firm.” *Id.* ¶ 89. “In reality, M&T Bank had not begun foreclosure
8 proceedings, and was using this false, deceptive, or misleading representation or means
9 in connection with the collection of debt to coerce payment from [Plaintiff Victoria
10 Amelina], in violation of the FDCPA and California Rosenthal Act.” *Id.* ¶ 90.

11 “On April 28, 2014, the Wolf Law Firm sent Plaintiff ten identical letters....
12 Plaintiff received all of these letters at once a few days later.” *Id.* ¶ 92. “The purpose
13 for sending all of these letters from a law firm was to intimidate and embarrass []
14 [Plaintiff Victoria Amelina] and her family and to alert third parties that [Plaintiff
15 Victoria Amelina] had legal problems.” *Id.* ¶ 93. “In response, Plaintiff sent Defendant
16 a request for validation within 30 days of receiving Wolf’s April 28, 2014 letters, just
17 as she had previously done with M&T Bank.” *Id.* ¶ 94.

18 “[O]n or about July of 2014 Wolf continued its abusive behavior and sent ten
19 (10) more copies of another letter dated July 22, 2014.” *Id.* ¶ 95. “These letters failed
20 to provide Plaintiff with validation of the debt in violation of the FDCPA and
21 California’s Rosenthal Act.” *Id.* ¶ 97. “The purpose of sending all of these letters from
22 a law firm was to intimidate and embarrass [Plaintiff Victoria Amelina] and her family
23 and to alert third parties that [Plaintiff Victoria Amelina] had legal problems.” *Id.* ¶ 98.

24 “[O]nce Wolf [r]ecorded a Notice of Trustee Sale, Wolf mailed an additional
25 twenty-two copies to [Plaintiff Victoria Amelina] of the notice.” *Id.* ¶ 99. “Wolf’s only
26 purpose of sending twenty-two letters is to intimidate and harass Plaintiff.” *Id.* ¶ 100.
27 “Again, by communicating with Plaintiff by mail before validating the debt, as required
28 pursuant to 15 U.S.C. § 1692g(b), Defendant violated 15 U.S.C. § 1692g. Because this

1 communication did not comply with 15 U.S.C. § 1692g, this communication also
2 violated Cal. Civ. Code § 1788.17.” *Id.* ¶ 102.

3 “On at least two other occasions, [Plaintiff Victoria Amelina’s] family noticed
4 strangers conducting surveillance on Plaintiffs’ home, which included again trying to
5 open Plaintiffs’ entrance door, looking through windows, and taking pictures of the
6 outside and inside of Plaintiffs’ home (through the windows).” *Id.* ¶103. “In reality,
7 these visits by Safeguard, at the instruction of M&T Bank, were intimidation attempts,
8 which Safeguard and M&T Banktry to justify by stating that the intrusions are simply
9 efforts to secure the property.” *Id.* ¶ 105. “Shortly thereafter, [Plaintiff Victoria
10 Amelina] began noticing that Defendant was charging her for ‘Home Inspections’ on
11 her monthly mortgage statements. The dates referenced for the ‘Home Inspection’
12 entries on [Plaintiff Victoria Amelina’s] monthly mortgage statements from M&T Bank
13 were consistent with the dates when [Plaintiff Victoria Amelina] and Plaintiff’s family
14 noticed strangers conducting surveillance around Plaintiffs’ home in order to stalk and
15 harass Plaintiff and their [sic] family.” *Id.* ¶ 106. “Through this conduct, M&T Bank
16 engaged in conduct the natural consequence of which was to harass, oppress, or abuse
17 a person in connection with the collection of a debt. Consequently, M&T Bank violated
18 15 U.S.C. § 1692d.” *Id.* ¶ 107. “These charges were not expressly authorized by the
19 agreement creating the debt or permitted by law.... Consequently, M&T Bank violated
20 15 U.S.C. § 1692f(1), and Cal. Civ. Code § 1788.17.” *Id.* ¶ 108-09.

21 “As a result of M&T Bank’s illegal behavior, [Plaintiff Victoria Amelina] and
22 Plaintiff’s family have not felt safe in their own home for months, and are in constant
23 fear for their physical safety as well as having to endure the mental anguish that such
24 conduct brings. [Plaintiff Victoria Amelina] and Plaintiff’s family have been forced to
25 modify the way they conduct their day-to-day lives in order to at least diminish M&T
26 Bank’s impact on them through their collection tactics.” *Id.* ¶ 110. “A.A. is afraid to
27 sleep without their [sic] lights on, out of fear that M&T Bank’s agent(s) will try to break
28 into the house again.” *Id.* ¶ 112. “[Plaintiff Victoria Amelina] is experiencing intense

1 anxiety, and has difficulty sleeping at night, causing her to be drowsy and lethargic.”
2 *Id.* ¶ 113. “[Plaintiff Victoria Amelina] feels helpless and fears for the safety of herself
3 and her family.” *Id.* ¶ 114. “As a result of M&T Bank’s relentless collection tactics
4 [Plaintiff Victoria Amelina] has been diagnosed with severe depression and anxiety and
5 has been prescribed anti-depressant medication.” *Id.* ¶ 115. “[Plaintiff Victoria
6 Amelina] now regularly attends sessions with a psychiatrist to help her cope with her
7 anxiety and depression.” *Id.* ¶ 116. “Defendants have continued sending collection
8 letters to [Plaintiff Victoria Amelina], which aggravates [Plaintiff Victoria Amelina’s]
9 stress, anxiety, and depression.” *Id.* ¶ 117.

10 Plaintiffs’ assert five claims including: (1) violation of the Fair Debt Collection
11 Practices Act (“FDCPA”), 15 U.S.C. §§ 1692, *et seq.*; (2) violation of the Rosenthal
12 Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788-1788.32; (3) negligent
13 infliction of emotional distress; (4) intentional infliction of emotional distress; and (5)
14 invasion of privacy. (ECF No. 1 at 16-20).

15 **LEGAL STANDARD**

16 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state
17 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of
18 Civil Procedure 8(a) provides that “[a] pleading that states a claim for relief must
19 contain ... a short and plain statement of the claim showing that the pleader is entitled
20 to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where
21 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
22 legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

23 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
24 requires more than labels and conclusions, and a formulaic recitation of the elements
25 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
26 (quoting Fed. R. Civ. P. 8(a)). When considering a motion to dismiss, a court must
27 accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662,
28 679 (2009). However, a court is not “required to accept as true allegations that are

1 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”
2 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “In sum, for a
3 complaint to survive a motion to dismiss, the non-conclusory factual content, and
4 reasonable inferences from that content, must be plausibly suggestive of a claim
5 entitling the plaintiff to relief.” *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir.
6 2009) (quotations omitted).

7 Pro se complaints are held to a less stringent standard than formal pleadings by
8 lawyers. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972). A pro se plaintiff’s
9 complaint must be construed liberally to determine whether a claim has been stated.
10 See *Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). “Although a pro se litigant
11 ... may be entitled to great leeway when the court construes his pleadings, those
12 pleadings nonetheless must meet some minimum threshold in providing a defendant
13 with notice of what it is that it allegedly did wrong.” *Brazil v. U.S. Dep’t of Navy*, 66
14 F.3d 193, 199 (9th Cir. 1995).

15 **FEDERAL LAW CLAIM: FDCPA**

16 The FDCPA prohibits debt collectors from engaging in abusive, deceptive and
17 unfair practices in the collection of consumer debts. See 15 U.S.C. § 1692. To state a
18 claim under the FDCPA, a plaintiff must allege facts that establish (1) the plaintiff has
19 been the object of collection activity arising from a consumer debt; (2) the defendant
20 attempting to collect the debt qualifies as a “debt collector” under the FDCPA; and (3)
21 the defendant has engaged in a prohibited act or has failed to perform a requirement
22 imposed by the FDCPA. *Pratap v. Wells Fargo Bank, N.A.*, No. 12-CV-06378-MEJ,
23 2014 WL 3884413, at *8 (N.D. Cal. Aug. 7, 2014) (citing *Gomez v. Wells Fargo Home*
24 *Mortg.*, 2011 WL 5834949, at *5 (N.D. Cal. Nov. 21, 2011)). “The term ‘debt collector’
25 means any person who uses any instrumentality of interstate commerce or the mails in
26 any business the principal purpose of which is the collection of any debts, or who
27 regularly collects or attempts to collect, directly or indirectly, debts owed or due or
28 asserted to be owed or due another.” 15 U.S.C. § 1692a. The complaint must plead

1 “factual content that allows the court to draw the reasonable inference” that Defendants
2 are “debt collectors.” *Schlegel v. Wells Fargo Bank, N.A.*, 720 F.3d 1204, 1208 (9th
3 Cir. 2013) (finding that Plaintiff’s complaint “fails to provide any factual basis from
4 which we could plausibly infer that the principal purpose of Wells Fargo’s business is
5 the collection of debt. Rather, the complaint’s factual matter, viewed in a light most
6 favorable to the Schlegels, establishes only that debt collection is some part of Wells
7 Fargo’s business, which is insufficient to state a claim under the FDCPA.”).

8 **1. Defendant M&T**

9 Defendant M&T contends that the FDCPA does not apply to loan servicers
10 because a mortgage servicing company is not a “debt collector” under the FDCPA.
11 Defendant M&T contends that it is excepted from the FDCPA’s definition of “debt
12 collector” because it was the servicer of Plaintiff’s loan before and after the loan was
13 in default. Defendant M&T further contends that it is not a debt collector because the
14 alleged conduct attributable to Defendant M&T does not constitute debt collection.

15 Plaintiffs contend that Defendant M&T falls within the definition of a “debt
16 collector” under the FDCPA. Plaintiffs concede that there is an exception for servicers
17 who began servicing the loans before the loan is in default, but contend that the
18 exception is not applicable in this case because the alleged debt was in default prior to
19 being acquired by Defendant M&T.

20 In order to fall within the first definition of “debt collector,” Plaintiffs’ first
21 amended complaint must provide a factual basis to plausibly infer that the principal
22 purpose of Defendant M&T’s business is the collection of debt. In this case, Plaintiff
23 alleges that “Defendant M&T Bank is a creditor who demanded money and property
24 from Plaintiffs and is therefore a debt collector under the FDCPA....” (ECF No. 12 ¶
25 28). Plaintiffs fail to allege facts that would allow the Court to draw the reasonable
26 inference that the principal purpose of Defendant M&T’s business is the collection of
27 debt.

28 In order to fall within the second definition of “debt collector,” Plaintiffs’ first

1 amended complaint must provide a factual basis from which the Court could plausibly
2 infer that Defendant M&T regularly collect debts owed or due another. *See Schlegel*,
3 720 F.3d at 1208. The facts alleged with respect to Defendant involves conduct specific
4 to the Plaintiffs in this action. Plaintiffs fail to allege facts which show that Defendant
5 M&T regularly collects “debts owed or due or asserted to be owed or due another.” 15
6 U.S.C. § 1692a. The Court concludes that Plaintiffs’ first amended complaint fails to
7 allege “factual content that allows the court to draw the reasonable inference” that
8 Defendants are “debt collectors.” *Schlegel*, 720 F.3d at 1208.

9 2. **Defendant Safeguard**

10 Defendant Safeguard contends that it is not subject to the FDCPA because it is
11 not a debt collector and did not engage in debt collection. Defendant Safeguard
12 contends that the facts pled specific to Safeguard make it apparent that Safeguard’s
13 business includes verifying residential occupancy, not debt collection. Defendant
14 Safeguard contends that Plaintiffs have not added any factual allegations to support
15 their conclusory claims, or to show any business activity that rises to the level of debt
16 collection. Defendant Safeguard contends that “[t]he postcard asks Plaintiff Amelina
17 for nothing more than the verification of the occupancy of her residence, and notifies
18 her that she may contact M&T Bank for an in-person meeting.” (ECF No. 20-1 at 13).
19 Defendant Safeguard contends that Plaintiffs offer “only their own assumptions as to
20 some unstated, ulterior purpose of the pink postcard that was allegedly mailed by
21 Safeguard.” (ECF No. 26 at 3). Defendant Safeguard further contends that if the home
22 visit is attributed to Safeguard or a Safeguard agent, Plaintiff still fails to allege facts
23 to show that the home visit constitutes a debt collection effort.

24 Plaintiffs contend that the language at the end of the postcard, “[m]ortgager: You
25 are entitled to contact M&T Bank regarding a face to face interview at our Buffalo NY
26 Office. 800-724-1633,” constitutes an effort to collect a debt. (ECF No. 1 ¶ 53).
27 Plaintiffs contend that the only purpose of inviting Plaintiff Victoria Amelina to reach
28 out to M&T was to encourage and facilitate the collection of the alleged debt. Plaintiff

1 contends that Safeguard is a debt collector as an entity that regularly collects on behalf
2 of another. Plaintiffs further contend that Safeguard's behavior in sending an agent to
3 Plaintiffs' home, peering through windows, and leaving notes goes beyond what is
4 necessary to determine whether a property is vacant or populated. Plaintiffs contend
5 that the only plausible reasoning for Safeguard to do such things is to assist M&T in
6 collecting money.

7 Plaintiffs' Complaint alleges:

8 ...Safeguard Properties, LLC sent Victoria a pink postcard with printing
9 clearly visible on both sides to anyone who had access to Plaintiff's mail
or processed it.

10 ...

11 This postcard was sent to Victoria for the purpose of conveying
information regarding a debt directly or indirectly to Victoria, and was
12 also for the purpose of collecting this alleged debt.

13 This postcard stated the following:

14 Dear Property Resident

15 Safeguard Properties, LLC is conducting a monthly audit on
behalf of M&T Bank in order to verify the occupancy of your
16 property.

17 Please contact our Special Operator at 866-969-9859 to
confirm only that you are presently residing at this property.
18 Thank you.

19 Mortgager: You are entitled to contact M&T Bank regarding
a face to face interview at our Buffalo NY Office.
20 800-724-1633.

21 The purpose of this communication with Victoria was to convey
information regarding a debt directly or indirectly to Victoria, specifically,
22 the name and telephone number of M&T Bank to encourage Victoria to
contact M&T Bank so that M&T Bank could collect the debt alleged to be
owed, in violation of the FDCPA and California's Rosenthal Act.

23 Further, this postcard was intended to intimidate Victoria into payment of
24 money to M&T Bank or vacate the property at which point Safeguard
would then possess the property.

25 ...

26 On January 4, 2014, Safeguard, at the instruction of M&T Bank, sent an
agent to Plaintiffs' home (hereinafter, "the intruder").

27 At the instruction of Safeguard and M&T bank, the intruder attempted to
28 physically enter the home of Victoria and her minor children.

...

1 During this incident, the intruder attempted to force entry into the home.
2 ...

3 The intruder then continued to batter on the door with more force and
4 eventually told A.A. that if she did not open the door immediately, her
5 parents would “be in big trouble.”

(ECF No. 12 ¶¶ 57-59, 64-65, 67, 71).

6 The Court concludes that the factual allegations regarding the postcard contains
7 no language to support Plaintiffs’ allegation that the postcard was an attempt to collect
8 a debt. The language of the postcard specifically states that the purpose is to confirm
9 whether or not the Plaintiffs’ were currently residing at that property. With respect to
10 the alleged attempt to force entry into Plaintiffs’ home, the factual allegations do not
11 plausibly suggest facts to show that the incident at Plaintiffs’ home was an attempt to
12 collect debt. The facts alleged fail to show that the incident was more than an attempt
13 to verify the occupancy of the property. The Court finds that Plaintiffs’ have not
14 alleged sufficient facts to show that Defendant Safeguard was attempting to collect a
15 debt. *See Sprewell*, 266 F.3d at 988 (“...a court is not required to accept as true
16 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
17 inferences.”) (internal citation omitted); *Moss*, 572 F.3d at 969 (“In sum, for a
18 complaint to survive a motion to dismiss, the non-conclusory factual content, and
19 reasonable inferences from that content, must be plausibly suggestive of a claim
20 entitling the plaintiff to relief.”). Because the Court finds that the alleged conduct of
21 Defendant Safeguard does not constitute “debt collecting,” the Court need not
22 determine whether Defendant Safeguard is a “debt collector” under the FDCPA. *See*
23 *Santoro v. CTC Foreclosure Service Corp.*, 12 Fed. Appx. 476, 480 (9th Cir. 2001)
24 (“We need not decide whether Countrywide is a debt collector under the FDCPA
25 because we hold that the conduct, as alleged, does not constitute ‘debt collecting.’”).

26 **3. Defendant Wolf Law Firm**

27 Defendant Wolf Law Firm contends that Plaintiffs fail to show that it is a debt
28 collector or that the alleged conduct specific to Defendant Wolf Law Firm constitutes
debt collection. Defendant Wolf Law Firm contends that Plaintiffs’ conclusory

1 statements that the letters were sent to intimidate and embarrass Plaintiffs is insufficient
2 to state a cause of action under the FDCPA. Defendant Wolf Law Firm contends that
3 Plaintiffs fail to show that Defendant is regularly involved in the collection of debts.
4 Defendant Wolf Law Firm further contends that it served solely in its capacity as trustee
5 and is, therefore, immune in its non-judicial foreclosure conduct. (ECF No. 28 at 4).

6 Plaintiffs contend that when collecting debts, attorneys are debt collectors
7 pursuant to the FDCPA. Plaintiffs contend that attorneys are not protected by a
8 litigation privilege, even when the activity is directly related to litigation. Plaintiffs
9 contend that Defendant Wolf Law Firm is specifically acting as a debt collector in a
10 non-judicial manner and not protected by privilege.

11 In this case, Plaintiffs allege:

12 ...on January 28, 2014, M&T Bank sent another letter to Victoria.

13 ...

14 This letter stated, in part, that Victoria's "mortgage documents have
15 been forwarded to our attorney's office for foreclosure proceedings" and
16 that "All communications concerning the mortgage must now be directed
17 to:"

18 Wolf Law Firm
2955 Main St 2nd Floor
Irvine CA 92614
(949) 720-9200

19 ...

20 On April 28, 2014, the Wolf Law Firm sent Victoria ten (10) identical
21 letters, five (5) by certified mail, and five (5) by regular mail. Victoria
22 received all of these letters at once a few days later.

23 The purpose for sending all of these letters from a law firm was to
24 intimidate and embarrass the Victoria and her family and to alert third
25 parties that Victoria had legal problems.

26 In response, Victoria sent the Wolf Law Firm a request for validation
27 within 30 days of receiving Wolf's April 28, 2014 letters, just as she had
28 previously done with M&T Bank.

Notwithstanding this, on or about July of 2014 Wolf continued its abusive
behavior and sent ten (10) more copies of another letter dated July 22,
2014.

Again, the letter was sent by certified mail six (6) times and regular mail
four (4) times.

...

1 The purpose for sending all of these letters from a law firm was to
2 intimidate and embarrass the Victoria and her family and to alert third
parties that Victoria had legal problems.

3 Additionally, once Wolf recorded a Notice of Trustee Sale, Wolf mailed
4 an additional twenty-two (22) copies to Plaintiff of the Notice; eleven (11)
certified mail, and eleven (11) by routine mail.

5 There is no reason to send anyone twenty-two (22) copies of any letter.
6 Wolf's only purpose of sending twenty-two (22) letters is to intimidate and
harass Victoria.

7 Each time Victoria received these letters, always in an envelope from a
8 law office, the postal carrier made comments about the incident and clearly
knew that Victoria and her family had legal issues, which embarrassed
9 Victoria.

10 (ECF No. 12 ¶¶ 83-101).

11 As discussed in Section III(B)(1), *supra*, in order to fall within the first definition
12 of “debt collector,” Plaintiffs’ first amended complaint must provide a factual basis
13 from which the Court could plausibly infer that the principal purpose of Defendant’s
14 business is the “collection of any debt.” 15 U.S.C. § 1692a. Plaintiffs fail to allege
15 facts that would permit the Court to draw the reasonable inference that the principal
16 purpose of Defendant Wolf Law Firm’s business is the collection of debt.

17 In order to fall within the second definition of “debt collector,” Plaintiffs’ first
18 amended complaint must provide a factual basis from which the Court could plausibly
19 infer that Defendant’s regularly collect “debts owed or due or asserted to be owed or
20 due another.” 15 U.S.C. § 1692a. The facts alleged with respect to Defendant Wolf
21 Law Firm involves conduct specific to the Plaintiffs in this action and are insufficient
22 to show that Defendant Wolf Law Firm regularly collects debts owed or due another.
23 The Court finds Plaintiffs’ first amended complaint fails to allege “factual content that
24 allows the court to draw the reasonable inference” that Defendants are “debt collectors.”
25 *Schlegel*, 720 F.3d at 1208.

26 Plaintiffs’ first amended complaint does not provide the content of the letters sent
27 by Defendant Wolf Law Firm in its alleged attempt to collect a debt. The Court
28 concludes that Plaintiffs’ first amended complaint fails to allege sufficient facts to show
that Defendant Wolf Law Firm was attempting to collect a debt. *See Sprewell*, 266 F.3d

1 at 988 (“...a court is not required to accept as true allegations that are merely
2 conclusory, unwarranted deductions of fact, or unreasonable inferences.”) (internal
3 citation omitted); *Moss*, 572 F.3d at 969 (“In sum, for a complaint to survive a motion
4 to dismiss, the non-conclusory factual content, and reasonable inferences from that
5 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.”).

6 To the extent Plaintiffs’ first amended complaint alleges that Defendant Wolf
7 Law Firm sent Plaintiff copies of the Notice of Trustee Sale, activity related to non-
8 judicial foreclosure does not constitute debt collection under the FDCPA. *See Pratap*
9 *v. Wells Fargo Bank, N.A.*, No. 12-CV-06378-MEJ, 2014 WL 3884413, at *9 (N.D.
10 Cal. Aug. 7, 2014) (“[T]he overwhelming majority of courts within the Ninth Circuit
11 have concluded that nonjudicial foreclosures do not constitute debt collection under the
12 FDCPA.”); *Valenzuela v. Wells Fargo Bank Nat. Ass’n*, No. CV F 13-1620 LJO JLT,
13 2014 WL 309438, at *17 (E.D. Cal. Jan. 28, 2014) (“The complaint’s limited
14 meaningful allegations address foreclosure, not debt collection activities subject to the
15 FDCPA. In the absence of facts of actionable debt collection, a claim based on the
16 FDCPA is subject to dismissal.”); *Izenberg v. ETS Servs., LLC*, 589 F. Supp. 2d 1193,
17 1199 (C.D. Cal. 2008) (“[F]oreclosing on a property pursuant to a deed of trust is not
18 the collection of a debt within the meaning of the FDCPA.”); *Reed v. Wells Fargo*
19 *Home Mortg. Inc.*, No. 10-2133, 2010 WL 5136196, at *7 (E.D. Cal. Dec. 10, 2010)
20 (“The activity of foreclosing on a property pursuant to a deed of trust is not the
21 collection of a debt within the meaning of the FDCPA....”).

22 STATE LAW CLAIMS

23 The remaining four causes of action assert violations of California state laws.
24 Plaintiffs do not allege that this Court has diversity jurisdiction over this action.
25 Plaintiffs allege that this Court has supplemental jurisdiction over the state law claims
26 pursuant to 28 U.S.C. § 1367. (ECF No. 12 at 3).

27 The federal supplemental jurisdiction statute provides: “[I]n any civil action of
28 which the district courts have original jurisdiction, the district courts shall have

1 supplemental jurisdiction over all other claims that are so related to claims in the action
2 within such original jurisdiction that they form part of the same case or controversy
3 under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). A district
4 court may decline to exercise supplemental jurisdiction over a state law claim if:

- 5 (1) the claim raises a novel or complex issue of State law,
6 (2) the claim substantially predominates over the claim or claims over
7 which the district court has original jurisdiction
8 (3) the district court has dismissed all claims over which it has original
9 jurisdiction, or
10 (4) in exceptional circumstances, there are other compelling reasons for
11 declining jurisdiction.

12 28 U.S.C. § 1367(c). Having dismissed the federal claims asserted by Plaintiffs against
13 the Defendants, the Court declines to exercise supplemental jurisdiction over the state
14 law claims against the moving Defendants pursuant to 28 U.S.C. § 1367(c). *See San
15 Pedro Hotel Co., Inc. v. City of Los Angeles*, 159 F.3d 470, 478 (9th Cir. 1998).

16 CONCLUSION

17 IT IS HEREBY ORDERED that the Motions to Dismiss (ECF Nos. 18, 20, 28)
18 are GRANTED.

19 DATED: March 12, 2015

20 
21 **WILLIAM Q. HAYES**
22 United States District Judge
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