

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 2:24-cv-14035-KMM

DERICK M. CUNNINGHAM and
SCHVONNYA LEE,

Plaintiffs,

v.

FANNIE MAE, *et al.*,

Defendants.

ORDER ON REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon Defendants' Renewed Motion to Dismiss Amended Complaint. ("Mot.") (ECF No. 35). The Court referred the matter to the Honorable Ryon M. McCabe, United States Magistrate Judge, who issued a Report and Recommendation recommending that the Motion be GRANTED and that the Amended Complaint (ECF No. 12) be DISMISSED WITHOUT PREJUDICE. ("R&R") (ECF No. 47). Defendants filed a Notice of Non-Objection to the R&R (ECF No. 49); Plaintiffs did not file objections and the time to do so has passed. The matter is now ripe for review. As set forth below, the Court ADOPTS the R&R.

This action stems from a lien on Plaintiffs' property located in Fort Pierce, Florida. R&R at 1. Defendants assert a lien on the property by way of a mortgage recorded in the public records, and Plaintiffs allege that Defendants have no legitimate basis for the lien because of unconscionability, non-disclosure of material terms, and deceptive lending practices. *Id.* at 2. Defendants seek dismissal of the Amended Complaint based on lack of subject matter jurisdiction and the rule against shotgun pleadings. *See generally* Mot.

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). As set forth in the R&R, Magistrate Judge McCabe finds that there is no basis for federal question jurisdiction in the Amended Complaint, nor have Plaintiffs alleged facts to show diversity jurisdiction. R&R at 3–5. Magistrate Judge McCabe further finds that the Amended Complaint violates Federal Rules of Civil Procedure 8 and 10. *Id.* at 5–7 (explaining that Plaintiffs repeatedly group all Defendants together without specifying which Defendants did what acts, and the allegations list a “hodgepodge of potential claims, causes of action, and boilerplate legal terms”). Therefore, Magistrate Judge McCabe recommends that the Amended Complaint be dismissed without prejudice with leave to file a Second Amended Complaint. *Id.* at 8. This Court agrees.

Accordingly, UPON CONSIDERATION of the Motion to Dismiss, the R&R, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that:

1. Magistrate Judge McCabe’s Report and Recommendation (ECF No. 47) is ADOPTED;
2. The Renewed Motion to Dismiss Amended Complaint (ECF No. 35) IS GRANTED;
3. The Amended Complaint (ECF No. 12) is DISMISSED WITHOUT PREJUDICE;
4. Plaintiffs may file a Second Amended Complaint to address the aforementioned deficiencies by June 24, 2024;
5. The Clerk of Court is INSTRUCTED to CLOSE this case.

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of June, 2024.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record