

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIA TAYLOR and OLENA
KALACHOVA,

Plaintiffs,

v.

ANDREY SINKEVICH and DIANA
PARKER,

Defendants.

No. 3:16-cv-01939-HZ

OPINION & ORDER

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Pro se Defendants

HERNÁNDEZ, District Judge:

Plaintiffs Victoria Taylor and Olena Kalachova bring this civil rights action against Pro se Defendants Andrey Sinkevich and Diana Parker. Plaintiffs allege that Defendants discriminated against them based on their national origin and subjected them to unfair housing and debt collection practices, as well as emotional distress. Plaintiffs bring claims under the Federal and Oregon Fair Housing Acts, the Oregon Unlawful Debt Collection Practices Act, and the Oregon Landlord Tenant Act. Defendants move to dismiss Plaintiffs' claims. Defendants argue that Plaintiffs' claims are illegal, untimely, and subject to claim preclusion. They also maintain that Plaintiffs' claims are factually insufficient and do not give rise to plausible entitlement to relief. Because all of Defendants' arguments fail, the Court denies Defendants' motion. However, because of what the Court assumes is a scrivener's error, the Court requires Plaintiffs to file a corrected, amended complaint.

BACKGROUND

In their Complaint, Plaintiffs allege the following facts: Plaintiffs were cotenants in a property owned by their landlord, Defendant Andrey Sinkevich. Compl. ¶¶ 1, 8, ECF 1. Defendant Diana Parker is Sinkevich's agent. Compl. ¶ 9. Plaintiffs are from Ukraine. Compl. ¶ 10. Defendants began harassing Plaintiffs directly after Defendants noticed a flag for a Ukrainian patriotic group in Plaintiffs' home. Compl. ¶ 12. Defendants were openly hostile, used abusive language, threatened violence, and refused to leave after entering Plaintiffs' home. Compl. ¶ 14. Furthermore, Defendants claimed to lose rent payments, unlawfully attempted to

acquire additional funds by sending Plaintiffs a letter that requested “an amount pursuant to a non-existent statute,” and threatened Plaintiffs’ nonpayment of those funds with eviction.

Compl. ¶¶ 13, 15.

Plaintiffs later vacated the premises and Defendants failed to provide them a final accounting of damages. Compl. ¶¶ 16–17. Defendants also tried, on multiple occasions, to unlawfully collect late fees. Compl. ¶¶ 18–21. Defendants’ conduct caused Plaintiffs monetary damages and severe emotional distress. Compl. ¶ 22.

After Plaintiffs filed this action, Defendants filed an Answer in which they denied all of Plaintiffs’ allegations. Answer, ECF 4. Defendants later filed this motion to dismiss for failure to state a claim. Mot. Dismiss, ECF 13.

STANDARDS

When a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is filed after an answer, it is treated as a motion for judgment on the pleadings under Rule 12(c). Fed. R. Civ. P. 12(h)(2); *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 954 (9th Cir. 2004). However, when a motion for judgment on the pleadings asserts the defense of failure to state a claim, it is subject to the same standard of review as a 12(b)(6) motion. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988), see also *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011) (holding that Rule 12(c) is “functionally identical” to Rule 12(b)(6) and “the same standard of review” applies to motions brought under either rule) (internal quotation marks and citations omitted).

In considering a motion for judgment on the pleadings or a Rule 12(b)(6) motion to dismiss, the court “must accept all factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party.” *Turner v. Cook*, 362 F.3d 1219, 1225 (9th

Cir. 2004); *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). However, the court need not accept unsupported conclusory allegations as truthful. *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992); see also *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003) ("We do not . . . necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations.") (internal quotation marks omitted).

DISCUSSION

Defendants maintain that Plaintiffs' claims are illegal, untimely, barred by claim preclusion, and without sufficient clarity to demonstrate plausible entitlement to relief. The Court addresses each of these arguments in turn.

I. Illegal Claims

Defendants argue that Plaintiffs' claims are false and illegal, but do not offer any authority to support this contention. Mot. Dismiss ¶ 5. Plaintiffs may allege facts in their Complaint. Fed. R. Civ. P. 8(a). They may also request relief based on Defendants' alleged misconduct. *Id.* Plaintiffs' claims against Defendants are not illegal.

II. Statute of Limitations

Defendants argue that Plaintiffs' claims are untimely. Mot. Dismiss ¶ 6. Plaintiffs' Complaint omits allegations of any dates. A motion to dismiss based on the timeliness of the complaint may be granted only when "the running of the statute is apparent on the face of the complaint." *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006) (internal quotation marks omitted); see also *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995) (holding that, to dismiss a claim for untimeliness, the court must find "beyond doubt" that there is no set of facts in the complaint that could make the complaint timely).

Without dates, the Court cannot conclude from the face of the Complaint that Plaintiffs'

claims are untimely. Thus, Defendants' attempt to dismiss on this basis is denied.

III. Claim Preclusion

Defendants assert that Plaintiffs' claims are the same as previously litigated claims between the parties. Mot. Dismiss ¶¶ 1, 4. The burden is on Defendants to demonstrate to the Court that Plaintiffs' claims are barred by claim preclusion. See *Hydranautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2000). Defendants support their assertion with only a state court Stalking Protective Order and an Arbitration Award that were attached to their motion. These documents are not referenced in Plaintiffs' Complaint.

“Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990). However, on a motion to dismiss or motion for judgment on the pleadings, “a court may take judicial notice of matters of public record.” See *Intri-Plex Technologies, Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007); cf. *Lee v. City of Los Angeles*, 250 F.3d 668, 689–90 (9th Cir. 2001) (noting that a district court may not take judicial notice of a disputed fact in a public record).

Because Defendants have not asked the Court to take judicial notice of the attached documents, the Court has discretion over whether to take judicial notice. Fed. R. Evid. 201(c); see also *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1198 (9th Cir. 1988). Here, the Court does not take judicial notice of the documents because consideration of the documents would not inform or affect this Court's decision regarding Defendants' motion.¹ Furthermore, Defendants

¹ If the attachment of the documents is construed as a request for judicial notice, the Court denies the request even assuming that the documents are appropriate for judicial notice under Federal Rule of Evidence 201: (1) The Stalking Order would not affect Plaintiffs' claims because it does not appear to have adjudicated any claims or facts relevant to this case; and (2) the Arbitration Award may concern some late fees or monetary issues in contention in this case, but Plaintiffs' claims are too broad for the Arbitration Award to support dismissal of any claim in its entirety.

fail to demonstrate in any other way that Plaintiffs' claims are barred by claim preclusion. See Compl. ¶ 1. Thus, Defendants' argument fails.

IV. Failure to State a Claim

Defendants move to dismiss Plaintiffs' claims for failure to state a claim. Mot. Dismiss ¶¶ 2–4. To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Thus, a complaint must contain "well-pleaded facts" which "permit the court to infer more than the mere possibility of misconduct[.]" *Id.* at 679. The Court reviews each of Plaintiffs' claims in turn.

A. Fair Housing Acts

Under the Federal and Oregon Fair Housing Acts, it is unlawful to discriminate in the terms or provision of rental services based on national origin. 42 U.S.C. § 3604(b); O.R.S. § 659A.421(2). Plaintiffs allege that discriminatory treatment began directly after Defendants learned that Plaintiffs were from Ukraine. Compl. ¶¶ 11–14 (alleging Defendants threatened violence and refused to leave Plaintiffs' home). Accepting the allegations as true and given the nature of Defendants' alleged conduct, Plaintiffs assert plausible claims for relief under both acts.

Plaintiffs, however, demanded relief under 42 U.S.C. § 3604(f)(2) and O.R.S. § 659A.145 in their Complaint, which make discrimination against persons with disabilities unlawful. Compl. ¶¶ 24(a), 30. Because Plaintiffs' Complaint has no disability based allegation, the Court assumes Plaintiffs mistakenly referred to 42 U.S.C. § 3604(f)(2) and O.R.S. § 659A.145, instead of 42 U.S.C. § 3604(b) and O.R.S. § 659A.421(2), which concern national

origin. Given that Plaintiffs' claims were generally brought under the correct acts, the Court requires Plaintiffs to amend their claims to indicate the correct statutory sections instead of dismissing the claims outright.

B. Intentional Infliction of Emotional Distress

Plaintiffs claim that Defendants are liable for intentional infliction of emotional distress ("IIED"). Compl. ¶ 34. To sustain an IIED claim, Plaintiffs must show that Defendants "intended to inflict severe emotional distress[,] . . . [D]efendants' acts were the cause of . . . [Plaintiffs'] severe emotional distress, and . . . [D]efendants' acts constituted an extraordinary transgression of the bounds of socially tolerable conduct." *McGanty v. Staudenraus*, 321 Or. 532, 543, 901 P.2d 841, 849 (1995) (citation omitted).

In reading Plaintiffs' factual allegations in the light most favorable to Plaintiffs, the Court finds that Defendants are not entitled to judgment on the pleadings for Plaintiffs' IIED claim because the facts alleged sufficiently assert a plausible claim for relief. See Compl. ¶¶ 13–14 (alleging open hostility, threats of violence, and multiple attempts by Defendants to force Plaintiffs from their home).

C. Oregon Unlawful Debt Collection Practices Act

Under the Oregon Unlawful Debt Collection Practices Act ("UDCPA"), Defendants may not attempt to collect unauthorized fees and charges from Plaintiffs. O.R.S. § 646.639(2)(n). Plaintiffs' Complaint sufficiently alleges that Defendants employed various unlawful methods to attempt to collect unauthorized fees. Compl. ¶¶ 13, 15, 18–21 (alleging Defendants claimed to lose Plaintiffs' rent payments, cited a non-existent statute in an attempt to collect additional money from Plaintiffs, and charged late fees in excess of statutory limits). Thus, Plaintiffs' UDCPA claim survives Defendants' motion.

D. Oregon Landlord Tenant Act

Landlords may not charge late fees in excess of the limits prescribed by the Oregon Landlord Tenant Act (“OLTA”). O.R.S. § 90.260(2). Landlords must also refrain from discriminating against tenants in such a way that violates “local, state, or federal law,” O.R.S. § 90.390(1), and landlords must provide a final accounting of any funds withheld from tenants at the end of the tenancy. O.R.S. § 90.300(12).

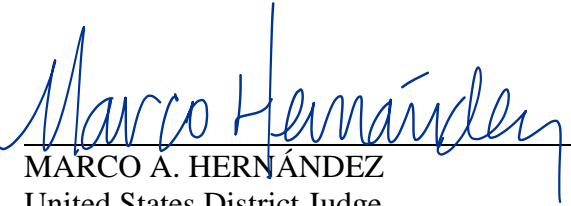
Plaintiffs properly allege that Defendants charged Plaintiffs for excessive late fees and attempted to collect the fees by threat. Compl. ¶¶ 18–21. Plaintiffs also allege that they were the subject of discrimination and that Defendants failed to provide a final accounting. Compl. ¶¶ 12, 17. In viewing the pleadings through the lens most favorable to Plaintiffs, the Court finds that Defendants’ motion must be denied because Plaintiffs have alleged a plausible claim for relief.

CONCLUSION

Based on the forgoing, the Court denies Defendants’ Motion to Dismiss [13] construed as a motion for judgment on the pleadings. Nevertheless, Plaintiffs must amend their Complaint to indicate the correct housing discrimination statutory sections under which Plaintiffs bring their claims. The amended complaint shall be filed within ten days of the date of this Opinion & Order.

IT IS SO ORDERED.

Dated this 26 day of July, 2017.


MARCO A. HERNÁNDEZ
United States District Judge