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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 STEVEN K YOUNG, et al.,

11 Plaintiffs,

12 v.

13 NORTHWEST TRUSTEE SERVICES
14 INC., et al.,

15 Defendants.

CASE NO. C14-1807 MJP

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS

16 THIS MATTER comes before the Court on Defendants Green Tree Servicing LLC and
17 Federal National Mortgage Association's ("Defendants") motion to dismiss Plaintiffs' claims
18 under Fed. R. Civ. P. 12(b)(6). (Dkt. No. 7.) Having reviewed the Parties' briefing and all related
19 papers, the Court GRANTS Defendants' motion and DISMISSES Plaintiffs' claims with
20 prejudice.

21 **Background**

22 Plaintiffs filed this suit on November 28, 2014, alleging violations of several statutes in
23 connection with Defendants' scheduled non-judicial foreclosure on their property. (Dkt. No. 1.)
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1 Plaintiffs allege violation of 12 C.F.R. § 226.39, part of the Truth in Lending Act (“TILA”),
2 breach of contract in connection with 15 U.S.C. § 1635, violation of the Racketeering Influenced
3 and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962, civil conspiracy, and assert claims
4 for declaratory relief and to quiet title. Plaintiffs’ main contention is that Defendants do not have
5 adequate proof of ownership of the debt and, therefore, cannot foreclose on the property. (See
6 Dkt. No. 1 at 8–9.) Defendants now move to dismiss, arguing that Plaintiffs have failed to state a
7 claim upon which relief can be granted. (Dkt. No. 7.)

8 Discussion

9 **I. Legal Standard**

10 **A. Dismissal Pursuant to Fed. R. Civ. P. 12(b)(6)**

11 Under Fed. R. Civ. P. 12(b)(6), the Court may dismiss a complaint for “failure to state a
12 claim upon which relief can be granted.” In ruling on a motion to dismiss, the Court must
13 construe the complaint in the light most favorable to the non-moving party. Livid Holdings Ltd.
14 v. Salomon Smith Barney, Inc., 416 F.3d 940, 946 (9th Cir. 2005). The Court must accept all
15 well-pleaded allegations of material fact as true and draw all reasonable inferences in favor of
16 the plaintiff. Wylar Summit P’ship v. Turner Broad. Sys., 135 F.3d 658, 661 (9th Cir. 1998).

17 Dismissal is appropriate where a complaint fails to allege “enough facts to state a claim
18 to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A
19 claim is plausible on its face “when the plaintiff pleads factual content that allows the court to
20 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft
21 v. Iqbal, 556 U.S. 662, 678 (2009). As a result, a complaint must contain “more than labels and
22 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
23 Twombly, 550 U.S. at 555.

1 **II. Defendants’ Motion to Dismiss**

2 Defendants move to dismiss Plaintiffs’ complaint under Fed. R. Civ. P. 12(b)(6) for
3 failure to state a claim. (Dkt. No. 7.)

4 **A. Quiet Title**

5 Plaintiffs’ first cause of action seeks to quiet title to their property and seeks a declaration
6 that “the title to the Subject Property is vested solely in Plaintiff and that Defendants have no
7 right, title, estate, lien, or interest in the Property and that Defendants and each of them be
8 forever enjoined from asserting any right, title, lien or interest in the Property adverse to
9 Plaintiff.” (Dkt. No. 1 at 16.) Plaintiffs argue Defendants must cease foreclosure proceedings on
10 the property because “none of the Defendants are the holder of the [promissory] Note, and none
11 of them can prove that the Note is secured by the Deed of Trust. . . .” (Id.) Defendants argue
12 Plaintiffs’ claim to quiet title is both legally deficient and inadequately pleaded: Defendants are
13 not, and could not be, asserting an ownership interest in or a right to possession of the property
14 because the deed of trust created only a lien, and Plaintiffs fail to plead that Defendants are
15 otherwise asserting a current right to ownership or possession of the property. (Dkt. No. 7 at 4.)

16 A plaintiff may bring a quiet title action “against the person claiming the title or some
17 interest therein, and may have judgment in such action quieting or removing a cloud from
18 plaintiff’s title.” RCW 7.28.010. “[T]he plaintiff in an action to quiet title must prevail, if he
19 prevails at all, on the strength of his own title, and not on the weakness of the title of his
20 adversary.” City of Centralia v. Miller, 31 Wn.2d 417, 422 (1948). A deed of trust creates a lien
21 on real property, but it does not convey title to the lender. RCW 61.24.020; Rustad Heating &
22 Plumbing Co. v. Waldt, 91 Wn.2d 372, 376 (1979) (holding that a deed of trust is a species of
23 mortgage, creating a lien on real property).

1 Plaintiffs fail to state a claim to quiet title. While Plaintiffs allege that Defendants lack a
2 right to possess the property, they do not allege that Defendants are claiming a current right of
3 ownership or possession of the property. (See Dkt. No. 1 at 13.) Because the deed of trust only
4 creates a lien without conveying ownership rights to Defendants, and because Plaintiffs do not
5 separately allege that Defendants have asserted a title interest in the property, a claim to quiet
6 title cannot be maintained. See, e.g., Evans v. BAC Home Loans Servicing LP, No. 10-0656,
7 2010 WL 5138394, at *4 (W.D. Wash. Dec. 10, 2010) (dismissing a claim to quiet title when
8 Plaintiffs did not allege that Defendant asserted a title interest in the disputed property).
9 Plaintiffs' first cause of action fails to state a claim upon which relief can be granted, and is
10 therefore DISMISSED.

11 **B. Wrongful Foreclosure under Truth in Lending Act**

12 Plaintiffs' second cause of action alleges Defendants wrongfully foreclosed on Plaintiffs'
13 property by violating certain TILA requirements codified at 12 C.F.R. § 226.39. (Dkt. No. 1 at
14 16.) Plaintiffs allege "the Defendant GREENTREE is not a real and beneficial party of interest,
15 nor the Holder of the Note, . . . [and that] Green Tree Servicing LLC has offered no evidence that
16 loan [sic] was ever purchased from Countrywide Bank, FSB." (Id. at 9, 15.) As a result, Plaintiffs
17 claim that "Defendants do not have the right to foreclose on the Property because the Defendants
18 do not own the Note of [sic] have any legal relationship to the Note." (Id. at 18.) Defendants
19 argue that 12 C.F.R. § 226.39 contains no private cause of action and cannot support a wrongful
20 foreclosure claim. (Dkt. No. 7 at 5.)

21 12 C.F.R. § 226.39 consists of notification requirements for a creditor who takes title to
22 an existing mortgage loan. Failure to comply with these requirements gives rise to a private
23 cause of action against the creditor. See 15 U.S.C. § 1640; Logan v. U.S. Bank Nat. Ass'n, 722
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1 F.3d 1163, 1172 (9th Cir. 2013) (explaining that any person may “sue a creditor who fails to
2 comply with the newly enacted notice requirement or other requirements under the Act for
3 damages.”). To state a claim under TILA, a plaintiff must allege actual damages resulting from
4 the creditor’s TILA violation. In re Smith, 289 F.3d 1155, 1157 (9th Cir. 2002); Fazio v.
5 Experian Info. Solutions, Inc., No. 12-00497, 2012 WL 2119253, at *6 (N.D. Cal. June 11,
6 2012).

7 Plaintiffs fail to state a plausible claim for relief under TILA. While Plaintiffs support
8 their TILA violation claim by alleging Green Tree Servicing cannot prove ownership of the
9 promissory note, they do not state any facts showing that actual damages resulted from a TILA
10 notice violation. Plaintiffs’ second cause of action fails to state a claim upon which relief can be
11 granted, and is therefore DISMISSED.

12 To the extent Plaintiffs’ second cause of action can be construed to allege that Defendants
13 violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692g, Plaintiffs’ claim
14 still fails. Plaintiffs argue that Defendants do not have the right to foreclose on the property
15 because “the debt has been and is now officially in dispute. By law, all collection activities must
16 cease until this matter is resolved.” (Dkt. No. 1 at 17.) While the FDCPA covers debt collection
17 activities, “a non-judicial foreclosure action does not constitute ‘debt collection’ under the
18 FDCPA.” Diessner v. Mortgage Elec. Registration Sys., 618 F. Supp. 2d 1184, 1188–89 (D.
19 Ariz. 2009), aff’d 384 F. App’x 609 (9th Cir. 2010). Because Defendants’ non-judicial
20 foreclosure of Plaintiffs’ property does not equate to debt collection under the FDCPA, to the
21 extent Plaintiffs’ cause of action can be construed as a FDCPA claim, Plaintiffs fail to state a
22 claim upon which relief can be granted.

1 **C. TILA Right to Rescind/Breach of Contract**

2 Plaintiffs’ third cause of action asserts a breach of contract claim against Defendants, but
3 is styled as a TILA violation under the right-to-rescind provision, 15 U.S.C. § 1635. (Dkt. No. 1
4 at 19.) Plaintiffs allege that “after failure of the Defendants to validate true ownership [of the
5 property], [Plaintiffs] executed their ‘Right-to-Cancel’ pursuant to Truth in Lending [Act].” (Id.
6 at 6.) Defendants argue Plaintiffs fail to state a claim for rescission under TILA because any
7 claim would be time-barred and Plaintiffs do not claim to be ready, willing, and able to return the
8 funds loaned to them. (Dkt. No. 7 at 6.) Defendants further argue Plaintiffs fail to allege any
9 facts supporting a breach of contract claim, including what contract was breached and by whom.
10 (Id.)

11 TILA provides a right to rescind to borrowers who secure a loan with their primary
12 residence, such as a borrower securing a home loan with a deed of trust and promissory note. 15
13 U.S.C. § 1635. The borrower’s right to rescind, however, expires three years after the date of
14 consummation of the transaction or upon the sale of the property, whichever occurs first. 15
15 U.S.C. § 1635(f); Merritt v. Countrywide Fin. Corp., 759 F.3d 1023, 1030 (9th Cir. 2014).

16 Plaintiffs fail to state a claim for rescission under TILA. Although Plaintiffs state that
17 they executed their right to rescind “after failure of the Defendants to validate true ownership,”
18 (Dkt. No. 1 at 6), they do not state when, precisely, Defendants failed to validate true ownership
19 or when they executed their right to rescind. Plaintiffs’ mortgage was recorded in 2008, (Id. at
20 10), more than three years before this action was instituted, and Plaintiffs do not argue that the
21 statute of limitations should not apply. The Court finds that Plaintiffs’ right to rescind has
22 expired because the transaction was consummated more than three years ago, and therefore their
23 third cause of action fails to state a claim upon which relief can be granted and is DISMISSED.

1 To the extent Plaintiffs plead breach of contract under Washington common law, a breach
2 of a contract is actionable where “the contract imposes a duty, the duty is breached, and the
3 breach proximately causes damages to the claimant.” Northwest Mfrs. v. Dep’t of Labor, 78 Wn.
4 App. 707, 713 (1995). Here, Plaintiffs fail to allege a specific contract that was breached, the
5 duty that was breached, and the party who breached it. Plaintiffs therefore fail to state a claim for
6 breach of contract.

7 **D. Racketeering Influenced and Corrupt Organizations Act**

8 Plaintiffs’ fourth cause of action alleges a RICO violation by Defendant Green Tree
9 Servicing under 18 U.S.C. § 1962. (Dkt. No. 1 at 20.) Plaintiffs claim Defendant was the
10 “principal or participated in the operation, management of this scheme itself and the pattern of
11 racketeering include at least acts, transmission, the use of mail of fake assignments and mortgage
12 and fictional corporate signatures [sic].” (Id.) Plaintiffs also claim Defendant manufactured
13 default and used the “State Court and County Recorder’s office to foreclose on Plaintiff’s
14 property.” (Id.) Defendants argue Plaintiffs fail to allege facts that support any of the RICO
15 elements, and that the claim is time-barred. (Dkt. No. 7 at 7.)

16 To state a RICO claim, a plaintiff must allege “(1) conduct (2) of an enterprise (3)
17 through a pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing injury to
18 plaintiff’s ‘business or property.’” Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431
19 F.3d 353, 361 (9th Cir. 2005). Courts apply Fed. R. Civ. P. 9(b)’s particularity requirement to
20 RICO claims. Moore v. Kayport Package Exp., Inc., 885 F.2d 531, 541 (9th Cir. 1989). “Rule
21 9(b) requires that the pleader state the time, place, and specific content of the false
22 representations as well as the identities of the parties to the misrepresentation.” Id.

1 Plaintiffs fail to state a plausible RICO claim with particularity because they do not state
2 the time, place, or specific content of the false representations allegedly made by Defendant
3 Green Tree Servicing. Plaintiffs' fourth cause of action fails to state a claim upon which relief
4 can be granted, and is therefore DISMISSED.

5 **E. Civil Conspiracy**

6 Plaintiffs' fifth cause of action alleges civil conspiracy against Defendants Northwest
7 Trustee Services and Green Tree Servicing. (Dkt. No. 1 at 21.) Plaintiffs argue Northwest
8 Trustee Services and Green Tree Servicing conspired to divest Plaintiffs of real property and "are
9 employing a willful and intentional misuse of the foreclosure process." (Id.) Plaintiffs voluntarily
10 dismissed Northwest Trustee Services from this lawsuit, which results in a civil conspiracy claim
11 against one party: Green Tree Servicing. (See Dkt. No. 9.) Because a claim for civil conspiracy
12 requires "a combination of two or more persons who contrive to commit a criminal or unlawful
13 act," Adams v. King Cnty., 164 Wn.2d 640, 660 (2008) (emphasis added), Plaintiffs' fifth cause
14 of action fails to state a claim upon which relief can be granted, and is therefore DISMISSED.

15 **F. Declaratory Relief**

16 Plaintiffs' final cause of action seeks declaratory relief and requests the Court to
17 determine "whether any Defendant has the legal right to foreclose based upon the Mortgage,"
18 and the "rights and duties as to the validity of the Note and the Deed of Trust, and Defendants'
19 rights to conduct a non-judicial foreclosure." (Dkt. No. 1 at 22.)

20 Declaratory judgment is a remedy, not a cause of action. See, e.g., Bisson v. Bank of
21 Am., N.A., 919 F. Supp. 2d 1130, 1139 (W.D. Wash. 2013). To obtain declaratory relief,
22 Plaintiffs must first adequately state an underlying claim. Id.; see also Massey v. BAC Home
23 Loans Servicing LP, 2013 U.S. Dist. LEXIS 147342, at *14 (W.D. Wash. Feb. 13, 2013).

1 Because Plaintiffs have failed to state any plausible claim, they are not entitled to declaratory
2 relief, and their sixth cause of action is DISMISSED.

3 **II. Plaintiffs' Additional Arguments**

4 In their January 23, 2015 Response, (Dkt. No. 10), Plaintiffs assert that they did not
5 receive service of the motion, mailed to them on December 22, 2014, (Dkt. No. 7 at 10), until
6 January 17, 2015, six days before the motion's noting date. They argue the motion should be re-
7 noted from January 23, 2015, to February 13, 2015, to allow them time to seek counsel regarding
8 a response to the motion. (Dkt. No 10 at 2–3.) Plaintiffs then filed an Amended Response—
9 without counsel—on February 2, 2015, (Dkt. No. 11), again requesting that the motion be re-
10 noted for February 13, 2015.

11 To the extent Plaintiffs' response can be interpreted as a request for additional time to
12 respond, Plaintiffs have now had over one month to prepare and file a response since the alleged
13 date of service, and have already filed one amended response. The Court declines to provide
14 Plaintiffs with additional time, or leave to file a third response, simply because Plaintiffs have
15 decided to seek counsel. The Court also notes that service appears proper because Defendants
16 mailed the motion on December 22, 2014 via first class mail. Fed. R. Civ. P. 5(b); Kim v.
17 Commandant, Def. Language Inst., Foreign Language Ctr., 772 F.2d 521, 524 (9th Cir. 1985)
18 (“Service by mail is complete upon mailing.”). The Court finds that Plaintiffs have had sufficient
19 opportunity to respond to the motion and, therefore, denies Plaintiffs' request for additional time
20 to respond.

21 Plaintiffs also argue in their amended response that Defendants have failed to comply
22 with Fed. R. Civ. P. 7.1, requiring them to file corporate disclosure statements. (Dkt. No. 11 at
23 4.) Because Defendants did not submit corporate disclosure statements prior to their motion,
24

1 | Plaintiffs “move the Court to strike Defendant’s Motion and for Judgment on the allegations of
2 | Plaintiff’s Complaint. . . .” (Id.)

3 | Plaintiffs’ argument is without merit. Fed. R. Civ. P. 7.1 is intended to help judges be
4 | properly informed of potential conflicts of interest that might justify disqualification. See
5 | Advisory Committee Note, Fed. R. Civ. P. 7.1. Furthermore, corporate disclosures were filed on
6 | March 2, 2015, and the Court finds that the delay in their filing has not prejudiced Plaintiffs in
7 | this case.

8 | The remainder of Plaintiffs’ response argues that Plaintiffs believe they will prevail if
9 | allowed to conduct discovery. (Dkt. No. 11 at 5.) To survive dismissal, however, Plaintiffs’
10 | complaint must plead factual content sufficient to state a claim for relief that is plausible on its
11 | face; conclusory statements are insufficient.

12 | **Conclusion**

13 | Because Plaintiffs fail to state a plausible claim for relief, the Court GRANTS
14 | Defendants’ motion to dismiss under Fed. R. Civ. P. 12(b)(6) and DISMISSES Plaintiffs’ claims
15 | with prejudice.

16 |
17 | The clerk is ordered to provide copies of this order to all counsel.

18 | Dated this 11th day of March, 2015.

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22 | Marsha J. Pechman
23 | Chief United States District Judge