

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GARY W. ALEXANDER, an individual,

Plaintiff,

v.

WELLS FARGO, BANK, N.A., et al.

Defendants.

CASE NO. C15-459RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Defendant Northwest Trustee Services Inc.'s ("NWTS") Fed. R. Civ. P. 12(b)(6) Motion to Dismiss (Dkt. # 6) and Defendants U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust ("USB Trust") Wells Fargo Bank, N.A. ("Wells Fargo"), and U.S. Bank, N.A.'s ("US Bank") (collectively, "Defendants") Motion to Dismiss (Dkt. # 7). As set forth below, the Court **GRANTS** Defendants' motions and **DISMISSES** this Action **with leave to amend**.

II. BACKGROUND

In September 2005 or 2006, Plaintiff purchased a property located at 29 North Tweedt Place, Units A-D, Kennewick, WA 99336 (the "Property"). *See* Compl. ¶ 11-12, 17; Dkt. # 6-1, Ex. 1 at p.2.¹ Plaintiff financed his purchase through a loan from

¹ NWTS has attached eight exhibits to its motion to dismiss. *See* Dkt. # 6. Although a court ordinarily may not consider evidence outside the complaint on a Rule 12(b)(6) motion to dismiss (*see Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001)), it may consider documents "referenced in a complaint but not explicitly incorporated therein if the complaint relies on the document and its authenticity is unquestioned." *Swartz v. KPMG LLP*,

1 Washington Mutual Bank (“WaMu”). Compl. ¶ 12; Dkt. # 6-1, Ex. 1. Plaintiff and non-
2 party Diane M. Alexander executed a promissory note in the amount of \$176,250.00
3 payable to WaMu. Compl. ¶ 17; Dkt. # 6-1, Ex. 1 at pp. 1 & 6. Pursuant to the terms of
4 the note, Plaintiff and Diane Alexander would be in default if they failed to pay the full
5 amount of each monthly payment. *See* Dkt. # 6-1, Ex. 1 at p. 4.

6 Plaintiff and Diane Alexander also executed a deed of trust securing the note,
7 which listed WaMu as the beneficiary. Dkt. # 6-2, Ex. 2 at pp. 5, 21; *see also* Compl. ¶¶
8 22, 26. Pursuant to the terms of the deed of trust, the note and the deed of trust could be
9 sold “without prior notice to Borrower.” Dkt. # 6-2, Ex. 2 at p. 17. The deed of trust also
10 provided that the lender could “appoint a successor trustee” who would “succeed to all
11 the title, power and duties conferred upon” the original trustee. *Id.* at p. 20.

12 In October or November 2010, an appointment of successor trustee was recorded
13 with the Benton County Auditor naming NWTs as the successor trustee. *See* Dkt. # 6-3,
14 Ex. 3 at p. 2. Another appointment of successor trustee naming NWTs as successor
15 trustee was recorded in August 2014. *See id.* at pp. 3-4.

16 On June 17, 2013, a corporate assignment of deed of trust was recorded with the
17 Benton County Auditor which memorialized a transfer from the Federal Deposit
18 Insurance Corporation, as receiver of WaMu, to JPMorgan Chase Bank, N.A. (“Chase”).

19
20 476 F.3d 756, 763 (9th Cir. 2007). Consequently, in similar cases, courts have considered
21 evidence substantially identical to the evidence NWTs has attached to its motion. *See e.g., Haag*
22 *v. PNC Bank NA*, No. C13–1746JLR, 2014 WL 1725801, at *1 n.1 (W.D. Wash. Apr. 30, 2014)
23 (taking judicial notice of deed of trust and other documents); *Petheram v. Wells Fargo Bank*, No.
24 C13–1016JLR, 2013 WL 4761049, at *1 n.1 (W.D. Wash. Sept. 3, 2013) (taking judicial notice
25 of deed of trust, assignments of the deed of trust, and notices of trustee sales even though they
26 were not attached to the complaint). Moreover, the majority of the submitted documents (*see*
27 Dkt. # 6 Exs. 2, 3, 4, 5, 8) are public records properly subject to judicial notice (*see United States*
28 *v. 14.02 Acres of Land More or Less in Fresno Cnty.*, 547 F.3d 943, 955 (9th Cir. 2008)).

Plaintiff appears to argue that these exhibits are inadmissible under the Best Evidence Rule. *See*
Dkt. # 9 at p. 14 (citing Fed. R. Evid. 1002 & 1003). However, that rule does not operate to
exclude these documents here. Under Fed. R. Evid. 1003, a duplicate is admissible to the same
extent as the original, and a duplicate is simply “a counterpart produced by a mechanical,
photographic, chemical, electronic, or other equivalent process or technique that accurately
reproduces the original.” *See* Fed. R. Evid. 1001. This is clearly the case here.

1 See Dkt. # 6-4, Ex. 4 at p. 2; *see also* Compl. ¶¶ 13, 15. On June 3, 2014, a Washington
2 assignment of deed of trust was recorded with the Benton County Auditor memorializing
3 an assignment of the deed of trust from Chase to USB Trust. *See* Dkt. # 6-5 at p. 2; *see*
4 *also* Compl. ¶ 15. Plaintiff claims at some point, USB Trust or US Bank began claiming
5 ownership of the note on the property. *See id.* ¶¶ 15, 21. Plaintiff alleges that he has
6 never received any notice of a transfer or assignment of the loan to USB Trust. *Id.* ¶ 15.

7 In October 2014, NWTS issued a notice of default to Plaintiff based on delinquent
8 monthly payments since June 2010. *See* Dkt. # 6-7, Ex. 7; *see also* Dkt. # 6-8, Ex. 8 at
9 pp. 4-7. The notice of default lists USB Trust as the note owner and loan servicer. *Id.* at
10 p. 6. And on November 24, 2014, a notice of trustee’s sale was recorded with the Benton
11 County Auditor, setting a sale date of March 27, 2015. *See* Dkt. # 6-8, Ex. 8 at p. 3.
12 Plaintiff claims that USB Trust and NWTS are attempting to foreclose on the Property
13 “by presenting a counterfeit promissory note and counterfeit deed of trust.” *Id.* ¶ 25.

14 III. LEGAL STANDARD

15 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a
16 claim. The rule requires the court to assume the truth of the complaint’s factual
17 allegations and credit all reasonable inferences arising from those allegations. *Sanders v.*
18 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court “need not accept as true conclusory
19 allegations that are contradicted by documents referred to in the complaint.” *Manzarek v.*
20 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must
21 point to factual allegations that “state a claim to relief that is plausible on its face.” *Bell*
22 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint
23 avoids dismissal if there is “any set of facts consistent with the allegations in the
24 complaint” that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.
25 662, 679 (2009).

26 The court typically cannot consider evidence beyond the four corners of the
27 complaint, although it may rely on a document to which the complaint refers if the

1 document is central to the party's claims and its authenticity is not in question. *Marder v.*
2 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). The court may also consider evidence subject
3 to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

4 Where a plaintiff proceeds *pro se*, the court must construe his "complaints
5 liberally even when evaluating it under the *Iqbal* standard." *Johnson v. Lucent Techs.*
6 *Inc.*, 653 F.3d 1000, 1011 (9th Cir. 2011) (citing *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th
7 Cir. 2010)). "Furthermore, '[l]eave to amend should be granted unless the pleading could
8 not possibly be cured by the allegation of other facts, and should be granted more
9 liberally to pro se plaintiffs.'" *Id.* (quoting *McQuillion v. Schwarzenegger*, 369 F.3d
10 1091, 1099 (9th Cir. 2004)).

11 IV. ANALYSIS

12 Plaintiff brings six causes of action in his complaint. Specifically, Plaintiff brings
13 claims for (1) "Violations Under Title 12 § 226.39 (regulation Z) part (a) ('Wrongful
14 Foreclosure')" against USB Trust only (Compl. ¶¶ 32-35); (2) to Quiet Title against USB
15 Trust only (Compl. ¶ 36); (3) Violations of the Fair Debt Collection Practices Act against
16 USB Trust and NTWS (Compl. ¶¶ 37-41); (4) Civil RICO claims against USB Trust and
17 NTWS (Compl. ¶¶ 42-46); (5) Civil Conspiracy claims against USB Trust and NTWS;
18 and (6) for Declaratory Relief (Compl. ¶¶ 49a-48b²).

19 a. Plaintiff's Failure to Assert Claims Against Wells Fargo and US Bank

20 Plaintiff names both Wells Fargo and US Bank as defendants but does not bring
21 any claims against them. *See* Compl. ¶¶ 32-48b. Aside from alleging that Wells Fargo
22 does business in Benton County, Washington, Plaintiff does not allege any facts
23 involving Wells Fargo. Similarly, Plaintiff's only two allegations involving US Bank are
24 that it does business in Benton County and "is claiming ownership of the purported
25 mortgage," though the substance of the Complaint suggests that Plaintiff actually means

26 ² Plaintiff's complaint restarts its numbering scheme at paragraph 46 following paragraph 54 on
27 page 16. For clarity's sake, the Court will refer to the first set of those paragraph numbers as "a"
and the second set as "b".

1 USB Trust. *Id.* ¶¶ 2, 21. Given Plaintiff’s failure to plead any factual content against
2 either Defendant – and his failure to discuss either party in his Oppositions – the Court
3 finds that Plaintiff has not alleged any facts suggesting that he is entitled to relief against
4 these defendants. Accordingly, the Court **DISMISSES** both Wells Fargo and US Bank.

5 b. Violations of the Truth in Lending Act (“TILA”)

6 Plaintiff’s first claim alleges that USB Trust violated Regulation Z of the TILA by
7 attempting to foreclose on the Property without having the rights of a holder in due
8 course. *See* Compl. ¶ 33. Plaintiff alleges that he believes that USB Trust cannot
9 foreclose on the property because it is not the holder of the note and has presented
10 counterfeit documents. *See* Compl. ¶¶ 24-25, 33-34.

11 TILA’s Regulation Z, 12 C.F.R. § 226.39, does not apply to this matter. Under
12 that section, a “covered person” must mail or deliver certain required disclosures to
13 consumers within 30 days of the transfer of a “mortgage loan.” 12 C.F.R. § 226.39(b). A
14 “mortgage loan” is defined as “any consumer credit transaction that is secured by the
15 *principal dwelling* of a consumer.” *Id.* § 226.39(a); *cf. Ziogiannis v. Dreambuilder Invs.*
16 *LLC*, 782 F. Supp. 2d 14, 17 (E.D.N.Y. 2011).

17 Here, Plaintiff alleges that he, “at all times mentioned herein,” has resided in
18 Redmond, Washington. *See* Compl. ¶¶ 1, 10. The Property, however, is located in
19 Kennewick, Washington. *See id.* ¶ 11, 17. By Plaintiff’s own admission, it is not
20 plausible that Plaintiff primarily resided in the Property – rendering TILA inapplicable.

21 Moreover, Regulation Z pertains solely to disclosures of mortgage transfers – and
22 a party alleging a violation must allege damages – actual or statutory – arising from the
23 TILA violation. *See Young v. Nw. Trustee Servs. Inc.*, No. C14–1807 MJP, 2015 WL
24 1062047, at *2 (W.D. Wash. Mar. 11, 2015) (citing *In re Smith*, 289 F.3d 1155, 1157 (9th
25 Cir. 2002); *Fazio v. Experian Info. Solutions, Inc.*, No. 12–00497, 2012 WL 2119253, at
26 *6 (N.D. Cal. June 11, 2012)). Plaintiff has not alleged any such damages or otherwise
27 explained how USB Trust’s alleged failure to notify him has caused him damages.

1 Instead, Plaintiff seeks injunctive relief for the violation – a remedy which is not
2 provided for by TILA. *See* Compl. ¶ 35.

3 Finally, Plaintiff cites various Michigan cases in his Opposition. *See* Dkt. # 9 at
4 pp. 4-7. Plaintiff also seeks leave to amend his Complaint to “introduce new information
5 that he has obtained regarding the Defendant US Bank Trust Servicing and Pooling
6 Agreement.” Dkt. # 9 at p. 10. Plaintiff does not explain what this information is.
7 Plaintiff appears to argue that he may challenge USB Trust’s standing on the basis that
8 the assignment of the deed of trust violated a “Pooling and Service Agreement” or
9 “PSA”. *Id.* at p. 4. Beyond the fact that none of Plaintiff’s cited authority is binding on
10 this Court, Plaintiff does not identify any facts in his Complaint showing the existence of
11 a relevant PSA or how USB Trust’s possession of the note violates the PSA. Further, the
12 majority of Ninth Circuit courts have held that “plaintiffs lack standing to challenge
13 noncompliance with a PSA in securitization unless they are parties to the PSA or third
14 party beneficiaries of the PSA.” *Rockridge Trust v. Wells Fargo, N.A.*, 985 F. Supp. 2d
15 1110, 1155 (N.D. Cal. 2013).

16 Accordingly, the Court **DISMISSES** Plaintiff’s first cause of action. Because
17 further amendment of this claim would be futile, the Court dismisses this claim **without**
18 **leave to amend**. *See Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009).

19 c. Quiet Title

20 Although “Plaintiff seeks to quiet title against the claims of Defendants and all
21 persons claiming any legal right” in the Property, he only brings this claim against USB
22 Trust. *See* Compl. ¶ 36.

23 In any event, Plaintiff’s claim fails because he has not alleged facts showing that
24 he has satisfied his obligations under the deed of trust. *See Evans v. BAC Home Loans*
25 *Servicing LP*, No. C10-0656 RSM, 2010 WL 5138394, at *4 (W.D. Wash. Dec. 10,
26 2010). Plaintiff acknowledges that he executed the promissory note and deed of trust
27 (*see* Compl. ¶¶ 12, 14, 24-25) and even that he defaulted on his obligations (*see* Compl. ¶

1 14 (“WaMu issued millions of predatory loans between 2001 and 2008 with the
2 knowledge that borrowers, including Plaintiff, would default”). Consequently, “it would
3 be unreasonable to allow a borrower to bring an action to quiet title against its lender
4 without alleging satisfaction of those loan obligations.” *Evans*, 2010 WL 5138394, at *4.

5 Plaintiff does not allege that any Defendant is currently claiming a current right to
6 ownership. A quiet title action may only be brought “against the person claiming the title
7 or some interest therein.” Wash. Rev. Code § 7.28.010. “[T]he plaintiff in an action to
8 quiet title must prevail, if he prevails at all, on the strength of his own title, and not on the
9 weakness of the title of his adversary.” *City of Centralia v. Miller*, 197 P.2d 244, 247
10 (Wash. 1948). “A deed of trust creates a lien on real property, but it does not convey title
11 to the lender.” *Young*, 2015 WL 1062047, at *2 (citing Wash. Rev. Code § 61.24.020;
12 *Rustad Heating & Plumbing Co. v. Waldt*, 588 P.2d 1153, 1155 (Wash. 1979)).

13 Although Plaintiff alleges that either USB Trust or NWTs has improperly asserted
14 rights to promissory note or deed of trust (*see* Compl. ¶¶ 15, 21-22, 24-26), he does not
15 allege that they – or any other Defendant – claim a current right to the Property. Instead,
16 Plaintiff’s allegations at best explain that USB Trust and NWTs merely appear to be
17 attempting to foreclose on the Property by enforcing their lien.

18 Accordingly, the Court **DISMISSES** Plaintiff’s second claim. Because further
19 amendment of this claim would be futile, the Court dismisses this claim **without leave to**
20 **amend**. *See Gardner*, 563 F.3d at 990.

21 d. Violation of the Fair Debt Collection Practices Act (“FDCPA”)

22 Plaintiff brings claims against NWTs and USB Trust under the FDCPA, alleging
23 that NWTs and USB Trust have violated the FDCPA by attempting to foreclose on
24 behalf of USB Trust while knowing that USB Trust has no right to collect payments on
25 his obligation or foreclose on the deed of trust. *See* Compl. ¶¶ 38-39. Plaintiff also
26 alleges that NWTs has violated the FDCPA by failing to provide him a debt collection
27 notice. *Id.* ¶ 40. Plaintiff appears to bring his claim under 15 U.S.C. § 1692e.

1 As a threshold matter, in order to state a claim under the FDCPA, Plaintiff must
2 allege facts showing that a defendant is a “debt collector” collecting a “debt.” *See*
3 *Izenberg v. ETS Servs., LLC*, 589 F. Supp. 2d 1193, 1199 (C.D. Cal. 2008); 15 U.S.C. §
4 1692a(6); *see also Schlegel v. Wells Fargo Bank, NA*, 720 F.3d 1204, 1208 (9th Cir.
5 2013). “The FDCPA defines ‘debt collector’ as ‘any person who uses any
6 instrumentality of interstate commerce or the mails in any business the principal purpose
7 of which is the collection of any debts, or who regularly collects or attempts to collect,
8 directly or indirectly, debts owed or due or asserted to be owed or due another.’” *Echlin*
9 *v. Dynamic Collectors, Inc.*, No. C14-5718 BHS, 2015 WL 1954540, at *4 (W.D. Wash.
10 Apr. 29, 2015) (quoting 15 U.S.C. § 1692a(6)).

11 Plaintiff argues in his Opposition that the Sixth Circuit has held that mortgage
12 foreclosures may constitute debt collection under the FDCPA. *See* Dkt. # 9 at pp. 10-12.
13 Plaintiff’s argument does have some support. *See Kaymark v. Bank of Am., N.A.*, 783
14 F.3d 168, 179 (3d Cir. 2015); *Glazer v. Chase Home Fin. LLC*, 704 F.3d 453, 464 (6th
15 Cir. 2013); *Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 376 (4th Cir. 2006).
16 Still, these authorities are not binding on this Court, and “the overwhelming majority of
17 courts within the Ninth Circuit have concluded that nonjudicial foreclosures do not
18 constitute debt collection under the FDCPA.” *Pratap v. Wells Fargo Bank, N.A.*, 63 F.
19 Supp. 3d 1101, 1114 (N.D. Cal. 2014). In any event, the Court need not reach this
20 question because it finds that Plaintiff has not alleged sufficient facts to show that any of
21 the Defendants constitute “debt collectors” under the FDCPA.

22 Plaintiff has not alleged facts showing that either USB Trust or NWTs are debt
23 collectors under the FDCPA. Even construing Plaintiff’s allegations liberally, at best,
24 Plaintiff alleges that these two defendants have attempted to collect *this* particular debt,
25 not that their principal business is to collect debts or that they regularly do so on behalf of
26 others. Accordingly, defendants do not constitute “debt collectors” and the Court
27 **DISMISSES** Plaintiff’s FDCPA claim. However, the Court finds that Plaintiff could

1 potentially amend his Complaint to allege further facts showing how the Defendants
2 constitute “debt collectors” under the FDCPA. As such, Plaintiff’s FDCPA claim is
3 **DISMISSED with 20 days leave to amend.**

4 e. Civil RICO

5 Plaintiff also brings a claim for a RICO violation by USB Trust and NWTs. *See*
6 Compl. ¶¶ 42-46. Plaintiff alleges that “Defendants unlawfully employed the U.S. Mail,
7 State Courts, [and] County Recorder’s Office to unjustly enrich themselves by divesting
8 Plaintiff of his real property.” *Id.* ¶ 43. Specifically, USB Trust is alleged to have
9 transmitted or mailed “fake assignments and mortgage and fictional corporate signatures”
10 apparently to “manufacture[] default and the used [sic] of the State Court and County
11 Recorder’s office to foreclose on Plaintiff’s property.” *Id.* ¶¶ 44-45.

12 In order “[t]o state a civil RICO claim, [Plaintiff] must allege (1) conduct (2) of an
13 enterprise (3) through a pattern (4) of racketeering activity (5) causing injury to plaintiffs’
14 ‘business or property.’” *Ove v. Gwinn*, 264 F.3d 817, 825 (9th Cir. 2001) (quoting 18
15 U.S.C. § 1964(c)). Rule 9(b) “applies to civil RICO fraud claims.” *See Edwards v.*
16 *Marin Park, Inc.*, 356 F.3d 1058, 1065-66 (9th Cir. 2004) (citing *Alan Neuman Prods.,*
17 *Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1989)). Thus, Plaintiff’s “complaint
18 would need to ‘state the time, place, and specific content of the false representations as
19 well as the identities of the parties to the misrepresentation.’” *Id.* Plaintiff does not
20 allege any facts coming close to satisfying the heightened Rule 9(b) standard. As such,
21 the Court **DISMISSES** Plaintiff’s RICO claim. *See Young*, 2015 WL 1062047, at *4.

22 But even beyond this, Plaintiff does not allege any facts establishing any of the
23 required elements for a civil RICO claim. For example, Plaintiff does not allege any
24 facts showing the existence of an ongoing organization. *See Madlaing v. JPMorgan*
25 *Chase Bank, N.A.*, No. CV F 12-2069 LJO SMS, 2013 WL 2403379, at *21 (E.D. Cal.
26 May 31, 2013). Nor does Plaintiff allege any racketeering activities distinct from the
27 alleged enterprise. *See Odom v. Microsoft Corp.*, 486 F.3d 541, 552 (9th Cir. 2007).

1 Because further amendment of this claim would be futile, the Court dismisses this
2 claim **without leave to amend**. *See Gardner*, 563 F.3d at 990.

3 f. Civil Conspiracy

4 Plaintiff’s civil conspiracy claim alleges that Defendants have “conspired to divest
5 him of his real property” ostensibly through “a willful and intentional misuse of the
6 foreclosure process” and through an “attempt by Defendants to defraud them through the
7 use of sham documents and fabricated evidence.” Compl. ¶ 48a.

8 “Under Washington law, a plaintiff proves a civil conspiracy by showing ‘by
9 clear, cogent and convincing evidence that (1) two or more people contributed to
10 accomplish an unlawful purpose, or combined to accomplish a lawful purpose by
11 unlawful means; and (2) the conspirators entered into an agreement to accomplish the
12 object of the conspiracy.’” *Gossen v. JPMorgan Chase Bank*, 819 F. Supp. 2d 1162,
13 1171 (W.D. Wash. 2011) (quoting *Wilson v. State of Wash.*, 929 P.2d 448, 459 (Wash.
14 Ct. App. 1996)). Moreover, “civil conspiracy does not exist independently—its viability
15 hinges on the existence of a cognizable and separate underlying claim.” *Id.* (citing *Nw.*
16 *Laborers-Employers Health & Sec. Trust Fund v. Philip Morris, Inc.*, 58 F. Supp. 2d
17 1211, 1216 (W.D. Wash. 1999)).

18 But Plaintiff does not allege any facts showing that Defendants committed any of
19 the elements for civil conspiracy. For example, Plaintiff does not allege any facts
20 showing that Defendants ever reached an agreement. Beyond the conclusory allegation
21 that “Defendants conspired” (Compl. ¶ 48a), Plaintiff does not allege any facts showing
22 that the relevant Defendants entered into an agreement, much less *any* facts about Wells
23 Fargo or US Bank. Moreover, Plaintiff’s conspiracy claims do not sufficiently provide
24 “the particulars of when, where, or how the alleged conspiracy occurred” to satisfy Rule
25 9(b)’s heightened pleading requirements. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d
26 1097, 1107 (9th Cir. 2003).

1 Accordingly, the Court **DISMISSES** Plaintiff’s conspiracy claim. Because further
2 amendment of this claim would be futile, the Court dismisses this claim **without leave to**
3 **amend**. See *Gardner*, 563 F.3d at 990.

4 g. Declaratory Judgment

5 Plaintiff’s final cause of action is for declaratory relief. But “[t]he Declaratory
6 Judgment Act creates only a remedy, not a cause of action.” *Bisson v. Bank of Am., N.A.*,
7 919 F. Supp. 2d 1130, 1139 (W.D. Wash. 2013). Because the Court **DISMISSES** all of
8 Plaintiff’s other claims, his claim for declaratory relief must be dismissed as well. *Id.*

9 h. Other Arguments

10 In opposition, Plaintiff also requests leave to amend to include a cause of action
11 for violation of Uniform Commercial Code (“UCC”) § 3-309. See Dkt. # 9 at pp. 7-9. It
12 is not entirely clear what bearing the UCC has on this case. The “UCC is inapplicable to
13 transactions involving real property” (*Elene-Arp v. Fed. Home Fin. Agency*, No. C12-
14 2154 RAJ, 2013 WL 1898218, at *3 (W.D. Wash. May 7, 2013)) and without question
15 this case entirely focuses on Plaintiff’s financing of a purchase of real property.

16 **V. CONCLUSION**

17 For the foregoing reasons, the Court **GRANTS** Defendants’ motions to dismiss.
18 Accordingly, Plaintiff’s:

- 19
- 20 • First claim for “Violations Under Title 12 § 226.39 (regulation Z) part (a)
21 (“Wrongful Foreclosure’))” is **DISMISSED without leave to amend**;
 - 22 • Second claim to Quiet Title is **DISMISSED without leave to amend**;
 - 23 • Third claim for Violations of the Fair Debt Collection Practices Act is
24 **DISMISSED with 20 days leave to amend**;
 - 25 • Fourth claim for Civil RICO is **DISMISSED without leave to amend**;
 - 26 • Fifth claim for Civil Conspiracy claims is **DISMISSED without leave to**
27 **amend**; and

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- Sixth claim for Declaratory Relief is **DISMISSED with 20 days leave to amend.**

Accordingly, Plaintiff is granted leave to file an amended complaint containing *only* his third claim for violations of the FDCPA and his sixth claim for declaratory relief **within 20 days of the date of this Order.**

DATED this 31st day of August, 2015.



The Honorable Richard A. Jones
United States District Judge