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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 LACINA SYLLA, et al.,

9 Plaintiffs,

10 v.

11 JPMORGAN CHASE BANK, N.A., et
12 al.,

Defendants.

C16-453-TSZ

ORDER

13 THIS MATTER comes before the Court upon defendant JPMorgan Chase Bank,
14 N.A.'s ("Chase") Motion to Dismiss, docket no. 12. For the following reasons, plaintiffs'
15 claims are DISMISSED with prejudice.

16 **Background**

17 Plaintiffs Lacina Sylla and Nasitan Samake borrowed approximately \$350,000
18 from CTX Mortgage Company in December 2006 and executed a deed of trust. By May
19 2009, Chase became the beneficiary of the deed. However, since September 2008,
20 plaintiffs have not made any payments either to CTX or Chase, and thus the loan has
21 been in default for over seven years. Northwest Trustee Services, Inc. ("NWTS") as
22 trustee, has instituted a series of nonjudicial foreclosures but none has culminated into a
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1 trustee’s sale. The most recent notice scheduled a sale for March 25, 2016. Nine days
2 before the scheduled sale, plaintiffs filed this suit in Snohomish County Superior Court
3 and defendant Chase filed a notice of removal. *See* docket no. 1.¹

4 **Discussion**

5 **A. Standard of Review**

6 Although a complaint challenged by a Rule 12(b)(6) motion to dismiss need not
7 provide detailed factual allegations, it must offer “more than labels and conclusions” and
8 contain more than a “formulaic recitation of the elements of a cause of action.” *Bell Atl.*
9 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must indicate more than
10 mere speculation of a right to relief. *Id.* When a complaint fails to adequately state a
11 claim, such deficiency should be “exposed at the point of minimum expenditure of time
12 and money by the parties and the court.” *Id.* at 558. A complaint may be lacking for one
13 of two reasons: (i) absence of a cognizable legal theory, or (ii) insufficient facts under a
14 cognizable legal claim. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th
15 Cir. 1984). In ruling on a motion to dismiss, the Court must assume the truth of the
16 plaintiff’s allegations and draw all reasonable inferences in the plaintiff’s favor. *E.g.*,
17 *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). The question for the
18 Court is whether the facts in the complaint sufficiently state a “plausible” ground for
19 relief. *Twombly*, 550 U.S. at 570. If the Court dismisses the complaint or portions

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22 ¹ Plaintiffs voluntarily dismissed NWTs during the state court proceedings. *See* docket
23 no. 1-2, at 64-65.

1 thereof, it must consider whether to grant leave to amend. *Lopez v. Smith*, 203 F.3d 1122,
2 1130 (9th Cir. 2000).

3 **B. Analysis**

4 Plaintiffs bring this action to quiet title pursuant to RCW 7.28.300, which permits
5 the owner of real estate to “maintain an action to quiet title against the lien of a mortgage
6 or deed of trust on the real estate where an action to foreclose such mortgage or deed of
7 trust would be barred by the statute of limitations.” Initially, plaintiffs alleged that the
8 lien could be extinguished by virtue of their obligation to Chase being barred by the
9 statute of limitations. In their opposition to Chase’s motion, however, plaintiffs concede
10 that they are in default with respect to, at least, the past six years of payments preceding
11 the most recent Notice of Trustee’s Sale. Pls.’ Opp., docket no. 13, at 2. Accordingly,
12 there is no basis under which the Court could conclude that “an action to foreclose [the]
13 mortgage or deed of trust would be barred by the statute of limitations.” RCW 7.28.300.
14 The First Cause of Action is thus dismissed with prejudice.²

15 In truth, plaintiffs’ opposition papers reveal that the true scope of this case is
16 whether Chase may include payments owed more than six years ago in its calculation of
17 plaintiffs’ debt. The practical impact relates to how the Deed of Trust Act (“DTA”)
18 addresses trustee’s sales. If the sale proceeds exceed “the obligation secured by the deed
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20 ² Plaintiffs’ Second Cause of Action for a temporary restraining order and preliminary
21 injunction against the trustee’s sale is similarly dismissed with prejudice. It is “well-
22 settled” that a claim for injunctive relief standing alone is not a cause of action. *Ramos v.*
23 *Chase Home Fin.*, 810 F. Supp. 2d 1125, 1132 (D. Haw. 2011).

1 of trust,” such a surplus is disbursed among various parties including the homeowner.
2 RCW 61.24.080.

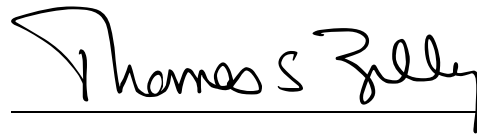
3 In sum, plaintiffs have not pleaded a cognizable claim under RCW 7.28.300 where
4 they freely admit that they are in default on mortgage payments which would not be
5 barred by the statute of limitations.

6 ***Conclusion***

7 For the above reasons, plaintiffs’ First and Second Causes of Action are
8 DISMISSED with prejudice.

9 IT IS SO ORDERED.

10 Dated this 2nd day of August, 2016.

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13 Thomas S. Zilly
14 United States District Judge