



1 \$76,800 in loan payments, but that after they signed the loan documents, the full value of the  
2 loan was never paid to them. *Id.* at ¶¶ 8-12. They allege that Guaranteed Rate, Inc. provided  
3 them with a check from a commercial bank that had insufficient funds to cover the amount of the  
4 check. *Id.* at ¶¶ 13-16. They further allege that this was part of a “check kiting scheme,” and  
5 that Defendants were committing fraud by charging interest on “non-existent [sic] funds.” *Id.* at  
6 ¶¶ 17-19. As a result, Plaintiffs allege a number of claims, many of which are incomprehensible.

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8 For example, Plaintiffs allege as follows:

9 **Claim I:** The averments of the previously numbered paragraphs are restated  
10 herein **article 1. Section 10 of the U.S. Constitution this is in dispute**  
11 **between parties.**

12 **Plaintiffs [sic] position** is that the U.S. Constitution article 1. Section 10 of  
13 the U.S. Constitution has not been amended/Modify BY the Required 2/3  
14 VOTE of the States Legislators.

15 **Claim II:** The averments of the previously numbered paragraphs are restated  
16 by reference herein **Parties are in dispute of what the U.S. Constitution**  
17 **is/represents.**

18 **Plaintiffs [sic] position,** the U.S. Constitution is a Limitation upon the power  
19 of government both State/federal government.

20 Dkt. #3 at 11 (bold in original). Plaintiffs go on to allege that there has been a breach of contract,  
21 that the parties dispute whether there is a legally binding contract, there has been a breach of oral  
22 promises, and that there have been a variety of violations of the Washington State Constitution.

23 *Id.* at 11-24. Finally, Plaintiffs allege that attempts to collect on the debt violates various federal  
24 statutes, and that it also constitutes involuntary servitude. *Id.* As a result, Plaintiffs ask for  
25 monetary damages, a declaration that their mortgage note, trust and deed are null and void, and  
26 an injunction requiring Defendants to divest themselves of any assets taken from Plaintiffs. *Id.*  
27 at 25.  
28

1 At the same time, Plaintiffs have filed a Motion for TRO. Dkt. #4. In that motion,  
2 Plaintiffs appear to be seeking an Order precluding a foreclosure sale planned for Friday, June  
3 16, 2017. See Dkt. #4 at ¶ 2. Again, Plaintiffs do not identify the subject property, but list their  
4 current residence, which the Court presumes is the property at issue. Dkt. #4-1.

5 Plaintiffs appear to argue that a restraining order and injunction should issue under the  
6 Washington Deed of Trusts Act (“DTA”), RCW Chapter 61.24, *et seq.* With regard to the DTA,  
7 Plaintiffs have failed to show that they gave any defendant or the trustee the requisite 5 days’  
8 notice or that they are able to make the requisite payments to the Court’s registry. RCW  
9 61.24.130. In fact, while Plaintiffs have asserted that they mailed copies of their Complaint and  
10 this motion to Defendants, no Declarations of Service have been provided, nor have any dates of  
11 service been provided. Therefore, the Court DENIES the motion for a temporary restraining  
12 order under the DTA.  
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15 To the extent that Plaintiffs seek a restraining order under this Court’s inherent power to  
16 issue such an order, that request will also be DENIED. In order to succeed on a motion for  
17 temporary restraining order, the moving party must show: (1) a likelihood of success on the  
18 merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary  
19 relief; (3) that a balance of equities tips in the favor of the moving party; and (4) that an injunction  
20 is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365,  
21 172 L. Ed. 2d 249 (2008). The Ninth Circuit employs a “sliding scale” approach, according to  
22 which these elements are balanced, “so that a stronger showing of one element may offset a  
23 weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th  
24 Cir. 2011).  
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1 The Court finds that Plaintiffs have presented insufficient evidence to warrant granting a  
2 TRO in this case. First, it is not at all clear that any of the Defendants have been served by  
3 Plaintiffs with the instant Motion or even their lawsuit. See Local Rule 65(b)(1) (“Motions for  
4 temporary restraining orders without notice to and an opportunity to be heard by the adverse  
5 party are disfavored and will rarely be granted.”).

6  
7 Second, even if all Defendants have received notice, Plaintiffs have failed to meet their  
8 burden of demonstrating a likelihood of success on the merits in this case. Indeed, Plaintiffs  
9 provide no legal argument in support of their position. While, they cite to *Bain v. Metropolitan*  
10 *Mortgage*, 175 Wn.2d 83, 285 P.2d 34 (2012), that case stands for the proposition that only the  
11 actual holder of the promissory note or other instrument evidencing the obligation may be a  
12 beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real  
13 property. *Bain*, 175 Wn.2d at 89. However, Plaintiffs fail to identify who is attempting to  
14 foreclose on the house, and why such entity does not have authority to foreclose. In fact, they  
15 have failed to attach a single document even demonstrating that a foreclosure is about to occur.  
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18 In Washington, “[a] mortgage creates nothing more than a lien in support of the debt  
19 which it is given to secure.” *Pratt v. Pratt*, 121 Wash. 298, 300, 209 P. 535 (1922) (citing  
20 *Gleason v. Hawkins*, 32 Wash. 464, 73 P. 533 (1903)); see also 18 STOEBCUK & WEAVER, *supra*,  
21 § 18.2, at 305. This case appears to involve a mortgage secured by a deed of trust on the  
22 mortgaged property. Such a deed does not convey the property when executed; instead, “[t]he  
23 statutory deed of trust is a form of a mortgage.” 18 STOEBCUK & WEAVER, *supra*, § 17.3, at 260.  
24 “More precisely, it is a three-party transaction in which land is conveyed by a borrower, the  
25 ‘grantor,’ to a ‘trustee,’ who holds title in trust for a lender, the ‘beneficiary,’ as security for  
26 ‘credit or a loan the lender has given the borrower.” *Id.* Title in the property pledged as security  
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1 for the debt is not conveyed by the deed, even if “on its face the deed conveys title to the trustee,  
2 because it shows that it is given as security for an obligation, it is an equitable mortgage.” *Id.*  
3 (citing GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW § 1.6 (4th ed.  
4 2001)).

5  
6 When secured by a deed of trust that grants the trustee the power of sale if the borrower  
7 defaults on repaying the underlying obligation, the trustee may usually foreclose the deed of trust  
8 and sell the property without judicial supervision. *Id.* at 260-61; RCW 61.24.020; RCW  
9 61.12.090; RCW 7.28.230(1). Trustees have obligations to all of the parties to the deed,  
10 including the homeowner. RCW 61.24.010(4) (“The trustee or successor trustee has a duty of  
11 good faith to the borrower, beneficiary, and grantor.”); *Cox v. Helenius*, 103 Wn.2d 383, 389,  
12 693 P.2d 683 (1985) (“[A] trustee of a deed of trust is a fiduciary for both the mortgagee and  
13 mortgagor and must act impartially between them.” (citing GEORGE E. OSBORNE, GRANT S.  
14 NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW § 7.21 (1979))). Among other  
15 things, “the trustee shall have proof that the beneficiary is the owner of any promissory note or  
16 other obligation secured by the deed of trust” and shall provide the homeowner with “the name  
17 and address of the owner of any promissory notes or other obligations secured by the deed of  
18 trust” before foreclosing on an owner-occupied home. RCW 61.24.030(7)(a), (8)(l).

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21 Likewise, Plaintiffs fail to demonstrate that they have a valid claim for involuntary  
22 servitude. The Thirteenth Amendment provides:

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24 Section 1. Neither slavery nor involuntary servitude, except as a punishment  
25 for crime whereof the party shall have been duly convicted, shall exist within  
26 the United States, or any place subject to their jurisdiction.

27  
28 Section 2. Congress shall have power to enforce this article by appropriate  
legislation.

1 U.S. CONST. AMEND. XIII. There is no private right of action pursuant to the Thirteenth  
2 Amendment itself. *See City of Memphis v. Greene*, 451 U.S. 100, 128, 101 S. Ct. 1584, 67 L.  
3 Ed. 2d 769 (1981) (holding that unless there is a violation of legislation enacted under § 2 of the  
4 Thirteenth Amendment, there is no violation of the Thirteenth Amendment); *see Palmer v.*  
5 *Thompson*, 403 U.S. 217, 226-27, 91 S. Ct. 1940, 29 L. Ed. 2d 438 (1971). Accordingly,  
6 Plaintiffs must proceed under one of the Thirteenth Amendment's implementing statutes.  
7 However, Plaintiffs Complaint fail to plead facts to plausibly suggest that Defendants acted under  
8 color of state law (which is necessary to support claims under 42 U.S.C. § 1983) or that they  
9 engaged in any conduct that might violate 18 U.S.C. §§ 1581-1596.  
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11 Similarly, Plaintiffs fail to plead with any sufficiency facts that would demonstrate a  
12 likelihood of success on the merits on the alleged violation of the Fair Debt Collection Practices  
13 Act ("FDCPA"), the Collection Agency Act, Washington's Consumer Protection Act, or any  
14 federal Constitutional violation. As a result, based on a review of the current record, the Court  
15 is not convinced that Plaintiffs are likely to succeed on the merits of the instant matter.  
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17 Finally, it is not clear from the extremely limited information presented why the sale of  
18 this property will cause Plaintiffs harm that cannot be redressed should they be successful in their  
19 action before the Court.  
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21 Given these deficiencies, the Court hereby finds and ORDERS that Plaintiffs' Motion for  
22 Temporary Restraining Order (Dkt. #4) is DENIED.  
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24 DATED this 14 day of June 2017.

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27 RICARDO S. MARTINEZ  
28 CHIEF UNITED STATES DISTRICT JUDGE