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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

YULIYA P GOSSEN, A/K/A JULIA
GOSSEN and ALEKSEY V GOSSEN,

Plaintiff,

v.

JPMORGAN CHASE BANK,
NATIONAL
ASSOCIATIONAL/WASHINGTON
MUTUAL BANK, FA (FL); STEWART
TITLE COMPANY; NORTHWEST
TRUSTEE SERVICES, INC.,
SUCCESSORS BY MERGER TO
NORTHWEST TRUSTEE SERVICES
PLLC FKA NORTHWEST TRUSTEE
SERVICES, LLC; DOES 1THROUGH
250 INCLUSIVE,,

Defendants.

CASE NO. C11-05506 RJB

ORDER GRANTING MOTIONS TO
DISMISS OF DEFENDANTS JP
MORGAN CHASE BANK AND
NORTHWEST TRUSTEE
SERVICES, INC.

This matter comes before the Court on Defendant JP Morgan Chase Bank's (Chase) Motion to Dismiss under Fed. R. Civ. P. 12(b)(6). Dkt. 11. Defendant Northwest Trustee Services, Inc. (NWTS) joins the motion and also requests dismissal of Plaintiffs' claims. Dkt.

1 15. The Plaintiffs have failed to respond to the motions to dismiss. Pursuant to Local Rule
2 7(b)(2), such failure may be considered by the Court as an admission that the motion has merit.
3 The Court has considered the pleadings in support of motions and the record herein.

4 **INTRODUCTION AND BACKGROUND**

5 In July 2007, Plaintiffs Yuliya and Aleksey Gossen, husband and wife, refinanced the
6 loan for their home in City of Battle Ground, Washington. Dkt. 6-1 pp. 7. The Gossens
7 executed an "Adjustable Rate Note" (Note) with Washington Mutual Bank (WaMu), dated July
8 12, 2007, with a principal amount of \$304,000. Dkt. 6-1 pp 7, 51-55; Dkt. 12 pp. 4-9. Yuliya
9 Gossen initialed each page of the Note and signed it. Dkt. 12 pp. 4-9. The Note identified
10 WaMu as the "Lender," and Yuliya Gossen as the "Borrower." *Id.*, at pp. 4, 8. The Note stated
11 that the borrower "understands that Lender may transfer this Note" *Id.*, at pp. 4.

12 The Note was secured by a Deed of Trust recorded in Clark County, Washington. Dkt. 6-
13 1 pp. 8, 57-71; Dkt. 12 pp. 10-31. The Deed of Trust identified Yuliya Gossen and Aleksey as
14 the "Borrower" and WaMu as the "Lender." Dkt. 6-1 pp. 57. The Deed of Trust stated that the
15 "Lender is the beneficiary under this Security Instrument," and Stewart Title Company the
16 "Trustee." *Id.*, at pp. 58. The Deed of Trust further provided that the "Note or a partial interest
17 in the Note (together with this Security Instrument) can be sold one or more times without prior
18 notice to Borrower." *Id.*, at pp. 68. The Deed of Trust empowered the Lender to direct a trustee
19 to initiate foreclosure upon default. *Id.*, at pp. 69-70. Both Yuliya and Aleksey Gossen initialed
20 each page of and signed the Deed of Trust. *Id.*, at pp. 57-71.

21 On September 25, 2008, the Federal Deposit Insurance Corporation (FDIC) placed
22 WaMu in receivership and sold many of WaMu's assets to Chase, including all loans and loan
23 commitments of WaMu. Dkt. 13 pp. 5 through Dkt. 13-1 pp. 20; Dkt. 13-2 pp. 21.

1 On April 10, 2009, Northwest Trustee Services, Inc. (NWTS) served a Notice of Default
2 on the Gossens. Dkt. 6-1 pp. 31-33. The Notice of Default was issued by NWTS as the
3 authorized agent of Chase. *Id.*, at pp. 33. The Notice referenced the Deed of Trust and Note
4 executed by the Gossens and WaMu. *Id.*

5 On April 22, 2009, Chase recorded with Clark County an Appointment of Successor
6 Trustee (Appointment). Dkt. 6-1 pp. 36. The Appointment notes that it appears on record that
7 WaMu is the beneficiary and Stewart Title the trustee of the Deed of Trust. The Appointment
8 goes on to state that Chase, as purchaser of the loans and other assets of WaMu, is the present
9 beneficiary and as the present beneficiary, NWTS is appointed as the successor trustee to Stewart
10 Title. *Id.*

11 On May 19, 2009, more than thirty days after transmitting the Notice of Default and not
12 having received a response, NWTS recorded a Notice of Trustee's Sale that set the sale date for
13 August 21, 2009. Dkt. 6-1 pp. 38-41. A sale did not occur and on March 25, 2010, NWTS
14 executed a Notice of Discontinuance of Trustee's Sale and a new Notice of Trustee's Sale, setting
15 the new sale for July 2, 2010. Dkt. 6-1 pp. 43-47; Dkt. 13-2 pp. 13.

16 NWTS eventually sold the property on September 24, 2010, to Federal National
17 Mortgage Association (Fannie Mae) for \$362,378.00 and recorded the Trustee's Deed on
18 October 10, 2010. Dkt. 13-2 pp. 16-18. The Gossens neither sought nor obtained a temporary
19 restraining order or preliminary injunction to restrain the sale.

20 On May 4, 2011, the Gossens filed the instant lawsuit against three entities: JP Morgan
21 Chase Bank, National Associational/Washington Mutual Bank, FA (Chase); Stewart Title
22 Company; and Northwest Trustee Services (NWTS). Dkt. 6-1 pp. 2-5. The Complaint asserts
23 fourteen causes of action, as well as Truth In Lending Act (TILA) and Real Estate Settlement
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1 Procedures Act (RESPA) violations. Dkt. 6-1. The causes of action are: (1) wrongful
2 foreclosure, (2) "set aside default," (3) fraud , (4) declaratory relief, (5) quiet title, (6) breach of
3 fiduciary duty, (7) breach of the covenant of good faith and fair dealing, (8) injunctive relief –
4 note, (9) injunctive relief – foreclosure, (10) "separation of note and deed of trust," (11) "no
5 holder in due course," (12) "right of rescission," (13) conspiracy, and (14) accounting. *Id.*

6 The Gossens premise these causes of action primarily on three factual allegations. First,
7 the Gossens assert that the lender WaMu failed to disclose pertinent loan information to the
8 Gossens (Dkt. 6-1 pp. 10-12); second, they assert that because WaMu did not record an
9 assignment of its interest in the Note and Deed of Trust to Chase, Chase did not have a beneficial
10 interest in the Note or Deed of Trust, and thus could not foreclose (Dkt. 6-1 pp. 7-10); and third,
11 NWTS lacked authority to issue the Notice of Default starting the foreclosure process because it
12 did so before Chase executed the appointment of NWTS as successor trustee to Stewart Title in
13 the Deed Of Trust (Dkt. 6-1 pp. 12-13).

14 Defendants Chase and NWTS move for dismissal with prejudice of all claims of the
15 Plaintiffs pursuant to Fed. R. Civ. P. 12(b)(6). Stewart Title Company has not filed an
16 appearance in the action, nor does the record reflect that Stewart Title Company has been served
17 with a copy of the summons and complaint.

18 **STANDARDS GOVERNING RULE 12(b)(6) MOTIONS TO DISMISS**

19 Federal Rule of Civil Procedure 8(a)(2) provides that a pleading must contain a “short
20 and plain statement of the claim showing that the pleader is entitled to relief.” Under Fed. R.
21 Civ. P. 12(b)(6), a complaint may be dismissed for “failure to state a claim upon which relief
22 can be granted.” Dismissal of a complaint may be based on either the lack of a cognizable legal
23 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*

1 *Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir.1990). While a complaint attacked by a
2 Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation
3 to provide the grounds of his entitlement to relief requires more than labels and conclusions, and
4 a formulaic recitation of the elements of a cause of action will not do. *Bell Atlantic Corp. v.*
5 *Twombly*, 550 U.S. 544, 555 (2007).

6 Accordingly, “[t]o survive a motion to dismiss, a complaint must contain sufficient
7 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*
8 *v. Iqbal*, 129 S. Ct. 1937, 1949 (citing *Twombly*, at 570). A claim has “facial plausibility” when
9 the party seeking relief “pleads factual content that allows the court to draw the reasonable
10 inference that the defendant is liable for the misconduct alleged.” *Id.* First, “a court considering
11 a motion to dismiss can choose to begin by identifying pleadings that, because they are no more
12 than conclusions, are not entitled to the assumption of truth.” *Id.*, at 1950. Secondly, “[w]hen
13 there are well-pleaded factual allegations, a court should assume their veracity and then
14 determine whether they plausibly give rise to an entitlement to relief.” *Id.* In sum, for a
15 complaint to survive a motion to dismiss the non-conclusory factual content, and reasonable
16 inferences from that content must be plausibly suggestive of a claim entitling the pleader to
17 relief.

18 A court may consider material which is properly submitted as part of the complaint on a
19 motion to dismiss without converting into a motion for summary judgment. *Lee v. City of Los*
20 *Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Where the documents are not physically attached to
21 the complaint, they may be considered if the documents’ “authenticity ... is not contested” and
22 “the plaintiff’s complaint necessarily relies” on them.” *Parrino v. FHP, Inc.*, 146 F.3d 699, 705–
23 06 (9th Cir. 1998). Further, pursuant to Fed. R. Evid. 201, a court may take judicial notice of
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1 “matters of public record” without converting a motion to dismiss into a motion for summary
2 judgment. *Mack v. South Bay Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

3 Plaintiffs have attached much of this documentation to Plaintiffs’ Verified Complaint. It
4 is also in large part a matter of public record. Further, its authenticity has not been contested.
5 Finally, the Verified Complaint necessarily relies on these documents. Accordingly, the Court
6 has considered these documents in ruling on this motion to dismiss.

7 **CLAIMS ARISING FROM CONDUCT OF WASHINGTON MUTUAL**

8 The Gossens assert TILA and RESPA violations based on WaMu’s alleged failure to
9 identify loan charges, fees, and terms at the origination of the loan agreement. Dkt. 6-1 pp. 10-
10 The Second Cause of Action (To Set Aside Default) is based on WaMu’s alleged failure to
11 provide the Gossens the “opportunity to negotiate” the Deed of Trust. Dkt. 6-1 pp. 71. The Third
12 Cause of Action (Fraud) is based on the language of the Deed of Trust executed with WaMu.
13 Dkt. 6-1 pp. 17-18. The Eleventh Cause of Action (No Holder in Due Course) is based on
14 WaMu’s alleged failure to record the assignment to Chase. Dkt, 6-1 pp. 25. The Thirteenth
15 Cause of Action (Conspiracy) is based on WaMu’s alleged concealment of the purported
16 negative loan amortization. Dkt. 6-1 pp, 26-27.

17 These causes of action are subject to dismissal because the alleged conduct of WaMu, if
18 proved in fact, cannot be the basis of a cause of action against Chase or NWTs.

19 First, as previously noted, WaMu went into receivership with the FDIC, which sold many
20 of WaMu's assets to Chase under a Purchase and Assumption Agreement. Under Article 2.5 of
21 the Agreement, Chase expressly did not assume any WaMu liabilities involving "borrower
22 claims for payment of or liability to any borrower for monetary relief, or that provide for any
23 other form of relief to any borrower ... related in any way to any loan or commitment to lend
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1 | made by [WaMu]" before September 25, 2008, when WaMu went into FDIC receivership. Dkt.
2 | 13 pp. 17. Thus, Chase (and NWTs) is not a successor to WaMu for liabilities related to the
3 | Gossens' loan origination. See *McCann v. Quality Loan Servo Corp.*, 729 F. Supp. 2d 1238,
4 | 1241-42 (W.D. Wash. 2010). On this basis the Gossens' causes of action based on the conduct
5 | of WaMu in the origination of the loan are subject to dismissal.

6 | A separate basis for dismissal of these claims is that Chase is a holder in due course,
7 | which bars the Gossens' damage claims for WaMu's purported disclosure violations. Under
8 | federal law, the FDIC is given holder in due course status and that status is also acquired by its
9 | assignees under the shelter doctrine. See *Fed Sav. & Loan Ins. Corp. v. Cribbs*, 918 F.2d 557,
10 | 559-60 (5th Cir. 1990). As a general rule, a holder in due course takes a negotiable instrument
11 | free from "all claims to it on the part of any person," and from "all defenses of any party to the
12 | instrument with whom the holder has not dealt." *Wesche v. Martin*, 64 Wn. App. 1, 8 822 P.2d
13 | 812 (1992). Chase, the assignee of note from FDIC, acting as receiver, had the right to enforce
14 | the Note free from the defenses arising from WaMu's conduct at loan origination.

15 | Plaintiffs claim that the Note was a non-negotiable instrument and not subject to holder in
16 | due course status is contrary to the law. See *Fed. Fin. Co. v. Gerard*, 90 Wn. App. 169 949 P.2d
17 | 412 (1998). The cause of action asserting no holder in due course is subject to dismissal, as are
18 | the claims premised on WaMu conduct in the origination of the loan.

19 | TILA's one-year limitations period also bars Plaintiffs' damages claims because they did
20 | not file this lawsuit within one year of the date of the alleged violation, the date the Gossens
21 | signed the loan documents. 15 U.S.C. § 1640(e); *Meyer v. Ameriquest Mortg. Co.*, 342 F.3d 899,
22 | 902 (9th Cir. 2003).

1 Plaintiffs plead no facts supporting their bare assertion that equitable tolling should apply
2 to their claim for damages under TILA.

3 To the extent the Gossens also seek rescission under TILA, the claim is subject to
4 dismissal because they could only seek rescission under TILA within "three years after the date
5 of consummation of the transaction or upon the sale of the property, whichever occurs first." 15
6 U.S.C. § 1635(f). The property was sold on September 24, 2010. On October 8, 2010, NWTS
7 recorded a Trustee's Deed showing that ownership of the property transferred from the Gossens
8 to Fannie Mae. Thus, Plaintiffs cannot seek rescission under TILA.

9 The RESPA claims are subject to dismissal because the Gossens failed to plead any facts
10 supporting a RESPA claim.

11 **CLAIMS BASED ON WASHINGTON DEED OF TRUST ACT**

12 A number of the causes of action asserted by the Gossens are governed by the
13 Washington Deed of Trust Act. These are (1) Second Cause of Action (Set Aside Default), Dkt
14 6-1 pp. 15-16; (2) Third Cause of Action (Fraud) *Id.* pp 16-18; (3) Fourth Cause of Action
15 (Declaratory Relief), *Id.* pp. 18-19; (4) Fifth cause of Action (Quiet Title), *Id.* pp. 19-20; (5)
16 Sixth Cause of Action (Breach of Fiduciary Duty), *Id.* pp. 20-21; (6) Seventh Cause of Action
17 (Breach of Covenant of Good Faith and Fair Dealing), *Id.* pp. 21-22; (7) Eighth and Ninth
18 Causes of Action (Injunctive Relief), *Id.* pp. 22-24; (8) Tenth Cause of Action (Separation of the
19 Note and Deed of Trust), *Id.* pp. 24-25; (9) Eleventh Cause of Action (No Holder in Due
20 Course), *Id.* pp. 25; (10) Twelfth Cause of Action (Right of Rescission), *Id.* at pp. 26; (11)
21 Thirteenth Cause of Action (Conspiracy) *Id.* pp. 26-27; and (12) Fourteenth Cause of Action
22 (Accounting), *Id.* pp. 27-28.

1 The Deed of Trust Act (Act) sets out the procedures that must be followed to properly
2 foreclose a debt secured by a deed of trust. Chapter 61.24 RCW. A proper foreclosure action
3 extinguishes the debt and transfers title to the property to the beneficiary of the deed of trust or to
4 the successful bidder at a public foreclosure sale. *Albice v. Premier Mortg. Services of*
5 *Washington, Inc.*, 157 Wn. App. 912, 920, 239 P.3d 1148 (2010).

6 The Act provides a procedure by which any enumerated entity may restrain a trustee's
7 sale on any proper ground. *Brown v. Household Realty Corp.*, 146 Wn. App. 157, 163, 189 P.2d
8 233 (2008). This statutory procedure is the only means by which a grantor may preclude a sale
9 once foreclosure has begun with receipt of the notice of sale and foreclosure. *Id.* A borrower's
10 failure to take advantage of the pre-sale remedies under the Deed of Trust Act results in waiver
11 of their right to object to the trustee's sale where the party (1) received notice of the right to
12 enjoin the sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the
13 sale, and (3) failed to bring an action to obtain a court order enjoining the sale. *Brown*, at 163.
14 See also *Plein v. Lackey*, 149 Wn.2d 214, 227-229, 693 P.2d 683 (2003).

15 In their Complaint, the Gossens admit they received the Notice of Default and the Notice
16 of Trustee's sale, and they do not dispute that those Notices advised them of their right to seek to
17 enjoin the sale. The Gossens did not invoke any pre-sale remedy afforded to them with respect
18 to their causes of action seeking to set aside sale of the foreclosed property, thus these claims
19 may be deemed waived. *Brown*, at 163; RCW 61.24.127; RCW 61.24.130.

20 The Gossens' causes of action for declaratory and injunctive relief, quiet title, rescission,
21 to set aside default and for an accounting are subject to dismissal pursuant to the waiver
22 provisions of the Deed of Trust Act. Further, because the Gossens no longer have a right to
23 possession of the property, the Court cannot provide effective relief for these claims, rendering
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1 | them moot. See *Rosal v. First Fed. Bank of Cal.*, 671 F. Supp. 2d 1111, 1136 (N.D. Cal.
2 | 2009)(claims for injunctive relief moot where trustee's sale already occurred).

3 | The Deed of Trust Act was amended in 2009 to permit claims for money damages after a
4 | foreclosure sale based upon (1) fraud or misrepresentation, (2) claims under RCW 19, and (3) the
5 | failure of the trustee to “materially comply” with the provisions of the Act. RCW 61.24.127.

6 | The Gossens assert that Chase and NWTS failed to comply with the provisions of the
7 | Deed of Trust Act. They complain the Notice of Default was defective because NWTS did not
8 | sign or record it, and NWTS issued the Notice of Default as an "agent" for Chase, before Chase
9 | recorded the appointment of HWTS as successor trustee.

10 | The Act specifies the requisites for a trustee’s sale. RCW 61.24.030; *Vawter v. Quality*
11 | *Loan Serv. Corp. of Wash.*, 707 F. Supp. 2d 1115, 1121 (W.D. Wash. 2010). Under the Deed of
12 | Trust Act, a default notice need not be recorded or signed, unlike the Notice of Trustee's Sale,
13 | which must be both recorded and signed (as they were here). Compare RCW 61.24.030(8)
14 | (default notice need be written and transmitted, only), with RCW 61.24.040(1)(a), (f) (notice of
15 | trustee's sale must be recorded and signed).

16 | The Deed of Trust Act also expressly allows the beneficiary (Chase) to direct an
17 | "authorized agent" (NWTS) to issue the notice of default. RCW 61.24.031. By statute, then, an
18 | agent of the beneficiary may issue the Notice of Default. The Notice of Default makes clear that
19 | NWTS was not acting as trustee, but rather as the "duly authorized agent" for Chase.

20 | As previously discussed, Chase became the beneficiary under the Deed of Trust when it
21 | acquired the Gossens' Note from WaMu. Chase thus had authority under the Deed of Trust to
22 | appoint a successor trustee. Chase appointed NWTS as successor trustee. The Appointment of
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1 Successor Trustee was signed, notarized, and recorded. As trustee, NWTS had the authority to
2 foreclose on the property. RCW 61.24.030-.040.

3 The Gossens' causes of action for violation of the provisions of the Deed of Trust Act
4 (Wrongful Foreclosure, Separation of Note and Deed of Trust, No Holder in Due Course) are
5 subject to dismissal.

6 The Gossens allege a breach of a fiduciary duty. A trustee on a deed of trust acts as a
7 fiduciary for both the debtor and the creditor. *Meyers Way Dev. Ltd. P'ship v. Univ. Sav. Bank*,
8 80 Wn. App. 655, 665, 910 P.2d 1308 (1996); *Cox v. Helenius*, 103 Wn.2d 383, 389, 693 P.2d
9 683 (1985). The Gossens have failed to plead any facts that would support a finding of a breach
10 of the trustee's fiduciary duty. There is no provision in Washington's Deed of Trust Act
11 requiring the trustee to produce the original note to the borrower. Courts have routinely held that
12 Plaintiff's 'show me the note' argument lacks merit. *Diessner v. Mortgage Electronic*
13 *Registration Systems*, 618 F.Supp.2d 1184, 1187 (D. Ariz. 2009); *Wallis v. Indymac Fed. Bank*,
14 717 F.Supp.2d 1195, 1200-01 (W.D. Wash. 2010). Threadbare recitals of the elements of a
15 cause of action, supported by mere conclusory statements do not state a claim. *Ashcroft v. Iqbal*,
16 129 S. Ct. 1937, 1950 (2009).

17 The causes of action alleging breach of a covenant of good faith and fair dealing fails for
18 the same reason. A covenant of good faith and fair dealing exists only in relation to performance
19 of a specific contract obligation. *Johnson v. Yousoofian*, 84 Wn. App. 755, 762, 930 P.2d 921
20 (1996); *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 570, 807 P.2d 356 (1991). The Gossens fail
21 to identify any contract provision that Chase or NWTS failed to perform. Chase had authority
22 under the Note and Deed of Trust to foreclose, and did so properly.

23 The Gossens allege fraud and conspiracy.

1 Under Washington law, a claim for fraud has the following nine elements: (1)
2 representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its
3 falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's
4 ignorance of its falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's
5 right to rely upon it; and (9) damages suffered by the plaintiff. *Stiley v. Block*, 130 Wn.2d 486,
6 505, 925 P.2d 194 (1996).

7 To survive a motion to dismiss, a complaint must plead allegations of fraud with
8 particularity. Fed. R. Civ. P. 9(b). The complaint must include an account of the time, place,
9 and specific content of the false representations as well as the identities of the parties to the
10 misrepresentations. *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007); *Edwards v. Marin*
11 *Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004)). Moreover, Rule 9(b) does not allow a
12 complaint to merely lump multiple defendants together but requires plaintiffs to differentiate
13 their allegations when suing more than one defendant and inform each defendant separately of
14 the allegations surrounding his alleged participation in the fraud. *Id.* at 764-65. Thus, where, as
15 here, a fraud suit involves multiple defendants, a plaintiff must, at a minimum, identify the role
16 of each defendant in the alleged fraudulent scheme. *Id.* at 765

17 Rather than identifying the specific circumstances of allegedly fraudulent conduct of
18 Chase and NWTs, the Gossens make broad allegations that the defendants were involved the
19 changing of beneficiaries of the Deed of Trust and foreclosing on their property without
20 complying with the procedures of the Deed of Trust Act. These allegations appear to stem from
21 the theory that the foreclosure was improper due to the lack of a recorded assignment of deed of
22 trust from WaMu to Chase, and the appointment of NWTs as successor trustee. As previously
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1 discussed, these theories lack any legal merit. Thus, the allegations of fraud contain insufficient
2 factual matter to state a claim.

3 Under Washington law, a plaintiff proves a civil conspiracy by showing "by clear, cogent
4 and convincing evidence that (1) two or more people contributed to accomplish an unlawful
5 purpose, or combined to accomplish a lawful purpose by unlawful means; and (2) the
6 conspirators entered into an agreement to accomplish the object of the conspiracy. *Wilson v.*
7 *State of Washington*, 84 Wn. App. 332, 350-51, 929 P.2d 448 (1996). Because the conspiracy
8 must be combined with an unlawful purpose, civil conspiracy does not exist independently - its
9 viability hinges on the existence of a cognizable and separate underlying claim. *N.W. Laborers-*
10 *Employers Health & Sec. Trust Fund v. Philip Morris. Inc.*, 58 F. Supp. 2d 1211, 1216 (W.D.
11 Wash. 1999).

12 Here, the Gossens plead no facts showing that Chase or NWTS: (a) combined with
13 anyone for an unlawful purpose; (b) used unlawful means to accomplish a lawful purpose; (c)
14 entered into an agreement to accomplish any conspiracy; or (d) caused through a conspiracy the
15 violation of a separate, independent claim. The conspiracy claim is subject to dismissal.

16 CONCLUSION

17 For all the foregoing reasons, Chase and NWTS are entitled to dismissal of the Gossens'
18 claims. The Plaintiffs have failed to state a claim to relief that is plausible on its face. Allowing
19 Plaintiffs to amend their complaint would be futile.

20 Therefore, it is hereby **ORDERED:**

- 21 1. Defendant JP Morgan Chase Bank's Motion to Dismiss (Dkt. 11) is **GRANTED**.
- 22 2. Defendant Northwest Trustee Services, Inc.'s Motion to Dismiss (Dkt. 15) is

23 **GRANTED.**

- 1 3. The claims of Plaintiffs Yuliya Gossen and Aleksey Gossen (Dkt. 6-1) are
2 **DISMISSED WITH PREJUDICE** as against Defendants JP Morgan Chase Bank
3 and Northwest Trustee Services, Inc.
- 4 4. The remaining named Defendant, Stewart Title Company, has not filed an appearance
5 in this action and the record does not reflect that it was served with a copy of the
6 summons and complaint. It is unknown whether Plaintiffs intend to proceed with this
7 action against Stewart Title Company. Accordingly, Plaintiffs are **ORDERED** to
8 provide the Court, no later than October 28, 2011, proof of service of process on
9 Stewart Title Company and notification as to whether they intend to proceed with this
10 lawsuit against Stewart Title Company. In the event Plaintiffs fail to respond, the
11 case will be dismissed against Stewart Title Company without prejudice and without
12 further notice for failure to prosecute.
- 13 5. The Clerk is directed to send copies of this Order to all counsel of record and to any
14 party appearing *pro se* at said party's last known address.

15 Dated this 18th day of October, 2011.

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17 ROBERT J. BRYAN
18 United States District Judge
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