

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN DERHEIM and CHERISE E.
DERHEIM,

Plaintiffs,

v.

HOMEcomings FINANCIAL, et al.,

Defendants.

No. 13-cv-5147-RBL

ORDER

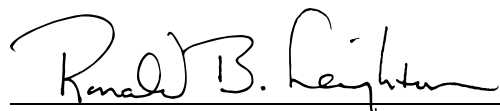
(Dkt. #1)

Plaintiffs have applied to proceed *in forma pauperis* in this action arising from the foreclosure of their property. A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad discretion in resolving the application, but “the privilege of proceeding *in forma pauperis* in civil actions for damages should be sparingly granted.” *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963). Moreover, a court should “deny leave to proceed *in forma pauperis* at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.” *Tripathi v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987) (citations omitted); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). An *in forma pauperis* complaint is frivolous if “it ha[s] no arguable substance in law or fact.” *Id.* (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

1 The Court does not deny *in forma pauperis* status lightly, especially where a homeowner
2 challenges the impending foreclosure of their property. But the Court must conclude that the
3 proposed Complaint is frivolous on its face. First, much of Plaintiffs' contentions are based on
4 the incorrect belief that their lender must produce their original promissory note. This is
5 incorrect and has been rejected by every court to address it. *See, e.g., Mikhay v. Bank of Am.,*
6 *NA., 2011 WL 167064, *2-3 (W.D. Wash. 2011); Wright v. Accredited Home Lenders, 2011*
7 *WL 39027 (W.D. Wash. 2011); Pelzel v. First Saving Bank Northwest, 2010 WL 3814285, at *2*
8 *(W.D. Wash. 2010); Wallis v. IndyMac Fed. Bank, 717 F. Supp. 2d 1195, 1200 (W.D. Wash.*
9 *2010); Freeston v. Bishop, White & Marshall, P.S., 2010 WL 1186276, at *6 (W.D. Wash.*
10 *2010). Indeed, the Washington Deed of Trust Act requires that a foreclosing lender demonstrate*
11 *its ownership of the underlying note to the trustee, not the borrower. RCW 61.24.030(7).*
12 Second, the remaining allegations fail to support a legal claim. The Complaint contains a
13 lengthy discussion of the mortgage system, allegations of fraud and conspiracy, and a number of
14 statutory causes of action. None are supported by factual allegations.

15 For the reasons stated above, the Application to Proceed *In Forma Pauperis* (Dkt. #1) is
16 **DENIED**. Plaintiffs have **15 days** from the date of this order to pay the filing fees or the case
17 will be dismissed.

18
19 Dated this 13th day of March 2013.

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21 

22 RONALD B. LEIGHTON
23 UNITED STATES DISTRICT JUDGE