

1 HONORABLE RONALD B. LEIGHTON  
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8 UNITED STATES DISTRICT COURT  
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WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JULIA REIN, et al.,

Plaintiffs,

v.

SAKAE SAKAI, ANDREA DESHIELL,  
ROBERT LEWIS, et al.,

Defendants.

CASE NO. 14-5125

ORDER GRANTING  
DEFENDANTS' MOTIONS TO  
DISMISS AND DENYING  
PLAINTIFF'S MOTIONS

[DKTS. #13, #17, #20, #36, #37, #44]

I. INTRODUCTION

THIS MATTER is before the Court on Defendants Northwest Trustee Services, Mortgage Electronic Registration Systems, Inc., Wells Fargo Bank, N.A., Lane Powell PC, and Northwest Mortgage Group, Inc.'s Motions to Dismiss,<sup>1</sup> and on Plaintiff Julia Rein's Motions for Extension of Time (Dkt. #36), Court-Appointed Counsel (Dkt. #37), and Exclusion of Original Complaint from Trial (Dkt. #44). In a prior state court case, Rein sued her creditors (and others involved in her mortgage) in an effort to stop them from foreclosing on her home. Judge Robert Lewis of Clark County Superior Court dismissed her claims with prejudice. Rein then sued the

<sup>1</sup> Northwest Trustee Services' Motion to Dismiss (Dkt. #13); Mortgage Electronic Registration Systems, Inc.; Wells Fargo Bank, N.A.; and Lane Powell PC's Motion to Dismiss (Dkt. #17); and Northwest Mortgage Group, Inc.'s Motion to Dismiss (Dkt. #20).

1 original defendants from the state court lawsuit, and also sued Judge Lewis, his assistant, and  
2 opposing counsel from the prior lawsuit. Rein alleges that all Defendants conspired to defeat her  
3 in the earlier lawsuit and, in doing so, violated her civil rights.

4 Rein has filed an Amended Complaint without obtaining leave from the court (Dkt. #42).  
5 In the Amended Complaint, Rein states that she only wishes to proceed against Defendants  
6 Judge Lewis, Andrea DeShiell, and Sakae Sakai. She has also moved for an extension of time to  
7 respond to defendants' motions, for court-appointed counsel, and to exclude her original  
8 complaint from trial.

9 Defendants Judge Lewis, Andrea DeShiell, and Sakae Sakai have been dismissed.  
10 Because there is no cognizable legal theory to support any claims against Defendants Northwest  
11 Trustee Services, Mortgage Electronic Registration Systems; Wells Fargo Bank; Lane Powell, or  
12 Northwest Mortgage Group, their Motions to Dismiss [Dkts. #13, #17, and #20] are GRANTED  
13 and all claims against them are DISMISSED with prejudice. Rein's remaining pending motions  
14 [Dkts. #36, #37, and #44] are DENIED as moot.

15 **II. DISCUSSION**

16 **A. Defendant's Motions to Dismiss**

17 Rein's Amended Complaint appears to voluntarily abandon her claims against Northwest  
18 Trustee Services, Mortgage Electronic Registration Systems, Inc., Wells Fargo Bank, N.A., Lane  
19 Powell PC, and Northwest Mortgage Group, Inc. Neither the Amended Complaint nor the  
20 previous complaint alleged any wrongdoing by any of the companies. Accordingly, each has  
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1 moved to dismiss. To clear up any potential confusion, and because the Amended Complaint was  
2 filed without leave, the Court addresses the defendants' motions on their merits.<sup>2</sup>

3       **1. Standard of Review**

4       Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal  
5 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*  
6 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint must allege facts to state a  
7 claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).  
8       A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows  
9 the court to draw the reasonable inference that the defendant is liable for the misconduct  
10 alleged." *Id.* Although the Court must accept as true a complaint's well-pled facts, conclusory  
11 allegations of law and unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6)  
12 motion. *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State*  
13 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to provide the 'grounds'  
14 of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic  
15 recitation of the elements of a cause of action will not do. Factual allegations must be enough to  
16 raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
17 (2007) (citations and footnote omitted). This requires a plaintiff to plead "more than an  
18 unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S. Ct. at 1949 (citing  
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22       *Twombly*).

23       On a 12(b)(6) motion, "a district court should grant leave to amend even if no request to  
24 amend the pleading was made, unless it determines that the pleading could not possibly be cured  
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27       <sup>2</sup> Consistent with her abandoning the claims, Rein's Amended Complaint does not allege  
28 any new facts that could support claims against these remaining Defendants.

1 by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,  
2 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether  
3 there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v.*  
4 *Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988). The purpose of the rule is to encourage decisions on  
5 the merits rather than on the precision (or imprecision, as the case may be) of the pleadings. *See*  
6 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

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8 **2. Rein’s Civil Rights Claims Are Improperly Asserted Against Non-State**  
9 **Actors, and the *Rooker-Feldman* Doctrine Bars Review of State Court**  
10 **Decisions.**

11 Rein’s lawsuit is a civil rights action. The Constitution’s protections of individual liberty  
12 and equal protection generally apply only to government acts. *Edmonson v. Leesville Concrete*  
13 *Co., Inc.*, 500 U.S. 614, 619, 111 S.Ct. 2077 (1991). Private conduct is not controlled by the  
14 Fourteenth Amendment unless significantly intertwined with state involvement. *Kennebec, Inc.*  
15 *v. Bank of the West*, 88 Wn.2d 718, 721, 565 P.2d 812 (1977).

16 Furthermore, to the extent that Rein asks the Court to revisit the state court proceedings  
17 in which NWTS was a party, the Court is barred from doing so by the *Rooker-Feldman* doctrine.  
18 *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *Dist. of Columbia Court of*  
19 *Appeals v. Feldman*, 460 U.S. 462, 486-87 (1983). A district court must give full faith and credit  
20 to state court judgments, even if the state court erred by refusing to consider a party’s federal  
21 claims. *See Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 293, 125 S.Ct.  
22 1517 (2005).

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2       **3. Defendants' Motions to Dismiss are Granted.**

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4       Northwest Trustee Services, Mortgage Electronic Registration Systems, Inc., Wells Fargo  
5       Bank, N.A., Lane Powell PC, and Northwest Mortgage Group, Inc. move to dismiss. Each argues  
6       that Rein has failed to make any allegations against them, and that they cannot be sued for civil  
7       rights violations because they are not state actors. Rein does not, and cannot, allege facts to show  
8       that any defendant is a state actor or that its acts were intertwined with state acts. Each defendant  
9       is a financial institution, and Rein does not allege any specific wrongdoing by any of them. Nor  
10      can this Court revisit the state court action to which any defendant was a party—*Rooker-*  
11      *Feldman* and res judicata doctrines bar this kind of review. Therefore, because there is no  
12      cognizable legal theory to support the claims against them, all Defendants' Motions to Dismiss  
13      are GRANTED and all claims against them are DISMISSED with prejudice.

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15      **B. Rein's Motions for Court-Appointed Counsel, Extension of Time, and Exclusion**  
16      **of Original Complaint at Trial are Moot.**

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18       Rein asks the Court to appoint counsel for her, for an extension to respond to the  
19       Defendants' most recent motions, and to exclude her original complaint from trial.

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21       Under 28 U.S.C. § 1915(e)(1), the court may request an attorney to represent any person  
22       unable to afford counsel. Under §1915, the court may appoint counsel in exceptional  
23       circumstances. *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). To find exceptional  
24       circumstances, the court must evaluate the likelihood of success on the merits and the ability of  
25       the petitioner to articulate the claims pro se in light of the complexity of the legal issues  
26       involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Rein cannot meet her burden of  
27       showing any likelihood of success on the merits—indeed, all Rein's claims have now been  
28       dismissed with prejudice. Her application for court appointed counsel is DENIED.

The Court has dismissed all defendants. Because an extension of time would be moot, the Motion for Extension of Time is DENIED. Because there will be no trial, the Motion to Exclude from Trial is also DENIED as moot.

### III. CONCLUSION

Because there is no cognizable legal theory to support claims against Northwest Trustee Services, Mortgage Electronic Registration Systems, Inc., Wells Fargo Bank, N.A., Lane Powell PC, or Northwest Mortgage Group, Inc., their Motions to Dismiss are GRANTED and all claims against them are DISMISSED with prejudice. Because all defendants have now been dismissed, Rein's Motions for Court-Appointed Counsel, Extension of Time, and Exclusion of Original Complaint from Trial are DENIED as moot. All other pending motions by any parties are also DENIED as moot.

IT IS SO ORDERED.

Dated this 23<sup>rd</sup> day of April, 2014.

Ronald B. Lightner

RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE