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

8 JIM and DAVID DIERST,

9 Plaintiff,

10 v.

11 WELLS FARGO BANK, N.A.,

12 Defendant.

CASE NO. C14-5935 BHS

ORDER DISMISSING  
COMPLAINT

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14 This matter comes before the Court on Defendant Wells Fargo Bank, N.A.'s  
15 ("Wells Fargo") motion for summary judgment (Dkt. 13), the Court's order to show  
16 cause (Dkt. 20), and the parties' responses (Dkts. 22-24). The Court has considered the  
17 responses to the order to show cause and the remainder of the file and hereby dismisses  
18 the complaint for lack of standing.

19 **I. PROCEDURAL HISTORY**

20 On October 24, 2014, Plaintiffs Jim and David Dierst ("Diersts") filed a complaint  
21 against Wells Fargo in the Pierce County Superior Court for the State of Washington.  
22 Dkt. 1, Exh. A ("Comp."). The Diersts assert one claim for unjust enrichment. *Id.*

1 On November 25, 2015, Wells Fargo removed the matter to this Court. Dkt. 1.

2 On April 23, 2015, Wells Fargo moved for summary judgment. Dkt. 13. On June  
3 18, 2015, the Court ordered the parties to show cause, if any they had, why the Diersts'  
4 complaint should not be dismissed for lack of standing. Dkt. 20. On June 26, 2015, the  
5 parties responded. Dkts. 22–24.

## 6 **II. FACTUAL BACKGROUND**

7 The parties agree that the material facts in this case are almost entirely undisputed.  
8 For the purposes of this order, only a few facts are relevant. On June 25, 2013, Jim  
9 Dierst closed on a property transaction involving a home located at 3802 Spyglass Drive  
10 NE, Tacoma, WA. Under the assumption that Jim Dierst now owned the home, the  
11 Diersts allege that they “expended significant monies to improve the property . . .  
12 incur[ring] costs of over \$45,000 and put[ting] in approximately 480 hours of labor.”  
13 Comp., ¶ 32. After some litigation, a state court determined that the property legally  
14 belonged to Wells Fargo and that it was fraudulently conveyed to Jim Dierst. In this  
15 action, the Diersts seek to recover their improvements to the property under a theory of  
16 unjust enrichment. Specifically, the Diersts allege as follows: “Defendants will realize  
17 and appreciate the benefit conferred by Plaintiffs when Defendants foreclose on the  
18 Property and obtain a sales price significantly higher due to the value of Plaintiffs’  
19 improvements.” *Id.*, ¶ 41.

## 20 **III. DISCUSSION**

21 Article III of the United States Constitution limits the jurisdiction of federal courts  
22 to cases and controversies. Under Article III, courts use the doctrine of standing “to

1 identify those disputes which are appropriately resolved through the judicial process.”

2 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citing *Whitmore v. Arkansas*,

3 495 U.S. 149, 155 (1990)). To satisfy Article III standing, a plaintiff must demonstrate

4 that

5 (1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized  
6 and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is  
7 fairly traceable to the challenged action of the defendant and (3) it is likely,  
8 as opposed to merely speculative, that the injury will be redressed by a  
9 favorable decision.

8 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–

9 81 (2000).

10 In the order to show cause, the Court stated that “it appears that the Diersts’ injury

11 is completely conjectural and hypothetical.” Dkt. 20 at 3. The Diersts provided two

12 responses to the Court’s concern. First, the Diersts assert that, regardless of whether the

13 property has been sold, the property is currently worth more with the remodel than

14 without the remodel. This assertion is still based on the hypothetical argument that Wells

15 Fargo will obtain a greater sales price at some unidentified future sale. The injury is

16 completely conjectural and hypothetical, and the Court is not persuaded otherwise.

17 Second, the Diersts argue that Wells Fargo is time-barred from asserting any right

18 under the original note under the Washington statute of limitations. This argument has

19 no merit on the issue of whether the Diersts have asserted an actual injury against Wells

20 Fargo.

21 On the other hand, Wells Fargo argues that the Diersts lack standing and the Court

22 should dismiss the complaint with prejudice. The Court agrees with Wells Fargo on the

1 former issue. The Court, however, declines to dismiss the claims with prejudice because,  
2 in doing so, the Court would be required to reach the merits of the Diersts' claim.  
3 Therefore, the Court concludes that the Diersts lack standing because they fail to assert  
4 an actual injury and the Court is without jurisdiction to consider their claim.

5 **IV. ORDER**

6 Therefore, it is hereby **ORDERED** that the Diersts' complaint is **DISMISSED**  
7 **without prejudice** for lack of jurisdiction. The Clerk shall close this case.

8 Dated this 29th day of June, 2015.

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BENJAMIN H. SETTLE  
11 United States District Judge