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PHH MORTGAGE CORPORATION

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

KEVIN WALKER ESTATE,
DONNABELLE MORTEL ESTATE,
KEVIN WALKER IRR TRUST, WG
EXPRESS TRUST,

Plaintiffs,

vs.

JAY PROMISCO, JOSEPH MORAN,
CHRISTIAN GAULT, AMIR SABET,
AMANDA COFFRINI, JOHN
GOULDING, BRIAN McGINLEY,
VIRGINIA ERBES, COREY MOORE,
DREW FUERSTENBERGERM,
JAMES E. COFFRINI, PAUL
GUSTAFSON, DEVIN ORMONDE,
SIERRA PACIFIC MORTGAGE
COMPANY INC., GREENHEAD
INVESTMENTS INC., PHH
MORTGAGE SERVICES, PRIME
RECON LLC, and DOES 1-100
inclusive

Defendants.

Case No.: 5:25-cv-00339-JGB-DTB

**DEFENDANT PHH MORTGAGE
CORPORATION’S NOTICE OF
MOTION, MOTION TO
DISMISS, AND MEMORANDUM
OF POINTS AND AUTHORITIES**

Hearing –

Date: March 24, 2025

Time: 9:00 a.m.

Judge: Hon. Jesus G. Bernal

Place: Courtroom 1

George E. Brown, Jr. Federal
Building and U.S. Courthouse
3470 Twelfth St.

Riverside, CA 92501

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NOTICE OF MOTION AND MOTION TO DISMISS

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 24, 2025, at 9:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 1 of the above captioned court, located at 3470 Twelfth Street, Riverside, CA 92501, defendant PHH Mortgage Corporation (“PHH”) will, and hereby does, move to dismiss with prejudice the Amended Verified Complaint (Docket No. 1-2) (“Amended Complaint”) filed by plaintiffs Kevin Walker Estate, Donabelle Mortel Estate, Kevin Walker IRR Trust, and WG Express Trust (collectively, “Plaintiffs”). This motion is made pursuant to Federal Rules of Civil Procedure 12(b)(6) on the grounds that the Amended Complaint fails to state a claim upon which relief may be granted against PHH because (1) plaintiffs lack standing, (2) the allegations are to undifferentiated “Defendants” with no specific allegations as to PHH, (3) the sovereign citizen contentions are unintelligible, and (4) each of the claims fails to plead facts sufficient to state a claim.

This motion is exempt from the prefiling conference requirement because Plaintiffs are not attorneys. *See* Local Rules 7-3 and 16-12(c).

This motion is based on this Notice and Motion, the attached Memorandum of Points and Authorities in Support; the concurrently filed Request for Judicial Notice (“RJN”) and any matters that may or must be judicially noticed; the pleadings and records on file in this action; and any further evidence, arguments, or authorities presented at or before the hearing of this Motion.

Dated: February 21, 2025

HOUSER LLP

Bv: 

Eric D. Houser
Neil J. Cooper
Attorneys for Defendant
PHH MORTGAGE CORPORATION

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Kevin Walker and Donnabelle Mortel (“Borrowers”) are “sovereign
4 citizens” who apparently believe (and counsel others) that they can be entitled to
5 billions or trillions of dollars by using the right secret codes or language, or
6 sending letters that no reasonable person would respond to.¹ Such contentions
7 must be rejected, and the Amended Complaint’s defects are so numerous that it
8 should be dismissed with prejudice and without leave to amend.

9 First, the Amended Complaint fails to state a claim upon which relief can
10 be granted because Borrowers do not have standing to bring the action for
11 Plaintiffs. Borrowers purport to separate their legal personhood from their
12 physical persons and claim the Plaintiffs are not themselves, but purported legal
13 entities: “TMKEVIN WALKER© ESTATE, TMDONNABELLE MORTEL©
14 ESTATE, TMKEVIN WALKER© IRR TRUST, TMWG EXPRESS TRUST©.”
15 Amended Complaint, ¶1; *accord* Complaint, ¶1 (describing Plaintiffs as “foreign
16 trusts”). Borrowers are purportedly acting as attorneys in fact for the Plaintiffs. If
17 Borrowers are going to pretend Plaintiffs are distinct from themselves, they must
18 accept the consequences. Trusts may only litigate through actual attorneys.
19 Since, according to the Amended Complaint’s allegations, Borrowers are not
20 Plaintiffs, Borrowers have no standing to bring the action for Plaintiffs and the
21 Amended Complaint does not state a claim upon which relief may be granted.

22
23
24 ¹ See, e.g., <https://realworldfare.com/900-billion-right-to-travel-lawsuit-kevin-walker-estate-issues-california-highway-patrol-a-notice-of-default-and-opportunity-to-cure/> (last accessed 1/14/25); <https://realworldfare.com/one-trillion-dollar-right-to-travel-lawsuit-pending-against-riverside-county-sheriff-eastwood-bowman-prat-and-reyes/> (last accessed 1/14/25); <https://realworldfare.com/kevin-walker-estate-files-30-billion-lawsuit-against-georgias-own-and-mccarthy-holthus-affirming-fraud-racketeering-and-other-federal-crime/> (last accessed 1/14/25).

1 Second, the Amended Complaint fails to state a claim upon which relief
2 may be granted against PHH for the simple reason that the Amended Complaint
3 alleges various actions by undifferentiated “Defendants” but never identifies any
4 action by PHH. The Amended Complaint has 17 named defendants and 100 Doe
5 defendants. The Amended Complaint’s failure to specify what PHH supposedly
6 did stops it from stating a claim for relief against PHH.

7 Finally, the Amended Complaint’s sovereign citizen theories and individual
8 claims are nonsensical and fail to state a claim upon which relief can be granted.
9 Courts routinely dismiss sovereign citizen complaints out of hand because the
10 theories are frivolous; the Court need not even get into the specific claims before
11 dismissing the Amended Complaint. If the Court does go into the claims, it will
12 find they all lack merit. Without the sovereign citizen theories, the Plaintiffs
13 complain that defendants foreclosed on their real property. Yet the only purported
14 wrongdoing by any of the defendants is based on sovereign citizen assertions,
15 such as that Plaintiffs issued a letter of credit from their personal, fictional bank
16 that supposedly paid off their mortgage, or that Janet Yellen was responsible for
17 paying it off from a secret government fund. None of the claims have any sort of
18 rational basis, and each is subject to dismissal for its numerous defects.

19 For each of the foregoing reasons, the Court should grant PHH’s motion to
20 dismiss with prejudice and without giving Plaintiffs leave to amend.

21 **II. ARGUMENT**

22 **A. The Amended Complaint Fails to State a Claim because Borrowers** 23 **Lack Standing to Bring the Action for Plaintiffs**

24 The Amended Complaint alleges that each of the Plaintiffs is a foreign
25 Trust. *See* Amended Complaint, ¶1; *accord* Complaint, ¶1 (Plaintiffs “each are a
26 foreign Trust”). Borrowers are the “Attorney(s)-in-Fact” of Plaintiffs. *See*
27 Amended Complaint, at 1:27-2:16. However, Borrowers are not California
28 licensed attorneys. *See* RJN, Exs. 1-2. Accordingly, Borrowers have no right to

1 represent Plaintiffs in this action. *See C.E. Pope Equity Trust v. U.S.*, 818 F.2d
2 696, 698 (9th Cir. 1987) (nonlawyer trustee may not litigate pro se on behalf of
3 trust); *Knoefler v. United Bank of Bismarck*, 20 F.3d 347, 348 (8th Cir. 1994) (“A
4 nonlawyer, such as these purported ‘trustee(s) pro se’ has no right to represent
5 another entity, i.e., a trust, in a court of the United States.”). Indeed, in *Alpha*
6 *Land Company v. Little*, 238 F.R.D. 497 (E.D. Cal. 2006), the Court noted that a
7 motion to dismiss for lack of standing may be treated as a motion to dismiss for
8 failure to state a claim under Rule 12(b)(6), and granted the motion because the
9 trust was not represented by counsel. *See Alpha Land Company*, 238 F.R.D. 502.
10 “It is undisputed that Allen Casselman is not licensed to practice law...., a trust
11 can only be represented by an *attorney* in federal court. ... For this reason alone,
12 the quiet title action brought by Alpha Land Company against the IRS must be
13 dismissed for lack of standing.” *Ibid.* So too, here, Borrowers are not attorneys
14 and therefore cannot represent the Plaintiffs, who are alleged to be trusts. The
15 Amended Complaint thus fails to state a claim and should be dismissed.

16 **B. The Amended Complaint Fails to State a Claim against PHH**
17 **because It Only Refers to Undifferentiated “Defendants”**

18 There are 17 named defendants, including PHH, plus an additional 100 Doe
19 defendants. *See* Amended Complaint, ¶6. However, the Amended Complaint
20 merely alleges actions by “Defendants.” That is improper and insufficient to
21 plead a claim upon which relief can be granted against PHH. “[T]he complaint
22 fails to state a claim because plaintiffs do not indicate which individual defendant
23 or defendants were responsible for which alleged wrongful act.” *In re Sagent*
24 *Technology, Inc., Derivative Litigation*, 278 F.Supp.2d 1079, 1094 (N.D. Cal.
25 2003); *accord Gauvin v. Trombatore*, 682 F.Supp. 1067, 1071 (N.D. Cal. 1988)
26 (“all defendants are lumped together in a single, broad allegation. ... Plaintiff
27 must allege the basis of his claim against each defendant to satisfy Federal Rule of
28 Civil Procedure 8(a)(2)”). Aside from being defined as a defendant in Amended

1 Complaint paragraph 6, PHH is not individually named in any other paragraph.
2 The Amended Complaint’s failure to allege any facts specific to PHH prevents it
3 from stating a claim upon which relief can be granted against PHH.

4 **C. The Sovereign Citizen Complaint Is Subject to Summary Dismissal**

5 The Amended Complaint is a sovereign citizen complaint. Borrowers
6 explicitly state that they are “natural *freeborn* Sovereigns” who are “non-domestic
7 *without* the United States.” Amended Complaint, at 2:3-4 and 1:4 (italics and
8 underline in original). Sovereign citizen filings are a nuisance to the court system
9 and can be (and often are) dismissed out of hand. *Cf. People v. Cheng*, Case No.
10 E060420, 2015 WL 729326, at *2-3 (Cal. App. 4 Dist. Feb. 19, 2015) (“Sovereign
11 Citizens often file frivolous documents or lawsuits, a practice called ‘paper
12 terrorism.’”)

13 So-called sovereign citizens believe that as “natural humans” (or
14 sovereigns) they are “not subject to government authority and
15 employ various tactics in an attempt to, among other things, avoid
16 paying taxes, *extinguish debts*, and derail criminal proceedings.”
17 *Gravatt v. United States*, 100 Fed. Cl. 279, 282 (2011) (emphasis
18 added). Their arguments and outlandish legal theories have been
19 consistently rejected. *See, e.g., United States v. Sterling*, 738 F.3d
20 228, 233 n.1 (11th Cir. 2013) (noting that courts routinely reject
21 sovereign citizen legal theories as “frivolous”) (citing *United*
22 *States v. Benabe*, 654 F.3d 753, 761–67 (7th Cir. 2011)
23 (recommending that sovereign citizen theories “be rejected
24 summarily, however they are presented”); *Roach v. Arrisi*, 2016
WL 8943290, at *2 (M.D. Fla. 2016) (noting that sovereign citizen
theories have not only been consistently rejected by the courts, but
they have been described as “utterly frivolous,” “patently
ludicrous,” and “a waste of ... the court's time, which is being paid
for by hard-earned tax dollars”) (citation omitted).

25 *Young v. PNC Bank, N.A.*, Case No. 16-cv-298-RV-EMT, 2018 WL 1251920, at
26 *2 (N.D. Fla. March 12, 2018) (granting motion to dismiss in favor of bank who
27 threatened plaintiff with foreclosure and negative credit reporting for not paying
28 his mortgage).

1 Plaintiff's claims are subject to dismissal because they are based
2 solely on sovereign citizen ideology and principles. It is well-
3 established in the Eighth Circuit that claims based on sovereign
4 citizen ideology are inherently frivolous and should be summarily
5 dismissed as a waste of judicial resources. *United States v. Jagim*,
6 978 F.2d 1032, 1036 (8th Cir. 1992) (holding the sovereign citizen
7 issues in the case “are completely without merit, patently frivolous,
8 and will be rejected without expending any more of this Court's
9 resources on their discussion.”); *United States v. Hart*, 701 F.2d
10 749, 750 (8th Cir. 1983) (rejecting “sovereign citizen” as a status);
11 *Meyer v. Pfeifle*, No. 4:18-CV-04048, 2019 WL 1209776, at *5
12 (D.S.D. Mar. 14, 2019), *aff'd*, 790 F. App'x 843 (8th Cir. 2020)
13 (“[plaintiff's] allegations regarding rights as a ‘sovereign citizen’
14 are frivolous and fail to state a claim”); *King v. Turnbull*, No.
15 4:21CV3003, 2021 WL 1293307, at *2 (D. Neb. Apr. 7, 2021)
16 (claim that Nebraska statutes and laws do not apply to a sovereign
17 citizen dismissed as frivolous); *Engel v. Corizon*, No. 4:20-CV-
18 1744-HEA, 2021 WL 1105351, at *3 (E.D. Mo. Mar. 23, 2021)
19 (“Arguments based upon sovereign citizen ideology have been
20 summarily rejected as frivolous and irrational in this Circuit and in
21 other federal courts around the nation.”); *U.S. v. Mooney*, No. 16-
22 CV-2547 (SRN/LIB), 2017 WL 2352002, at *3 (D. Minn. May 31,
23 2017) (noting sovereign citizen “arguments have been thoroughly
24 and consistently rejected by courts throughout this country”); *see*
25 *also United States v. Benabe*, 654 F.3d 753, 761-67 (7th Cir. 2011)
26 (recommending that sovereign citizen arguments “be rejected
27 summarily, however they are presented”); *Haywood v. Texas*
28 *Realator*, No. 3:22-CV-02174-K-BT, 2023 WL 5597346, at *3
(N.D. Tex. Aug. 7, 2023), *report and recommendation adopted*,
No. 3:22-CV-02174-K-BT, 2023 WL 5604130 (N.D. Tex. Aug.
29, 2023) (sovereign citizens “cannot claim to be sovereigns
independent of governmental authority while they simultaneously
ask the judicial system to grant them recourse”).

Hopper v. Addams, Case No. 24-cv-02129-TLB, 2024 WL 4730595, at *2 (W.D.
Ark. Oct. 21, 2024); *see also* U.S. Dept. of Justice, F.B.I., Counterterrorism
Analysis Section, Sovereign Citizens: A Growing Domestic Threat to Law
Enforcement (Sept. 1, 2011) [https://leb.fbi.gov/articles/featured-
articles/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement](https://leb.fbi.gov/articles/featured-articles/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement) (last

1 visited 1/14/25) (explaining hallmarks of the sovereign-citizen redemption theory
2 and redemption scheme used “to defraud banks, credit institutions, and the U.S.
3 government” by filing purported U.C.C. forms “for illegitimate purposes,
4 believing that doing so correctly will compel the U.S. Treasury to fulfill its debts,
5 such as credit card debts, taxes, and mortgages”).

6 The Amended Complaint’s sovereign citizen legal theories are frivolous.
7 The Amended Complaint claims Borrowers/Plaintiffs have UCC filings between
8 their ‘legal selves’ and ‘actual selves.’ *See, e.g.*, Amended Complaint, ¶¶13, 15,
9 and Ex.² A-D. The Amended Complaint claims defendants have no interest in a
10 note or deed of trust because it was somehow set off by the United States
11 suspending the gold standard in 1933, *see* Amended Complaint, ¶21, because
12 Plaintiffs submitted a “Bill of Exchange” and letter of credit from their personal,
13 fictional bank, *see* Amended Complaint, ¶60 and Exs. Q-R, because Janet Yellen
14 controls a \$200 Billion “Master Discharge and Indemnity Bond” that was to be
15 used to satisfy their debts, *see* Amended Complaint, ¶65 and Ex. S, and other
16 equally outlandish assertions. *Cf. Wilson v. Aqua Finance*, Case No. 23-cv-5348-
17 SAL-SVH, 2023 WL 7924150, at *2 (D. S.C. Oct. 26, 2023) (criticizing and
18 dismissing claims; “Plaintiff is not the first to send a ‘bill of exchange’ to a lender
19 in hopes of settling a given debt.”); *Spells v. Bay Country Fin.*, Case No. 23-cv-
20 01942-LKG, 2023 WL 4868405, at *1 (D. Md. July 31, 2023) (summary
21 dismissal of complaint where the plaintiff claimed he issued a bill of exchange to
22 the lender, he was a sovereign citizen, and he should have received a paid off
23 vehicle for his bill of exchange); *Brandon Joe Williams v. United States Small*
24 *Business Administration*, Case No. 24-cv-09553-RGK-SK, 2024 WL 5247154, at
25 *2 (C.D. Cal. Dec. 30, 2024) (“To put it bluntly, Plaintiff’s Complaint is

26
27 ² Exhibits were attached to the Complaint (Docket No. 1-1) but not the Amended
28 Complaint. *Cf.* Amended Complaint, at 87-88 (listing exhibits). Accordingly,
exhibits references should be understood to refer to Docket No. 1-1.

1 unintelligible. Plaintiff's claims rely on various strange, legally unsound
2 arguments based on commercial codes, citizenship (or the purported lack thereof),
3 and corporate statuses to conclude that he should be allowed to not just rescind his
4 loan and have his debt cancelled, but also receive \$2 million in unexplainable
5 damages. These arguments are highly similar to those made by sovereign citizens,
6 which courts have uniformly rejected.”); *Vachon v. Reverse Mortgage Solutions,*
7 *Inc.*, Case 16-cv-02419-DMG-KES, 2017 WL 6628103, at *5 (C.D. Cal. Aug. 11,
8 2017) (rejecting as “patently frivolous” sovereign citizen’s gold standard,
9 redemption, and vapor money theories). Indeed, this Court has previous
10 experience with sovereign citizens: “Like other ‘sovereign citizen’ fantasists, she
11 provides out-of-context cites to antiquated and obsolete precedent and legal
12 dictionaries in support of her argument that she is not subject to the authority and
13 laws of the United States. Courts across the country have uniformly rejected such
14 ‘sovereign citizen’ theories as frivolous, irrational, or unintelligible.” *Bey v.*
15 *Geiser*, Case No. 5:19-cv-844 JGB-KKx, 2019 WL 12447340, at *1 (C.D. Cal.
16 May 21, 2019).

17 The Amended Complaint also claims Plaintiffs are entitled to \$30 Billion
18 because of “self-executing” contracts or letters that were purportedly not answered
19 to Plaintiffs’ satisfaction. *See* Amended Complaint, ¶¶236. Based on Biblical
20 verse, the theory that “he who leaves the battlefield first loses by default,” and
21 other unsound legal assertions, Plaintiffs contend the contracts entitle them to
22 billions of dollars. *See* Amended Complaint, ¶¶54-88.

23 In short, before even getting into specific claims, the entire Amended
24 Complaint may and should be summarily dismissed as an unintelligible and
25 patently frivolous sovereign citizen complaint. *Cf. Bey v. Geiser*, Case No. 5:19-
26 cv-844 JGB-KKx, 2019 WL 4422678, at *2 (C.D. Cal. July 24, 2019) (“the Court
27 finds that granting leave to amend would be futile, both because the Court has
28

1 already dismissed the Complaint on largely the same grounds and because the
2 FAC persists in alleging largely outlandish and nonsensical claims”).

3 **D. Each Claim Should be Dismissed With Prejudice**

4 **1. The Fraud Claim Lacks a Private Right of Action, Specificity,**
5 **and Reliance**

6 Plaintiffs’ first cause of action is for fraud. However, Plaintiffs base it on
7 18 U.S.C. § 1341. *See* Amended Complaint, ¶97. There is no private right of
8 action for the violation of that statute. *See Khan v. Google, LLC*, Case No.: 2:22-
9 cv-02333-MEMF-AS, 2024 WL 5220884, at *6 (C.D. Cal., Dec. 24, 2024)
10 (dismissal without leave to amend); *Cirino v. GMAC Mortgage LLC*, 667
11 Fed.Appx. 248, 249 (9th Cir. 2016) (affirming dismissal).

12 Even if the Court were to look at the claim through the ordinary fraud lens,
13 Plaintiffs have not pled facts sufficient to constitute a claim. Fraud requires
14 pleading with specificity. *See* Fed. R. Civ. P. 9(b); *LeGrand v. Abbott*
15 *Laboratories*, 655 F.Supp.3d 871, 895 (N.D. Cal. 2023). Here, all that Plaintiffs
16 allege is unspecified “Defendants” “misrepresent[ed] material facts related to the
17 title and authority to conduct a trustee’s sale.” Amended Complaint, ¶90. That
18 does not identify any specific misrepresentations purportedly made by PHH.
19 Additionally, Plaintiffs do not plead that they relied on the representation(s). *Cf.*
20 *Khan v. CitiMortgage, Inc.*, 975 F.Supp.2d 1127, 1139 (E.D. Cal. 2013) (elements
21 of fraud include justifiable reliance). Accordingly, the fraud claim should be
22 dismissed without leave to amend.

23 **2. The Breach of Contract Claim Lacks a Contract**

24 Plaintiffs’ second claim is for breach of contract. Specifically, Plaintiffs
25 claim that by not rebutting the “self-executing” contracts to Plaintiffs’ satisfaction,
26 defendants entered the contracts wherein, among other terms, defendants agreed to
27 pay Plaintiffs more than \$1 Billion. *See* Amended Complaint, ¶¶39-59, 99-107
28 and Exs. I-O.

1 “To establish the existence of a valid contract plaintiff must allege: (1)
2 parties capable of contracting; (2) their consent; (3) a lawful object; and (4)
3 sufficient cause or consideration.” *Aguilera v. Loancare, LLC*, Case No. No.
4 2:16-cv-2377-JAM-KJN, 2016 WL 6996227, at *5 (E.D. Cal. Nov. 30, 2016).
5 Self-executing contracts are a fiction; silence was not consent. “Plaintiff describes
6 the contract as self-executing and alleges that defendant's failure to respond to the
7 ‘formally executed instruments’ constituted ‘Acquiescence, Agreement, and
8 Dishonor.’ However, it is well established that ‘[a]n offer made to another, either
9 orally or in writing, cannot be turned into an agreement because the person to
10 whom it is made or sent makes no reply, even though the offer states that silence
11 will be taken as consent’ *Wold v. League of Cross of Archdiocese of San*
12 *Francisco*, 114 Cal. App. 474, 480 (1931).” *Aguilera v. Bigham*, Case No. No.
13 2:15-cv-1781-KJM-EFB, 2016 WL 4540834, at *4 (E.D. Cal. Aug. 30, 2016).
14 Further, there was no consideration for the purported contract: the purported
15 contract did not require Plaintiffs to do or give up anything in exchange for
16 defendants’ performance. *See ibid.* Accordingly, there is no contract for the
17 breach of contract claim, which should be dismissed without leave to amend.

18 **3. The Embezzlement Claim Lacks a Private Right of Action**

19 Plaintiffs’ third claim is for embezzlement in violation of 18 U.S.C. § 656.
20 There is no private right of action for the violation of that statute. *See Hines v. US*
21 *Bankcorp*, Case No. 2:21-cv-02192-RGK-E, 2021 WL 3923248, at *2 (C.D. Cal.
22 July 14, 2021); *Chilkat Indian Village v. Johnson*, 870 F.2d 1469, 1472 (9th Cir.
23 1989). Though Plaintiffs claim they have a private right of action under 12 U.S.C.
24 § 503, Section 656 is not one of the statutes that Section 503 grants a right of
25 action to and, more importantly, Section 503 is inapplicable: PHH is not a
26 “director[] or officer[] of any [Federal Reserve System] member bank.” 12 U.S.C.
27 § 503.

1 **4. The Fraud Claim Lacks a Private Right of Action**

2 Plaintiffs’ fourth claim is for fraud, forgery, and identity theft in violation
3 of 18 U.S.C. §§ 1025 and 1028a. There is no private right of action for the
4 violation of those statutes. *See Bey v. Re/max*, Case No. 8:23-cv-2768-TPB-
5 TGW, 2023 WL 8778617, at *1 fn.1 (M.D. Fla. Dec. 19, 2023); *Steven*
6 *Macarthur-Brooks Estate v. Moreno*, Case No. 24-cv-24273-ALTMAN, 2025 WL
7 30390, at *4 (S.D. Fla. Jan. 6, 2025). More, the claim was not pled with
8 specificity. *See* Fed. R. Civ. P. 9(b).

9 **5. The Antitrust Claim Lacks an Antitrust Violation or Injury**

10 Plaintiffs’ fifth claim is for the “monopolization of trade and commerce” in
11 violation of 15 U.S.C. § 2. The private right of action for its violation is 15
12 U.S.C. § 15. *See DocMagic, Inc. v. Ellie Mae, Inc.*, 745 F.Supp.2d 1119, 1133
13 (N.D. Cal. 2010). However, Plaintiffs do not plead any facts regarding an
14 antitrust violation; they allege bank fraud, e.g., “by fabricating false debts” and
15 wrongfully foreclosing. *See* Amended Complaint, ¶¶125 and 127. Moreover,
16 Plaintiffs do not plead how they suffered an antitrust injury and thus do not plead
17 facts sufficient to establish standing. *Cf. Pulse Network, L.L.C. v. Visa, Inc.*, 30
18 F.4th 480, 488 (5th Cir. 2022) (elements for standing include an antitrust injury).
19 Accordingly, Plaintiffs have not pled facts sufficient to state an antitrust claim,
20 and the claim should be dismissed.

21 **6. The Deprivation of Rights Claim Lacks of an Action Under Color**
22 **of Law and a Right Purportedly Violated**

23 Plaintiffs’ sixth claim is for deprivation of rights in violation of 42 U.S.C. §
24 1983 and 18 U.S.C. § 241. There is no private right of action for the violation of
25 Section 241. *See Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir.
26 2006). “To state a claim for relief in an action brought under § 1983, [plaintiffs]
27 must establish that they were deprived of a right secured by the Constitution or
28 laws of the United States, and that the alleged deprivation was committed under

1 color of state law. Like the state-action requirement of the Fourteenth
2 Amendment, the under-color-of-state-law element of § 1983 excludes from its
3 reach ‘ ‘merely private conduct, no matter how discriminatory or wrongful.’ ’ ”
4 *American Mfrs. Mut. Ins. Co. v. Sullivan*, 119 S.Ct. 977, 985, 526 U.S. 40, 49–50
5 (1999). *See also Lindke v. Freed*, 144 S.Ct. 756, 764–65, 601 U.S. 187, 194
6 (2024) (Section 1983 “protects against acts attributable to a State, not those of a
7 private person.”). Plaintiffs do not plead any facts showing any defendant was
8 acting under color of state law, nor the violation of rights guaranteed by the
9 Constitution or federal laws. Instead, Plaintiffs argue that defendants threatened
10 to nonjudicially foreclose against their real property. *See Amended Complaint*,
11 ¶¶137. Nonjudicially foreclosing is not state action and therefore cannot give rise
12 to a Section 1983 claim. *See Apao v. Bank of New York*, 324 F.3d 1091, 1095 (9th
13 Cir. 2003); *Altman v. PNC Mortgage*, 850 F.Supp.2d 1057, 1080 (E.D. Cal.
14 2012); *Gonzalez v. J.P. Morgan Chase Bank N.A.*, Case No. 2:17-cv-09310-
15 ODW-ASx, 2020 WL 104994, at *5 (C.D. Cal. Jan. 9, 2020). Accordingly,
16 Plaintiffs have not pled facts sufficient to state a claim for violation of 42 U.S.C. §
17 1983, and the claim should be dismissed without leave to amend.

18 **7. The Receipt of Extortion Proceeds Claim Lacks a Private Right**
19 **of Action and Factual Content**

20 Plaintiffs’ seventh claim is for the receipt of extortion proceeds in violation
21 of 18 U.S.C. § 880. There is no private right of action for the violation of that
22 statute. *See Marian v. Castro*, Case No. 16-cv-8276 DMG-RAOx, 2017 WL
23 6551108, at *2 (C.D. Cal. April 13, 2017); *Fowler v. University of Phoenix, Inc.*,
24 Case No.: 18cv1544-WQH-KSC, 2019 WL 1746576, at *17 (S.D. Cal. April 18,
25 2019).

26 Though Plaintiffs also raise 42 U.S.C. § 1983 and 15 U.S.C. § 1, alleging
27 that “Defendants employed coercive tactics” and attempted to “monopolize or
28 restrain trade,” *see Amended Complaint*, ¶¶145-146, there are neither facts pled

1 nor any explanation for how the allegations relate to the receipt of extortion
2 proceeds. That is, the allegations do not appear to relate to the claim advanced.

3 Accordingly, Plaintiffs have not pled facts sufficient to state a claim, and
4 the claim should be dismissed without leave to amend.

5 **8. The False Pretense Claim Lacks a Private Right of Action and**
6 **Specificity**

7 Plaintiffs' eighth claim is for false pretense in violation of 18 U.S.C. § 1025
8 and 1341. There is no private right of action for the violation of those statutes.
9 *See Khan*, 2024 WL 5220884, at *6; *Kulikova v. Newrez LLC*, Case No. 24-cv-
10 01864-MMC, 2024 WL 4906488, at *3 (N.D. Cal. Nov. 26, 2024). Moreover, as
11 addressed with the first claim, there is no specificity in the pleading, nor reliance
12 sufficient to state a claim. *See* Section II.D.1., *supra*.

13 **9. The False Pretense Claim Lacks a Private Right of Action**

14 Plaintiffs' ninth claim is for extortion in violation of 18 U.S.C. § 878.
15 There is no private right of action for the violation of that statute. *See Steven*
16 *Macarthur-Brooks Estate*, 2025 WL 30390, at *5. Plaintiffs claim there is a
17 private right of action under 18 U.S.C. § 873. *See* Amended Complaint, ¶168.
18 However, that statute criminalizes blackmail. *See* 18 U.S.C. § 873. There is no
19 private right of action for the violation of that statute. *See Peden v. Comcast*
20 *Communications, LLC*, Case No. 2:22-cv-01551-DAD-JDP, 2023 WL 3955678,
21 at *1 (E.D. Cal. June 12, 2023)

22 **10. The RICO Claim Lacks Specificity and Standing**

23 Plaintiffs' tenth claim is for purported racketeering in violation of the
24 Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*
25 (“RICO”). Rule 9(b)'s particularity requirement applies to RICO claims. *See* Fed.
26 R. Civ. P. 9(b); *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065-66 (9th Cir.
27 2004). A complaint must “state the time, place, and specific content of the false
28 representations as well as the identities of the parties to the misrepresentation.” *Id.*

1 (citation marks and citation omitted) (dismissing RICO claim as under pled).
2 Here, Plaintiffs do not plead facts detailing the purported violation. Instead, they
3 plead that unspecified “Defendants” “misrepresent[ed] material facts... including
4 but not limited to misrepresentations regarding how money is created,” “created
5 false claims of debt, placed fraudulent documents in the post office,” etc. with no
6 specificity. *See* Amended Complaint, ¶¶174-175. Accordingly, Plaintiffs do not
7 plead facts for a RICO violation.

8 Additionally, Plaintiffs do not plead facts sufficient to establish standing.
9 To have standing, a plaintiff must plead (1) an injury to their business or property
10 and (2) proximate causation between the RICO violation and injury. *See Shulman*
11 *v. Kaplan*, 58 F.4th 404, 410 (9th Cir. 2023). While they baldly assert injury to
12 their business and property, they do not plead any facts nor connect the injury to
13 any purported RICO violation. *See* Amended Complaint, ¶¶176.

14 Accordingly, Plaintiffs have not pled facts sufficient to state a RICO
15 violation, and the claim should be dismissed.

16 **11. The Bank Fraud Claim Lacks a Private Right of Action**

17 Plaintiffs’ eleventh claim is for bank fraud in violation of 18 U.S.C. § 1344.
18 Though Plaintiffs also purport to quote 12 U.S.C. § 1831 and claim “Defendants”
19 violated that statute, *see* Amended Complaint, ¶181, the language they quote is
20 from 18 U.S.C. § 1344, not 12 U.S.C. § 1831. *See* 12 U.S.C. § 1831; 18 U.S.C. §
21 1344. There is no private right of action for the violation of that statute. *See*
22 *Steven Macarthur-Brooks Estate*, 2025 WL 30390, at *6; *Megha v. Los Angeles*
23 *County Records Office*, Case No. 22-cv-6076-DMG-Ex, 2023 WL 5671929, at
24 *4 (C.D. Cal. Sept. 1, 2023).

25 **12. The Transportation of Stolen Goods Claim Lacks a Private Right** 26 **of Action**

27 Plaintiffs’ twelfth claim is for transportation of stolen goods, securities, or
28 moneys in violation of 18 U.S.C. §§ 2314 and 2315. There is no private right of

1 action for the violation of those statutes. *See Steven Macarthur-Brooks Estate*,
2 2025 WL 30390, at *6; *Williams v. American Express Company*, Case No. 24-cv-
3 1631-MWF-PVCx, 2024 WL 3914479, at *3 (C.D. Cal. July 10, 2024); *Schele v.*
4 *Mercedes-Benz USA, LLC*, Case No. 10-cv-1643-RS, 2011 WL 1088760, at *2
5 (N.D. Cal. March 14, 2011). Plaintiffs also cite 15 U.S.C. § 78j, also known as
6 Section 10 of the Securities and Exchange Act, but pleads no facts as to any
7 securities.

8 **13. The Slander of Title Claim Lacks Specificity and Standing**

9 Plaintiffs’ thirteenth claim is for slander of title. Slander of title requires
10 Plaintiffs “to establish each of the following four elements: (1) a publication, (2)
11 which is without privilege or justification, (3) which is false, and (4) which causes
12 direct and immediate pecuniary loss.” *Manhattan Loft, LLC v. Mercury Liquors,*
13 *Inc.*, 173 Cal.App.4th 1040, 1051 (2009). Though Plaintiffs reference
14 “Defendants’ false, malicious, and improper statements or filings,” they do not
15 plead any facts such as what the “statements or filings” were or when they were
16 published. The Amended Complaint thus fails to plead sufficient facts to state a
17 claim. Plaintiffs have also not pled – in either general averment or factually – that
18 the purported statements or filings were without privilege or justification.
19 Relevant here, to the extent the statements or filings were for a nonjudicial
20 foreclosure, they are privileged. *See* Cal. Civ. Code § 47; Cal. Civ. Code §
21 2924(d); *Schep v. Capital One, N.A.*, 12 Cal.App.5th 1331, 1336 (2017).
22 Accordingly, Plaintiffs have not pled facts sufficient to state a claim for slander of
23 title, and the claim should be dismissed.

24 **14. The Quiet Title Claim Lacks Specificity and Standing**

25 Plaintiffs’ fourteenth claim is for quiet title. Quiet title claims are governed
26 by California Code of Civil Procedure § 761.020, which requires the complaint
27 state the date as of which the determination is sought, among other things. *See*
28 *Hardisty v. Moore*, 6 F.Supp.3d 1044, 1063 (S.D. Cal. 2014); Cal. Civ. Code §

1 761.020. The Amended Complaint does not contain a date as of which the
2 determination is sought. More, Plaintiffs cannot quiet title without paying off the
3 loan. *See Lueras v. BAC Home Loans Servicing, LP*, 221 Cal.App.4th 49, 86
4 (2013) (“A borrower may not, however, quiet title against a secured lender
5 without first paying the outstanding debt on which the mortgage or deed of trust is
6 based.”); *Flores v. EMC Mortg. Co.*, 997 F.Supp.2d 1088, 1121 (E.D. Cal. 2014)
7 (“A quiet title claim requires an allegation that the plaintiffs ‘are the rightful
8 owners of the property, i.e., that they have satisfied their obligations under the
9 Deed of Trust.’ [Citation.] The complaint lacks genuine facts that Mr. Flores is
10 the property’s rightful owner, has satisfied DOT obligations and thus lacks a
11 properly pled quiet title claim.”). Plaintiffs do not plead cognizable facts (as
12 opposed to sovereign citizen nonsense) that they paid off the loan. Accordingly,
13 Plaintiffs have not pled facts sufficient to state a claim for quiet title, and the claim
14 should be dismissed.

15 **15. The Interference Claim Lacks a Private Right of Action and**
16 **Factual Content**

17 Plaintiffs’ fifteenth claim is for interference with commerce in violation of
18 18 U.S.C. § 1951. There is no private right of action for the violation of that
19 statute. *See Abcarian v. Levine*, 972 F.3d 1019, 1025-26 (9th Cir. 2020). More
20 basically, the Amended Complaint fails to plead any facts, such as what Plaintiffs’
21 business is, which defendant committed an act and when, and how Plaintiffs were
22 injured. Further, while Plaintiffs claim emotional distress, they pled they are
23 business entities and therefore cannot recover emotional distress damages. *See*
24 *Ginsberg v. Google Inc.*, 586 F.Supp.3d 998, 1009 (N.D. Cal. 2022).
25 Accordingly, Plaintiffs have not pled facts sufficient to state a claim, and the
26 claim should be dismissed with prejudice.

1 **16. The Declaratory Relief Claim Fails because it is Duplicative and**
2 **Unnecessary**

3 Plaintiffs’ sixteenth claim is for declaratory relief, and seeks a declaration
4 as to the prior claims. The claim thus necessarily fails with the prior claims. *Cf.*
5 *Gafcon, Inc. v. Ponsor & Associates*, 98 Cal.App.4th 1388, 1402 (2002)
6 (judgment proper on declaratory relief claim where the sought-after declaration is
7 legally incorrect or the undisputed facts do not support the premise for the sought-
8 after declaration). Further, when the rights of the complaining party have
9 crystallized into a cause of action for past wrongs, the court should refuse to
10 entertain the cause of action for declaratory relief. *See Warren v. Kaiser*
11 *Foundation Health Plan, Inc.*, 47 Cal.App.3d 678, 683 (1975); *Otay Land Co. v.*
12 *Royal Indem. Co.*, 169 Cal.App.4th 556, 562 (2008) (operates prospectively to
13 declare future rights, not to redress a past wrong); Code Civ. Proc. § 1060.
14 Moreover, “[t]he declaratory relief statute should not be used for the purpose of
15 anticipating and determining an issue which can be determined in the main
16 action.” *California Insurance Guarantee Association v. Superior Court*, 231
17 Cal.App.3d 1617, 1623-1624 (1991); *see also Hood v. Superior Court*, 33
18 Cal.App.4th 319, 324 (1995) (declaratory relief unnecessary and superfluous
19 because the issues invoked in that cause of action already were addressed by other
20 causes of action in the underlying case). The object of the statute is to afford a
21 new form of relief where needed, not to furnish a cause of action for the
22 determination of identical issues. *See California Insurance*, 231 Cal.App.3d at
23 1624; *General of America Ins. Co. v. Lilly*, 258 Cal.App.2d 465, 470 (1968). The
24 declaratory relief claim is thus subject to dismissal as duplicative and unnecessary.

25 **17. Summary Judgment is Not a Claim**

26 Lastly, Plaintiffs assert “summary judgment as a matter of law” as the
27 seventeenth claim. Summary judgment is a procedure, not a claim, and Plaintiffs
28

1 have not complied with the required procedures for notice, a separate statement of
2 uncontroverted facts, etc. *See, e.g.*, Local Rules 6-1, 7-4, 7-5, and 56-1.

3 **III. CONCLUSION**

4 For each of the foregoing reasons, the Court should grant PHH’s motion to
5 dismiss with prejudice and without leave to amend.

6
7 Dated: February 21, 2025

HOUSER LLP

8 Bv: 

Eric D. Houser
Neil J. Cooper
Attorneys for Defendant
PHH MORTGAGE CORPORATION

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14 **CERTIFICATION OF COMPLIANCE**

15 Pursuant to Local Rule 11-6.2, the undersigned, counsel of record for
16 defendant PHH Mortgage Corporation, certifies that this brief contains 5,179
17 words, which complies with the 7,000 word limit of L.R. 11-6.1.

18
19 Dated: February 21, 2025

HOUSER LLP

20 Bv: 

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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 9970 Research Drive, Irvine, CA 92618.

On February 21, 2025 I served the following document(s) described as follows:

DEFENDANT PHH MORTGAGE CORPORATION’S NOTICE OF MOTION, MOTION TO DISMISS, AND MEMORANDUM OF POINTS AND AUTHORITIES

On the following interested parties in this action:

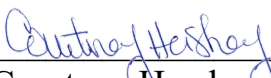
SEE ATTACHED SERVICE LIST

FIRST CLASS MAIL—By placing a true copy thereof enclosed in a sealed envelope(s) addressed as attached, and placing each for collection and mailing on the date following ordinary business practices. I am readily familiar with my firm’s business practice and collection and processing of mail with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service at Irvine, California, with postage thereon fully prepaid that same day in the ordinary course of business.

ELECTRONIC MAIL—By transmitting the document by electronic mail to the electronic mail address as stated on the service list.

I declare under penalty of perjury, under the laws of the United States that the foregoing is true and correct.

Executed on February 21, 2025 at Irvine, California.



Courtney Hershey

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Sierra Pacific Mortgage Company, Inc.;
and Greenhead Investments, Inc.
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Applications/Ex Parte Applications/Motions/Petitions/Requests

[5:25-cv-00339-JGB-DTB Kevin](#)

[Walker Estate et al v. Jay](#)

[Promisco et al](#)

ACCO,
(DTBx),DISCOVERY,MJDAP_OUT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Cooper, Neil on 2/21/2025 at 10:55 AM PST and filed on 2/21/2025

Case Name: Kevin Walker Estate et al v. Jay Promisco et al

Case Number: [5:25-cv-00339-JGB-DTB](#)

Filer: PHH Mortgage Services

Document Number: [11](#)

Docket Text:

NOTICE OF MOTION AND MOTION to Dismiss Amended Complaint filed by defendant PHH Mortgage Services. Motion set for hearing on 3/24/2025 at 09:00 AM before Judge Jesus G. Bernal. (Cooper, Neil)

5:25-cv-00339-JGB-DTB Notice has been electronically mailed to:

Neil Joseph Cooper ncooper@houser-law.com, chershey@houser-law.com

5:25-cv-00339-JGB-DTB Notice has been delivered by First Class U. S. Mail or by other means **BY THE FILER** to :

Donnabelle Mortel Estate
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Kevin Walker Estate
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Temecula, CA 92591

Kevin Walker IRR Trust
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WG Express Trust
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c834eea2ba9c8dee30a55fe187885fbc517d3154dc8a1419966d362935157]]