

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JUAN LUNA AND RAQUEL SPINOSO,	§	
	§	
Plaintiffs,	§	
	§	Civil Action No. 4:24-cv-00551
v.	§	
	§	
PHH MORTGAGE CORPORATION,	§	
	§	
Defendant.	§	

DEFENDANT’S MOTION TO DISMISS AND BRIEF IN SUPPORT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant PHH Mortgage Corporation (“PHH”) hereby files its Motion to Dismiss and Brief in Support (the “Motion”), requesting that the Court grant the Motion and dismiss all of Plaintiffs’ Juan Luna and Raquel Spinoso (“Plaintiffs”) claims with prejudice. In support of the Motion, PHH states as follows:

I. INTRODUCTION

This is Plaintiffs’ third attempt to prevent the foreclosure sale of real property located at 2739 Sherwin Street, Houston, Texas 77007 (the “Property”). One of the Plaintiffs voluntarily nonsuited the first lawsuit, and a federal court dismissed the second lawsuit filed by both Plaintiffs in its entirety.¹ This lawsuit, too, should end with a take-

¹ Spinoso filed the first lawsuit in the 269th Judicial District Court of Harris County, Texas, in an action administered under Cause No. 2018-14375 (the “First Lawsuit”) against PHH’s predecessors on March 5, 2018, and Plaintiffs filed the second lawsuit in the 333rd Judicial District Court of Harris County, Texas, in an action administered under Cause No. 2019-71216 (the “Second Lawsuit”) against PHH and its predecessors on September 30, 2019. Both lawsuits resulted in dismissals. Specifically, Spinoso nonsuited

nothing judgment for Plaintiffs. Plaintiffs filed this action solely to stop PHH from foreclosing on the Property after they failed to “reinstate the[ir mortgage] debt.”² Plaintiffs assert claims for breach of contract and violations of the Texas Debt Collection Act (“TDCA”).³ Plaintiffs’ claims are premised on alleged disputes of their mortgage loan and unidentified collection calls.⁴ But Plaintiffs have not identified any unauthorized charges on their mortgage loan or dates and/or times of any unlawful calls PHH made to Plaintiffs.⁵ Nor have they identified which contract or contractual provision they contend PHH breached or alleged the essential elements to state a TDCA claim.⁶ Notably, Plaintiffs omit allegations pertaining to any damages they suffered as a result of PHH’s alleged wrongdoing because PHH has not foreclosed on the Property.⁷ In short, Plaintiffs’ claims fail as a matter of law, and the Court should dismiss all of Plaintiffs’ claims with prejudice.

PHH’s predecessors in the First Lawsuit on April 26, 2019. With respect to the Second Lawsuit, PHH and its predecessors removed the case to the United States District Court for the Southern District of Texas, Houston Division, under Case No. 4:19-CV-03941, and moved to dismiss Plaintiffs’ claims. The court dismissed all of Plaintiffs’ claims without prejudice. PHH respectfully requests that the Court take judicial notice of the pleadings and orders filed in the First Lawsuit and the Second Lawsuit. FED. R. EVID. 201; *Basic Capital Mgmt., Inc. v. Dynex Capital, Inc.*, 976 F.3d 585, 588 (5th Cir. 2020) (“Judicially noticed facts may . . . be considered in ruling on a motion to dismiss.”).

² Doc. No. 1-4 at Ex. D, ¶ 10.

³ Doc. No. 1-4 at Ex. D, ¶¶ 12–13.

⁴ Doc. No. 1-4 at Ex. D, ¶¶ 9–11.

⁵ See generally Doc. No. 1-4 at Ex. D.

⁶ Doc. No. 1-4 at Ex. D, ¶¶ 9–13.

⁷ See generally Doc. No. 1-4 at Ex. D; see also Doc. No. 1-5 at Ex. E.

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II. NATURE AND STAGE OF THE PROCEEDING

On February 5, 2024, Plaintiffs filed their Original Petition for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction (the “Complaint”) in the 151st Judicial District Court of Harris County, Texas, in an action styled *Juan Luna and Raquel Spinoso v. PHH Mortgage Corporation*, under Cause No. 2024-07284.⁸ The state court issued an *ex parte* temporary restraining order (“TRO”) on the same day.⁹ On February 15, 2024, PHH removed the lawsuit to this Court.¹⁰

On March 18, 2024, PHH filed a letter, pursuant to Rule 6(B) of the Court Procedures, requesting a pre-motion conference to address PHH’s request to file a motion to dismiss.¹¹ The Court held a pre-motion conference on March 29, 2024.¹² During the pre-motion conference, PHH notified the Court of its inability to move forward due to two key issues. First, Plaintiffs’ counsel is not licensed to practice in federal court.¹³ Second, Plaintiffs have not complied with the Court’s Order for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons and the Order on Initial Discovery Protocols for Residential Mortgage Cases.¹⁴ Consequently, PHH has not had the benefit of discussing with Plaintiffs, *inter alia*, any possibilities for a prompt settlement or resolution of the case or the proposed discovery plan. Further, PHH has not received the relevant

⁸ Doc. No. 1-4 at Ex. D.

⁹ Doc. No. 1-5 at Ex. E.

¹⁰ Doc. No. 1.

¹¹ Doc. No. 9.

¹² Doc. No. 11.

¹³ Doc. No. 12.

¹⁴ Doc. Nos. 5, 6.

information and documents it needs to assist in framing the issues to be resolved for trial because Plaintiffs have not complied with the Court's orders.¹⁵

The Court informed Plaintiffs of their ability to file an amended complaint by May 10, 2024, and advised them to retain counsel licensed in the Southern District of Texas as promptly as possible.¹⁶ The Court also granted PHH leave to file a motion to dismiss without needing to file another pre-motion letter.¹⁷ Plaintiffs did not file an amended complaint.

PHH now moves to dismiss all the claims in the Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 12(b)(6).

III. FACTUAL BACKGROUND¹⁸

According to the Complaint, Plaintiffs allege that they “executed a Promissory Note” and that PHH is the “Noteholder.”¹⁹ While they admit that they obtained a loan to purchase the Property, they aver that they contacted PHH “disputing the debt amount” on September 29, 2023.²⁰ They contend that PHH furnished the “payment history” on October 3, 2023.²¹ Plaintiffs claim they “attempted to resolve the disputed amount to no avail,” without further explanation.²² Plaintiffs state that they requested a “payoff statement and reinstatement letter,” but they allege that PHH has not provided them with a copy of either

¹⁵ *See* FED. R. CIV. P. 26(a)(1); Doc. No. 6.

¹⁶ Doc. No. 12.

¹⁷ Doc. No. 12.

¹⁸ Although the allegations in the Complaint must be taken as true in this Motion, PHH reserves the right to challenge those factual allegations at the appropriate time.

¹⁹ Doc. No. 1-4 at Ex. D, ¶ 7.

²⁰ Doc. No. 1-4 at Ex. D, ¶¶ 7–9.

²¹ Doc. No. 1-4 at Ex. D, ¶ 9.

²² Doc. No. 1-4 at Ex. D, ¶ 9.

document.²³ Plaintiffs also state that PHH has “continued to harass” them by “placing telephone calls without disclosing the name of the individual making the call.”²⁴ Notably, Plaintiffs admit that they are not current on their mortgage payments because they allege that they need to “reinstate the debt.”²⁵

Based on these allegations, Plaintiffs assert claims for breach of contract and violations of Section 392.302(2) and (4) under the Texas Debt Collection Act (“TDCA”).²⁶ *See* TEX. FIN. CODE § 392.302(2), (4). They seek unspecified actual damages, attorneys’ fees, pre- and post-judgment interest, court costs, and injunctive relief preventing foreclosure.²⁷

IV. STATEMENT OF THE ISSUES

1. Whether the Court should dismiss Plaintiffs’ breach-of-contract claim because Plaintiffs have not alleged facts showing (a) that PHH has breached any specific contract or contractual provision or (b) the essential elements of causation and damages.
2. Whether the Court should dismiss Plaintiffs’ TDCA claims because Plaintiffs have not alleged facts showing that (a) PHH is a “debt collector,” as defined by the TDCA, (b) PHH engaged in conduct prohibited by the TDCA, (c) PHH attempted to collect a debt, or (d) Plaintiffs have suffered any actual damages.
3. Whether the Court should deny Plaintiffs’ requests for injunctive relief, damages, attorneys’ fees, and other relief since Plaintiffs have not presented any viable claims for relief.

²³ Doc. No. 1-4 at Ex. D, ¶ 10.

²⁴ Doc. No. 1-4 at Ex. D, ¶ 10.

²⁵ *See generally* Doc. No. 1-4 at Ex. D.

²⁶ Doc. No. 1-4 at Ex. D, ¶¶ 12–13.

²⁷ Doc. No. 1-4 at Ex. D, ¶¶ 4, 12–14, 16, Requested Relief.

V. SUMMARY OF THE ARGUMENTS

The Court should dismiss all claims asserted against PHH because Plaintiffs fail to state a claim for relief for all their claims.

First, Plaintiffs' breach-of-contract claim fails as a matter of law because Plaintiffs have not alleged any facts showing that PHH breached any specific contract or contractual provision. In addition, Plaintiffs have not alleged any facts showing that PHH caused them to suffer any actual damages. Indeed, Plaintiffs suffered no damages because their request for an *ex parte* TRO stopped the scheduled foreclosure sale, and Plaintiffs still own and possess the Property.

Second, Plaintiffs' TDCA claims fail as a matter of law because the Complaint omits any allegations setting out the necessary elements to maintain their claims. Specifically, Plaintiffs have not alleged facts showing that (a) PHH is a "debt collector," as defined by the TDCA, (b) PHH engaged in conduct prohibited by the TDCA, (c) PHH attempted to collect a debt, or (d) Plaintiffs have suffered any actual damages.

Third, Plaintiffs are not entitled to any relief they request because their claims fail as a matter of law.

Because Plaintiffs have not alleged any viable claims, the Court should dismiss all of their claims with prejudice.

VI. ARGUMENTS AND AUTHORITIES

A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). The Fifth Circuit has summarized the pleading standard as follows:

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. This includes the basic requirement that the facts plausibly establish each required element for each legal claim. However, a complaint is insufficient if it offers only labels and conclusions, or a formulaic recitation of the elements of a cause of action.

Coleman v. Sweetin, 745 F.3d 756, 763–64 (5th Cir. 2014) (internal quotation marks and citations omitted). Rule 12(b)(6) authorizes a party to move for dismissal of claims lacking facial plausibility. *See* FED. R. CIV. P. 12(b)(6). Such is the case here with respect to all of Plaintiffs’ claims alleged against PHH.

A. PLAINTIFFS’ BREACH-OF-CONTRACT CLAIM FAILS AS A MATTER OF LAW.

Plaintiffs argue that PHH “has breached the contract between parties.”²⁸ To prevail on a breach-of-contract claim in Texas, Plaintiffs must show: (1) the existence of a valid contract; (2) performance or tendered performance by Plaintiffs; (3) that PHH breached the contract; and (4) damages sustained by Plaintiffs as a result of the breach. *Smith Int’l., Inc. v. Egle Grp., LLC*, 490 F.3d 380, 387 (5th Cir. 2007).

1. Plaintiffs have not alleged that PHH has breached any specific contract or contractual provision.

Plaintiffs have not identified any specific contract or provision of a contract that was allegedly breached in support of their breach-of-contract claim.²⁹ They only lodge a conclusory allegation that PHH breached “the contract between [the] parties,” without any further details.³⁰ *See Sandhar v. Grewal*, No. H-08-2348, 2009 WL 175073, at *4 (S.D. Tex. Jan. 23, 2009) (stating that plaintiff must plead “the provisions of the contract

²⁸ Doc. No. 1-4 at Ex. D, ¶ 12.

²⁹ Doc. No. 1-4 at Ex. D, ¶ 12.

³⁰ Doc. No. 1-4 at Ex. D, ¶ 12.

allegedly breached” to survive a motion to dismiss). Rather, Plaintiffs seem to casually suggest that the subject promissory note and Deed of Trust form the basis of their breach-of-contract claim, but fail to assert any allegations which expressly identify the contracts at issue, or the provisions breached.³¹ The Complaint does not explain how PHH’s alleged misconduct—*e.g.*, PHH alleged refusal to provide Plaintiffs with either a payoff statement or reinstatement letter—breached the subject promissory note and Deed of Trust.³² Allegations containing baseless and “unadorned, the-defendant-unlawfully-harmed-me accusation[s]” do not meet the requirements under Rule 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Therefore, Plaintiffs’ breach-of-contract claim fails as a matter of law and must be dismissed for these reasons alone.

2. Plaintiffs have not alleged the essential elements of causation and damages to support their breach-of-contract claim.

Plaintiffs fail to adequately allege causation and damages. Damages is an essential element of a breach-of-contract claim, and Plaintiffs have to allege that PHH’s alleged breach caused Plaintiffs’ to incur damages. *Southwell v. Univ. of the Incarnate Word*, 974 S.W.2d 351, 354–55 (Tex. App.—San Antonio 1998, pet. denied). This requires that Plaintiffs show both causation and injury. To establish causation, Plaintiffs must first plead that the alleged injury was “the natural, probable, and foreseeable consequence of the defendant’s conduct.” *Mead v. Johnson Grp.*, 615 S.W.2d 685, 687 (Tex. 1981) (citation omitted). “The absence of this causal connection between the alleged breach and the

³¹ See generally Doc. No. 1-4 at Ex. D.

³² See generally Doc. No. 1-4 at Ex. D.

alleged damages will preclude recovery.” *Prudential Secs., Inc. v. Haughland*, 973 S.W.2d 394, 397 (Tex. App.—El Paso 1998, pet. denied) (citation omitted).

Here, Plaintiffs fail to allege that they suffered any compensable injury, much less that any alleged injury was the natural, probable, and foreseeable consequence of PHH’s alleged misconduct.³³ Specifically, Plaintiffs have not explained how PHH’s alleged failure to provide them with a payoff statement and reinstatement letter caused them to incur any damages.³⁴ Notwithstanding this pleading deficiency, Plaintiffs cannot plausibly establish that they incurred any damages caused by PHH because Plaintiffs obtained an *ex parte* TRO stopping the foreclosure sale of the Property.³⁵ Moreover, Plaintiffs have not alleged that they have been dispossessed from the Property.³⁶ Thus, Plaintiffs cannot allege that they suffered any damages caused by PHH. Absent such allegations, Plaintiffs cannot maintain a claim for breach of contract, and the Court should dismiss their claim with prejudice.

B. PLAINTIFFS’ TDCA CLAIMS FAIL AS A MATTER OF LAW.

Plaintiffs allege that PHH violated the TDCA by purportedly harassing Plaintiffs via telephone.³⁷ Specifically, Plaintiffs allege the following in support of their TDCA claims:

Furthermore, Defendant have [sic] continued to harass Plaintiffs by continuous [sic], placing telephone calls without disclosing the name of the individual making the call and with the intent to annoy, harass, or threaten a

³³ Doc. No. 1-4 at Ex. D, ¶ 12.

³⁴ *See generally* Doc. No. 1-4 at Ex. D.

³⁵ Doc. No. 1-5 at Ex. E.

³⁶ *See generally* Doc. No. 1-4 at Ex. D, ¶ 8; Doc. No. 1-5 at Ex. E.

³⁷ *See generally* Doc. No. 1-4 at Ex. D.

person at the called number and other various violations under Texas protection of Consumers of Financial Services section 392.³⁸

Based on this allegation, Plaintiffs make the misplaced and conclusory determination that PHH violated Section 392.302(2) and (4) of the Texas Finance Code.³⁹

The TDCA prohibits debt collectors from using fraudulent, deceptive, or misleading representations in the collection of consumer debts. *See* TEX. FIN. CODE § 392.304(a). In order to state a claim under the TDCA, Plaintiffs must allege that: (1) the debt at issue is a consumer debt; (2) PHH is a debt collector within the meaning of the TDCA; (3) PHH committed a wrongful act in violation of the TDCA; (4) the wrongful act was committed against PHH; and (5) Plaintiffs were injured as result of PHH’s wrongful act. *See* TEX. FIN. CODE §§ 392.001 *et. seq.* Notably, the TDCA does not prevent a debt collector from “exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.” *See* TEX. FIN. CODE § 392.301(b)(3); *see also* *McCaig v. Wells Fargo Bank (Tex.), N.A.*, 788 F.3d 463, 475 (5th Cir. 2015) (“Indeed, the TDCA contemplates that there will often be contractual duties running between a consumer and debt collector, and a debt collector’s otherwise wrongful conduct may be permissible if authorized by contract.”).

1. Plaintiffs have not alleged facts demonstrating that PHH is a “debt collector,” as defined by the TDCA.

As a threshold matter, before PHH can allege violations under the TDCA, they must first demonstrate that PHH is a “debt collector” as defined by the TDCA. *See* TEX. FIN.

³⁸ *See generally* Doc. No. 1-4 at Ex. D, ¶ 11.

³⁹ *See generally* Doc. No. 1-4 at Ex. D, ¶¶ 11, 13.

CODE § 392.001(6) (defining for “debt collector”). Here, Plaintiffs have not asserted any allegations which indicate that PHH is a debt collector as defined by the TDCA. *See Blackburn v. City of Marshall*, 42 F.3d 925, 931 (5th Cir. 1995) (noting that conclusory statements are not entitled to the presumption of truth). Indeed, there are no allegations providing that PHH directly or indirectly called Plaintiffs to collect or solicit for collection any outstanding debts.⁴⁰ *See* TEX. FIN. CODE § 392.001(5), (6) (describing “debt collection” and “debt collector” as acts that involve the collection of consumer debts).

Plaintiffs only allege in the Complaint that PHH called them, but they do not allege the intended purpose of those calls—whether to collect on the outstanding balance owed or in response to any of their mortgage activity inquiries.⁴¹ The only allegation pertaining to any communication between the parties involves PHH providing Plaintiffs “with a payment history” in response to their dispute of the “debt amount.”⁴² Because Plaintiffs have not alleged any facts indicating that PHH is a debt collector or that it engaged in any debt collection activity, the Court should dismiss Plaintiffs’ TDCA claims with prejudice, given the conclusory, skeletal allegations in the Complaint. *See Blackburn*, 42 F.3d at 931 (noting that, “conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss”).

2. Plaintiffs have not alleged facts showing that PHH engaged in conduct prohibited by the TDCA.

Regardless, the Complaint is devoid of factual allegations which satisfy the

⁴⁰ *See generally* Doc. No. 1-4 at Ex. D.

⁴¹ Doc. No. 1-4 at Ex. D, ¶ 11.

⁴² Doc. No. 1-4 at Ex. D, ¶ 9.

elements of a TDCA claim for violation of the statutory provisions Plaintiffs contend PHH violated. Particularly, the Complaint fails to assert any non-conclusory allegations that describe: (1) any legally prohibited action taken by PHH in violation of the TDCA, (2) the volume or number of calls PHH allegedly made to Plaintiffs, (3) dates and/or times PHH allegedly called Plaintiffs, (4) which person—whether Spinoso or Luna—or telephone number PHH allegedly called, (5) the purpose or nature of the call, or (6) any purported statements made on the call.⁴³ Above all, Plaintiffs have not alleged any facts that would enable this Court to infer that PHH *intentionally* acted in an “unreasonable, unjustified, or unwarranted manner” towards Plaintiffs or “in its administration of the loan.” *Cherkaoui v. Santander Consumer USA, Inc.*, 32 F. Supp. 3d 811, 816 (S.D. Tex. 2014); *cf. Smith v. Conn Credit Corp., Inc.*, No. H-16-3572, 2017 WL 1292381, at *2 (S.D. Tex. Apr. 5, 2017) (finding an allegation that 133 calls from June 13 to July 10 sufficient to establish requisite intent to harass necessary to maintain a TDCA claim).

Because Plaintiffs have not pled any allegations indicating that PHH engaged in conduct prohibited by the TDCA, their TDCA claims should be dismissed with prejudice.⁴⁴ *See Robinson v. Wells Fargo Bank, NA*, 576 F. App’x 358, 362 (5th Cir. 2014) (per curiam) (upholding dismissal of TDCA claim and requiring a showing of “both a great volume of phone calls and extenuating circumstances, such as making those calls at odd hours or

⁴³ *See generally* Doc. No. 1-4 at Ex. D.

⁴⁴ *See also* *Washington v. MCG Mortg., Inc.*, No. CV H-11-4429, 2013 WL 12141550, at *3 (S.D. Tex. Apr. 5, 2013) (granting summary judgment where, like here, the plaintiffs failed to plead “any specific facts” showing that the lender “engaged in any” prohibited practices); *O’Dea v. Wells Fargo Home Mortg.*, No. CIV.A. H-10-4755, 2013 WL 441461, at *10 (S.D. Tex. Feb. 5, 2013) (granting summary judgment because plaintiffs failed to demonstrate that defendants called Plaintiffs “with the intent to harass a person at the called number”).

threatening personal violence”); *Zamora v. Wells Fargo Bank, N.A.*, No. CV H-19-3966, 2020 WL 4708153, at *4 (S.D. Tex. Aug. 13, 2020) (dismissing TDCA claims under Section 392.302(2) and (4) of the Texas Finance Code based on plaintiff’s failure to allege such harassing or abusive conduct in the complaint).

3. Plaintiffs have not alleged plausible facts constituting PHH’s attempt to collect a debt.

Plaintiffs have not alleged any plausible facts which support their TDCA claims because they have not alleged that PHH has attempted to collect any debt.⁴⁵ Notwithstanding the deficiencies identified *supra* in Section VI(B)(1), the Complaint vaguely mentions generic and unidentified telephone calls that PHH made to Plaintiffs.⁴⁶ Without any further factual detail, the sheer act of “placing telephone calls”—without more—is not an act that involves unlawful debt collection activity.⁴⁷ Therefore, Plaintiffs TDCA claims must fail as a matter of law.

4. Plaintiffs have not alleged facts establishing that they have suffered actual damages.

“To maintain an action for damages under the TDCA, a plaintiff must plead and prove actual damages.” *Kerr v. Bank of New York Mellon Tr. Co., N.A. as Tr. of CWABS Asset-Backed Certificates Tr. 2007-12*, No. 02-20-00179-CV, 2021 WL 1421440, at *7 (Tex. App.—Fort Worth Apr. 15, 2021, pet. denied). Here, Plaintiffs have not pled that any facts showing that PHH’s purported telephone calls caused Plaintiffs to incur any actual

⁴⁵ Doc. No. 1-4 at Ex. D, ¶¶ 11, 13.

⁴⁶ Doc. No. 1-4 at Ex. D, ¶¶ 11, 13.

⁴⁷ Doc. No. 1-4 at Ex. D, ¶ 10.

damages, which is detrimental to their TDCA claims.⁴⁸ *Naranjo v. Universal Sur. of Am.*, 679 F. Supp. 2d 787, 801 (S.D. Tex. 2010) (“Texas courts have stated that a plaintiff who cannot prove actual damages cannot ‘successfully maintain an action under the [TDCA].’”) (quoting *Jackson Law Office, P.C. v. Chappell*, 37 S.W.3d 15, 30–31 (Tex. App.—Tyler 2000, pet. denied)). Consequently, the Court should dismiss Plaintiffs’ TDCA claims with prejudice.

In sum, Plaintiffs’ TDCA claims are conclusory and insufficient to meet the plausibility threshold required by Rule 12(b)(6) of the Federal Rules of Civil Procedure.⁴⁹ *See Franklin v. BAC Home Loans Servicing, L.P.*, No. 3:10-cv-1174-M, 2011 WL 248445, at *3 (N.D. Tex. Jan. 26, 2011) (“Merely stating Defendant violated the TDCA, without more factual allegations, is a legal conclusion couched as a factual assertion, which does not survive a motion to dismiss under the federal rules and applicable law.”). “Reciting the statutory language, as [Plaintiffs do] here, does not suffice to state a claim.”⁵⁰ *Jobe v. JPMorgan Chase Bank, Nat’l Ass’n*, No. 3:20-CV-588-K-BN, 2020 WL 5984369, at *5 (N.D. Tex. Sept. 18, 2020), *report and recommendation adopted*, No. 3:20-CV-588-K-BN, 2020 WL 5981999 (N.D. Tex. Oct. 7, 2020). Thus, the Court should dismiss these claims with prejudice.

⁴⁸ *See generally* Doc. No. 1-4 at Ex. D.

⁴⁹ *See generally* Doc. No. 1-4 at Ex. D.

⁵⁰ Doc. No. 1-4 at Ex. D, ¶¶ 11, 13.

C. PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF SHOULD BE DENIED.

Plaintiffs request injunctive relief precluding PHH from foreclosing on the Property.⁵¹ The request for injunctive relief, however, should be denied. A request for injunctive relief is not a cause of action itself, but is dependent on an underlying cause of action. *See Cook v. Wells Fargo Bank, N.A.*, No. 3:10-CV-592-D, 2010 WL 2772445, at *4 (N.D. Tex. July 12, 2010). Because they have not asserted any viable claims in this lawsuit as a matter of law, Plaintiffs are not entitled to injunctive relief.

D. PLAINTIFFS' REQUESTS FOR ACTUAL DAMAGES, ATTORNEYS' FEES, AND OTHER RELIEF SHOULD BE DENIED.

Plaintiffs also seek unspecified actual damages, attorneys' fees, pre- and post-judgment interest, and court costs.⁵² To recover attorneys' fees and other relief, Plaintiffs must prevail on a cause of action for which attorney's fees are recoverable and recover damages. *Green Int'l, Inc. v. Solis*, 951 S.W.2d 384, 390 (Tex. 1997) (noting that attorney's fees may only be recovered if a party "(1) prevail[s] on a cause of action for which attorney's fees are recoverable, and (2) recover[s] damages"). They cannot recover attorneys' fees because they have not established any viable causes of action and are not entitled to recover any damages they request. *See MacDonald v. JPMorgan Chase Bank*, No. 7:18-CV-289, 2019 WL 3361283, at *7 (S.D. Tex. July 25, 2019) (declining to award damages or attorney's fees where plaintiff had not suffered any compensable damages under Texas law, and he had no viable causes of action). Therefore, the Court should deny

⁵¹ Doc. No. 1-4 at Ex. D, ¶¶ 12–14, Requested Relief.

⁵² Doc. No. 1-4 at Ex. D, ¶¶ 4, 16, Requested Relief.

Plaintiffs' requests for actual damages, attorneys' fees, pre- and post-judgment interest, and court costs.

VII. CONCLUSION

Based on the foregoing, PHH respectfully requests that the Court grant this Motion and dismiss Plaintiffs' claims with prejudice. PHH additionally requests such other and further relief to which it is entitled.

Respectfully submitted,

*/s/ Helen O. Turner*_____

Robert T. Mowrey – Attorney-in-Charge

Texas Bar No. 14607500

S.D. Texas Bar No. 9529

rmowrey@lockelord.com

Matthew K. Hansen

Texas Bar No. 24065368

S.D. Texas Bar No. 1046257

LOCKE LORD LLP

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2750

Telephone: (214) 740-8000

Facsimile: (214) 740-8800

Helen O. Turner

Texas Bar No. 24094229

S.D. Texas Bar No. 2924121

helen.turner@lockelord.com

LOCKE LORD LLP

600 Travis Street, Suite 2800

Houston, Texas 77002

Telephone: (713) 226-1280

Facsimile: (713) 229-2501

**COUNSEL FOR DEFENDANT
PHH MORTGAGE CORPORATION**

CERTIFICATE OF CONFERENCE

The undersigned certifies that on March 1, 2024, March 6, 2024, and March 29, 2024, Plaintiffs' counsel and undersigned defense counsel have personally conducted conferences via letter, telephone, and electronic conferencing at the pre-motion conference, respectively, at which there was substantive discussion of the contents of this Motion and, despite best efforts, counsel could not agree that the pleading deficiency could be cured in any part by a permissible amendment offered by the undersigned. After conferring at least three times about this Motion, Plaintiffs' counsel has not indicated whether Plaintiffs are opposed to the requested relief.

/s/ Helen O. Turner

Counsel for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that on May 15, 2024, a true and correct copy of the foregoing document was delivered to the following counsel of record *via eFile Texas and/or email* consistent with the Federal Rules of Civil Procedure.

Angela Walter
Texas Bar No. 24110505
angela@treblegal.com
Jeremy Jang
Texas Bar No. 24123262
jeremy@treblegal.com
TEXAS REAL ESTATE & BUSINESS LAW FIRM, PLLC
1400 Broadfield Blvd., Suite 200
Houston, Texas 77084
Telephone: (832) 205-8144

Counsel for Plaintiffs

/s/ Helen O. Turner

Counsel for Defendant