

Exhibit # 2

John C. Nelums and Delmarshi H Nelums

315 Bentwood Lane

Columbia, SC 29229

MIME-Version:1.0

From:SCDEfilingstat@scd.uscourts.gov

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--Case Participants: Honorable Joseph F Anderson, Jr (janderson_ecf@scd.uscourts.gov)

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Message-Id:<10364068@scd.uscourts.gov>

Subject:Activity in Case 3:21-cv-02161-JFA Nelums et al v. Hutchens Law Firm, LLP et al
Transfer of Case Management

Content-Type: text/html

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 8/31/2021 at 4:26 PM EDT and filed on 8/31/2021

Case Name: Nelums et al v. Hutchens Law Firm, LLP et al

Case Number: 3:21-cv-02161-JFA

Filer:

Document Number: 9(No document attached)

Docket Text:

*****CASE MANAGEMENT TRANSFERRED to civil case manager for Judge Joseph F. Anderson, Jr. Any future filings must be sent to the Clerk's Office at the following address: 901 Richland Street Columbia, SC 29201. (mmcd)**

3:21-cv-02161-JFA Notice has been electronically mailed to:

3:21-cv-02161-JFA Notice will not be electronically mailed to:

Delmarshi H Nelums
315 Bentwood Lane
Columbia, SC 29229

John C. Nelums
315 Bentwood Lane
Columbia, SC 29229

MIME-Version:1.0

From:SCDEfilingstat@scd.uscourts.gov

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--Case Participants: Honorable Joseph F Anderson, Jr (janderson_ecf@scd.uscourts.gov),

Magistrate Judge Paige J Gossett (gossett_ecf@scd.uscourts.gov)

--Non Case Participants:

--No Notice Sent:

Message-Id:<10364050@scd.uscourts.gov>

Subject:Activity in Case 3:21-cv-02161-JFA Nelums et al v. Hutchens Law Firm, LLP et al
Report and Recommendation

Content-Type: text/html

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 8/31/2021 at 4:25 PM EDT and filed on 8/31/2021

Case Name: Nelums et al v. Hutchens Law Firm, LLP et al

Case Number: 3:21-cv-02161-JFA

Filer:

Document Number: 8

Docket Text:

REPORT AND RECOMMENDATION recommending this case be summarily dismissed without prejudice and issuance and service of process. It is further recommended that Plaintiff's motions for [5] in 21-2161 and [4] in 21-2162 temporary restraining order and permanent injunctions be denied as moot. **Objections to R&R due by 9/14/2021. Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. Signed by Magistrate Judge Paige J. Gossett on 8/31/2021. (mmcd)**

3:21-cv-02161-JFA Notice has been electronically mailed to:

3:21-cv-02161-JFA Notice will not be electronically mailed to:

Delmarshi H Nelums
315 Bentwood Lane
Columbia, SC 29229

John C. Nelums
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The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

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[STAMP dcecfStamp_ID=1091130295 [Date=8/31/2021] [FileNumber=10364049-0] [8605543b190f15ffdd9b315a495f573696e364a471b7d37088d55e60fd5f24778617302d50fa479745993df58b06a1271a54b732fbb5054887d63d14678541a9]]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

John C. Nelums; Delmarshi H. Nelums,)
)
Plaintiffs,)

v.)

Hutchens Law Firm, LLP; John B. Kelchner;)
Lender Processing Services, Inc.; LPS Default)
Solutions; LPS Default Solutions Network;)
Fidelity National Title Insurance Company;)
Deutsche Bank National Trust Company;)
Ocwen Loan Servicing, LLC; Mortgage)
Electronic Registrat System; PHH Mortgage)
Services; John Do 1-10,)
)
Defendants.)

C/A No. 3:21-2161-JFA-PJG

REPORT AND RECOMMENDATION

Janet Louise Nelums; Chris Nelums,)
)
Plaintiff,)

v.)

John E. Waites, *United States Bankruptcy)
Court, Chief Judge*; Jeffrey M. Tzerman Law)
Firm P.A. H. Guyton Murrell, *Scott and)
Corley, P.A.H.*; Ms. Louise Myers Johnson;)
Eddy L. Lane, P.A.; Robert A. Bernstein,)
Bernstein and Bernstein, P.A.; Turner Law,)
LLC; Adrienne L. Turner, *For Distributing)
Co of Columbia Turner Law, LLC*;)
Specialized Loan Servicing LLC; Deutsche)
Bank National Trust Company; Ocwen Loan)
Servicing, LLC; Mortgage Electronic)
Registrat System,)
)
Defendants.)

C/A No. 3:21-2162-MGL-PJG

REPORT AND RECOMMENDATION

The above-named plaintiffs, proceeding *pro se*, filed these related civil actions for damages and injunctive relief for purported violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961, *et seq.* This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). Having reviewed the Complaints in accordance with applicable law, the court concludes the actions are frivolous and that they should be summarily dismissed without prejudice and issuance and service of process.

I. Factual and Procedural Background

Plaintiffs John C. Nelums and Delmarshi H. Nelums previously filed a lawsuit in this court against several of the defendants listed in their Complaints—Deutsche Bank National Trust Company; Ocwen Loan Servicing, LLC; Mortgage Electronic Registrar System; and PHH Mortgage Services. See C/A No. 3:20-2932. Defendants John B. Kelchner and his law firm, Defendant Hutchens Law Firm, LLP, were counsel for those defendants in that case. John and Delmarshi brought allegations of fraud and conspiracy arising out of a note and mortgage on their residential property in Columbia, South Carolina. Generally, John and Delmarshi claimed that the defendants in that case violated federal lending statutes by not properly executing documentation when transferring the rights to John’s and Delmarshi’s mortgage and note. The court granted the defendants’ motion to dismiss, finding that the complaint in that case failed to state a claim upon which relief can be granted. See C/A No. 3:20-2932, ECF No. 43.

John and Delmarshi now file this action against the same defendants and their attorneys, along with other entities, claiming that the defendants are engaged in a conspiracy to launder money through real property transactions in violation of RICO and federal criminal law. Generally, John and Delmarshi allege that the defendants launder money through shell corporations by conducting real property transactions. John and Delmarshi seek damages and

injunctive relief, including investigations by the United States Department of Justice into the defendants' activities and for the court to permanently enjoin the defendants from engaging in these activities.

Janet Louise Nelums and Chris Nelums filed their action contemporaneously with John and Delmarshi's lawsuit. It is not clear what relation, if any, these plaintiffs have with each other. However, the complaints are virtually identical except for the names of most of the parties. Otherwise, the allegations are generally the same—they both allege a conspiracy to launder money through real property transactions—and they seek same relief—federal investigations and injunctions from the court. Notably, both complaints are styled, formatted, and written as if one was copied and pasted from another. Both complaints are over one hundred pages long, typed, and written with purported legal jargon that is not coherent.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaints. The court possesses the inherent authority to review a *pro se* complaint to ensure that subject matter jurisdiction exists and that a case is not frivolous, even if the complaint is not subject to the prescreening provisions of 28 U.S.C. § 1915. See Mallard v. U.S. Dist. Court, 490 U.S. 296, 307–08 (1989) (“Section 1915(d) . . . authorizes courts to dismiss a ‘frivolous or malicious’ action, but there is little doubt they would have power to do so even in the absence of this statutory provision.”); Ross v. Baron, 493 F. App’x 405, 406 (4th Cir. 2012) (unpublished) (“[F]rivolous complaints are subject to dismissal pursuant to the inherent authority of the court, even when the filing fee has been paid . . . [and] because a court lacks subject matter jurisdiction over an obviously frivolous complaint, dismissal prior to service of process is permitted.”)

(citations omitted),¹ see also Fitzgerald v. First E. Seventh Street Tenants Corp., 221 F.3d 362, 364 (2d Cir. 2000) (“[D]istrict courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee[.]”); Ricketts v. Midwest Nat’l Bank, 874 F.2d 1177, 1181 (7th Cir. 1989) (“[A] district court’s obligation to review its own jurisdiction is a matter that must be raised *sua sponte*, and it exists independent of the ‘defenses’ a party might either make or waive under the Federal Rules.”); Franklin v. State of Or., State Welfare Div., 662 F.2d 1337, 1342 (9th Cir. 1981) (providing a judge may dismiss an action *sua sponte* for lack of subject matter jurisdiction without issuing a summons or following other procedural requirements).

This court is required to liberally construe *pro se* complaints, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for “all civil actions”).

B. Analysis

The court concludes that the Complaints in these cases are frivolous for the following reasons. First, the Complaints fail to comply with Federal Rule of Civil Procedure 8. See Fed. R. Civ. P. 8 (requiring that a pleading contain “a short and plain statement of the claim showing that the pleader is entitled to relief”); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (stating Federal Rule of Civil Procedure 8 does not require detailed factual allegations, but it requires more than a plain accusation that the defendant unlawfully harmed the plaintiff, devoid of factual support). The

¹ The plaintiffs paid the filing fees in their cases.

court is not able to determine what causes of action the plaintiffs bring against each defendant, what relief is sought, or how each defendant is involved in the purported conspiracy. See North Carolina v. McGuirt, 114 F. App'x 555, 558 (4th Cir. 2004) (affirming dismissal of a complaint under Rule 8 where “the complaint . . . does not permit the defendants to figure out what legally sufficient claim the plaintiffs are making and against whom they are making it”); see also U.S. ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378-79 (7th Cir. 2004) (collecting cases). The Complaints list numerous “relevant federal statutes” but do not explain how each defendant violated the statutes. (See, e.g., C/A No. 3:21-2161, ECF No. 1 at 5-7.) Additionally, the excessive use of purported legal jargon and extraneous facts that do not appear to bear any relation to the plaintiffs or defendants’ specific conduct make it impossible for the court to find the relevant allegations that would support the plaintiffs’ claims. See generally Grimes v. Fremont Gen. Corp., 933 F. Supp. 2d 584, 595 (S.D.N.Y. 2013) (“When a complaint does not comply with Rule 8, by virtue of a plaintiff’s including redundant or unnecessary allegations, the court may dismiss the complaint or strike those portions that are redundant or immaterial.”) (internal quotations marks omitted).

Second, the Complaints do not explain how the plaintiffs have standing to bring this action. See Pye v. United States, 269 F.3d 459, 466 (2001) (“Standing is a threshold jurisdictional question which ensures that a suit is a case or controversy appropriate for the exercise of the courts’ judicial powers under the Constitution of the United States.”) (citing Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102 (1998)). The plaintiff bears the burden of establishing the three elements of standing: (1) the plaintiff suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016). At the pleading stage, the plaintiff

must clearly allege facts demonstrating each element. Id.; Bishop v. Bartlett, 575 F.3d 419, 424 (4th Cir. 2009) (stating that at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, but the party invoking the jurisdiction of the court must include the necessary factual allegations in the pleading, or else the case must be dismissed for lack of standing). Here, though the Complaints make vague statements that would indicate that the defendants are involved in the foreclosure of the plaintiffs' properties, the Complaints fail to provide any allegations that explain how the plaintiffs were injured by the defendants' actions or how the relief they seek would remedy any injury that is particular to the plaintiffs.

Third, and relatedly, to the extent the Complaints seek relief in the manner of criminal investigations or the like, the plaintiffs do not have standing or authority to bring criminal charges by filing a civil lawsuit. See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) (“[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”); see also Harris v. Salley, 339 F. App'x 281 (4th Cir. 2009) (“Harris does not have a constitutional right to institute criminal proceedings against Salley or to sue the defendants for failing to use their authority to do so.”).

Fourth, John's and Delmarshi's claims are barred by principles of *res judicata*. John and Delmarshi already sued several of the defendants in this court, bringing conclusory allegations of fraud and conspiracy, and the court granted the defendants' motion to dismiss. Thus, Plaintiffs' claims against those previous defendants would be barred by claim preclusion. See Headwaters Inc. v. U.S. Forest Serv., 399 F.3d 1047, 1054 (9th Cir. 2005) (“As a general matter, a court may, *sua sponte*, dismiss a case on preclusion grounds ‘where the records of that court show that a previous action covering the same subject matter and parties had been dismissed.’”) (quoting Evarts v. W. Metal Finishing Co., 253 F.2d 637, 639 n.1 (9th Cir. 1958)); Padmanabhan v. Hulka,

308 F. Supp. 3d 484, 495 (D. Mass. 2018) (*sua sponte* dismissing claims that were duplicative of a previous case resolved on the merits against an unserved party on *res judicata* grounds to avoid judicial waste); see also Trawick v. Med. Univ. of S.C., Case No. 2:16-cv-730-DCN-MGB, 2016 WL 8650132, at *7-8 (D.S.C. June 28, 2016) (recommending dismissal of duplicative claims *sua sponte* on *res judicata* grounds and collecting cases in support).

III. Conclusion

Based on the foregoing, the court concludes that the Complaints in the above-captioned cases are frivolous and should be summarily dismissed without prejudice and issuance and service of process. In light of the court's recommendation, Plaintiffs' motions for temporary restraining orders and permanent injunctions should be denied as moot. C/A No. 21-2161 (ECF No. 5); C/A 21-2162 (ECF No. 4).

August 31, 2021
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

Plaintiff's attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).