

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 19 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL A. FARIA; NANETTE M.
FARIA,

Plaintiffs - Appellants,

v.

SN SERVICING CORPORATION,

Defendant - Appellee,

and

PNC BANK, N.A.,

Defendant.

No. 24-3170

D.C. No.

2:23-cv-02023-DAD-CSK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted February 14, 2025**
San Francisco, California

Before: N.R. SMITH and JOHNSTONE, Circuit Judges, and CHRISTENSEN,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

District Judge.***

Plaintiffs Michael and Nanette Faria appeal the district court’s dismissal of their First Amended Complaint against SN Servicing Corp. Because the parties are familiar with the facts and procedural history of this case, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, we affirm.

1. A plaintiff is required to allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “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.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). The district court dismissed all three of the Farias’ claims for failure to state a claim, *see* Fed. R. Civ. P. 12(b)(6), reasoning that their alleged facts did not allow the court to draw the reasonable inference that SN Servicing was liable. The district court did not err in so holding.

A breach of contract claim under California law requires proof of (1) the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) damages. *Richman v. Hartley*, 169 Cal. Rptr. 3d 475, 478 (Cal. Ct. App. 2014). The Farias fail to sufficiently allege the existence of a contract. And

*** The Honorable Dana L. Christensen, United States District Judge for the District of Montana, sitting by designation.

because they only make their allegations on information and belief, even assuming the existence of a contract, the Farias fail to sufficiently allege that they fully performed. *See Soo Park v. Thompson*, 851 F.3d 910, 928 (9th Cir. 2017). Thus, they insufficiently pleaded their breach of contract claim. Their Fair Debt Collection Practices Act and California law claims also lack sufficient factual allegations, relying instead on bare recitations of the laws they allege that SN Servicing violated. *See Twombly*, 550 U.S. at 570.

2. The district court did not abuse its discretion in denying the Farias leave to amend their pleadings because it would be futile under these circumstances. *See Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 655–56 (9th Cir. 2017) (“An amendment is futile when no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.” (internal quotation marks and citation omitted)). Further, the Farias had ample opportunity to amend the complaint and never did. First, in its order denying the Farias’ ex parte application for a temporary restraining order, the district court had substantially similar concerns about the sufficiency of the Farias’ pleadings as it eventually did in the appealed order here. And again, in its order dismissing the Farias’ original complaint, the district court explained why the pleadings were insufficient. The Farias argue on appeal that the district court’s reasons for denying the temporary restraining order and dismissing the original complaint were

substantially different, but they fail to sufficiently support that position.

AFFIRMED