

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Bonnie T. Ramos, et al.,

10 Plaintiffs,

11 v.

12 Wells Fargo Home Mortgage, et al.,

13 Defendants.
14

No. CV-17-00316-PHX-GMS

ORDER

15 Pending before the Court is Defendant's Motion to Dismiss Plaintiffs' First
16 Amended Complaint ("FAC") pursuant to Federal Rule of Civil Procedure 9(b) and
17 12(b)(6). For the following reasons, the motion to dismiss is granted in part and denied
18 in part.

19 **BACKGROUND**

20 In November of 1969, Bonnie T. Ramos ("Mrs. Ramos") purchased a home at
21 2340 W. Adams Street, Phoenix, AZ 85009.¹ (Doc. 9 at 3.) The home was financed with
22 a VA loan Mrs. Ramos received from Colonial Associates Mortgage. (*Id.*) Mrs. Ramos
23 was the only individual named on the loan, but her husband, Mr. Ramos, is also a named
24 Plaintiff in this case. (*Id.* at 2.) Mrs. Ramos refinanced the loan first through Ace
25 Mortgage Co. and again through WMC Mortgage in May of 2004. (*Id.*) In December of
26 2008, Mrs. Ramos requested a loan modification from Wells Fargo Bank ("WFB"), and
27

28 ¹ The Court takes as true the allegations in Plaintiff's Complaint at this stage of the
litigation. See *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1991).

1 entered into a written agreement with WFB on or about August 20, 2009 (“2009
2 modification). (*Id.* at 4.) The 2009 modification was executed under the Home
3 Affordable Modification Program (“HAMP”) which decreased Mrs. Ramos’s interest
4 rate, but increased her monthly payments by several hundred dollars. (*Id.*; Doc. 19-1 at
5 2; 13-1 at 16.)² Mrs. Ramos informed WFB that she wanted the loan modification to
6 decrease her monthly payment, not increase it. (*Id.*) In response, WFB advised her to
7 accept the modification and reapply for another HAMP modification to receive a lower
8 monthly payment, even though her finances had not changed since she first applied.
9 (Doc. 9 at 4–5.) Mrs. Ramos alleges that from 2009 to 2016 WFB continuously told her
10 that required documents for the HAMP application were either unsent or missing, despite
11 her repeated assertions that she had sent the requested documents. (Doc. 9 at 5–6.) In
12 May of 2016 WFB declined Mrs. Ramos’ HAMP application. (Doc. 9 at 8.) Mrs. Ramos
13 states that WFB told her HAMP rules prevented WFB from accepting any further
14 payments until she prevailed on appeal. (*Id.* at 10.) Ramos alleges that WFB told her
15 that she would have to be in default for a period of three months before she could appeal
16 the denial. (*Id.* at 19). Mrs. Ramos attempted to make her monthly payments as of July
17 of 2016, but WFB has refused to accept them. (*Id.*) In September of 2016, Mrs. Ramos
18 learned WFB had initiated foreclosure proceedings. (*Id.* at 11.)

19 Plaintiffs commenced this action against WFB in Superior Court on or about
20 January 10, 2017. (Doc. 1.) WFB removed the action to this Court on January 31, 2017.

21
22 ² When considering a motion to dismiss, a court will generally only look to the
23 face of the Plaintiff’s complaint. *See Van Buskirk v. Cable News Network, Inc.*, 284 F.3d
24 977, 980 (9th Cir. 2002). However, a court may also look to documents that are
25 “incorporated by reference” in the complaint as well as documents that are part of the
26 public record, such as a deed of trust. *Id.*; *Hal Roach Studios, Inc. v. Richard Feiner &*
27 *Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1989). The loan modification of 2009 was
28 referenced throughout the FAC. It was attached to the pleadings and no party contests
its authenticity. *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Likewise, the
deed of trust is a public record and it was referenced in the FAC. Therefore, both are
properly before the Court.

1 (*Id.*) In Plaintiffs’ First Amended Complaint (“FAC”), Plaintiffs allege four claims for
2 relief. First, Plaintiffs allege WFB tortiously breached the Implied Covenant of Good
3 Faith and Fair Dealing by (1) not complying with HAMP regulations or the Consent
4 Order from the Department of the Treasury outlining standard mortgage servicing
5 practices, and (2) providing them with false information regarding HAMP’s loan
6 application and appeal process. (Doc. 9 at 12–16.) Second, Plaintiffs allege WFB
7 negligently breached the Arizona Good Samaritan Doctrine by (1) misleading them into
8 modifying their existing loan instead of applying for a new loan, (2) improperly
9 administering the first HAMP application by offering a loan modification that raised their
10 monthly payments, (3) improperly advising Plaintiffs that they needed to default on their
11 loan in order to appeal the denial of their HAMP application, and (4) unjustifiably
12 denying her HAMP re-application after seven years. (*Id.* at 17–22.) Third, Plaintiffs
13 allege that WFB engaged in negligent or intentional misrepresentation by luring Mrs.
14 Ramos into accepting the 2009 modification while advising her to reapply for another
15 modification, as it knew that any such reapplication was futile. (*Id.* at 23.) The FAC
16 alleges that Mrs. Ramos relied upon WFB’s representations, and that if she had known
17 that a new modification was impossible, she would have defaulted on her loan earlier
18 rather than continue to make payments. (*Id.* at 23–24.) Fourth, the FAC alleges that
19 WFB tortiously breached the Truth in Lending Act (“TILA”) by: (1) failing to provide
20 Mrs. Ramos with a Truth in Lending Statement or similar disclosure detailing the cost of
21 the HAMP payments, (2) failing to disclose information regarding WFB’s finance
22 charges, and (3) changing the amounts and demanding additional payments via phone
23 conversations and not in writing. (*Id.* at 25–30.) The Plaintiffs seek monetary and
24 declaratory relief that WFB is liable for the tortious conduct outlined in the FAC, and
25 that a Cancellation of Notice of Trustee Sale be recorded with in the Maricopa County
26 Recorder’s office.”³ (Doc. 9 at 32.) In response, WFB filed the instant motion to
27

28 ³ In her Response, Mrs. Ramos references an additional claim not alleged in the
FAC for a breach of the Arizona Consumer Fraud Act. (Doc. 19 at 11.) This claim was

1 dismiss.

2 DISCUSSION

3 I. Legal Standard

4 “A Rule 12(b)(6) motion tests the legal sufficiency of a claim.” *Navarro v. Block*,
5 250 F.3d 729, 732 (9th Cir. 2001). To survive dismissal for failure to state a claim
6 pursuant to Rule 12(b)(6) a complaint must contain more than “labels and conclusions”
7 or a “formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v.*
8 *Twombly*, 550 U.S. 544, 555 (2007). A plaintiff must allege sufficient facts to state a
9 claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
10 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the
11 court to draw the reasonable inference that the defendant is liable for the misconduct
12 alleged. The plausibility standard is not akin to a ‘probability requirement,’ but it asks
13 for more than a sheer possibility that a defendant has acted unlawfully.”). In deciding a
14 Rule 12(b)(6) motion, a court must accept all factual allegations in the complaint as true,
15 in addition to the reasonable inferences that can be drawn from them. *Id.*

16 II. Analysis

17 A. Mr. Ramos’s Claims

18 The Complaint states that Mr. Ramos “sues in his individual capacity for non-
19 community damages,” but the Complaint does not provide any facts indicating that Mr.
20 Ramos was damaged in his non-community capacity. (Doc. 9 at 2.) Mr. Ramos has not
21 alleged any “factual content that allows the court to draw the reasonable inference that
22 the defendant is liable for the misconduct alleged against Mr. Ramos in a non-community
23 capacity.” *Ashcroft v. Iqbal*, 556 U.S. at 678. Therefore, such claims are dismissed.

24 B. Tortious Breach of Implied Covenant of Good Faith and Fair Dealing

25 Arizona law “implies a covenant of good faith and fair dealing in every contract.”
26 *Rawlings v. Apodaca*, 151 Ariz. 149, 153, 726 P.2d 565, 569 (1986). This covenant

27
28

not pled in the FAC, the Defendant did not move to dismiss it in its Motion to Dismiss,
and thus the Court will not address it in this order.

1 imposes a duty on both parties to ensure that “neither party will act to impair the right of
2 the other to receive the benefits which flow from their agreement or contractual
3 relationship.” *Id.* Generally, this cause of action arises as a matter of contract law, not
4 tort law. However, if there is a special relationship between the two parties, a plaintiff
5 can seek relief as a matter of tort law.⁴ *McAlister v. Citibank (Arizona), a Subsidiary of*
6 *Citicorp*, 171 Ariz. 207, 213, 829 P.2d 1253, 1259 (Ct. App. 1992). A special relationship
7 arises between parties where there is a “fiduciary relationship, elements of public interest
8 (e.g., unequal bargaining positions), or adhesion.” *Id.*

9 Mrs. Ramos alleges that WFB engaged in a host of bad faith behaviors while
10 considering her application for modifying the 2009 modification. However, she does not
11 allege any facts that indicate the existence of any contract entitling her to a loan
12 modification following the 2009 modification. Instead, she relies on her 2009
13 modification contract, which does not mention any right to a subsequent modification.
14 WFB could not have breached the covenant of good faith and fair dealing during
15 negotiations for a new modification absent the presence of a contract that included, at the
16 least, an implied right to subsequent modification as a benefit of the contract. *See*
17 *Weisman v. Capital One NA*, No. CV-15-00657-PHX-GMS, 2016 WL 558416, at *3 (D.
18 Ariz. Feb. 12, 2016); *Hunter v. CitiMortgage, Inc.*, No. CV 11-01549-PHX-FJM, 2011
19 WL 4625973, at *3 (D. Ariz. Oct. 5, 2011) (“Plaintiffs have not pled the existence of a
20 separate enforceable contract to negotiate for a loan modification in good faith, and thus
21 any claims alleging a violation of good faith and fair dealing arising from the loan
22 modification negotiations fail.”). Mrs. Ramos has not alleged the existence of any such
23 contract, and thus her first claim fails.

24 To the extent that Mrs. Ramos alleges that WFB may be liable for breach of the
25

26 ⁴ A debtor-creditor relationship generally does not create a special relationship
27 under Arizona law. *See McAlister v. Citibank (Arizona), a Subsidiary of Citicorp*, 171
28 Ariz. 207, 213, 829 P.2d 1253, 1259 (Ct. App. 1992) (finding no special relationship
between a debtor and a creditor). This presents an additional reason to dismiss Mrs.
Ramos’s claim.

1 implied covenant of good faith and fair dealing due to violations of HAMP or the April
2 2011 Consent Order with the Office of the Comptroller, her claim also fails. Mrs. Ramos
3 does not allege that she was a party to the consent order, and thus it cannot form the basis
4 of her claim. Furthermore, it is well established that HAMP does not provide individual
5 borrowers with a private right of action. *See Marks v. Bank of America, N.A.*, No. 03:10-
6 CV-08039-PHX-JAT, 2010 WL 2572988 (D. Ariz. 2010); *see also Ruvalcaba v. Citibank*
7 *CitiMortgage, Inc.*, No. CV-12-4655-JFW(AJWX), 2012 WL 12894753, *3 (C.D. Cal.
8 2012) (collecting cases). “A party cannot circumvent the lack of a private right of action
9 by filing a breach of contract claim based on third party beneficiary status when the
10 statute does not demonstrate any intent to allow beneficiaries to enforce those terms.”
11 *Id.*; *see also Astra USA, Inc. v. Santa Clara Cty., Cal.*, 563 U.S. 110, 118 (2011) (“The
12 absence of a private right to enforce the statutory ceiling price obligations would be
13 rendered meaningless if 340B entities could overcome that obstacle by suing to enforce
14 the contract’s ceiling price obligations instead.”). Therefore, Mrs. Ramos’s claim for
15 breach of the implied covenant of good faith and fair dealing is dismissed.

16 **C. Breach of the Arizona Good Samaritan Doctrine**

17 Pursuant to Arizona’s Good Samaritan Doctrine, “a party may be liable for
18 negligent performance of an assumed duty by either: (1) increasing the risk of harm to
19 another, or (2) causing another to suffer harm because he or she relied on the party
20 exercising reasonable care in undertaking the duty.” *Steinberger v. McVey ex rel. Cty. of*
21 *Maricopa*, 234 Ariz. 125, 137, 318 P.3d 419, 431 (Ct. App. 2014). Therefore, to state a
22 claim, a plaintiff must allege facts indicating an increase in the risk of harm or reliance on
23 the Defendant’s decision to assume the duty at issue. *Id.* Mrs. Ramos alleges that WFB
24 increased her risk of economic harm.

25 Mrs. Ramos alleges that WFB told her that she had to default on her loan to appeal
26 the denial of her loan re-modification. (Doc. 9 at 19.) Mrs. Ramos also alleges that if
27 WFB had been honest with her, she would have either obtained a new loan with another
28 lender, or defaulted on her loan with WFB earlier, rather than making seven years of

1 payments only to be denied, required to default to appeal the denial, and to now face
2 foreclosure as a result. (*Id.* at 23.) Thus, she adequately alleges that WFB increased the
3 risk of economic harm to her through its negligent undertaking, lack of candor and
4 misrepresentations. In *Steinberger*, the Arizona Court of Appeals found that a plaintiff
5 could state a claim under the Good Samaritan Doctrine where

6 (1) a lender, or its agent/representative, induces a borrower to
7 default on his or her loan by promising a loan modification if
8 he or she defaults; (2) the borrower, in reliance on the
9 promise to modify the loan, subsequently defaults on the
10 loan; (3) after the borrower defaults, the lender or its
11 agent/representative negligently processes or fails to process
12 the loan modification, or due to the
13 lender/agent/representative's negligence, the borrower is not
14 granted a loan modification; and (4) based on the default, the
15 lender subsequently forecloses on the borrower's property.

16 *Steinberger v. McVey ex rel. Cty. of Maricopa*, 234 Ariz. 125, 138, 318 P.3d 419, 432
17 (Ct. App. 2014). Such is the case here, thus Mrs. Ramos's claim will not be dismissed.

18 WFB argues that Mrs. Ramos cannot demonstrate that she reasonably relied on
19 WFB's promise of a new re-modification, as her application remained pending
20 throughout this time period. However, *Steinberger* clarified that under the increased risk
21 of economic harm theory, a plaintiff is "not required to allege reliance on [WFB's] loan
22 modification program." *Steinberger*, 234 Ariz. at 138. Therefore, Mrs. Ramos's claim is
23 not dismissed.

24 **D. Intentional Misrepresentation**

25 To state a claim for intentional misrepresentation, the plaintiff must allege

26 (1) a representation; (2) its falsity; (3) its materiality; (4) the
27 speaker's knowledge of its falsity or ignorance of its truth; (5)
28 the speaker's intent that it be acted upon by the recipient in
the manner reasonably contemplated; (6) the hearer's
ignorance of its falsity; (7) the listener's reliance on its truth;
(8) the right to rely on it; and (9) his consequent and
proximate injury.

///

1 *Wells Fargo Credit Corp. v. Smith*, 166 Ariz. 489, 494, 803 P.2d 900, 905 (Ct. App.
2 1990).⁵ This claim requires the plaintiff to allege falsity, and thus Federal Rule of Civil
3 Procedure 9(b) applies. *See* Fed. R. Civ. P. 9(b) (setting the particularity standard for
4 claims rooted in fraud or mistake).

5 Rule 9(b) requires the plaintiff to “state with particularity the circumstances
6 constituting fraud.” Fed. R. Civ. P. 9(b). This requires that the party alleging fraud to
7 include an account of the “time, place, and specific content of the false representations as
8 well as the identities of the parties to the misrepresentation.” *Edwards v. Marin Park,*
9 *Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004). “To comply with Rule 9(b), allegations of
10 fraud must be specific enough to give defendants notice of the particular misconduct
11 which is alleged to constitute the fraud charged so that they can defend against the charge
12 and not just deny that they have done anything wrong.” *Bly-Magee v. California*, 236
13 F.3d 1014, 1019 (9th Cir. 2001) (internal quotations omitted). However, “[m]alice,
14 intent, knowledge, and other conditions of a person’s mind may be alleged generally.”
15 Fed. R. Civ. P. 9(b).

16 Ms. Ramos complied with Rule 9(b). Her complaint establishes a time-line of
17 events leading up to her application’s eventual rejection that satisfy Rule 9(b)’s pleading
18 requirements. (Doc. 9 at 6–10.) Mrs. Ramos alleged that beginning in September of
19 2009, employees from WFB called her to request documents that Mrs. Ramos already
20 gave them. (Doc. 9 at 7.) Mrs. Ramos also alleged that in December of 2009, her
21 account was transferred to a Ms. Megan Lynch, who spent the next three years claiming
22 that WFB needed additional documentation until finally admitting that WFB was waiting
23

24 ⁵ Mrs. Ramos does not distinguish her negligent misrepresentation claim from her
25 intentional misrepresentation claim. However, to the extent that she raises a negligent
26 misrepresentation claim, that claim is dismissed because, as discussed above, there is no
27 contract between Mrs. Ramos and WFB establishing that WFB had any duty to Mrs.
28 Ramos while negotiating for a new modification. A plaintiff seeking to recover under a
negligent misrepresentation theory of liability must establish that such a duty exists.
PLM Tax Certificate Program 1991–92, L.P. v. Schweikert, 216 Ariz. 47, 50, 162 P.3d
1267, 1270 (Ct. App. 2007) (The plaintiff must also allege that “the person charged with
negligent misrepresentation must have owed a duty to the injured party.”). Thus, the
negligent misrepresentation claim is dismissed.

1 on the government to respond. (*Id.*) According to Mrs. Ramos, this was a lie, as lenders
2 such as WFB approved HAMP applications, not the government. (*Id.*) Mrs. Ramos also
3 alleges that the letters WFB sent her in September and December of 2014 continued to
4 request more information from her. (*Id.* at 8.) Mrs. Ramos was not notified that she was
5 not eligible to receive an additional HAMP loan on the same property until May 12,
6 2016. (*Id.*) Mrs. Ramos alleges that WFB, by virtue of its position, had to know that she
7 could not qualify for a HAMP loan long before 2016, and continued to take her payments
8 anyway. (*Id.* at 8–9.) Likewise, WFB had to know that any appeal effort on
9 Mrs. Ramos’s part was futile, and yet it encouraged her to continue on with the appeal
10 process despite this. (*Id.*) As a result, Mrs. Ramos alleges that she continued to make
11 payments to WFB until it refused to continue to accept them. (*Id.* at 10.) Three months
12 later, WFB sent Mrs. Ramos a Debt Validation Notice and a Notice of Trustee’s Sale of
13 her home. (*Id.* at 9.) These facts, as alleged, are specific enough to place WFB on notice
14 of the conduct that forms the foundation of the alleged misrepresentation, and thus
15 Mrs. Ramos’s complaint complies with Rule 9(b). *See Bly-Magee*, 236 F.3d at 1019.

16 Even assuming Defendant is correct in asserting that the 150,000 dollars
17 Mrs. Ramos continued to pay as part of the trial modification payments cannot be
18 claimed as damages, Mrs. Ramos also alleges that WFB’s misrepresentations had a
19 detrimental impact on her credit score and resulted in a loss of equity. At this stage in the
20 proceedings, such allegations are sufficient to allege damages.

21 “A claim for intentional misrepresentation must be brought within three years
22 after the cause of action accrues.” *Bank of the W. v. Estate of Leo*, 231 F.R.D. 386, 390
23 (D. Ariz. 2005). However, under Arizona law, a cause of action for intentional
24 misrepresentation “shall not be deemed to have accrued until the discovery by the
25 aggrieved party of the facts constituting the fraud or mistake.” A.R.S. § 12-543; *see*
26 *Bank of the W.*, 231 F.R.D. at 390 (“The statutes of limitations for both negligent and
27 intentional misrepresentation begin to run when the plaintiff knew or by reasonable
28 diligence should have known of the misrepresentation.”). Furthermore, “[w]hen a motion

1 to dismiss is based on the running of the statute of limitations, it can be granted only if
2 the assertions of the complaint, read with the required liberality, would not permit the
3 plaintiff to prove that the statute was tolled.” *Jablon v. Dean Witter & Co.*, 614 F.2d 677,
4 682 (9th Cir. 1980).

5 Mrs. Ramos does not contest that much of the conduct that forms the basis for her
6 intentional misrepresentation claim occurred more than three years ago. However, she
7 asserts that pursuant to the so-called “discovery rule,” the cause of action did not accrue
8 until she, acting with “reasonable diligence could have learned of the fraud, whether or
9 not [she] actually learned of it.” *Coronado Dev. Corp. v. Superior Court of Arizona In &*
10 *For Cochise Cty.*, 139 Ariz. 350, 352, 678 P.2d 535, 537 (Ct. App. 1984). Mrs. Ramos
11 contends that she did not know of WFB’s misrepresentations until she met with her
12 lawyer in September of 2016. Yet, the standard does not limit its inquiry to when the
13 plaintiff actually learned of the misrepresentations; the cause of action accrues when she
14 could have learned of the fraud in the course of reasonable diligence. Pursuant to her
15 FAC, WFB told Mrs. Ramos that it would not accept any additional payments from her
16 until her appeal was successful in May of 2016. (Doc. 9 at 10.) Mrs. Ramos alleged that
17 she had to appeal HAMP decisions several times over the years, and the appeals never
18 interfered with her ability to make payments prior to this occurrence. (*Id.*) Therefore,
19 May of 2016 is likely the point at which a person, acting with reasonable diligence, could
20 have identified that something was wrong. However, for the purposes of this motion,
21 either time places the filing of Mrs. Ramos’s FAC well-within the three year statute of
22 limitations. If the facts as Mrs. Ramos alleged them are true, then she may be able to
23 prove that the statute of limitations did not begin to run until 2016, and thus the motion to
24 dismiss the intentional misrepresentation claim is denied. *See Jablon*, 614 F.2d at 682.

25 **E. Breach of the Truth in Lending Act (“TILA”)**

26 Mrs. Ramos contends that WFB breached the TILA during both the 2009
27 modification as well during the negotiation process for the proposed re-modification of
28 Mrs. Ramos’s loan. TILA was created by Congress “to assure a meaningful disclosure of

1 credit terms so that the consumer will be able to compare more readily the various credit
2 terms available to him and avoid the uninformed use of credit, and to protect the
3 consumer against inaccurate and unfair credit billing and credit card practices.”
4 15 U.S.C. § 1601. To that end, “[t]he statute requires, among other things, disclosure of
5 finance charges, the “cost of credit as a yearly rate,” and information about adjustable
6 interest rates.” *Carter v. Bank of Am., NA*, No. EDCV-15-1474-MWF(DTBx), 2015 WL
7 12732427, at *4 (C.D. Cal. Oct. 22, 2015) (quoting U.S.C. § 1638(a)). Mrs. Ramos
8 contends that WFB violated the statute by failing to provide the required disclosures.

9 However, the TILA does not apply to loan modifications such as Mrs. Ramos’s
10 2009 Modification. *See Diamond v. One West Bank*, No. CV-09-1593-PHX-JFM, 2010
11 WL 1742536 (D. Ariz. 2010) (“[A] loan modification does not require additional TILA
12 disclosures, particularly where no new monies are advanced.” (citing 15 U.S.C.
13 § 1634(e)(2)); *see also Carter*, 2015 WL 12732427 at *4 (“TILA’s disclosures
14 requirements were not triggered because the [l]oan modification was neither a
15 refinancing nor an extension of new credit.”). The 2009 Modification reduced Mrs.
16 Ramos’s interest rate and revised her monthly payment on her existing loan. Therefore, it
17 is excluded from the definition of refinancing under the TILA statute, and thus it is not
18 governed by TILA. *See* 12 C.F.R. § 226.20(a)(2) (excluding “[a] reduction in the annual
19 percentage rate with a corresponding change in the payment schedule” from the
20 definition of refinancing); *Beck v. Wells Fargo Bank, Nat’l Ass’n*, No. 5:11-CV-00663-
21 EJD, 2011 WL 6217345, at *3 (N.D. Cal. Dec. 14, 2011) (“Loan modifications and
22 workout agreements do not trigger new TILA obligations”).

23 Furthermore, even if the 2009 modification was covered by TILA, Mrs. Ramos’s
24 claims fall far beyond the one year statute of limitations. TILA has a one year statute of
25 limitations, which runs from the date of the violation. 15 U.S.C. § 1640(e). The loan
26 modification agreement was executed in 2009. The last violation Mrs. Ramos alleges is
27 an improper alteration to her payment plan in 2012. (Doc. 9 at 28.) Therefore, whatever
28 TILA claims Mrs. Ramos had to bring are untimely. Mrs. Ramos herself appears to

1 concede this, as she does not argue against the dismissal of her TILA claim in her
2 responsive briefing. (Doc. 19.) Therefore, the TILA claim is dismissed.

3 **F. Declaratory Relief**

4 Defendants' sole argument for dismissing Mrs. Ramos's request for declaratory
5 relief relies upon the assumption that her other claims fail. This is not the case. Thus, the
6 Court will not dismiss Mrs. Ramos's request for declaratory relief at this time.

7 **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss (Doc. 13)
8 is granted in part and denied in part as follows:

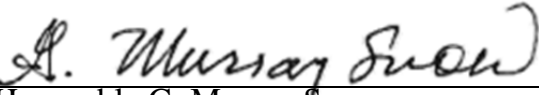
9 1. Count One alleging tortious breach of the implied covenant of good faith
10 and fair dealing is **DISMISSED**.

11 2. Count Two alleging negligent performance of an undertaking, also known
12 as a violation of Arizona's Good Samaritan Doctrine, is **NOT DISMISSED**.

13 3. Count Three alleging negligent or intentional misrepresentation is
14 **DISMISSED** only as to the negligent misrepresentation claim. The intentional
15 misrepresentation claim survives.

16 Count Four alleging a tortious breach of the TILA is **DISMISSED**.

17 Dated this 11th day of September, 2017.

18 
19 _____
20 Honorable G. Murray Snow
21 United States District Judge
22
23
24
25
26
27
28