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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 RICHARD N. BATSON and BEVERLY J. No. 2:15-cv-00193-SAB

10 JONES-BATSON,

11 Plaintiffs,

12 v.

13 DEUTSCHE BANK TRUST AMERICAS,

14 Indentured Trustee for SASTA 2005-3

15 Mortgage Backed Assets 2005-3;

16 MORGAN STANLEY FINANCIAL;

17 OCWEN MORTGAGE SERVICES,

18 NORTH CASCADE TRUSTEE

19 SERVICES; DOES 1-10; and ALL

20 OTHERS WITH SECURED INTEREST,

21 Defendants.
22

**ORDER GRANTING IN PART
AND DENYING IN PART
MOTIONS TO DISMISS**

23 **Introduction**

24 Before the Court is Defendants' Deutsche Bank Trust Company Americas
25 as Indenture Trustee for SASTA 2005-3 Mortgage Backed Assets 2005-3

26 ("Deutsche Bank") and Ocwen Loan Servicing, LLC ("Ocwen")'s Motion to

27 Dismiss, ECF No. 4, and Defendant Morgan Stanley's Motion to Dismiss for

28 Failure to State a Claim, ECF No. 15. The Court has reviewed the motions, and the

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1 responses of pro se Plaintiffs Richard N. Batson and Beverly J. Jones-Batson, as
2 well as the related replies, filings, and documents, including those submitted for
3 judicial notice. For the reasons discussed below, the Court **grants in part and**
4 **denies in part** the motion of Defendants’ Deutsche Bank and Ocwen, ECF No. 4,
5 and **grants** Defendant Morgan Stanely’s motion, ECF No. 15.

6 **I. Material Facts**

7 These facts, drawn from the Plaintiffs’ complaint, are assumed true. On
8 April 16, 2005, the Batsons entered an agreement to purchase the property
9 contested in the instant action, 12910 East Sinto Avenue, Spokane Valley
10 Washington 99216. The Plaintiffs executed a promissory note to finance the home
11 purchase, and the deed of trust was executed on July 3, 2005. The Plaintiffs
12 received their first payment statement in late July 2005. The amount due differed
13 “with no explanation, [from the] amount previously outlined.” ECF No. 1-3 at
14 32:18-19. The Plaintiffs then engaged in a five year effort, from July 2005 to
15 October 2010, to “correct, clear up, and eventually end association” with Saxon
16 Mortgage, the original lender. Id. at 32:22-23. Once Saxon Mortgage transferred
17 the deed, the Batsons attempted to similarly contest the terms of their loan with
18 Ocwen, from March 2011 to October 2013. At some point, the Batsons defaulted
19 on their loan payments.

20 The Batsons unsuccessfully attempted to secure information about their loan
21 from Saxon Mortgage, Ocwen, and Deutsche Bank from March 2011 through July
22 2013. After sending a demand letter in July 2014, the Batsons did not receive word
23 from the Defendants until January 2015, when Ocwen began sending letters
24 “claiming debt and attempting debt collection by way of invoices for reinstated
25 loan, required insurance and threats of foreclosure.” Id. at 33:13-16. A Notice of
26 Trustee Sale was posted on the property on March 28, 2015, which was filed on
27 June 1, 2015 with the Spokane County Auditor.

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1 The Plaintiffs' filed a complaint on June 26, 2015 in Spokane County
2 Superior Court. ECF No. 1-3. The complaint stated causes of action for Wrongful
3 Foreclosure, Intent to Defraud, Wrongful Claim to Debt Secured by Deed,
4 Violation of Consumer Rights, and Violation of Plaintiffs' Civil Rights.¹ The case
5 was removed to this Court's jurisdiction on July 24, 2015, and Plaintiffs moved
6 for a preliminary injunction on August 21, 2015, to halt the trustee's sale.

7 **II. Standard**

8 A motion to dismiss for failure to state a claim may be granted only when
9 the plaintiff's allegations, taken as true, demonstrate the plaintiff is not entitled to
10 relief as a matter of law. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Mendocino*
11 *Environ. Cntr. v. Mendocino Cnty.*, 14 F.3d 457, 460 (9th Cir. 1994). The Court
12 accepts all allegations in the complaint as true, and draws reasonable inferences in
13 favor of the plaintiff. *Hays v. City of Spokane*, No. CV-11-0010-LRS, 2011 WL
14 4852311, at *2 (E.D. Wash. Oct. 13, 2011). Furthermore, the complaint must be
15 construed in the light most favorable to the plaintiff. *Parks Schl. of Business, Inc.*
16 *v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). However, the Court need not
17 take legal conclusions as factual allegations. *Iqbal*, 556 U.S. at 678. Overall, the
18 claims for relief must be plausible on their face. *Id.*

19 **III. Judicial Notice**

20 The Court first considers Defendants' Request for Judicial Notice, ECF
21 No. 5. A document not attached to a complaint may be incorporated by reference
22 into a complaint if the plaintiff extensively refers to the document, or if the
23 document forms the basis of the plaintiff's claim. *United States v. Ritchie*, 342
24 F.3d 903, 908 (9th Cir. 2003). Defendants may offer such documents in a Rule
25 12(b)(6) motion to dismiss and the Court may consider such documents as part of
26 the complaint and assume them true. *Id.* Additionally, the Court can take judicial

27 ¹ These claims cite large chapters of the Revised Code of Washington and entire titles of the United States Code. The
28 Court has liberally construed the pro se complaint, "which must be held to less stringent standards than formal
pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 notice of facts that “can be accurately and readily determined from sources whose
2 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2).

3 Defendants request the Court take judicial notice of several documents
4 related to the Plaintiffs claims in this case: the Deed of Trust, recorded in Spokane
5 County, Document No. 5240753; the Appointment of Successor Trustee, recorded
6 in Spokane County, Document No. 6039643; the Appointment of Successor
7 Trustee, recorded in Spokane County, Document No. 6399575; and the Notice of
8 Trustee’s Sale, recorded in Spokane County, Document No. 6402728. Plaintiffs
9 reference these documents in the complaint, and they make up the basis of their
10 claims. Additionally, they are public records and their accuracy cannot reasonably
11 be questioned. *Justo v. Charter Capital Corp.*, No. 5:11-CV-00670 EJD, 2012 WL
12 359738, at *1 n.1 (N.D. Cal. Feb. 2, 2012). The Court therefore takes judicial
13 notice of the above documents, and proceeds to consider the instant motions as
14 Rule 12(b)(6) motions to dismiss without converting them into motions for
15 summary judgment. *Ritchie*, 342 F.3d at 909.

16 **IV. Deutsche Bank and Ocwen’s Motion to Dismiss, ECF No. 4**

17 The Court proceeds to discuss each of Plaintiffs’ claims in turn. Deutsche
18 Bank and Ocwen’s motion, ECF No. 4, seeks to dismiss all of Plaintiffs’ claims.

19 **A. Wrongful Foreclosure (Washington Deed of Trust Act and Consumer 20 Protection Act)**

21 The Deed of Trust Act provides the only method for enjoining or restraining
22 a nonjudicial foreclosure in Washington State. *Andrews v. Countrywide Bank*, No.
23 C15-0428JLR, 2015 WL 1487093, at *2 (W.D. Wash. Apr. 1, 2015). A court can
24 enjoin the trustee’s sale on any proper legal or equitable ground. RCW
25 61.24.130(1). But Plaintiffs do not plausibly set forth any specific provisions of
26 the Deed of Trust Act that Defendants violated. *Moon v. GMAC Mortg. Corp.*, No.
27 C08-969Z, 2009 WL 3185596, at *6 (W.D. Wash. Oct. 2, 2009). The documents
28 provided by Defendants, and taken under judicial notice and assumed true,

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1 *JPMorgan Chase Bank Nat. Ass'n*, No. 13-CV-0293-TOR, 2013 WL 6273583, at
2 *2 (E.D. Wash. Dec. 4, 2013). The Plaintiff must allege “the time, place, and
3 specific content of the false representations as well as the identities of the parties
4 to the misrepresentation.” *Schreiber Distributing Co. v. Serv-Well Furniture Co.,*
5 *Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

6 The Plaintiffs have not sufficiently alleged the circumstances constituting
7 fraud, let alone all nine elements. They generally allege that the documents are
8 fraudulent, and that the loans presented are not the ones they signed. They also
9 state that at one point that the assignee’s name is in a different font from the rest of
10 the assignment. At no point do the Plaintiffs ever state what is fraudulent about the
11 documents. The allegation that something in the document is fraudulent is the sort
12 of conclusory allegation that does not reach the Rule 9(b) standard.

13 Additionally, if the applicable statute of limitations time-bars a claim, it is
14 properly dismissed for failure to state a claim. *Jones v. Bock*, 549 U.S. 199, 215
15 (2007). The statute of limitations for fraud in Washington is three years after the
16 discovery of the fraudulent conduct. RCW 4.16.080(4). Since the Plaintiffs allege
17 they were aware of the alleged fraud in the loan documentation in 2005, no fraud
18 claims surrounding the loans can survive the statute of limitations. This also
19 eliminates any fraud claims based on the assignment of the deed of trust, which
20 occurred on October 11, 2011. ECF No. 30 at 4. Any fraud claim after that point
21 still fails, as the Plaintiffs have not shown justifiable reliance, or the specific
22 falsehoods they relied on. For the above reasons, the fraud claims are **dismissed**.

23 **1. Challenge to Assignment**

24 Plaintiffs cannot prevail on any claim behind the assignment. Borrowers
25 lack the standing to challenge assignments, even fraudulent ones, unless the
26 borrower shows a “genuine risk of paying the same debt twice.” *Borowski v. BNC*
27 *Mortgage, Inc.*, No. C12–5867 RJB, 2013 WL 4522253, at *5 (W.D. Wash. Aug.
28 27, 2013); *Brodie v. Nw. Trustee Servs., Inc.*, No. 12-CV-0469-TOR, 2012 WL

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1 6192723, at *2-3 (E.D. Wash. Dec. 12, 2012). There is no indication in the filings
2 of a risk of double-payment, and the assignment is legitimate. See *Cervantes v.*
3 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1042 (9th Cir. 2011) (plaintiffs
4 unable to show a potentially unlawful designation of beneficiary caused injury by
5 affecting terms of loan, ability to repay, or obligations as borrowers). This claim is
6 thus **dismissed**.

7 **C. Civil Rights Claims**

8 Plaintiffs allege civil rights violations. Since there are no state actors or acts
9 at issue here, there can be no liability for civil rights violations. *Cummings v.*
10 *Guardianship Servs. of Seattle*, 128 Wash. App. 742, 758 (2008). The Ninth
11 Circuit has explicitly held that a lawful trustee’s sale is not under color of state law
12 for civil rights purposes. *Brophy v. JPMorgan Chase Bank Nat’l Ass’n*, 2013 WL
13 6273583, at *3 (E.D. Wash. Dec. 4, 2013) (citing *Apao v. Bank of New York*, 324
14 F.3d 1091, 1093-95 (9th Cir. 2003)). The civil rights claim is **dismissed** as a
15 matter of law.

16 **D. Review of Potential Federal Statutory Claims**

17 In an abundance of caution in litigation involving pro se plaintiffs, the Court
18 next reviews potential claims under applicable federal statutes.

19 **1. Truth in Lending Act (“TILA”) Claim**

20 “A TILA violation occurs at the time the loan documents are signed.”
21 *Vatomanyuk v. Quality Loan Serv. Corp. of Washington*, 699 F. Supp. 2d 1242,
22 1244-45 (W.D. Wash. 2010) (citing *Meyer v. Ameriquest Mortgage Co.*, 342 F.3d
23 899, 902 (9th Cir. 2003)). For mortgage-related violations, a three-year statute of
24 limitations applies. 15 U.S.C. § 1640(e). Since the loan documents were signed in
25 2005, and Plaintiffs allege knowledge of any alleged fraud or misrepresentations
26 in 2005, the statute of limitations has run and any TILA claims fail.

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1 **2. Fair Debt Collection Procedures Act (“FDCPA”) Claim**

2 Plaintiffs likewise cannot raise a Fair Debt Collection Procedures Act claim,
3 as courts have held it is inapplicable to foreclosures. See, e.g., *Cheung v. Wells*
4 *Fargo Bank, N.A.*, 987 F. Supp. 2d 972, 977 (N.D. Cal. 2013).

5 **3. Real Estate Settlement Procedures Act (“RESPA”) Claim**

6 The Plaintiffs have set forth a RESPA claim which survives the motion to
7 dismiss. The statute of limitations for RESPA claims is three years. 12 U.S.C.
8 § 2614; *Padilla v. One West Bank*, No. 10-04080 CW, 2010 U.S. Dist. LEXIS
9 134387, at *15 (N.D. Cal. Dec. 20, 2010). Thus only violations occurring after
10 June 23, 2012 (three years before the complaint was filed) can survive. Plaintiffs
11 allege they sent a Qualified Written Request to Defendants on January 15, 2015.
12 Compl. ¶ 79. They allege requesting information on their loan balance,
13 explanation of fees; terms and conditions of amounts due; and penalties, and that
14 Defendants did not respond adequately. This is sufficient to set forth a plausible
15 claim under RESPA. See *Pelayo v. Home Capital Funding*, No. 08-CV-2030 IEG
16 (POR), 2009 U.S. Dist. LEXIS 44453, at ¶¶ 8-11 (S.D. Cal. May 22, 2009)
17 (alleging failure to respond to Qualified Written Requests sufficient to survive a
18 motion to dismiss). Any claims for RESPA violations occurring after June 23,
19 2012 survive the motion, and the Defendants’ motion is thereby **denied in part**.

20 **4. Federal Credit Rating Act**

21 Any potential FCRA claim cannot survive, as Plaintiffs have not alleged
22 that any credit ratings agencies notified Defendants or what information is
23 allegedly inaccurate. See *Wood v. Greenberry Fin. Servs., Inc.*, 907 F. Supp. 2d
24 1165, 1178 (D. Haw. 2012), abrogated on other grounds, 761 F.3d 1046 (9th Cir.
25 2014). Thus any claims under the FCRA are **dismissed**.

26 **E. Summary of *Deutsche Bank and Ocwen’s Motion to Dismiss***

27 For the reasons discussed above, Defendants Deutsche Bank and Ocwen’s
28 Motion to Dismiss is **granted in part, and denied in part**. Only the Plaintiffs’

1 RESPA claims remain. However, “leave to amend [the complaint] must be granted
2 [to the Plaintiffs] unless it is clear that the complaint’s deficiencies cannot be
3 cured by amendment.” *Lucas v. Dep’t of Corrections*, 66 F.3d 245, 248 (9th Cir.
4 1995). Therefore, the Plaintiffs are granted thirty days to file a first amended
5 complaint addressing any deficiencies described above.

6 **V. *Morgan Stanley’s Motion to Dismiss*, ECF No. 15**

7 Defendant Morgan Stanley has filed a separate motion to dismiss based on a
8 corporate liability theory. Morgan Stanley argues that it cannot be held liable for
9 allegedly illegal activities of its subsidiary, barring unusual circumstances.

10 The Court agrees. A corporation’s veil cannot be pierced absent unusual or
11 exceptional circumstances, in which the corporate form is used to avoid legitimate
12 legal obligations. See *Bangkok Broad. & T.V. Co. v. IPTV Corp.*, 742 F. Supp. 2d
13 1101, 1120 (C.D. Cal. 2010); *Culinary Workers & Bartenders Union v. Gateway*
14 *Cafe, Inc.*, 91 Wn. 2d 353, 366 (1979). Absent these circumstances, “a parent
15 corporation . . . is not liable for the acts of its subsidiaries.” *United States v.*
16 *Bestfoods*, 524 U.S. 51, 61 (1998).

17 The Plaintiffs do not present any evidence that Morgan Stanley is evading
18 legitimate liabilities, or that Morgan Stanley is operating as an alter ego for Saxon
19 Mortgage, the alleged subsidiary company. In their response, Plaintiffs state they
20 were “under the impression that Defendant Morgan Stanley would know they were
21 liable for the actions of Saxon Mortgage” ECF No. 19 at 6:4-5. Plaintiffs also
22 reference a news article where Morgan Stanley was ordered by the Federal
23 Reserve to review foreclosures conducted by Saxon Mortgage.

24 But as discussed above, there is no plausible indication on Plaintiffs’ part
25 that Saxon Mortgage engaged in impropriety on the part of the Plaintiffs’ deed in
26 trust. Even if there was, it would not supply the “unusual circumstances” needed
27 to pierce the corporate veil, such as alter ego liability or avoiding legitimate
28 obligations. Indeed, under any potential claim, the statute of limitations bars

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1 activities by Saxon Mortgage. Thus, Morgan Stanley's motion to dismiss is
2 **granted**, and the claims against it are **dismissed with prejudice**. See Reddy v.
3 Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990) (a district court may deny
4 leave to amend when any proposed amendment would be futile).

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Defendant Deutsche Bank and Ocwen's Motion to Dismiss, ECF No. 4, is
7 **granted in part and denied in part**, in accord with the reasoning above.

8 2. Defendant Morgan Stanley's Motion to Dismiss, ECF No. 15, is **granted**.
9 Defendant Morgan Stanley is **dismissed with prejudice**.

10 3. Plaintiffs are granted leave to amend their complaint, and must file their
11 first amended complaint no later than thirty days from the publication of this
12 order.

13 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
14 file this Order and provide copies to counsel and pro se Plaintiffs.

15 **DATED** this 6th day of November, 2015.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

21 Stanley A. Bastian
22 United States District Judge
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