

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KATHI M. WALLIS,

Plaintiff,

v.

INDYMAC FEDERAL BANK; WELLS  
FARGO BANK; REGIONAL TRUSTEE  
SERVICES CORPORATION; AND  
JOHN DOE,

Defendants.

CASE NO. C09-5500-BHS

ORDER GRANTING  
DEFENDANTS' MOTIONS  
TO DISMISS AND FOR  
SUMMARY JUDGMENT

This matter comes before the Court on Defendant Federal Deposit Insurance Company's ("FDIC") unopposed motion to dismiss or, alternatively, for summary judgment (Dkt. 11) and Defendant Wells Fargo Bank's ("Wells Fargo") unopposed motion for summary judgment (Dkt. 14). The Court has considered the pleadings filed in support of the respective motions and the remainder of the file and hereby grants the motions for the reasons discussed herein.

**I. PROCEDURAL HISTORY**

On March 19, 2009, Wallis filed her complaint against the above-captioned Defendants. Dkt. 1 at 7. On August 14, 2009, the matter was removed to federal court. *Id.* at 1. On March 23, 2010, FDIC filed its motion to dismiss or, in the alternative, for

1 summary judgment on behalf of Defendant IndyMac Federal Bank (“IndyMac”). Dkt. 11.  
2 On March 24, 2010, Wells Fargo filed its summary judgment motion. Dkt. 14. Wallis did  
3 not timely respond to either motion. On May 5, 2010, FDIC filed its reply brief on behalf  
4 of IndyMac. Dkt. 15. On May 10, 2010, Wells Fargo filed its reply brief. Dkt. 16. On  
5 May 24, 2010, Wallis filed her response to the summary judgment motions. Dkt. 20. On  
6 May 27, Wallis also filed a response to the FDIC’s motion to dismiss or alternatively for  
7 summary judgment (Dkt. 11). Dkt. 23 (Although Wallis styled this pleading as a “reply,”  
8 it was a response in opposition to a motion to dismiss).

9 To date, Wallis’ pleadings in opposition have been deficient, in that she has not  
10 filed any affidavits or documents in support of her responses. Accordingly, on May 26,  
11 2010, the Court noticed Wallis to this effect pursuant to *Rand v. Rowland*, 154 F.3d 952  
12 (9th Cir. 1998). Dkt. 22<sup>1</sup> (ordering Wallis to file a properly supported response and  
13 informing her that failure to do so may result in dismissal). Wallis did not file a response.  
14 On June 7, 2010, the Court struck the pretrial conference and issued a minute order  
15 informing the parties that this matter would be resolved on summary judgment. Dkt. 24.

## 16 **II. FACTUAL BACKGROUND**

17 This matter involves a challenge to the foreclosure on Wallis’ home. *See*  
18 Complaint; *see also* Declaration of David A. Weibel (Weibel Decl.), Ex. D (notice of  
19 trustee’s sale). On February 6, 2007, Wallis entered into and subsequently defaulted upon  
20 a loan agreement for \$577,000. *Id.*, Ex. A; *see also, e.g.*, Ex. C. On November 25, 2008,  
21 the deed of trust for this loan was assigned to IndyMac, recorded on December 5, 2008.  
22 *Id.*, Ex. B (assignment of deed of trust). Also on November 25, 2008, IndyMac initiated a  
23 nonjudicial foreclosure of the Wallis property, recorded on December 5, 2008. On  
24  
25

---

26  
27 <sup>1</sup>Although Wallis filed a response following this notice, it did not take the notice into  
28 consideration. *See* Dkt. 23 (filing a response that included only conclusory allegations).

1 December 24, 2009, Wallis was noticed that the trustee’s sale of her home would occur  
2 on March 27, 2009. *Id.*, Ex. D.

3         IndyMac failed as a bank. *See* Ex. F at 1. FDIC was appointed the receiver for  
4 IndyMac on July 11, 2008. Dkt. 1 ¶ 1 (notice of removal). By letter dated July 22, 2009,  
5 the FDIC informed Wallis that they had closed IndyMac and taken it into receivership.  
6 Ex. F at 1 (informing Wallis of the steps to take if she had a claim against the failed  
7 IndyMac). The Board of Directors for the FDIC determined that the IndyMac  
8 receivership held “insufficient assets . . . to satisfy deposit liabilities in full, [therefore,  
9 there will be no distributions on claims in the general liability class (or any lower priority  
10 classes) . . . .” *Id.*, Ex. N at 3.<sup>2</sup> The FDIC published this worthlessness determination in the  
11 federal register. *Id.*, Ex. O at 2. Because Wallis fell into a class of unsecured creditors that  
12 would not receive a distribution on claims, the FDIC informed Wallis of this fact by letter  
13 dated January 14, 2010. *Id.*, Ex. I at 2.  
14

15         On March 19, 2009, Wallis brought suit against the above-captioned Defendants  
16 by filing her complaint, apparently in an effort to enjoin the foreclosure action against her  
17 property located at “13816-65th Ave. NW, Gig Harbor, WA 98332, tax parcel No.  
18 012224-206-4 . . . .” Complaint at 7. In Wallis’ complaint she asserted concern over  
19 whether the entity foreclosing on her property had legitimate possession of the original  
20 note, which bore the name of the person owing the money. *Id.* at 8. Wallis further alleged  
21 that she believed the “original loan violated the Truth in Lending Act” (TILA). These are  
22 the extent of the allegations made by Wallis, which are not supported by any  
23 documentation other than the complaint and pleadings in opposition to summary  
24 judgment. *See generally* Complaint. Additionally, Wallis complained about removal to  
25

---

26         <sup>2</sup>Board of Directors determined that the total assets of IndyMac was \$63.131 million and  
27 the total deposit liabilities was \$8.738 billion, further concluding that the receivership assets  
28 equaled \$5.285 billion and the expenses of the receivership equaled \$7.964 billion. In short,  
liabilities greatly exceeded assets, i.e., Indymac was worthless. *See* Weibel Decl., Ex. N.

1 federal court in her latest deficient response (Dkt. 23); however, she does not assert any  
2 grounds on which removal was improper.

### 3 **III. DISCUSSION**

#### 4 **A. Local Rule 7(b)(2)**

5 When a party “fails to file papers in opposition to a motion, such failure may be  
6 considered by the court as an admission that the motion has merit. Local Rule 7(b)(2).

7 When the opposing party is proceeding *pro se*, as is the case here, some additional  
8 latitude is afforded to the *pro se* litigant.

9 Therefore, because Wallis is proceeding *pro se*, the Court carefully considered the  
10 basis on which Wells Fargo and the FDIC support their motions and whether such bases  
11 are meritorious.

#### 12 **B. The FDIC’s Motion to Dismiss**

##### 13 **1. Subject Matter Jurisdiction under 12(b)(1)**

14 The FDIC moves the Court to dismiss Wallis’ claim under Federal Rule of Civil  
15 Procedure 12(b)(1), which provides that a court may dismiss a claim for “lack of  
16 jurisdiction over the subject matter[.]” Fed. R. Civ. P. 12(b)(1). The FDIC argues that  
17 Wallis did not exhaust the claims process as set forth in 12 U.S.C. § 1821(d)(3)-(13).  
18 Congress granted the FDIC authority to act as receiver for failed banks and, when acting  
19 as such, tasked it with managing the failed banks’ assets and its distributions to legitimate  
20 depositors and creditors. *See* 12 U.S.C. §§ 1821(d)(2)(A)(ii); 1821(d)(2)(B) & (E); *see*  
21 *also* Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No.  
22 101-73, 103 Stat. 183 (“FIRREA”).

23 Under FIRREA, Congress established a means for the processing of claims,  
24 including those like Wallis’. *See* 12 U.S.C. § 1821(d)(3) - (13). This section requires all  
25 claims to be submitted to the FDIC within 90 days of the FDIC’s mailing of a claims  
26 form. 12 U.S.C. § 1821(d)(3)(B). The FDIC will have 180 days to review and resolve  
27  
28

1 such a claim without resorting to litigation. *See* 12 U.S.C. § 1821(d)(5)(A)(i). During this  
2 mandatory claims process, the courts do not have jurisdiction over such claims. *See*  
3 *McCarthy v. FDIC*, 348 F.3d 1075, 1077 (9th Cir. 2003) (noting that jurisdiction by  
4 courts may be asserted over such claims “after the administrative claims process has been  
5 completed”).

6 Here, it does not appear from the record that Wallis ever instituted the mandatory  
7 claims process, even though she was notified of the need to do so by the FDIC on July 22,  
8 2009. As a result, Wallis failed to exhaust her remedies under the mandatory  
9 administrative claims process. Accordingly, the Court lacks subject matter jurisdiction to  
10 hear this matter and dismisses the case with prejudice.

## 11 **2. Prudential Mootness**

12 Two varieties of mootness exist: Article III mootness and prudential mootness.  
13 Under Article III, section 2 of the United States Constitution, federal courts have  
14 jurisdiction to adjudicate only actual “Cases” or “Controversies.” U.S. CONST., art. III, §  
15 2, cl. 1. “[A]n actual controversy must be extant at all stages of review, not merely at the  
16 time the complaint is filed.” *Seven Words LLC v. Network Solutions*, 260 F.3d 1089, 1095  
17 (9th Cir. 2001) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67  
18 (1997)); *see also Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986, 989 (9th Cir. 1999)  
19 (“The twin pillars of standing and ‘case or controversy’ go to the heart of Article III  
20 jurisdiction. The corollary to these principles is that federal courts have no jurisdiction to  
21 hear a case that is moot, that is, where no actual or live controversy exists”); *Rosetti v.*  
22 *Shalala*, 12 F.3d 1216, 1223 (3rd Cir. 1994) (“Article III does not permit federal courts  
23 to decide moot cases”).

24  
25 “On the other hand, prudential mootness, ‘[t]he cousin of the mootness doctrine, in  
26 its strict Article III sense, is a melange of doctrines relating to the court’s discretion in  
27 matters of remedy and judicial administration.” *Ali v. Cangemi*, 419 F.3d 722, 724 (8th  
28

1 Cir. 2005) (en banc) (quoting *Chamber of Commerce v. United States Dep't of Energy*,  
2 627 F.2d 289, 291 (D.C. Cir. 1980)). “Even if a court has jurisdiction under Article III to  
3 decide a case, prudential concerns may militate against the use of judicial power, i.e., the  
4 court ‘should treat [the case] as moot for prudential reasons.’” *Cangemi*, 419 F.3d at 724  
5 (quoting *United States v. (Under Seal)*, 757 F.2d 600, 603 (4th Cir. 1985)).

6 “Under the doctrine of prudential mootness, there are circumstances under which a  
7 controversy, not constitutionally moot, is so ‘attenuated that considerations of prudence  
8 and comity for coordinate branches of government counsel the court to stay its hand, and  
9 to withhold relief it has the power to grant.’” *Fletcher v. United States*, 116 F.3d 1315,  
10 1321 (10th Cir. 1997) (quoting *Chamber of Commerce*, 627 F.2d at 291). “Where it is so  
11 unlikely that the court's grant of [remedy] will actually relieve the injury, the doctrine of  
12 prudential mootness – a facet of equity – comes into play. This concept is concerned, not  
13 with the court’s power under Article III to provide relief, but with the court’s discretion in  
14 exercising that power.” *Penthouse Int’l, Ltd. v. Meese*, 939 F.2d 1011, 1019 (D.C. Cir.  
15 1991).

16  
17 The Ninth Circuit has never adopted or rejected the doctrine of prudential  
18 mootness. In *Hunt v. Imperial Merchant Services, Inc.*, 560 F.3d 1137 (9th Cir. 2009), the  
19 court alluded to the doctrine in rejecting an assertion of anticipatory mootness, i.e, an  
20 argument that an appeal might become moot because of an impending decision in another  
21 appeal. *Id.* at 1142. The Ninth Circuit held that it need not “dismiss a live controversy as  
22 moot merely because it may become moot in the near future”; it noted, however, that  
23 “[p]erhaps some cases that are ‘anticipatorily moot’ might permissibly be dismissed  
24 [based on the] doctrine of ‘prudential mootness,’ adopted by some of our sister circuits,  
25 under which a court can dismiss an appeal not technically moot if ‘circumstances [have]  
26 changed since the beginning of litigation that forestall any occasion for meaningful  
27  
28

1 relief.” *Id.* (quoting *S. Utah Wilderness Alliance v. Smith*, 110 F.3d 724, 727 (10th Cir.  
2 1997), and citing *Chamber of Commerce*, 627 F.3d at 291).

3         The prudential mootness doctrine has been adopted by the First, Third, Fourth,  
4 Fifth, Sixth, Eighth, Tenth, and D.C. Circuits; no circuit or district court has rejected it.  
5 See *F.D.I.C. v. Kooyomjian*, 220 F.3d 10, 14-15 (1st Cir. 2000) (affirming the dismissal  
6 of § 1821(d) claims under the doctrine of prudential mootness); *Sierra Club v. U.S. Army*  
7 *Corps of Engineers*, 277 Fed. Appx. 170, 172-73 (3d Cir. 2008) (Unpub. Disp.) (“The  
8 central question in a prudential mootness analysis is ‘whether changes in circumstances  
9 that prevailed at the beginning of the litigation have forestalled any occasion for  
10 meaningful relief,’” quoting *Int’l Brotherhood of Boilermakers, Iron Ship Builders,*  
11 *Blacksmiths, Forgers and Helpers v. Kelly*, 815 F.2d 912, 915 (3d Cir. 1987)); (*Under*  
12 *Seal*), 757 F.2d at 603 (a court may treat a case “as moot for prudential reasons,”  
13 including the court’s “inability to given an effective remedy under the circumstances now  
14 developed and with the imprudence of deciding on the merits a difficult and sensitive  
15 constitutional issue whose essence has been at least substantially altered by supervening  
16 events; which is not likely to recur in its original form in respect of these appellees; and  
17 which in its altered form is now subject to determination in a more appropriate forum and  
18 litigation setting”); *281-300 Joint Venture v. Onion*, 938 F.2d 35, 38 (5th Cir. 1991)  
19 (dismissing “on prudential grounds” where “there will never be any assets with which to  
20 satisfy a judgment”), *cert. denied*, 502 U.S. 1057 (1992); *Greenbaum v. U.S.E.P.A.*, 370  
21 F.3d 527, 534-35 (6th Cir. 2004) (“Under the doctrine of prudential mootness, we decline  
22 to reach the specific issue of whether Ohio’s NSR program should have been fully  
23 approved prior to redesignation as the circumstances have changed, and we can no longer  
24 afford petitioners any meaningful relief on this point”); *see also Cangemi*, 419 F.3d at  
25 724; *S. Utah Wilderness Alliance*, 110 F.3d at 727; *Penthouse Int’l*, 939 F.2d at 1019.  
26  
27  
28

1 In addition, courts within the Ninth Circuit have consistently held that prudential  
2 mootness is a viable doctrine. *E.g.*, *In re Nelson*, 391 B.R. 437, 443 (B.A.P. 9th Cir.  
3 2008) (“The test for prudential mootness of an appeal is whether the appellate court can  
4 grant the appellant any effective relief in the event that it decides the matter on the merits  
5 in its favor”); *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202, 1244 (E.D. Cal. 1999)  
6 (applying the doctrine of prudential mootness, and quoting *S. Utah Wilderness Alliance*,  
7 110 F.3d at 727-78).

8 The First, Fifth, and Eighth Circuits have applied prudential mootness in  
9 circumstances identical to those that confront the court here. In *Kooyomjian*, following  
10 publication in the Federal Register of a decision by the FDIC that the claims of  
11 “unsecured creditors could not be satisfied out of [the bank’s] receivership assets and  
12 were therefore worthless,” the First Circuit held that, even were plaintiffs to prevail on  
13 their claim that the bank made negligent misrepresentations before its failure, recovery  
14 was unavailable “in light of [the] FDIC’s worthlessness determination.” *Kooyomjian*, 220  
15 F.3d at 13. *See also id.* at 15 (“The FDIC’s worthlessness determination is unchallenged  
16 and . . . precludes any relief for defendants even if they were successful on their  
17 negligence claim and obtained a favorable judgment”).

19 In the present matter, the FDIC determined IndyMac-Receivership to be worthless  
20 and that its unsecured creditors, like Wallis, could not recover. *See Ex. O* at 2 (publication  
21 of worthlessness determination in the federal register). This fact renders Wallis’ claim  
22 moot under the prudential mootness doctrine. *See First Indiana Federal Savings Bank v.*  
23 *FDIC*, 964 F.2d 503, 507 n. 7 (5th Cir. 1992) (“The FHLBB’s worthlessness  
24 determination not only established the value of First Indiana’s unsecured claims, it also  
25 binds the courts hearing actions on those claims”). As a practical matter there is no  
26 purpose in requiring adjudication of this case on the merits. *See id.*  
27  
28



1 To the extent Wallis pleads a § 1821(d) cause of action, that claim is prudentially  
2 moot. The deciding factor in all reported cases is the inability of the court to provide an  
3 effective remedy. Because the Court could not provide meaningful relief even were it to  
4 render judgment in favor of Wallis' § 1821(d) claim, the Court dismisses that claim under  
5 the doctrine of prudential mootness.

### 6 **3. Promissory Note**

7 In her complaint, Wallis contends that the Uniform Commercial Code (UCC) § 3-  
8 309 was violated because it was not proven that the foreclosure trustee possessed the  
9 original note and deed of trust. Complaint at 2.

10 However, as this Court has concluded before, courts “have routinely held that  
11 [Wallis’] so called ‘show me the note’ argument lacks merit.” *Freeston v. Bishop, White*  
12 *& Marshall, P.S.*, 2010 WL 1186276 (W.D. Wash, 2010) (quoting *Diessner v. Mortgage*  
13 *Electronic Registration Systems*, 618 F. Supp. 2d 1184, 1187 (D. Ariz. 2009) (collecting  
14 cases)). The Court finds that Wallis has failed to state a plausible claim for relief based on  
15 Defendants’ alleged failure to produce the original promissory note. Therefore, the Court  
16 dismisses this claim.  
17

18 Therefore, even if summary judgment was not proper for the reasons previously  
19 discussed, summary judgment is granted in favor of the FDIC and Wells Fargo on this  
20 issue.

### 21 **4. Conclusion**

22 For the foregoing reasons, Wallis’ claims are dismissed. Even if these reasons  
23 were insufficient to dismiss Wallis’ claims, other reasons are present to dismiss this  
24 matter on summary judgment, see below.

### 25 **C. Summary Judgment Under Fed. R. Civ. P. 56**

26 Summary judgment is proper only if the pleadings, the discovery and disclosure  
27 materials on file, and any affidavits show that there is no genuine issue as to any material  
28

1 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
2 The moving party is entitled to judgment as a matter of law when the nonmoving party  
3 fails to make a sufficient showing on an essential element of a claim in the case on which  
4 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323  
5 (1985). There is no genuine issue of fact for trial where the record, taken as a whole,  
6 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*  
7 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must  
8 present specific, significant probative evidence, not simply “some metaphysical doubt”).  
9 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if  
10 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or  
11 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477  
12 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d  
13 626, 630 (9th Cir. 1987).

14  
15 The determination of the existence of a material fact is often a close question. The  
16 Court must consider the substantive evidentiary burden that the nonmoving party must  
17 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477  
18 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual  
19 issues of controversy in favor of the nonmoving party only when the facts specifically  
20 attested by that party contradict facts specifically attested by the moving party. The  
21 nonmoving party may not merely state that it will discredit the moving party’s evidence at  
22 trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec.*  
23 *Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*). Conclusory, nonspecific  
24 statements in affidavits are not sufficient, and missing facts will not be presumed. *Lujan*  
25 *v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).  
26  
27  
28

1 **D. Wells Fargo’s and the FDIC’s Motions for Summary Judgment**

2 **1. TILA**

3 **a. The FDIC’s Receivership Defenses**

4 Although Wallis has not specifically alleged a TILA violation, it appears to be at  
5 least a basis on which she premises this lawsuit. *See generally* Complaint. The FDIC  
6 argues that Wallis’ TILA claim cannot be asserted against the FDIC because it is an  
7 involuntary assignee.

8 15 U.S.C. § 1641(a) provides as follows:

9  
10 Except as otherwise specifically provided in this title [15 U.S.C. §§  
11 1601 et seq.], any civil action for a violation of this title [15 U.S.C. §§ 1601  
12 et seq.] or proceeding under section 108 [15 U.S.C. § 1607] which may be  
13 brought against a creditor may be maintained against any assignee of such  
14 creditor only if the violation for which such action or proceeding is brought  
15 is apparent on the face of the disclosure statement, *except where the*  
16 *assignment was involuntary.*

17 (Emphasis added).

18 The Court agrees that § 1641(a) limits assignee liability. Indeed, the FDIC was  
19 required to accept its appointment as receiver for IndyMac under 12 U.S.C. §  
20 1821(c)(2)(A)(ii). *See FDIC v. Bank of Boulder*, 911 F.2d 1466, 1470 (9th Cir. 1990)  
21 (when the “FDIC is tendered the appointment as Receiver, it is statutorily obligated to  
22 accept the appointment”).

23 Because the FDIC’s receivership was involuntary, Wallis cannot plead any set of  
24 facts on which to premise a TILA claim against the FDIC.<sup>3</sup> Therefore, even if summary  
25 judgment was not proper for the reasons previously discussed, summary judgment is  
26 granted in favor of the FDIC on this issue.

---

27 <sup>3</sup> To the extent Wallis seeks an equitable remedy, like rescission, against the FDIC, such  
28 an action is also prohibited. *See* 12 U.S.C. § 1821(j) (prohibiting courts from granting relief of  
rescission against FDIC as receiver). This is another basis on which the FDIC prevails in its  
summary judgment motion.

1                   **b. Statute of Limitations**

2                   Claims for damages under TILA are subject to a one-year statute of limitations. 15  
3 U.S.C. § 1640(e) (“Any action under this section may be brought . . . within one year  
4 from the date of the occurrence of the violation.”) Absent equitable tolling, the statute of  
5 limitations begins on the date the loan transaction is consummated. *King v. State of*  
6 *California*, 784 F.2d 910, 915 (9th Cir. 1986). Both the FDIC and Wells Fargo argue that  
7 the statute of limitations has run on Wallis’ claims.

8                   Wallis’ loan was consummated on February 6, 2007, which is more than two years  
9 prior to her commencing this action on March 19, 2009. Wallis has not produced, and the  
10 Court does not find, any evidence that would suggest equitable tolling is in order in this  
11 matter.

12                   Therefore, even if summary judgment was not proper for the reasons previously  
13 discussed, summary judgment is granted in favor of the FDIC and Wells Fargo on this  
14 issue.  
15

16                   **c. Pleading Deficiency**

17                   Wells Fargo moves for summary judgment on the basis that Wallis’ complaint  
18 does not present any “evidence from which a reasonable fact-finder could find” for Wallis  
19 on her apparent TILA claim. Dkt. 14 at 5. Wallis’ complaint simply states that she  
20 “believes the original loan violated [TILA]” and that she “plans on proving such in  
21 court.” Complaint at 3. As Wells Fargo correctly notes, such pleadings are insufficient.  
22 Further, the Court noticed Wallis to correct this deficiency (*see* Dkt. 22), and she did not  
23 do so. The Court concludes that no material issue of fact remains regarding Wallis’ TILA  
24 claim.

25                   Therefore, even if summary judgment was not proper for the reasons previously  
26 discussed, summary judgment is granted in favor of the FDIC and Wells Fargo on this  
27 issue.  
28

1           **2.     Waiver**

2           Both the FDIC and Wells Fargo argue that Wallis waived any claims she may have  
3 had when she failed to enjoin the trustee’s sale. When a borrower fails to enjoin the  
4 trustee’s sale as provided under RCW 16.124.130, the borrower waives his/her claims  
5 with respect to the underlying obligation or the foreclosure process. *Brown v. Household*  
6 *Realty Corp.*, 146 Wn. App. 157, 160 (2008).

7           In the present matter, the trustee’s sale occurred on March 27, 2009, but Wallis  
8 instituted this action on March 19, 2009. *See* Complaint; *see also* Weibel Decl., Ex. D.  
9 Wallis was on notice of the trustee’s sale as early as December of 2008, well in advance  
10 of filing this action and before the actual sale. *See id.* Because Wallis failed to enjoin the  
11 trustee’s sale, she is barred from bringing post-sale claims regarding the nonjudicial  
12 foreclosure of her home.

13           Therefore, even if summary judgment was not proper for the reasons previously  
14 discussed, summary judgment is granted in favor of the FDIC and Wells Fargo on this  
15 issue.  
16

17           **3.     Conclusion**

18           Fore the foregoing reasons, even if Wallis’ claims could survive dismissal under  
19 section A, above, the Court concludes that Wallis’ claims are dismissed on summary  
20 judgment.<sup>4</sup>  
21  
22  
23  
24  
25

---

26  
27           <sup>4</sup>Given the record before the Court, the disposition of this matter would have been  
28 the same even if Wallis had submitted a proper response in opposition to the FDIC’s and  
Wells Fargo’s motions to dismiss or, alternatively, for summary judgment.

1  
2  
3 **IV. ORDER**

4 Therefore, it is hereby

5 **ORDERED** that the FDIC's unopposed motion to dismiss or, alternatively, for  
6 summary judgment (Dkt. 11) and Wells Fargo's unopposed motion for summary  
7 judgment (Dkt. 14), are **GRANTED** as discussed herein.

8 DATED this 8<sup>th</sup> day of June, 2010.

9 

10 BENJAMIN H. SETTLE  
11 United States District Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28