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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 JEREMY WOLFSON,

9 Plaintiff,

10 v.

11 BANK OF AMERICA NATIONAL  
12 ASSOCIATION, et al.,

13 Defendants.

CASE NO. C17-6064 BHS

ORDER GRANTING  
DEFENDANTS' MOTIONS TO  
DISMISS, GRANTING PLAINTIFF  
LEAVE TO AMEND, GRANTING  
PLAINTIFF'S MOTIONS FOR  
EXTENSIONS OF TIME AND  
DENYING PLAINTIFF'S MOTION  
TO STRIKE

14 This matter comes before the Court on Defendants Intercontinental Exchange,  
15 Inc., and Maroon Holding, LLC's ("MERS Parent Corporations") motion to dismiss  
16 (Dkt. 12), Defendants Bank of America National Association ("Bank of America"),  
17 Merscorp Holdings, Inc. ("Merscorp"), and Mortgage Electronic Registration Systems,  
18 Inc.'s ("MERS") motion to dismiss (Dkt. 14), Plaintiff Jeremy Wolfson ("Wolfson")  
19 motion to strike motion to dismiss (Dkt. 22), and Wolfson's motions for extension of  
20 time (Dkts. 23, 30). The Court has considered the pleadings filed in support of and in  
21 opposition to the motions and the remainder of the file and hereby rules as follows:  
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1 **I. PROCEDURAL HISTORY**

2 On December 21, 2017, Wolfson filed a complaint against MERS Parent  
3 Corporations, Bank of America, Merscorp, and MERS asserting causes of action for quiet  
4 title, violations of the Federal Debt Collection Practices Act (“FDCPA”), defamation,  
5 declaratory judgment, cancellation of instrument, replevin, breach of the implied duty of  
6 good faith and fair dealing, an accounting, violations of Washington Deed of Trusts Act  
7 (“DTA”), and violations of Washington Consumer Protection Act (“CPA”). Dkt. 1.

8 On February 20, 2018, MERS Parent Corporations filed a motion to dismiss. Dkt.  
9 12. On February 28, 2018, Bank of America, Merscorp, and MERS (“Loan Defendants”)  
10 filed a motion to dismiss. Dkt. 14. On April 3, 2018, the Court granted Wolfson’s  
11 motion for extension of time, renoted the motions to dismiss for consideration on the  
12 Court’s April 20, 2018 calendar, and informed Wolfson that the deadline for any  
13 response is April 16, 2018. Dkt. 21.

14 On April 5, 2018, Wolfson filed a motion to strike the Loan Defendants’ motion to  
15 dismiss because their counsel do not qualify as local counsel under the local rules of  
16 procedure. Dkt. 22. On April 9, 2018, Wolfson filed a motion for extension of time to  
17 reply to the Loan Defendants’ motion. Dkt. 23. On April 10 and 12, 2018, the Loan  
18 Defendants responded to Wolfson’s motions. Dkt. 24, 25. On April 16, 2018, Wolfson  
19 responded to the MERS Parent Corporations’ motion to dismiss. Dkt. 26.

20 On April 19, 2018, Wolfson filed a motion for an extension of time to respond to  
21 the Loan Defendants’ motion to dismiss and responded to the motion. Dkts. 30, 31. On  
22 April 20, 2018, MERS Parent Corporations replied. Dkt. 32.

1 **II. FACTUAL BACKGROUND**

2 On January 10, 2007, Wolfson and Erin D. Huffman (“Huffman”) signed a note  
3 (the “Note”) in the amount of \$279,000.00 in favor of First Magnus Corporation (“First  
4 Magnus”). In order to secure the Note, Wolfson and Huffman executed a deed of trust  
5 (“Deed”) against the property located at 16208 132nd Avenue East, Puyallup,  
6 Washington 98374 (the “Property”). Dkt. 12-2. The Deed named MERS as beneficiary  
7 for First Magnus. *Id.* at 3.

8 On or about June 21, 2013, MERS assigned its interest in the Deed to Bank of  
9 America. Dkt. 12-3. On November 8, 2013, Huffman signed a Quitclaim Deed to  
10 Wolfson. Dkt. 15-3. The Quitclaim was recorded on November 20, 2013. *Id.*

11 On March 30, 2017, Trustee Corps recorded a Notice of Trustee’s Sale (“NOTS”)  
12 against the Property asserting that Wolfson was over 8 months behind on payments and  
13 setting a trustee’s sale for the Property on August 4, 2017. Dkt. 15-4.

14 On August 4, 2017, Wolfson filed a bankruptcy case seeking relief under Chapter  
15 13. On September 20, 2017, the bankruptcy court dismissed his case for failure to  
16 comply with orders.

17 **III. DISCUSSION**

18 **A. Wolfson’s Motions**

19 Wolfson has filed two motions for extensions of time and a motion to strike the  
20 Loan Defendants’ motion to dismiss. Both of Wolfson’s motions for extensions of time  
21 request additional time to respond to the Loan Defendants’ motion to dismiss. Dkts. 23,  
22 30. The Loan Defendants opposed the first motion and failed to respond to the second

1 motion. Dkt. 24. While it is true that Wolfson’s second motion is untimely, the Court  
2 concludes that the Loan Defendants are not prejudiced by the late response because the  
3 Court routinely grants plaintiffs proceeding pro se an opportunity to amend the complaint  
4 before dismissing claims with prejudice. *See Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248  
5 (9th Cir. 1995) (per curiam) (“Unless it is absolutely clear that no amendment can cure  
6 the defect . . . , a pro se litigant is entitled to notice of the complaint’s deficiencies and an  
7 opportunity to amend prior to dismissal of the action.”). As further explained below,  
8 Wolfson is granted leave to amend, despite his untimely response.

9       Regarding Wolfson’s motion to strike, it is without merit because the Loan  
10 Defendants’ counsel are licensed to practice law in this Court. Counsel holds a  
11 Washington state license and is admitted to represent clients in this district. Therefore,  
12 the Court denies Wolfson’s motion.

13 **B. Motions to Dismiss**

14       Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil  
15 Procedure may be based on either the lack of a cognizable legal theory or the absence of  
16 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*,  
17 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the  
18 complaint is construed in the plaintiff’s favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301  
19 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed  
20 factual allegations but must provide the grounds for entitlement to relief and not merely a  
21 “formulaic recitation” of the elements of a cause of action. *Bell Atlantic Corp. v.*  
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1 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege “enough facts to state a  
2 claim to relief that is plausible on its face.” *Id.* at 1974.

### 3 **1. MERS Corporate Parents**

4 MERS Parent Corporations move to dismiss the complaint arguing that Wolfson  
5 has failed to provide sufficient allegations to establish that they are liable for the acts of  
6 their subsidiary MERS. Dkt. 12 at 13–18. Wolfson responds that he included allegations  
7 stating that both parents are responsible for the actions of MERS. Dkt. 26 at 2. Their  
8 allegations, however, are unsupported conclusions. *See, e.g.*, Dkt. 1, ¶ 40 (“Defendant  
9 MAROON HOLDING, LLC., is a foreign Limited Liability Corporation and is the parent  
10 company of Defendant MERSCORP HOLDINGS, INC., and is responsible for the acts  
11 of Defendant MERS.”). Therefore, the Court grants MERS Parent Corporations’ motion  
12 because Wolfson’s complaint fails to provide sufficient notice of the basis for his claims.

13 In the event the court finds that dismissal is warranted, the court should grant the  
14 plaintiff leave to amend unless amendment would be futile. *Eminence Capital, LLC v.*  
15 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.2003). In this case, it is not absolutely clear  
16 that Wolfson could not alleged facts sufficient to pierce the corporate veil. Therefore, the  
17 Court grants Wolfson leave to amend his theories of liability.

### 18 **2. Loan Defendants**

19 The Loan Defendants move to dismiss Wolfson’s claims for procedural reasons  
20 and on the merits. Dkt. 14. First, Merscorp argues that Wolfson fails to include any  
21 allegations that Merscorp is liable for any alleged wrongdoing. Wolfson responds that he  
22 included an allegation that, properly understood, alleges that Merscorp is responsible for

1 the actions of MERS because it is another parent company of MERS. Dkt. 31 at 2 (citing  
2 Dkt. 1, ¶ 39). This argument fails for the same reason that Wolfson’s claims against  
3 MERS Parent Corporations fail. Beyond the conclusory allegation, Wolfson fails to  
4 provide any notice that the alleged parent is responsible for the actions of its subsidiary.  
5 Therefore, the Court grants Merscorp’s motion to dismiss. Wolfson is granted leave to  
6 amend because it is not absolutely clear that any amendment would be futile. *Eminence*,  
7 316 F.3d at 1052.

8       Regarding Wolfson’s other claims, the Loan Defendants assert that the complaint  
9 “does not meet the basic pleading requirements of FRCP 8.” Dkt. 14 at 2. The Court  
10 agrees, and Wolfson’s arguments even conflict with allegations in his complaint. For  
11 example, the Loan Defendants argue that Wolfson lacks standing to challenge the  
12 assignment of the deed from MERS to Bank of America. Dkt. 14 at 6–7. In response,  
13 Wolfson argues that he has standing because “he is at risk of paying the same debt twice  
14 if the assignment stands . . . .” Dkt. 31 at 2. Wolfson, however, alleges that “[a]ny and  
15 all loans encumbering the property have been paid or otherwise discharged.” Dkt. 1, ¶  
16 223. Moreover, none of Wolfson’s other claims or arguments fare any better. Wolfson’s  
17 complaint is essentially a verbose collection of conflicting and conclusory allegations that  
18 lack clarity. Before addressing each claim on the merits, Wolfson is ordered to clarify  
19 and/or simplify the claims and provide actual, factual allegations to support each claim.  
20 Accordingly, the Court grants the Loan Defendants’ motion to dismiss and grants  
21 Wolfson leave to amend.  
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1 **IV. ORDER**

2 Therefore, it is hereby **ORDERED** that MERS Parent Corporations' motion to  
3 dismiss (Dkt. 12) and the Loan Defendants' motion to dismiss (Dkt. 14) are **GRANTED**,  
4 Wolfson's motion to strike motion to dismiss (Dkt. 22) is **DENIED**, Wolfson's motions  
5 for extension of time (Dkts. 23, 30) are **GRANTED**, and Wolfson is **GRANTED** leave  
6 to amend.

7 Wolfson must file an amended complaint no later than June 22, 2018. Failure to  
8 file an amended complaint or otherwise respond will result in dismissal of the action  
9 without further order of the Court.

10 Dated this 31<sup>st</sup> day of May, 2018.

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13 BENJAMIN H. SETTLE  
14 United States District Judge  
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