

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

JAMES R. WALTON and HELEN R. WALTON,)	
)	Case No. 1:17-cv-330
)	
<i>Plaintiffs,</i>)	Judge Travis R. McDonough
)	
v.)	Magistrate Judge Susan K. Lee
)	
CARRINGTON MORTGAGE SERVICES, LLC, BANK OF AMERICA, and TAYLOR, BEAN, & WHITAKER MORTGAGE CORP.,)	
)	
<i>Defendants.</i>)	

MEMORANDUM AND ORDER

Before the Court are motions for judgment on the pleadings filed by Defendants Carrington Mortgage Services, LLC (“Carrington”) and Bank of America (“BOA”) (Docs. 36, 38). Plaintiffs James R. Walton and Helen R. Walton have also filed the following motions: (1) a motion to enter into evidence certified exhibits of public record (Doc. 33); (2) a motion for default judgment as to Taylor, Bean, and Whitaker Mortgage Corp. (“TBW”) (Doc. 41); (3) a motion to deny Defendants’ motion for judgment on the pleadings (Doc. 42); and (4) a motion for summary judgment (Doc. 49).

For the following reasons, Carrington’s and BOA’s motions for judgment on the pleadings (Docs. 36, 38) will be **GRANTED**. Plaintiffs’ motion to enter into evidence certified exhibits of public record (Doc. 33) will be **GRANTED IN PART**. Plaintiffs’ motion for default judgment against TBW (Doc. 41) and their motion to deny Defendants’ motions for judgment on

the pleadings (Doc. 42) will be **DENIED**. Finally, Plaintiffs' motion for summary judgment (Doc. 49) will be **DENIED AS MOOT**.

I. DEFENDANTS' MOTIONS FOR JUDGMENT ON THE PLEADINGS

a. Background

This action arises out of a foreclosure on real property located in Hixson, Tennessee. Plaintiffs James R. Walton and Helen R. Walton, proceeding *pro se*, initiated this action on November 16, 2017. (Doc. 1.) According to their amended complaint, “[t]his is an action for[:] (1) damages for wrongful foreclosure[;] (2) fraudulent document submission[;] (3) invalid assignments of Deed of Trust[; and] (4) foreclosing while on a dual track of assistance with a modification.” (Doc. 11, at 1–2.)

According to Plaintiffs, on October 3, 2008, they “closed on a mortgage with Taylor, Bean and Whitaker (“TBW”) in the amount of \$277,148.00” on real property located at 1301 Winbrook Lane in Hixson, Tennessee (the “Property”). (*Id.* at 2; Doc. 22-1.)¹ Plaintiffs

¹ In connection with filing their answers to Plaintiffs' amended complaint and as part of their motions for judgment on the pleadings, Carrington and BOA attached several documents referenced in Plaintiffs' amended complaint, including, but not limited to, the promissory note, the deed of trust, assignments of the deed of trust, and bankruptcy court orders from Plaintiffs' Chapter 13 bankruptcy proceedings. (*See, e.g.*, Docs. 22-1, 22-2, 22-3.) The Court can consider these documents without converting Carrington's and BOA's motions for judgment on the pleadings into motions for summary judgment because they are public records or because Plaintiffs refer to these documents in their amended complaint and the documents are central to their claims against Carrington and BOA. *Rondigo, L.L.C. v. Twp. of Richmond*, 641 F.3d 673, 680 (6th Cir. 2011) (providing that courts may consider “exhibits attached [to pleadings], public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein, without converting the motion to one for summary judgment”). Conversely, in responding to Carrington's and BOA's motions for judgment on the pleadings, Plaintiffs attached numerous documents not referenced in their amended complaint, including, among other things, letters to various attorneys (Docs. 43-2, 43-3, 43-4), home loan account statements (Docs. 43-5, 43-6, 43-7), letters from BOA and Carrington (Docs. 43-8, 43-9, 43-10, 43-11, 43-12, 43-13, 43-14), landscaping invoices (Docs. 43-15, 43-16), and an e-mail with the Deputy Clerk for the Hamilton County Register of Deeds (Doc. 43-17). These documents are not part of

executed a promissory note in favor of TBW, which it endorsed “in blank.” (Doc. 22-1.) To secure repayment of the promissory note, Plaintiffs also executed a deed of trust, which identified TBW as the lender and Mortgage Electronic Registration Systems, Inc. (“MERS”) as “nominee” for the lender, the lender’s successors and assigns, and the beneficiary of the deed of trust. (Doc. 22-2.)

According to Plaintiffs, at some unspecified time, TBW sold the note to Ocala Funding, its wholly-owned subsidiary. (Doc. 11, at 2.) Plaintiffs allege that Ocala Funding served as: (1) “Purchaser,” meaning that it “would buy from TBW, mortgages that would then be sold directly or indirectly to Freddie Mac”; and (2) “Issuer,” meaning that “Ocala issued secured liquidity notes” and then “purchase[d] notes from TBW” and then bundled them to sell to investors. (*Id.* at 2–3.) Plaintiffs also allege that TBW served as: (1) “Seller,” meaning that it would originate mortgages and sell notes to Ocala; and (2) “Servicer,” meaning that TBW serviced loans held by Ocala and performed functions like “collecting monthly loan payments, handling mortgagees’ escrow accounts, and paying taxes and insurance from escrow accounts.”² (*Id.* at 3.)

According to Plaintiffs, at some unspecified time, Bank of America “sent notice” that, effective September 1, 2009, “BAC Home Loans Servicing, L.P.,” a subsidiary of Bank of America “would begin servicing the note.” (*Id.* at 4.) Plaintiffs allege that they “never received notice from TBW that BAC Home Loans was assigned as the new servicer.” (*Id.*) Based on these allegations, Plaintiffs assert “BAC and Bank of America wrongfully acted as servicer from Sept. 1, 2009 to Sept. 2011.” (*Id.*)

the pleadings in this case and will not be considered in ruling on Carrington’s and BOA’s motions for judgment on the pleadings.

² According to Plaintiffs, on August 24, 2009, TBW filed for bankruptcy in the United States District Court for the Northern District of Florida. (*Id.* at 3.)

According to Plaintiffs, on September 28, 2011, “Mortgage Electronic Registration Systems (MERS), without the lawful authority to do so, assigned the Deed of Trust to Bank of America,” the successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.³ (*Id.* at 4; Doc. 22-3.) Plaintiffs further allege that the deed of trust “was filed with the Hamilton County Clerks Office on October 11, 2011,” and that it was filed “with signatures of Robo-signers and inauthentic certificates.” (Doc. 11, at 4.) Plaintiffs also allege that they executed a loan-modification agreement with BOA in or around April 2013.⁴ (*See* Doc. 11, at 7; Doc. 22-6.)

On November 17, 2014, BOA assigned the deed of trust to Carrington, and, on December 10, 2014, “the Deed of Trust changed to a power of attorney to Carrington Mortgage Services.” (*Id.* at 5; Doc. 22-4.) Plaintiffs again allege that “the assignment of Deed by Bank of America contained signatures of robo-signers.” (Doc. 11, at 5.) According to Plaintiffs, on December 29, 2014, “an assignment of Deed was filed with the Hamilton County Recorder of Deeds with robo-signers, unexecuted notarized statements and a fraudulent certificate of acknowledgement.” (*Id.*)

³ Before Carrington and BOA filed their motions for judgment on the pleadings, Plaintiffs filed a motion to enter into evidence certified exhibits of public record. (Doc. 33.) Some of the documents attached to Plaintiffs’ motion are documents referenced in their amended complaint. For example, Plaintiffs attached copies of the assignments of the deed of trust from TBW to BOA and from BOA to Carrington. (Doc. 33-2, at 1; Doc. 33-3, at 1.) Other documents, however, appear unrelated to Plaintiffs, the Property, or the allegations in Plaintiffs’ amended complaint. (*See, e.g.*, Doc. 33-2, at 3–11; Doc. 33-3, at 3.) To the extent Plaintiffs have attached documents referenced in their amended complaint, the Court construes Plaintiffs’ motion as a motion to supplement their amended complaint. To that end, the Court will **GRANT IN PART** Plaintiffs’ motion (Doc. 33) and will consider documents referenced in their amended complaint and documents of public record in ruling on Carrington’s and BOA’s motions for judgment on the pleadings.

⁴ Plaintiffs’ amended complaint does not specify when they entered into the loan-modification agreement, but a copy of the loan-modification agreement attached to Carrington’s answer indicates that they entered into the loan-modification agreement in April 2013. (Doc. 22-6.)

In October 2016, Plaintiffs filed a voluntary petition for Chapter 13 bankruptcy in the United States Bankruptcy Court for the Eastern District of Tennessee. *In re Walton*, Case No. 1:16-BK-14437-NWW (E.D. Tenn. Bankr.). As part of their confirmed Chapter 13 bankruptcy plan, Plaintiffs agreed to surrender the Property to Carrington “in full satisfaction of the debt.” (Doc. 22-7.) After confirmation of the bankruptcy plan, Carrington sought relief from the automatic stay to proceed with foreclosure on the Property. (See Doc. 22-8.) The bankruptcy court denied the motion for relief from the automatic stay, explaining that “the relief requested was granted by the order confirming the debtor’s chapter 13 plan.” (*Id.*) According to Plaintiffs, Carrington foreclosed on the Property and held an auction on September 7, 2017, “while Plaintiffs were on dual track of a mortgage assistance plan.” (*Id.* at 5.) On March 8, 2018, the bankruptcy court closed Plaintiff’s Chapter 13 bankruptcy case. See *In re Walton*, Case No. 1:16-BK-14437-NWW, Doc. 59 (E.D. Tenn. Bankr.)

In their amended complaint, Plaintiffs allege that: (1) “there was never a validly assigned deed to Bank of America”; (2) “Bank of America did [not] have authority to assign the note to Carrington Mortgage Services”; and (3) “Carrington Mortgage Services did not have legal authority or standing to foreclose on Plaintiff[s]’ property.” (*Id.* at 6.) At its core, Plaintiffs’ amended complaint disputes the legality of the successive assignments of the deed of trust and ultimately asserts that Carrington did not have authority to foreclose on the Property because it did not have a valid beneficial interest in the promissory note and deed of trust. (See Doc. 11.) Although not entirely clear, based on these allegations, Plaintiffs appear to assert the following claims against BOA: (1) breach of contract; (2) violation for the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*; and (3) infliction of emotional distress. (Doc. 11, at 6–7.) Plaintiffs also appear to assert claims for fraud, wrongful foreclosure, and slander of title against

Carrington. (*Id.* at 8.) Plaintiffs’ amended complaint does not specify what claims, if any, they assert against TBW. (*See generally id.*) In their amended complaint, Plaintiffs seek: (1) “compensatory damages \$200,000 for emotional distress”; (2) “actual damages of \$95,832 for repairs, upkeep, [and] living arrangements while in limbo”; (3) “punitive damages due to wrongful foreclosure, fraudulent and negligent acts, in the amount of \$2,844,000”; and (4) “an award of quiet title due to title being clouded.” (*Id.* at 9–10.)

Carrington and BOA have moved for judgment on the pleadings, arguing that Plaintiffs have failed to state a claim upon which relief can be granted. (Docs. 36, 38.) Plaintiffs subsequently filed a motion to deny Defendants’ motions for judgment on the pleadings. (Doc. 42.) These motions are now ripe for the Court’s review.

b. Standard of Law

On a motion under Rule 12(c), the standard is the same as that for a motion under Rule 12(b)(6). The Court must accept all well-pleaded material allegations of the pleadings of the opposing party as true, and it may grant the motion only if the moving party is nevertheless clearly entitled to judgment as a matter of law. *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007). For purposes of this determination, the Court construes the complaint in the light most favorable to the nonmoving party and assumes the veracity of all well-pleaded factual allegations in the nonmovant’s pleading. *Thurman v. Pfizer, Inc.*, 484 F.3d 855, 859 (6th Cir. 2007). This assumption of veracity does not, however, extend to bare assertions of legal conclusions, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), nor is the Court “bound to accept as true a legal conclusion couched as a factual allegation[.]” *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

After sorting the factual allegations from the legal conclusions, the Court next considers whether the factual allegations, if true, would support a claim entitling the plaintiff to relief. *Thurman*, 484 F.3d at 859. This factual matter must “state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility “is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

The Court notes that Plaintiffs are proceeding in this action *pro se*. While pleadings of *pro se* litigants are “held to less stringent standards than formal pleadings drafted by lawyers,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)), a *pro se* complaint must still “contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face,” *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted). The “liberal treatment of *pro se* pleadings does not require lenient treatment of substantive law.” *Durante v. Fairlane Town Ctr.*, 201 F. App’x 338, 344 (6th Cir. 2006). The Court is “not required to either guess the nature of or create a litigant’s claim.” *Leeds v. City of Muldraugh*, 174 F. App’x 251, 255 (6th Cir. 2006).

c. Carrington’s Motion for Judgment on the Pleadings

Carrington first argues that Plaintiffs’ bankruptcy proceedings, including their surrender of the Property, and the doctrine of res judicata bar Plaintiffs’ claims against it. (Doc. 37, at 4.) The doctrine of res judicata dictates that “a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.” *Jodway v. Fifth Third Mortg. Co.*,

557 B.R. 560, 564 (E.D. Mich. 2016), *appeal dismissed sub nom. In re Jodway*, No. 16-2318, 2016 WL 9734941 (6th Cir. Dec. 1, 2016) (quoting *Montana v. United States*, 440 U.S. 147, 153 (1979) (citations omitted)). For res judicata to apply, there must be: (1) a final judgment on the merits in the first action by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action. *Bean v. Sundquist*, 22 F. App'x 492, 494 (6th Cir. 2001).

As it relates to bankruptcy proceedings, Title 11, United States Code, Section 1327(a) provides that “the provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.” Under this statute, confirmation of a Chapter 13 plan operates as an adjudication on the merits on the issues of classification and treatment of claims provided in a proposed Chapter 13 plan. *Lewis v. Countrywide Home Loans*, No. 09-11093, 2009 WL 2777005, at *2 (E.D. Mich. Aug. 27, 2009). As such, courts consistently interpret Section 1327(a) as barring re-litigation of issues decided or which could have been decided at confirmation. *Id.*; *see also Covert v. LVNV Funding, LLC*, 779 F.3d 242, 246–47 (4th Cir. 2015) (explaining that “once a bankruptcy plan is confirmed, its terms are not subject to collateral attack”); *In re Layo*, 460 F.3d 289 (2d Cir. 2006).

In this case, as part of their Chapter 13 bankruptcy proceedings, Plaintiffs agreed to make no payments on their loan and to surrender the Property. (Doc. 22-7.) To the extent Plaintiffs now claim that Carrington did not have legal authority or standing to foreclose on the Property, they could have asserted that claim in the bankruptcy proceeding, either at the time the bankruptcy court confirmed Plaintiffs’ Chapter 13 plan or at the time the bankruptcy court

denied Carrington's motion for relief from the automatic stay and explained that Carrington was permitted to foreclose on the Property under the confirmed Chapter 13 plan. Accordingly, Plaintiffs' claims against Carrington for fraud, wrongful foreclosure, and slander of title—all of which appear to be based on Plaintiffs' allegation that Carrington wrongfully foreclosed on the Property—are barred by the doctrine of res judicata and will be dismissed. *See Lewis*, 2009 WL 2777005, at *2–3 (finding that res judicata bars mortgagees' claims seeking rescission of a loan agreement when mortgagees surrendered property as part of a confirmed Chapter 13 bankruptcy plan).

Even if the doctrine of res judicata did not bar Plaintiffs' claims against Carrington, their claims still fail because they have not stated claims upon which relief can be granted. Under Tennessee law, to state a claim for fraud, a plaintiff must allege: (1) an intentional misrepresentation of material fact; (2) the misrepresentation was made knowingly, without belief in its truth, or recklessly without regard to its truth or falsity; (3) the plaintiff reasonably relied on the misrepresentation and suffered damages; and (4) the misrepresentation relates to an existing or past fact" *Power & Tel. Supply Co. v. SunTrust Banks, Inc.*, 447 F.3d 923, 931 (6th Cir. 2006) (quoting *Stacks v. Saunders*, 812 S.W.2d 587, 592 (Tenn. Ct. App. 1990)). Additionally, Rule 9(b) of the Federal Rules of Civil Procedure specifies that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." The Sixth Circuit has interpreted this requirement to mean a plaintiff must allege "*the time, place, and content* of the alleged misrepresentations on which he or she relied; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud." *Elsheick v. Select Portfolio Servicing, Inc.*, 566 F. App'x 492, 498 (6th Cir. 2014) (emphasis in original).

Here, Plaintiffs' amended complaint fails to state a claim for fraud. Plaintiffs' amended complaint does not: (1) identify specific misrepresentations made by Carrington; (2) allege that Carrington made misrepresentations knowingly or with reckless disregard for the truth; or (3) specify how Plaintiffs relied on Carrington's misrepresentations to their detriment. Thus, Plaintiffs have failed to satisfy the pleading requirements set forth in Rule 9(b) of the Federal Rules of Civil Procedure and have failed to state a claim for fraud under Tennessee law.

Finally, to the extent Plaintiffs' wrongful-foreclosure and slander-of-title claims seek to challenge MERS's role in the assignment of the deed of trust or the actual assignments of the deed of trust from MERS to BOA and from BOA to Carrington, Plaintiffs lack standing to challenge those assignments.⁵ Under Tennessee law, a litigant who is not a party to an assignment lacks standing to challenge the validity of that assignment. *Layer-Rosario v. Allied Mortg. Capital Corp.*, No. 17-5468, 2018 WL 1989636, at *2 (6th Cir. Jan. 9, 2018); *Berry v. Mortg. Elec. Registration Sys.*, No. W2014-02175-COA-R3-CV, 2015 WL 5121542, at *3 (Tenn. Ct. App. Aug. 31, 2015) (citing *Livonia Prop. Holdings, LLC v. 12840-12976 Farmington Road. Holdings, LLC*, 399 F. App'x 97, 102 (6th Cir. 2010)); *Hutchens v. Bank of Am., N.A.*, No. 3:11-cv-624, 2012 WL 1618316, at *10 (E.D. Tenn. May 9, 2012). Accordingly, Plaintiffs' allegations that the assignments of the deed of trust are somehow invalid fail to support a plausible challenge to Carrington's foreclosure or to support Plaintiffs' claims for wrongful foreclosure and slander of title. *See Layer-Rosario*, 2018 WL 1989636, at *2.

⁵ Plaintiffs' slander-of-title claim also fails because they fail to adequately allege an interest in the Property or that Carrington published false statements about the Property. As previously referenced, Plaintiffs surrendered their interest in the Property during their bankruptcy proceedings. Plaintiffs, therefore, cannot prevail on a slander-of-title claim. *See Layer-Rosario*, 2018 WL 1989636, at *2.

Accordingly, the Court will **GRANT** Carrington's motion for judgment on the pleadings and dismiss Plaintiffs' claims against it.

d. BOA's Motion for Judgment on the Pleadings

Like Carrington, BOA has filed a motion for judgment on the pleadings seeking dismissal of Plaintiffs' claims against it, arguing that their amended complaint fails to state a claim upon which relief can be granted. BOA first argues that Plaintiffs have failed to state a claim for breach of contract because they have not identified any contractual provisions that BOA allegedly breached. (Doc. 39, at 5–6.) “The essential elements of any breach-of-contract claim include: (1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the contract, and (3) damages caused by the breach of the contract.” *Ingram v. Cendant Mobility Fin. Corp.*, 215 S.W.3d 367, 374 (Tenn. Ct. App. 2006) (quoting *ARC LifeMed, Inc. v. AMC-Tennessee, Inc.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005)). To state a claim for breach of contract, a plaintiff must identify the provision of a contractual agreement allegedly breached and explain how defendant's conduct constitutes a breach of the agreement. *Mhoon v. U.S Bank Home Mortg.*, No. 12-CV-03053-JPM-TMP, 2013 WL 6858680, at *4 (W.D. Tenn. Dec. 30, 2013).

In this case, Plaintiffs fail to state a claim for breach of contract. Although Plaintiffs allege they “received a permanent modification, and [BOA] breached the contract,” they fail to identify any contractual language regarding the modification and fail to explain how BOA's alleged conduct constitutes a breach of its contractual obligations. Such threadbare and conclusory allegations are insufficient to state a claim for breach of contract against BOA. *See Mhoon*, 2013 WL 6858680, at *4 (dismissing plaintiff's breach-of-contract claim for failure to

identify a contractual provision breached by defendant and failure to state how defendant's conduct amounted to a breach).

BOA next argues that Plaintiffs fail to state a claim for violation of TILA and that any claim for violation of TILA is barred by the applicable one-year statute of limitations. TILA requires those who extend loans to “provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights.” *Derbabian v. Bank of Am., N.A.*, 587 F. App'x 949, 954–55 (6th Cir. 2014). Any claim for violation of TILA must be brought within one year from the date of the violation. *Id.* (quoting 15 U.S.C. § 1640(e)). “The limitations period for claims alleging violation of disclosure requirements begins running when the agreement is entered and the lender does not make the required disclosures.” *Id.*

In this case, Plaintiffs entered a loan-modification agreement with BOA in April 2013 (Doc. 22-6) but did not initiate the present action until November 2017—more than four years later. Accordingly, Plaintiffs' claim against BOA for violation of TILA is barred by its one-year statute of limitations. Moreover, even if Plaintiffs' TILA claim were not time barred, it would still fail because Plaintiffs have not pleaded any specific violations of TILA. As the basis for their claim, Plaintiffs allege only that BOA “through a predatory lending act was negligent in carrying out proper standards in the modification program.” (Doc. 11, at 7.) Plaintiffs, however, do not identify which sections of TILA BOA allegedly violated or explain how BOA violated those sections. Plaintiffs have, therefore, failed to satisfy the pleading requirements necessary to state a claim against BOA for violation of TILA. *See Derbabian*, 578 F. App'x at 955.

BOA next argues that Plaintiffs' amended complaint fails to state a claim for infliction of emotional distress. “The elements of an intentional infliction of emotional distress claim are that

the defendant's conduct was (1) intentional or reckless, (2) so outrageous that it is not tolerated by civilized society, and (3) resulted in serious mental injury to the plaintiff." *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 205 (Tenn. 2012).

In this case, Plaintiffs have failed to plead facts sufficient to support a claim for intentional infliction of emotional distress. As the basis for their emotional-distress claim, Plaintiffs allege that BOA "caused emotional distress during the process of the modification by losing documents and requiring documents to be re-sent a number of times. There was undue pressure caused by continuing to require the same documents to be sent over and over again." (Doc. 11, at 7.) While the Court is sympathetic that the loan-modification process and, ultimately, foreclosure, were emotionally-taxing processes, being required to resubmit documents to BOA during the modification process does not constitute "outrageous conduct" not tolerated by civilized society. Accordingly, Plaintiffs have failed to state a claim for intentional infliction of emotional distress.⁶

Finally, as previously explained in connection with Carrington's motion for judgment on the pleadings, to the extent Plaintiffs' claims seek to challenge MERS's role in the assignment of the deed of trust or the actual assignments of the deed of trust from MERS to BOA and from

⁶ To the extent Plaintiffs seek to assert a claim for negligent infliction of emotional distress, that claim also fails. Tennessee has adopted a general negligence standard for claims of negligent infliction of emotional distress, which requires a plaintiff to establish the elements of a general negligence claim. *Culver v. CCL Label, Inc.*, 455 F. App'x 625, 630 (6th Cir. 2012) (citing *Eskin v. Bartee*, 262 F.3d 727, 735 (Tenn. 2008)). Additionally, "if the only harm from the negligence is severe emotional distress," the plaintiff "must proffer expert proof establishing that the plaintiff's emotional distress is serious or severe." *Id.* Here, Plaintiffs have not alleged a serious or severe emotional injury and have not alleged facts necessary to establish the elements of a negligence claim. Accordingly, Plaintiffs have also failed to state a claim for negligent infliction of emotional distress.

BOA to Carrington, they lack standing to challenge those assignments.⁷ *Layer-Rosario*, 2018 WL 1989636, at *2; *Berry*, 2015 WL 5121542, at *3; *Hutchens*, 2012 WL 1618316, at *10.

Accordingly, the Court will **GRANT** BOA's motion for judgment on the pleadings and dismiss Plaintiffs' claims against it.⁸

II. PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AGAINST TBW

Plaintiffs initiated the present action on November 16, 2017 (Doc. 1), and filed an affidavit stating they served TBW by certified mail received on March 5, 2018 (Doc. 21). TBW did not answer or otherwise respond to Plaintiffs' complaint. On April 30, 2018, the Clerk of Court entered default against TBW (Doc. 40), and, on that same date, Plaintiffs moved for default judgment against TBW pursuant to Rule 55(b) of the Federal Rules of Civil Procedure (Doc. 41).

Once default is entered against a defendant, "it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party does not admit mere conclusions of law." *Bixler v. Foster*, 596 F.3d 751, 762 (10th Cir. 2010). Accordingly, a district court does not abuse its discretion in denying entry of default judgment against a defendant where the plaintiff's complaint fails to allege a sufficient basis to state a claim against a defendant who has not answered or otherwise responded to the plaintiff's complaint. *Id.*; *see*

⁷ To the extent Plaintiffs attempt to assert any claims based on the argument that "securitizing the note was fraud upon the borrower and upon the Court because the note was separated from the Deed of Trust," those claims also fail because, as the United States Court of Appeals for the Sixth Circuit has explained, under Tennessee law, "securitizing the note does not sever the note from the deed of trust." *Thompson v. Bank of America, N.A.*, 773 F.3d 741, 749 (6th Cir. 2014).

⁸ Because the Court is granting Carrington's and BOA's motions for judgment on the pleadings, the Court will **DENY** Plaintiffs' motion to deny Carrington's and BOA's motions for judgment on the pleadings (Doc. 42) and will **DENY AS MOOT** their motion for summary judgment (Doc. 49).

also Kezeli v. Oakland Cty. Cir. Ct., 42 F. App'x 762 (6th Cir. 2002) (explaining that entry of a default judgment is not appropriate where a plaintiff's claims are meritless).

In this case, although TBW has not answered or otherwise responded, entry of default judgment is inappropriate because Plaintiffs' amended complaint fails to state a claim against TBW. In their amended complaint, Plaintiffs allege that they closed a mortgage with TBW in the amount of \$277,148, and that TBW sold the note to Ocala Funding, its wholly-owned subsidiary. (Doc. 11, at 2.) Plaintiffs also generally allege that TBW originated mortgages it sold to Ocala Funding and then acted as servicer for loans held by Ocala Funding, meaning that TBW collected monthly loan payments, handled mortgagees' escrow accounts, and paid taxes and insurance from mortgagees' escrow accounts. (*Id.* at 3.) Plaintiffs' amended complaint contains no other allegations related to TBW, except that TBW filed for bankruptcy in 2009. (*Id.*) Given these scant allegations, the Court cannot determine what claims Plaintiffs seek to assert against TBW or how these allegations support those claims. Plaintiffs' amended complaint fails to allege a sufficient basis to state a claim against TBW. Accordingly, the Court will **DENY** Plaintiffs' motion for default judgment against TBW (Doc. 41).

III. CONCLUSION

For the reasons stated herein:

- Carrington's and BOA's motions for judgment on the pleadings (Docs. 36, 38) are **GRANTED**. Plaintiffs' claims against Carrington and BOA are hereby **DISMISSED WITH PREJUDICE**;
- Plaintiffs' motion to enter into evidence certified exhibits of public record (Doc. 33) is **GRANTED IN PART**;
- Plaintiffs' motion to deny Defendants' motions for judgment on the pleadings (Doc. 42) is **DENIED**; and
- Plaintiffs' motion for summary judgment (Doc. 49) is **DENIED AS MOOT**.

Additionally, because Plaintiffs' amended complaint fails to state a claim against TBW, their motion for default judgment against TBW (Doc. 41) is **DENIED**. Plaintiffs are hereby **ORDERED TO SHOW CAUSE** on or before **December 3, 2018**, as to why the Court should not dismiss their claims against TBW. Plaintiffs are hereby put **ON NOTICE** that if they do not timely file a response showing good cause, their claims against TBW will be dismissed.

SO ORDERED.

/s/ Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE