

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division

JAMES A. HEGEDUS, <i>et al.</i> ,	)	
Plaintiffs,	)	Civil Action No. 5:16-cv-00001
	)	
v.	)	<u>REPORT &amp; RECOMMENDATION</u>
	)	
NATIONSTAR MORTGAGE, LLC,	)	By: Joel C. Hoppe
Defendant.	)	United States Magistrate Judge

Plaintiffs James and Virginia Hegedus (“Plaintiffs”) filed this action *pro se* against Nationstar Mortgage, LLC (“Nationstar”) on January 4, 2016, complaining of acts made by Nationstar in its capacity as servicer of a mortgage on a residence owned by the Plaintiffs. Pending before the Court are Nationstar’s motion to dismiss, ECF No. 9, as well as Plaintiffs’ motions to strike evidence and legal arguments submitted by Nationstar in support of its motion, ECF Nos. 15–16. These motions are before me by referral under 28 U.S.C. § 636(b)(1)(A)–(B). ECF No. 12. All parties have fully briefed the issues, I have heard oral argument, and the motions are ripe for decision. After considering the pleadings, the parties’ briefs and oral arguments, and the applicable law, I find that Plaintiffs’ motions to strike are meritless and therefore deny those motions. Furthermore, I find that Plaintiffs have failed to state a claim that entitles them to relief and therefore recommend that the presiding District Judge grant Nationstar’s motion to dismiss.

I. Background

This action relates to a mortgage loan Plaintiffs received from First Horizon Home Loans in 2006, for which they began making payments to Nationstar in 2011. Compl. ¶ 5, ECF No. 1. Since that time, Nationstar has engaged in what the Plaintiffs characterize as deceptive and

illegal practices. In October 2014, and again in July 2015, Nationstar notified Plaintiffs that it had placed them in default and accelerated the remaining payments. *Id.* ¶¶ 16–17.

Plaintiffs’ claims fall into the following general categories: (1) alleged misrepresentations by Nationstar as to the identity of the owner of the mortgage; (2) alleged misrepresentations by Nationstar as to its status as a mortgage servicer, mortgagee, or debt collector; (3) alleged misrepresentations as to the status of the mortgage note; (4) failure to provide Plaintiffs with account statements and respond to Plaintiffs’ written requests for information; and (5) alleged mishandling of mortgage payments, including the refusal to accept full payments, wrongfully placing portions of payments in escrow, wrongfully assessing late fees and other charges, and “manufacturing” a default. Plaintiffs also make other vague, miscellaneous allegations of wrongdoing, but it is not clear whether these constitute separate claims. *See generally id.* ¶¶ 6–18.

A. *Applicable Law and Possible Causes of Action*

Plaintiffs assert their claims pursuant to three federal statutes: the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601–1667f; the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692–1692p; and the Real Estate Settlement Practices Act (“RESPA”), 12 U.S.C. §§ 2601–2610, 2614–2617. Compl. ¶ 6.<sup>1</sup> TILA sets out required disclosures in consumer credit transactions, such as the extension of credit (including mortgages), 15 U.S.C. §§ 1631–1651, and credit billing, *id.* §§ 1666–1666j. Its provisions, however, are of a limited scope: “the Act is not a

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<sup>1</sup> Plaintiffs also cite to Title XIV, Subtitle E, of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), Pub. L. No. 111-203, §§ 1461–1465, 124 Stat. 1376, 2178–85 (2010), and the “Unfair Practices Act.” Compl. ¶ 6. Both of these citations are redundant of Plaintiffs’ other federal claims. The cited portion of Dodd-Frank consists only of amendments to parts of TILA and RESPA, and thus any claims Plaintiffs make under Dodd-Frank would be encompassed by those statutes. Meanwhile, the Code section Plaintiffs appear to refer to as the “Unfair Practices Act,” 15 U.S.C. § 1692f, is not a distinct piece of legislation, but rather a provision of FDCPA regarding unfair or unconscionable collection practices.

general prohibition of fraud in consumer transactions or even in consumer credit transactions. Its limited office is to protect consumers from being misled about the cost of credit.” *Gibson v. Bob Watson Chevrolet-Geo, Inc.*, 112 F.3d 283, 285 (7th Cir. 1997).

FDCPA prohibits debt collection practices that are abusive, deceptive, or unfair. It places restrictions on communications by debt collectors with consumers, 15 U.S.C. § 1692c, prohibits false or misleading representations, *id.* § 1692e, requires validation of uncertain or disputed debts, *id.* § 1692g, and restricts other miscellaneous debt collection practices that are considered unfair or unconscionable, *id.* § 1692f. The statute provides a comprehensive definition of “debt collector,” which notably excludes persons who originated the debt or who are attempting to collect debts that were not in default at the time they were obtained by that person. *Id.* § 1692a(6).

RESPA imposes a variety of regulations on the real estate settlement process, including restrictions and obligations with regard to mortgage servicers. 12 U.S.C. § 2605. Mortgage servicers are required to disclose information relating to the transfer or assignment of loan servicing, *id.* § 2605(b)–(c), and to respond to the borrower’s requests for information, *id.* § 2605(e), (k)(1)(C)–(D). Specific procedures are set out for responding to a qualified written request (“QWR”) submitted by the borrower. *Id.* § 2605(e)(1)–(2). RESPA also imposes regulations on the administration of escrow accounts and limitations on escrow deposit requirements, *id.* §§ 2605(g), 2609, and regulates the assessment of certain types of fees, *id.* §§ 2605(d), 2605(k)(1)(B), 2607, 2610.

Plaintiffs also refer frequently to “Deceptive Trade Practices” as a possibly distinct cause of action, *see, e.g.*, Compl. ¶¶ 6(a), (b), (c), (f), but do not cite to any supporting law. Nationstar has interpreted this reference as a claim under the Virginia Consumer Protection Act (“VCPA”),

Va. Code Ann. §§ 59.1-196 to -207, and argues that Plaintiffs have failed to state a claim under this statute. Def. Br. 2, 13–16, ECF No. 10.<sup>2</sup> In addition to these statutory claims, Plaintiffs appear to assert common law claims for fraud, unjust enrichment, and intentional infliction of emotional distress. Compl. 14.

*B. Plaintiffs' Claims*

Plaintiffs claim that Nationstar engaged in a variety of distinct, unlawful acts, statements, and correspondences. They first allege that in a letter to Plaintiffs dated December 19, 2012, Nationstar stated that the current owner of their home loan was Bank of New York Mellon Trust Company with the Bank of New York Trust Company, N.A., in Irving, Texas, listed as a contact address. Plaintiffs claim they found “[t]his bank” to be nonexistent. Compl. ¶ 6(a), Ex. A. They complain further that in response to their inquiries of the loan’s ownership, Nationstar told them on other occasions that First Tennessee Bank owned the loan and that it had been securitized and pooled in a trust. *Id.* ¶ 13. Plaintiffs assert that these statements regarding the identity of the loan owner constituted violations of “Deceptive Trade Practices” and TILA. They also cursorily assert that it was a violation of New York trust law, as well as the Pooling and Servicing Agreement for the securitization, for Nationstar to have an interest in the securitized loan, effect a default, or accelerate the loan. *Id.* ¶¶ 6(a), 13.

On December 20, Nationstar sent Plaintiffs a “Suspense Notice,” which stated that a recent transaction on behalf of their account had resulted in Nationstar placing unapplied funds in suspense, that the funds were insufficient to be applied as a full payment, but that the funds could be applied toward future payments (although the account would still accrue late fees).

Plaintiffs complain that this explanation was insufficient and assert that the letter was a violation

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<sup>2</sup> Nationstar’s reading of this claim and arguments against it are the subjects of one of Plaintiffs’ “motions to strike,” ECF No. 16, discussed *infra*. In the motion to strike and at oral argument, the Plaintiffs asserted that they did not bring a claim under the VCPA.

of “Deceptive Trade Practices” and FDCPA. *Id.* ¶ 6(b), Ex. B. On January 10, 2013, Nationstar sent Plaintiffs a letter stating that the original copy of their mortgage note must stay on file with Nationstar. The letter included, as an attachment, a copy of a three-page promissory note. Plaintiffs allege that this was a violation of “Deceptive Trade Practices,” RESPA, and unspecified securities law. *Id.* ¶ 6(c), Ex. C. On March 6, Nationstar sent another letter that included an attached copy of the mortgage note, although this copy was four pages rather than three. Plaintiffs allege this copy is not authentic and that this letter constituted fraud and a violation of TILA and “unfair practices.” *Id.* ¶ 6(d), Ex. D.

Plaintiffs also claim that sometime in 2013, Nationstar “‘piggy-backed’ a property tax payment of \$140.17 to Sussex County, Delaware and immediately established an illegal ‘forced escrow’ account.” They allege that they had obtained an escrow waiver because of the size of their down payment and loan-to-value ratio. Plaintiffs state that, per loan documents, they returned \$140.17 to Nationstar, which refused to acknowledge receipt of this money and instead placed Plaintiffs’ account in “critical” status and their loan in default. Plaintiffs assert that this constituted fraud. *Id.* ¶ 7. They further allege that Nationstar’s “‘in-house’ accounting payment history” for a portion of 2013 demonstrates account manipulation by Nationstar. They complain that the \$140.17 property tax assessment appeared multiple times and that although Sussex County had returned this sum to Nationstar, the sum was not reflected in the statement and instead the escrow account remained in place. They also complain that their payment history continued until October, at which point “a full contractual payment was put into suspense, creating a manufactured default.” They allege fraud and a violation of FDCPA. *Id.* ¶ 8, Ex. G.

Plaintiffs further complain that prior to the next tax year (presumably 2014), they received a check from Nationstar for \$700.11. Although the memo line on the check stated that it

was paid from miscellaneous suspense and escrow funds, Plaintiffs allege that the money was actually taken from their loan payments. Plaintiffs did not cash the check, as they believed it was a “bait and switch tactic.” They allege that this was fraudulent. *Id.* ¶ 9. On December 16, 2013, Nationstar sent Plaintiffs a letter stating that Nationstar was a “debt collector,” which Plaintiffs claim was deceptive because the letter also stated that Nationstar was a servicer. They assert that this violated TILA, Dodd-Frank, and FDCPA and that it constituted fraud. *Id.* ¶¶ 6(e), 10–11, Exs. E, H. Plaintiffs also complain that an insurance document stated that Nationstar was a mortgagee (which they seem to claim is inconsistent with being either a debt collector or a servicer) and claim that this was fraudulent and a violation of “Deceptive Trade Practices,” Dodd-Frank, and TILA. *Id.* ¶ 15, Ex. I.

Plaintiffs next complain of two documents Nationstar sent them—the first sent on January 17, 2014, and the second signed on May 19, 2014—titled “PAYMENT HISTORY CERTIFICATION,” which explained that Plaintiffs had defaulted on their payments. Plaintiffs complain that the documents appeared to be affidavits, but they were not notarized and, although they purported to be signed by the same person, the signatures appeared different. The Plaintiffs allege that these acts constituted fraud and violated TILA, “Deceptive Trade Practices,” and FDCPA. *Id.* ¶ 6(f), Ex. F. Plaintiffs then state that Nationstar stopped sending them their monthly statements in April 2014 and they had to contact the Consumer Financial Protection Bureau (“CFPB”) to obtain a year-end 2014 statement. They allege that the statement cessation was fraudulent and a violation of Dodd-Frank and “Deceptive Trade Practices.” *Id.* ¶ 14.

In October 2014, counsel for Nationstar sent Plaintiffs a notice of default and acceleration. Plaintiffs disputed the debt within 30 days and received no response. They claim this notice and lack of response violated FDCPA. *Id.* ¶ 16. In July 2015, different counsel for

Nationstar sent Plaintiffs another notice of default and acceleration. Plaintiffs disputed the debt and received a reply in an envelope marked “debt dispute.” They claim that Nationstar’s attorney “couched his replies in a manner to deceive, using a ‘slight [sic] of hand’ tactic.” They assert that this reply was fraudulent and violated the Rules of Professional Conduct and FDCPA. *Id.* ¶ 17. Finally, Plaintiffs state that they sent QWRs to Nationstar on August 25, 2014; June 6, 2015 (attached to the Complaint as Exhibit J); June 15, 2015; June 19, 2015; and July 6, 2015. They claim that these requests remain unanswered, and that Nationstar’s failure to reply is a violation of RESPA. *Id.* ¶ 18.

## II. Discussion

### A. *Plaintiffs’ Motions to Strike*

Plaintiffs have filed two “motions to strike” in response to Nationstar’s motion to dismiss. In their “Motion to Strike the Virginia Consumer Protection Act,” ECF No. 16, Plaintiffs move to strike Nationstar’s interpretation of their claims for “Deceptive Trade Practices” as being brought under the VCPA. Rule 12(f) of the Federal Rules of Civil Procedure allows a court to “strike from a pleading an insufficient defense or any redundant, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Nationstar’s proposed construction of Plaintiffs’ claims, which it included in its memorandum in support of its motion to dismiss, is not a pleading. *See* Fed. R. Civ. P. 7(a) (defining pleadings). Instead, the Court construes Plaintiffs’ motion as additional briefing in response to the motion to dismiss.

Plaintiffs’ other motion to strike, ECF No. 15, relates to a purported copy of their mortgage that Nationstar appended to its motion to dismiss, ECF No. 9-1. Plaintiffs contend that this copy is inauthentic and has been altered from its original form, stating that “[s]ome numbers have been deleted, other numbers added, and initials have been added to the face of the

document.” ECF No. 15. At oral argument, however, Plaintiffs clarified to the Court that they did not contest the actual content of the document Nationstar filed, but expressed concern only regarding minor changes to identifying marks, which reflect that the mortgage was recorded with the local registry of deeds. Thus, Plaintiffs’ argument against the document’s authenticity is without merit, and the Court will treat the terms of the mortgage as a part of the pleadings to the extent they are integral to Plaintiffs’ complaint. *See Goines v. Valley Cmty. Servs. Bd.*, --- F.3d --, 2016 WL 2621262, at \*3 (4th Cir. May 9, 2016) (“[W]e may consider a document submitted by the movant that was not attached to or expressly incorporated in a complaint, so long as the document was integral to the complaint and there is no dispute about the document’s authenticity.”).

*B. Nationstar’s Motion to Dismiss*

Nationstar contends that Plaintiffs have failed to state a claim upon which relief can be granted and moves for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A complaint must “state[] a plausible claim for relief” that “permit[s] the court to infer more than the mere possibility of misconduct.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). In making this determination, the Court accepts as true all well-pled facts and construes those facts in the light most favorable to the plaintiff. *Philips v. Pitt Cty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). The Court need not accept legal conclusions, formulaic recitation of the elements of a cause of action, or “bare assertions devoid of further factual enhancements,” however, as those are not well-pled facts for Rule 12(b)(6)’s purposes. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678).

Plaintiffs must plead enough facts to “nudge[] their claims across the line from conceivable to plausible,” and the Court should dismiss a complaint that is not “plausible on its

face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Determining whether a complaint states a plausible claim for relief is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679. Federal courts have an obligation to construe *pro se* pleadings liberally, so that any potentially valid claim can be fairly decided on its merits rather than the *pro se* litigant’s legal acumen. *Rankin v. Appalachian Power Co.*, No. 6:14cv47, 2015 WL 412850, at \*1 (W.D. Va. Jan. 30, 2015) (citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)). Still, “a *pro se* plaintiff must . . . allege facts that state a cause of action, and district courts are not required ‘to conjure up questions never squarely presented to them.’” *Considerder v. Medicare*, No. 3:09cv49, 2009 WL 9052195, at \*1 (W.D. Va. Aug. 3, 2009) (quoting *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985)), *aff’d*, 373 F. App’x 341 (4th Cir. 2010). For the reasons stated below, I find that Plaintiffs have failed to state a plausible claim for relief and recommend that Nationstar’s motion be granted.

*I. Transfers, Assignments, and Securitization*

Plaintiffs’ claims relating to the transfer or assignment of the note, mortgage, or servicing rights are without merit. Virginia law permits such an assignment. *Wolf v. Fed. Nat’l Mortg. Ass’n*, 830 F. Supp. 2d 153, 162–63 (W.D. Va. 2011). Moreover, the Plaintiffs were not parties to the assignment and, thus, do not have standing to challenge it, as long as the assignment was sufficient to pass title. Likewise, they do not have standing to assert noncompliance with the Pooling and Servicing Agreement. Nor can they assert that securitization of their mortgage somehow extinguished their debt obligation or Nationstar’s ability to find them in default and accelerate payments. *Blick v. J.P. Morgan Chase Bank, N.A.*, No. 3:12cv1, 2012 WL 1030115, at \*5–6 (W.D. Va. Mar. 27, 2012).

## 2. TILA and FDCPA

Most of Plaintiffs' claims under TILA and FDCPA are barred by the respective statutes of limitations. Both TILA and FDCPA include a one-year limitations period from the date on which an alleged violation occurs. *See* 15 U.S.C. §§ 1640(e) (TILA),<sup>3</sup> 1692k(d) (FDCPA). Thus, any claims for alleged violations that occurred prior to January 4, 2015, are time barred. This includes all of the alleged TILA violations and all but one FDCPA violation. The only claim under these statutes that is not time barred is Plaintiffs' claim related to the July 2015 letter sent by counsel for Nationstar. Plaintiffs have not provided enough information about this letter, however, to state a claim for relief. They do not describe the contents of the letter, other than to state that it employed a "slight [sic] of hand tactic," Compl. ¶ 17, or provide any other facts to support this claim. This single conclusory allegation cannot support the FDCPA claim, which must be dismissed.

## 3. RESPA

Plaintiffs' RESPA claims consist of two distinct types of allegations: those related to Nationstar's failure to provide Plaintiffs with the original mortgage note on request and those related to Nationstar's alleged failure to respond to Plaintiffs' purported QWRs. Nationstar argues that the refusal to provide the original mortgage note "has nothing to do with servicing a mortgage loan as defined by RESPA." Def. Br. at 20. This evaluation of Plaintiffs' claim is correct. "[C]ourts have drawn a distinction between communications related to the servicing of the loan, which are covered under RESPA, and those challenging the validity of the loan, which

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<sup>3</sup> Section 1640(e) of TILA also contains a three-year limitations period for suits relating to certain required disclosures for mortgages. *See* 15 U.S.C. § 1640(e). These provisions only concern disclosures in the original mortgage documents, however, *see id.* §§ 1639, 1639b, 1639c, and Plaintiffs have not alleged any violation of these requirements. As per § 1640(e), all other claims for damages under TILA are subject to a one-year limitations period. *Id.* § 1640(e).

are not.” *Minson v. CitiMortgage, Inc.*, No. DKC 12-2233, 2013 WL 2383658, at \*4 (D. Md. May 29, 2013). Plaintiffs have not explained how Nationstar’s refusal to produce the original note violates any of RESPA’s provisions. Furthermore, they have not explained why Nationstar’s refusal was wrongful, other than summarily claiming that they were entitled to view the original note, rather than a photocopy. In addition, they have failed to allege any pecuniary loss—an element of the claim under 12 U.S.C. § 2605(f)(1)(A)—resulting from this action. *See Minson*, 2013 WL 2383658, at \*5; *Luther v. Wells Fargo Bank*, No. 4:11cv57, 2012 WL 4405318, at \*7 (W.D. Va. Aug. 6, 2012); *Ward v. Sec. Atl. Mortg. Elec. Registration Sys., Inc.*, 858 F. Supp. 2d 561, 575 (E.D.N.C. 2012).

As to Plaintiffs’ allegations that Nationstar refused to reply to their QWRs, Nationstar argues that Plaintiffs have failed to allege properly that their requests met the definition of a QWR. Although Plaintiffs allege that they sent Nationstar QWRs on August 25, 2014; June 6, 2015; June 15, 2015; June 19, 2015; and July 6, 2015, the only document they have attached to their Complaint was the letter of June 6, 2015. This letter questions Nationstar’s authority to establish an escrow account; challenges Nationstar’s use of mortgage payments for “interest, fees, corporate advances, inspections[,] and escrow”; and asks for Nationstar to explain why it is a mortgagee. Compl. Ex. J. Most of the issues raised in this letter are beyond the scope of a QWR, which is simply “a statement of the reasons for the belief of the borrower . . . that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.” 12 U.S.C. § 2605(e)(1)(B). Plaintiffs’ challenge to the use of the mortgage payments arguably asserts an error in the account, and Nationstar does not assert otherwise, at least at this time. Even assuming the June 6 letter served as a QWR, Nationstar correctly notes that Plaintiffs have not alleged pecuniary loss caused by Nationstar’s failure to respond, as is

necessary to state a claim under RESPA. Furthermore, Plaintiffs have not sufficiently alleged facts showing that the other requests they sent to Nationstar constituted QWRs, *see Fedewa v. J.P. Morgan Chase Bank*, 921 F. Supp. 2d 504, 510–11 (E.D. Va. 2013), or that they suffered any pecuniary loss related to these letters. For these reasons, Plaintiffs’ RESPA claims should be dismissed.

#### 4. *Common Law Claims*

Although Plaintiffs’ complaint is somewhat confusing as to the nature of their asserted common law claims, it is clear that they have not stated adequate grounds for relief regarding any such claims. Plaintiffs’ allegations of misrepresentations or material omissions fail to state a claim for fraud because they have not alleged detrimental reliance on these representations. *See Muncy v. Centex Home Equity Co.*, No. 1:14cv16, 2014 WL 3359335, at \*5 (W.D. Va. July 9, 2014) (“[C]laims of fraud and misrepresentation require an allegation of reasonable reliance on allegedly false and material statements.”). As Nationstar notes, Plaintiffs do not claim to have believed Nationstar’s representations at any point. Nowhere in the Complaint do the Plaintiffs allege that they relied on or acted upon any of these representations to their detriment.

Likewise, Plaintiffs’ claims that Nationstar mishandled their account by assessing fees and then creating an escrow account are unclear and lack factual support. These issues are controlled by the terms of the mortgage and promissory note, which Plaintiffs have misconstrued. For example, in Plaintiffs’ June 6, 2015, QWR, they state that Nationstar did not have authority to establish an escrow account because “there is no escrow due under the terms of the note; borrower shall repay lender any such amounts required under Section 3, this amount has been repaid in full.” Compl. Ex. J. To the contrary, the mortgage agreement specifically stated that Plaintiffs would need to provide periodic funds for payment of “Escrow Items,”

including property taxes and insurance premiums. ECF No. 9-1, at 5–6. Plaintiffs cannot state a claim for fraud based upon Nationstar’s actions in accordance with its contractual duties under the mortgage agreement. *See Jones v. Bank of Am. Corp.*, No. 4:09cv162, 2010 WL 6605789, at \*8 (E.D. Va. Aug. 24, 2010) (“[T]o maintain an action for fraud, the plaintiff must show that the alleged misrepresentation was unrelated to the performance of ‘a duty or an obligation that was specifically required by the . . . [c]ontract.’” (quoting *Richmond Metro. Auth. v. McDevitt St. Bovis, Inc.*, 507 S.E.2d 344, 347 (Va. 1998))).

Plaintiffs provide even less support for their claims of intentional infliction of emotional distress and unjust enrichment. With regard to their claim for intentional infliction of emotional distress, a tort that is “not favored” by the Virginia courts, *SuperValu, Inc. v. Johnson*, 666 S.E.2d 335, 343 (Va. 2008), Plaintiffs’ Complaint sets forth no facts showing that Nationstar acted in a way that was outrageous or intolerable, or that they suffered severe emotional distress because of this conduct. *Cf. Russo v. White*, 400 S.E.2d 160, 162–63 (Va. 1991) (describing the high threshold to state a claim for intentional infliction of emotional distress). Plaintiffs also cannot succeed in their claim for unjust enrichment because such a claim is not available where, as here, a written agreement governs the parties’ relationship. *See Raymond, Colesar, Glaspy & Huss, P.C. v. Allied Capital Corp.*, 961 F.2d 489, 491 (4th Cir. 1992) (“One cannot obtain quantum meruit relief from another if he has expressly delineated the contractual obligations the two will have on the subject in question.”). In addition, to the extent Plaintiffs assert other common law claims, they are too vague for the Court to discern, and therefore should be dismissed.

### III. Conclusion

Plaintiffs' Complaint, ECF No. 1, fails to state a cause of action for which the Court can grant relief, and I therefore recommend that the presiding District Judge **DISMISS WITH PREJUDICE** all claims that are barred by the statute of limitations; all claims challenging the assignment, pooling, or securitization of Plaintiffs' mortgage; and all claims for unjust enrichment and intentional infliction of emotional distress, as discussed herein. I further recommend that the presiding District Judge **DISMISS WITHOUT PREJUDICE** Plaintiffs' remaining claims under RESPA and for common law fraud. A separate order will issue **DENYING** Plaintiffs' motion to strike the alleged copy of the mortgage agreement, ECF No. 15, and **CONSTRUING** Plaintiffs' motion to strike Nationstar's arguments under the Virginia Consumer Protection Act, ECF No. 16, as additional briefing.

#### **Notice to Parties**

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14 day period, the Clerk is directed to transmit the record in this matter to the Honorable Michael F. Urbanski, United States District Judge.

The Clerk shall send copies of this Report and Recommendation to all counsel of record and unrepresented parties.

ENTER: June 15, 2016

A handwritten signature in black ink that reads "Joel C. Hoppe". The signature is written in a cursive style with a large initial 'J' and 'H'.

Joel C. Hoppe  
United States Magistrate Judge