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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Stanley Singer; Barbara Singer,

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No. CV-11-01279-PHX-NVW

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Plaintiffs,

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**ORDER**

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vs.

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BAC Home Loan Servicing, LP fka)  
Countrywide Home Loans Servicing, LP;  
ReconTrust, NA; Carmelia Boone, an  
individual,

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Defendants.

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Before the Court is Defendants' Motion to Dismiss (Doc. 8). The motion will be granted for the reasons stated below.

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**I. Background**

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On April 22, 2008, Plaintiffs borrowed \$336,000 from Bank of America, N.A., for the purchase of real property located at 8319 East Via De Los Libros, Scottsdale, Arizona 85258.

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The original trustee under the deed of trust was PRLAP, Inc. Plaintiffs made payments on the note until January 2011. Bank of America transferred its interest in the deed of trust to

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BAC Home Loans Servicing, LP on April 1, 2011. On that same day, BAC Home Loans Servicing, LP appointed ReconTrust Company, N.A. as the successor trustee. Also on April

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1, 2011, ReconTrust Company filed a notice of trustee's sale, scheduling the property to be sold by public auction on July 11, 2011. On April 27, 2011, BAC Home Loans Servicing,

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1 LP sent Plaintiffs a letter indicating its intent to sell the property at a trustee's sale. The  
2 trustee's sale has not yet occurred. Plaintiffs filed suit in Maricopa County Superior Court  
3 on June 2, 2011, asserting four causes of action: 1) Declaratory Relief; 2) False and  
4 Fraudulent Recordations; 3) Negligence; and 4) Suit to Quiet Title. Defendants removed the  
5 case to this Court on June 28, 2011.

## 6 **II. Legal Standard**

7 On a motion to dismiss under Fed. R. Civ. P. 12(b)(6), all allegations of material fact  
8 are assumed to be true and construed in the light most favorable to the nonmoving party.  
9 *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). Dismissal under Rule 12(b)(6) can  
10 be based on "the lack of a cognizable legal theory" or "the absence of sufficient facts alleged  
11 under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
12 Cir. 1990). To avoid dismissal, a complaint need contain only "enough facts to state a claim  
13 for relief that is plausible on its face." *Twombly*, 550 U.S. at 570. The principle that a court  
14 accepts as true all of the allegations in a complaint does not apply to legal conclusions or  
15 conclusory factual allegations. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). "Threadbare  
16 recitals of the elements of a cause of action, supported by mere conclusory statements, do not  
17 suffice." *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that  
18 allows the court to draw the reasonable inference that the defendant is liable for the  
19 misconduct alleged." *Id.* "The plausibility standard is not akin to a 'probability  
20 requirement,' but it asks for more than a sheer possibility that a defendant has acted  
21 unlawfully." *Id.* To show that the plaintiff is entitled to relief, the complaint must permit the  
22 court to infer more than the mere possibility of misconduct. *Id.*

## 23 **III. Analysis**

24 Because Plaintiffs have failed to state any plausible claim for relief, Defendants'  
25 motion to dismiss (Doc. 8) will be granted.

1           **A.     General Allegations Regarding the Mortgage Industry**

2           Plaintiffs’ complaint relies on arguments regarding the invalidity of the securitization  
3 process and the “show me the note theory”—that a party seeking to conduct a trustee’s sale  
4 must present the promissory note securing the loan in order to conduct a trustee’s sale.  
5 Plaintiffs have cited no authority for their assertions that securitization has any impact on  
6 their obligations under the loan or that a note must be presented to conduct a trustee’s sale;  
7 rather, these generalized arguments have repeatedly been rejected in this district. *See, e.g.,*  
8 *Silvas v. GMAC Mortgage LLC*, No. CV09-0265-PHX-GMS, 2009 WL 4573234 (D. Ariz.  
9 Dec. 1, 2009); *Cervantes v. Countrywide Home Loans, Inc.*, No. CV09-517-PHX-JAT, 2009  
10 WL 3157160 (D. Ariz. Sept. 24, 2009). Additionally, although Plaintiffs assert that Carmelia  
11 Boone is a “robosigner” and unlawfully signed the substitution of trustee, they have provided  
12 no facts supporting this claim or establishing a duty on Ms. Boone’s part to “study and  
13 review” the substitution of trustee form before signing it. (Doc. 1-1.) Accordingly, none of  
14 Plaintiffs’ generalized claims about the securitization process, the “show me the note” theory,  
15 or robo-signing state a plausible claim for relief.

16           **B.     “Fraudulent Recordations”**

17           In their second cause of action, Plaintiffs allege that Defendants violated A.R.S. §  
18 33–420 by recording certain of the loan documents that “show irregularities consistent with  
19 robo-signing[.]” (Doc. 1-1.) A.R.S. § 33–420 prohibits a party from recording “an interest  
20 in, or a lien or encumbrance against, real property” when that party “knows[s] or ha[s] reason  
21 to know that the document is forged, groundless, contains a material misstatement or false  
22 claim or is otherwise invalid[.]” Plaintiffs rely on the same meritless allegations, rejected  
23 above, about the invalidity of the securitization process and any resulting transfers of the  
24 deed of trust to support their claim that Defendants had no interest in Plaintiffs’ property and  
25 thus wrongly recorded loan documents in violation of A.R.S. § 33–420. Plaintiffs have  
26 offered no facts to show Defendants were knowingly recording false documents, and have  
27 not even stated which particular documents were allegedly recorded in violation of A.R.S.  
28 § 33–420. Accordingly, Count Two fails to state a plausible claim for relief.

1           **C.     Negligence**

2           In their third cause of action, Plaintiffs allege that BAC Home Loans Servicing, LP,  
3 owed them a “duty to be fair and to exercise the reasonable care of an attorney[.]” (Doc. 1-1.)  
4 Plaintiffs further allege that Carmelia Boone acted negligently by signing the substitution of  
5 trustee form appointing ReconTrust Company as trustee because she should have know that  
6 BAC Home Loans Servicing, LP did not have the power to appoint a substitute trustee.  
7 Plaintiffs also claim that ReconTrust Company “could not rely on the statement of breach”  
8 provided by BAC Home Loans Servicing, LP because BAC Home Loans Servicing, LP was  
9 not a “valid beneficiary[.]” (Doc. 1-1.)

10           In order to establish a claim for negligence, Plaintiffs must show  
11           1) a duty requiring the defendant to conform to a certain standard of care; (2) a breach  
12           by the defendant of that standard; (3) a causal connection between the defendant’s  
13           conduct and the resulting injury; and (4) actual damages.  
14           *Gipson v. Kasey*, 214 Ariz. 141, 143, 150 P.3d 227, 231 (2007). Plaintiffs fail to explain the  
15           basis for any duty owed by any Defendants, why Defendants “should have known” the  
16           various allegations that are said to have resulted in breaches of their purported duties, or how  
17           these breaches caused them injury. Accordingly, Plaintiffs’ negligence claim fails to state  
18           a claim for which relief can be granted.

18           **D.     Quiet Title**

19           In their fourth cause of action, Plaintiffs assert a claim to quiet title to their property.  
20           In order to state claim to quiet title, Plaintiffs must allege that they have satisfied their loan  
21           obligations and are accordingly entitled to the release of the deed of trust. *See Farrell v.*  
22           *West*, 57 Ariz. 490, 491, 114 P.2d 910, 911 (1941) (noting that where there is “an unsatisfied  
23           balance due to a defendant-mortgagee, or his assignee, the court will not quiet the title until  
24           and unless [plaintiff] pays off such mortgage lien”). However, Plaintiffs have not indicated  
25           that they are able or willing to tender the full amount owed on the loan or that they are  
26           otherwise equitably entitled to quiet title relief. Accordingly, Plaintiffs have failed to state  
27           a claim for relief in Court Four.

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1           **E.     Declaratory Relief**

2           Plaintiffs also seek as an independent cause of action declaratory relief. However,  
3 declaratory relief is a “remed[y] for underlying causes of action . . . not [a] separate cause[]  
4 of action[.]” *Silvas v. GMAC Mortgage, LLC*, No. CV-09-0265-PHX-GMS, 2009 WL  
5 4573234, at \*6 (D. Ariz. Dec. 1, 2009) (citations omitted). Since Plaintiffs have not  
6 sufficiently pled any underlying cause of action, they are not entitled to declaratory relief.

7           **F.     Dismissal of ReconTrust**

8           ReconTrust was appointed as substitute trustee on April 1, 2011 (Doc. 8-1). Actions  
9 against a substitute trustee are governed by A.R.S. § 33–807(E), which provides that a trustee  
10 “need only be joined as a party in legal actions pertaining to a breach of the trustee’s  
11 obligation under this chapter or under the deed of trust.” Where a trustee is named in an  
12 action that does not allege a breach of the trustee’s duties, “the trustee is entitled to be  
13 immediately dismissed and to recover costs and reasonable attorney fees from the person  
14 joining the trustee.” A.R.S. § 33–807(E). Because Plaintiffs have only alleged that  
15 ReconTrust does not have authority to institute a trustee’s sale, and not that ReconTrust  
16 breached any of its trustee’s duties, ReconTrust, as substitute trustee, is independently  
17 entitled to dismissal of the claims against it pursuant to A.R.S. § 33–807(E).

18 **IV.    Leave to Amend**

19           Leave to amend should be freely given “when justice so requires.” Fed. R. Civ.  
20 P. 15(a)(2). Plaintiffs will be given an opportunity to amend their complaint to make clear  
21 their allegations in short, plain statements. Any amended complaint must conform to the  
22 requirements of Rule 8(a), 8(d)(1), and 9(b) of the Federal Rules of Civil Procedure.  
23 Plaintiffs are warned that if they elect to file an amended complaint and fail to comply with  
24 the Court’s instructions explained in this order, the action may be dismissed pursuant to Rule  
25 41(b) of the Federal Rules of Civil Procedure. *See McHenry*, 84 F.3d at 1177 (affirming  
26 dismissal with prejudice of prolix, argumentative, and redundant amended complaint that did  
27 not comply with Rule 8(a)); *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673-74 (9th  
28 Cir. 1981) (affirming dismissal of amended complaint that was “equally as verbose,

1 confusing, and conclusory as the initial complaint”); *Corcoran v. Yorty*, 347 F.2d 222, 223  
2 (9th Cir. 1965) (affirming dismissal without leave to amend of second complaint that was “so  
3 verbose, confused and redundant that its true substance, if any, [was] well disguised”).

4 IT IS THEREFORE ORDERED that Defendants’ Motion to Dismiss (Doc. 8) is  
5 granted.

6 IT IS FURTHER ORDERED that Plaintiffs may file an amended complaint by  
7 August 5, 2011. The Clerk is directed to terminate this case without further order if Plaintiffs  
8 do not file an amended complaint by August 5, 2011.

9 DATED this 21<sup>st</sup> day of July, 2011.

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Neil V. Wake  
United States District Judge