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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DANIEL MASTERSON, BIJOU MASTERSON,	)	Case No. CV 14-08741 DDP (AJWx)
	)	
	)	
Plaintiffs,	)	<b>ORDER GRANTING DEFENDANTS' MOTION TO DISMISS</b>
	)	
v.	)	
	)	
THE BANK OF NEW YORK MELLON, formerly known as THE BANK OF NEW YORK AS TRUSEE FOR CWALT, INC., ALTERNATIVE LOAN TRUST 2007-19, MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2007-19; CWALT, INC. ALTERNATIVE LOAN TRUST 2007- 9, MORTGAGE PASS-TRHOUGH CERTIFICATES, et al.,	)	[Dkt. No. 37]
	)	
	)	
Defendants.	)	
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Presently before the court is Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint ("FAC"). Having considered the submissions of the parties, the court grants the motion and adopts the following order.

1 **I. Background**

2 In 2007, Plaintiffs executed a promissory note for  
3 \$1,995,000.00, secured by a Deed of Trust to real property located  
4 at 6227 Hollymont Drive, Los Angeles, California 90068. (FAC ¶ 31,  
5 Ex. 1 at 3.) The Deed named Defendant Mortgage Electronic  
6 Registration Systems, Inc. ("MERS") as a nominee for the lender and  
7 beneficiary under the Deed. (FAC Ex. 1 at 3.) On December 23,  
8 2010, MERS recorded an assignment of the Note and Deed to Defendant  
9 Bank of New York Mellon ("the Bank"), as Trustee for the CWALT,  
10 Inc. Alternative Loan Trust ("the Trust"). (FAC ¶ 32, Ex. 2 at  
11 2.)

12 On August 20, 2014, Plaintiffs, proceeding pro se, filed the  
13 instant action in the United States District Court for the Southern  
14 District of New York. Plaintiffs filed the First Amended Complaint  
15 on October 27, 2014. The District Court for the Southern District  
16 of New York later transferred this matter sua sponte to this court.  
17 (Dkt. 27.) In essence, the FAC alleges that the Deed was  
18 improperly assigned in 2010, and that the assignment violated the  
19 Trust's Prospectus and the Bank's duties as Trustees. The FAC  
20 alleges nineteen causes of action, brought under federal,  
21 California, and New York law, related to these allegations.<sup>1</sup>  
22 Plaintiffs seek, among other relief, monetary damages and a  
23 declaratory judgment that no Defendant has an interest in  
24 Plaintiffs' Note or Deed of Trust. (FAC ¶ 53.) Defendants now  
25 move to dismiss the FAC.

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27 <sup>1</sup> Although the caption of Plaintiffs' FAC lists only eight  
28 causes of action, the body of the FAC lists nineteen causes of  
action.

1 **II. Legal Standard**

2 A complaint will survive a motion to dismiss when it contains  
3 "sufficient factual matter, accepted as true, to state a claim to  
4 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
5 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
6 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
7 "accept as true all allegations of material fact and must construe  
8 those facts in the light most favorable to the plaintiff." Resnick  
9 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint  
10 need not include "detailed factual allegations," it must offer  
11 "more than an unadorned, the-defendant-unlawfully-harmed-me  
12 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
13 allegations that are no more than a statement of a legal conclusion  
14 "are not entitled to the assumption of truth." Id. at 679. In  
15 other words, a pleading that merely offers "labels and  
16 conclusions," a "formulaic recitation of the elements," or "naked  
17 assertions" will not be sufficient to state a claim upon which  
18 relief can be granted. Id. at 678 (citations and internal  
19 quotation marks omitted).

20 "When there are well-pleaded factual allegations, a court should  
21 assume their veracity and then determine whether they plausibly  
22 give rise to an entitlement of relief." Id. at 679. Plaintiffs  
23 must allege "plausible grounds to infer" that their claims rise  
24 "above the speculative level." Twombly, 550 U.S. at 555.  
25 "Determining whether a complaint states a plausible claim for  
26 relief" is a "context-specific task that requires the reviewing  
27 court to draw on its judicial experience and common sense." Iqbal,  
28 556 U.S. at 679.

1 **III. Discussion**

2 A. Prospectus-Based Claims

3 Plaintiffs' Eleventh, Twelfth, and Thirteenth Causes of Action  
4 allege that the December 2010 assignment of the Deed violated  
5 several terms of the Trust's Prospectus. Defendants argue that  
6 Plaintiffs lack standing to challenge alleged violations of the  
7 Prospectus. Indeed, Plaintiffs' FAC seems to acknowledge as much,  
8 alleging that Plaintiffs "do not have the authority to prosecute  
9 the enforcement of securities violations." (FAC ¶ 30.) The import  
10 of Plaintiffs' assertion that their claims "establish the  
11 plausibility that the [assignment is] in direct conflict with the  
12 Prospectus" is therefore unclear to the court. Although  
13 Plaintiffs allege that they are entitled "to potential monies for  
14 the identification of actions, to the SEC, that result [in] fines  
15 or penalties as a direct result of Plaintiffs' assistance,"  
16 Plaintiffs provide no authority for that proposition nor any  
17 argument why any such entitlement would confer standing upon  
18 Plaintiffs to challenge the Prospectus. The Eleventh, Twelfth, and  
19 Thirteenth Causes of action are dismissed, with prejudice.<sup>2</sup>

20 B. TILA

21 Plaintiffs' Nineteenth Cause of Action alleges a violation of  
22 the Truth in Lending Act ("TILA"), 15 U.S.C. SEC 1601 et seq.

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24 <sup>2</sup> Plaintiffs devote much of their opposition to arguments  
25 regarding the pool servicing agreement governing the securitization  
26 of their Note. The FAC, however, asserts no claims based upon the  
27 PSA. Furthermore, courts have regularly concluded that mortgagors  
28 lack standing to bring such claims. See, e.g., Rubio v. U.S. Bank,  
N.A., No. C 13-05752 LB, 2014 WL 1318631 at \*7-8 (N.D. Cal. Apr. 1,  
2014); Armeni v. America's Wholesale Lender, No. CV 11-8537 CAS,  
2012 WL 603242 at \*3 (C.D. Cal. Feb. 24, 2012); See also Rajamin v.  
Deutsche Bank Nat. Trust Co., 757 F.3d 79, 86 (2nd Cir. 2014).

1 Specifically, Plaintiffs allege that they did not receive written  
2 notice of the assignment of their mortgage within thirty days of  
3 the assignment. 15 U.S.C. § 1641(g). TILA claims must be brought,  
4 however, within one year of the violation. 15 U.S.C. § 1640(e).  
5 Here, that period expired in January 2012. Plaintiffs did not file  
6 their complaint in New York until August 20, 2014. Plaintiffs'  
7 TILA claim is, therefore, time-barred. The Nineteenth Cause of  
8 Action is dismissed with prejudice.

9 C. Declaratory Relief Re: Assignment

10 Plaintiffs' First Cause of Action seeks a declaration that no  
11 Defendant has any interest in Plaintiffs' Note, Deed, or property.  
12 (FAC ¶ 96.) Plaintiffs allege that only a "non-existent mortgage"  
13 was assigned, the Deed of Trust was never transferred, and,  
14 Plaintiffs allege, is now unsecured. (FAC ¶ 92.) Although the  
15 basis for Plaintiffs' contentions is somewhat unclear, it appears  
16 from the two sentences of Plaintiffs' opposition devoted to this  
17 issue that Plaintiffs' First Cause of Action is premised upon  
18 allegations that their Note was improperly securitized. (Opp. at  
19 8.) Plaintiffs do not have standing, however, to bring such  
20 claims. See note 2, supra; See also Yarpezeskhan v. Bank of  
21 America, N.A., No. 14-cv-237 JM, 2014 WL 3002410 at \*3-4 (S.D. Cal.  
22 Jul7 2, 2014). The First Cause of Action is dismissed.

23 D. IRS Requirements and New York EPTL Claim

24 Plaintiffs' Second through Eighth Causes of Action allege  
25 various violations of Internal Revenue Service requirements.  
26 Rather than address Defendants' contention that Plaintiffs lack  
27 standing to bring such claims, Plaintiffs argue that they intend  
28 "to amend the complaint to include the Internal Revenue Service."

1 (Opp. at 13.) The court therefore dismisses the Second through  
2 Eighth Causes of Action.<sup>3</sup>

3 Plaintiffs' discussion regarding amendment to include the IRS  
4 also refers to New York Estates Powers and Trusts Law ("EPTL") § 7-  
5 2.4. That statute serves as the basis for Plaintiffs' Tenth Cause  
6 of Action, which seeks a declaration that the assignment of  
7 Plaintiffs' Note is void under EPTL § 7-2.4. That claim, however,  
8 is foreclosed by the Second Circuit's decision in Rajamin v.  
9 Deutsche Bank Nat. Trust Co., 757 F.3d 79 (2014), which concluded  
10 that, even if mortgagors such as Plaintiffs had standing under EPTL  
11 § 7-2.4, which they do not, any failure to comply with the terms of  
12 a PSA would render an assignment voidable, not void. Rajamin, 757  
13 F.3d at 88-90. Plaintiffs' Tenth Cause of Action is therefore  
14 dismissed with prejudice.

15 E. Remaining Claims

16 Plaintiffs have not opposed Defendants' Motion to Dismiss with  
17 respect to the Ninth and Fourteenth through Eighteenth causes of  
18 action, which are, therefore, dismissed.

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27 <sup>3</sup> The nature of Plaintiffs' proposed amendment is unclear to  
28 the court. Nothing in this Order shall be read to suggest that an  
amendment along the lines Plaintiffs suggest would state a viable  
claim.

1 **IV. Conclusion**

2 For the reasons stated above, Defendants' Motion to Dismiss is  
3 GRANTED. Plaintiffs' First through Eighth Causes of Action are  
4 DISMISSED, with leave to amend. Any amended complaint shall be  
5 filed within fourteen days of the date of this Order. All other  
6 causes of action are DISMISSED, with prejudice.

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8 IT IS SO ORDERED.

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11 Dated: March 20, 2015

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DEAN D. PREGERSON  
United States District Judge

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