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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ROBERTA THROWER,  
                                Plaintiff,  
  
                v.  
  
NATIONSTAR MORTGAGE LLC; U.S.  
BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR LEHMAN XS TRUST  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-4N  
and DOES 1-10, inclusive.  
  
                                Defendants.

CIV. NO. 2:17-00766 WBS KJN  
  
MEMORANDUM AND ORDER RE: MOTION  
TO DISMISS

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                Plaintiff Roberta Thrower brought this action against  
Nationstar Mortgage LLC ("Nationstar") and U.S. Bank National  
Association ("U.S. Bank") for violations of state and federal law  
arising out defendants' alleged misconduct as plaintiff's  
purported mortgage servicer and beneficiary of plaintiff's debt  
obligation. The matter is now before the court on defendants'  
Motion to dismiss for failure to state a claim upon which relief

1 can be granted pursuant to Federal Rule of Civil Procedure  
2 12(b)(6). (Defs.' Mot. (Docket No. 4).)

3 I. Factual and Procedural Background

4 In 2006, plaintiff allegedly obtained a mortgage loan  
5 on property in Rocklin, California, which was secured by a Deed  
6 of Trust listing GreenPoint Mortgage Funding, Inc. as the lender.  
7 (Compl. 9:13-19 (Docket No. 1).) The Complaint alleges that the  
8 loan was placed in a mortgage-backed securities trust named  
9 Lehman XS Trust, Series 2006-4N ("2006-4N Trust"), which the  
10 parties agree is governed by New York law. (Compl. 9:25-10:1.)  
11 The 2006-4N Trust allegedly had a closing date--the date by which  
12 all Notes and Deeds of Trust must be transferred into the trust--  
13 of March 31, 2006. (Compl. 11:19-26.) The Complaint alleges  
14 that the Deed of Trust was not transferred to the 2006-4N Trust  
15 by the closing date and therefore the assignment is invalid.  
16 (Compl. 13:18-14:12.)

17 Following a series of recorded assignments, defendant  
18 U.S. Bank was the trustee and beneficiary of the Deed of Trust  
19 and Nationstar was the mortgage servicer. (Request for Judicial  
20 Notice ("RJN") Exs. 3-4, 8, 11 (Docket No. 5).)<sup>1</sup> Plaintiff

21 <sup>1</sup> A court may take judicial notice of facts "not subject  
22 to reasonable dispute" that are "accurately and readily  
23 determined from sources whose accuracy cannot reasonably be  
24 questioned." Fed. R. Evid. 201. "[A] court may take judicial  
25 notice of 'matters of public record.'" Lee v. City of Los  
26 Angeles, 250 F.3d 668, 689 (9th Cir. 2001) (citing Mack v. S. Bay  
27 Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986)). Defendants  
28 request that the court notice fifteen recorded documents--the  
grant deed, trust transfer deed, several assignments of the deed  
of trust, several substitutions of trustee, two Notices of  
Default and rescission of the first Notice of Default, two  
Notices of Trustee's Sale, the Modification Agreement, and the  
docket for plaintiff's Chapter 13 Bankruptcy petition in the  
Central District of California. (See RJN Exs. 1-15.) Plaintiff  
does not dispute the accuracy or authenticity of the documents.

1 allegedly made payments to defendants and refinanced her mortgage  
2 loan with Nationstar in 2012. (See RJN Ex. 10.) A Notice of  
3 Default was subsequently recorded in 2016 and a Notice of Trustee  
4 Sale was recorded on April 4, 2017. (RJN Exs. 13-14.)

5 Plaintiff filed a verified complaint, bringing claims  
6 against defendants for: (1) declaratory relief; (2) negligence;  
7 (3) quasi contract; (4) violation of the Fair Debt Collection  
8 Practices Act ("FDCPA"); (5) accounting; (6) quiet title; (7)  
9 violation of the California Unfair Competition Law ("UCL"); and  
10 (8) violation of 26 U.S.C. § 860G(d)(1). Now before the court is  
11 defendants' Motion to dismiss.

## 12 II. Discussion

13 On a motion to dismiss under Rule 12(b)(6), the court  
14 must accept the allegations in the complaint as true and draw all  
15 reasonable inferences in favor of the plaintiff. Scheuer v.  
16 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by  
17 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S.  
18 319, 322 (1972). To survive a motion to dismiss, a plaintiff  
19 must plead "only enough facts to state a claim to relief that is  
20 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.  
21 544, 570 (2007). "The plausibility standard is not akin to a  
22 'probability requirement,' but it asks for more than a sheer  
23 possibility that a defendant has acted unlawfully." Ashcroft v.  
24 Iqbal, 556 U.S. 662, 678 (2009). "A claim has facial

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26 Therefore, "[t]he court will take judicial notice of these  
27 documents because they are matters of public record whose  
28 accuracy cannot be questioned." See Willis v. JPMorgan Chase  
Bank, N.A., Civ. No. 2:17-366 WBS AC, 2017 WL 1349744, at \*1  
(E.D. Cal. Apr. 5, 2017) (taking judicial notice of recorded  
deeds of trust).

1 plausibility when the plaintiff pleads factual content that  
2 allows the court to draw the reasonable inference that the  
3 defendant is liable for the misconduct alleged.” Id.

4           The Complaint alleges that defendants cannot foreclose  
5 on the property or demand mortgage payments from plaintiff  
6 because the Deed of Trust and Note were not transferred into the  
7 2006-4N Trust by its closing date, thereby violating the Pooling  
8 Service Agreement (“PSA”). (Compl. 11:19-26.) Plaintiff does  
9 not allege that she was a party to any of the assignments of her  
10 loan, Deed of Trust, or Note. Defendants argue that plaintiff  
11 lacks standing to challenge any allegedly untimely assignment to  
12 the 2006-4N Trust and therefore plaintiff’s entire Complaint must  
13 be dismissed.

14           A borrower has standing to challenge an assignment of  
15 her note and deed of trust on the basis of defects that render  
16 the assignment void, but does not have standing to challenge a  
17 voidable assignment. Yvanova v. New Century Mortg. Corp., 62  
18 Cal. 4th 919, 942-43 (2016). “When an assignment is merely  
19 voidable, the power to ratify or avoid the transaction lies  
20 solely with the parties to the assignment.” Id. at 936. “Unlike  
21 a voidable transaction, a void one cannot be ratified or  
22 validated by the parties to it even if they so desire.” In re  
23 Turner, --- F.3d ----, 2017 WL 2587981, at \*3 (9th Cir. 2017).

24           Under New York law, an act in violation of a trust  
25 agreement renders the assignment not void, but voidable. See  
26 Rajamin v. Deutsche Bank Nat’l Trust Co., 757 F.3d 79, 87-90 (2d  
27 Cir. 2014) (holding that “any failure to comply with the terms of  
28 the PSAs” did not render the “acquisition of plaintiffs’ loan and

1 mortgages void" because "[u]nder New York law, unauthorized acts  
2 by trustees are generally subject to ratification by the trust  
3 beneficiaries"); see also Morgan v. Aurora Loan Servs., LLC, 646  
4 Fed. App'x 546, 550 (9th Cir. 2016) (citing Rajamin). Therefore,  
5 a borrower does not have standing to challenge a purported  
6 untimely assignment of a deed of trust. See In re Turner, 2017  
7 WL 2587981, at \*3-5 (holding a borrower did not have standing to  
8 challenge the assignment of her deed of trust into a securitized  
9 trust); Morgan, 646 Fed. App'x at 550 ("[B]ecause an action in  
10 violation of a trust agreement is voidable--not void--under New  
11 York law, which governs the [trust agreement] at issue,  
12 [plaintiff] lacks standing here.").

13           The alleged assignment in violation of the PSA  
14 "rendered the transfer voidable, not void." See In re Turner,  
15 2017 WL 2587981, at \*3. Because such a violation only renders  
16 the assignment voidable and plaintiff was not a party to the  
17 assignment, plaintiff does not have standing to challenge the  
18 assignment of her Note and Deed of Trust into the 2006-4N Trust.  
19 See id.

20           Plaintiff relies on Glaski v. Bank of America, N.A.,  
21 218 Cal. App. 4th 1079, 1097 (5th Dist. 2013), where the court  
22 held that an assignment of a deed of trust into a securitized  
23 trust after the closing date rendered the assignment void.  
24 However, Glaski is "an outlier and not widely accepted law."  
25 Gutierrez v. Bank of Am., N.A., Civ. No. 2:14-1246 TLN AC, 2015  
26 WL 925703, at \*5 (E.D. Cal. Mar. 3, 2015) (citing cases); see  
27 Wells Fargo Bank, N.A. v. Erobobo, 127 A.D.3d 1176, 1177-78 (N.Y.  
28 App. Div. 2015) (reversing the trial court decision relied upon

1 in Glaski). Plaintiff fails to point to a single post-Glaski  
2 case that follows Glaski's reasoning.<sup>2</sup> To the contrary, the  
3 courts that have addressed this issue post-Glaski--including the  
4 Ninth Circuit, many district courts within the Ninth Circuit, and  
5 other California Courts of Appeal--have held that borrowers do  
6 not have standing to challenge a late assignment of their deed of  
7 trust because an untimely assignment is voidable, not void. See,  
8 e.g., Morgan, 646 Fed. App'x at 550; Saterbak v. JPMorgan Chase  
9 Bank N.A., 245 Cal. App. 4th 808, 815 (4th Dist. 2016). The  
10 court finds no reason to depart from the overwhelming majority of  
11 recent decisions, including binding Ninth Circuit decisions.

12 Because plaintiff does not have standing to challenge  
13 the alleged assignment, she also does not have standing to bring  
14 claims relying on the allegedly untimely assignment. See Palmer  
15 v. MTC Fin., Inc., Civ. No. 1:17-43 DAD SKO, 2017 WL 2311680, at  
16 \*6 (E.D. Cal. May 26, 2017) (dismissing FDCPA, wrongful  
17 foreclosure, and quiet title claims because plaintiffs did not  
18 have standing to challenge the assignment of their deed of  
19 trust); Walker v. Deutsche Bank Nat'l Trust Co., CV 15-03887-BRO  
20 (MRWx), 2015 WL 12746201, at \*7 (C.D. Cal. Oct. 5, 2015)

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22 <sup>2</sup> Plaintiff also cites a pre-Glaski case, Vogan v. Wells  
23 Fargo Bank, N.A., Civ. No. 2:11-2098 JAM KJN, 2011 WL 5826016  
24 (E.D. Cal. Nov. 17, 2011), where the court denied a motion to  
25 dismiss a UCL claim when plaintiffs alleged, in part, that a  
26 recorded assignment was executed after the closing date of the  
27 securitized trust because it gave rise to a plausible inference  
28 that some of the assignment was fraudulent. That case, however,  
pre-dates the Second Circuit decision in Rajamin and the Ninth  
Circuit decisions in In re Turner and Morgan, which held that  
borrowers lack standing to challenge a late assignment of their  
note or deed of trust because such an act "is voidable--not void--  
under New York law." See, e.g., Morgan, 646 Fed. App'x at 550.

1 (dismissing quasi contract, wrongful foreclosure, and quiet title  
2 claims because plaintiff lacked standing to challenge the  
3 assignment of her loan). At oral argument, plaintiff's counsel  
4 conceded that all claims of plaintiff's complaint rely on this  
5 alleged assignment. Accordingly, the court will dismiss all of  
6 plaintiff's claims.

7 Although Fed. R. Civ. P. 15(a)(2) requires the court to  
8 "freely give leave [to amend] when justice so requires," a  
9 district court "need not grant leave to amend where the  
10 amendment: (1) prejudices the opposing party; (2) is sought in  
11 bad faith; (3) produces an undue delay in litigation; or (4) is  
12 futile." AmerisourceBergen Corp. v. Dialysist W., Inc., 465 F.3d  
13 946, 951 (9th Cir. 2006). Granting plaintiff leave to amend her  
14 claims when she lacks standing to challenge the assignment of her  
15 Deed of Trust would be futile because plaintiff cannot allege any  
16 set of facts that would render the assignment void, instead of  
17 voidable. See Palmer, 2017 WL 2311680, at \*6; Walker, 2015 WL  
18 12746201, at \*7. Therefore, the court will not grant plaintiff  
19 leave to amend.

20 IT IS THEREFORE ORDERED that defendants' Motion to  
21 dismiss (Docket No. 4) be, and the same hereby is, GRANTED.  
22 Plaintiff's claims are DISMISSED WITH PREJUDICE.

23 Dated: June 28, 2017



24 **WILLIAM B. SHUBB**  
25 **UNITED STATES DISTRICT JUDGE**  
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