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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE RAMOS, *et al.*,

No. C-14-4909 EMC

Plaintiffs,

v.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

J.P. MORGAN CHASE BANK, N.A., *et al.*,

(Docket No. 37)

Defendants.

I. INTRODUCTION

On October 1, 2014, Jose Ramos (“Plaintiff”) filed a complaint with the San Mateo Superior Court of California, which challenged J.P. Morgan Chase Bank’s authority to foreclose on his property. Docket No. 1. On November 5, 2014, J.P. Morgan Chase Bank (“Defendant”) removed to this Court. *Id.* On January 22, 2015, this Court granted Defendants’ first motion to dismiss, and provided Plaintiff with leave file an amended complaint. Docket No. 30. Currently pending before the Court is Defendants’ motion to dismiss Plaintiff’s First Amended Complaint. Docket No. 37.

II. BACKGROUND

On August 24, 2005, Plaintiff obtained a 40-year adjustable rate mortgage (“Mortgage”) from Greenpoint Mortgage Funding, Inc (“Greenpoint”) for \$296,000. Complaint (“Compl.”) ¶ 6; Exhibit to Complaint (“Ex.”) C. The loan was recorded in a promissory note (“Note”) and was secured by a deed of trust (“DOT”) against a property in Daly City, California. Ex. C. The DOT names Marin Conveyancing Corp. as the trustee and EMC Mortgage Corp. (EMC) as the loan

1 servicer. *Id.* Subsequent to the execution of the Mortgage, Greenpoint sold the Mortgage to EMC,
2 but failed to assign the DOT to EMC or endorse the Note. Compl. ¶ 10.

3 On October 1, 2005, Structured Asset Mortgage Investments II, Inc. (“SAMI”) formed a
4 mortgage-backed securities trust identified as the Greenpoint Mortgage Funding Trust 2005-AR5
5 (“AR5 Trust” or “Trust”), with Wells Fargo as trustee. This transaction is memorialized in a
6 Pooling and Servicing Agreement (“PSA”). Compl. ¶ 14. The PSA governing the AR5 Trust
7 prohibits assignments of loans to the Trust more than 90 days after the closing date – October 31,
8 2005. Compl. ¶ 14.

9 On October 31, 2005, EMC sold the Mortgage to SAMI. This transaction is memorialized in
10 the Mortgage Loan Purchase Agreement (“MLPA”). On the same day, SAMI “sold and securitized”
11 the Mortgage into the AR5 Trust. Compl. ¶ 16.

12 On January 19, 2010, Mortgage Electronic Registration Systems (MERS) issued an
13 Assignment of DOT, assigning a beneficiary interest under the DOT to Wells Fargo. Compl. ¶ 28.
14 On August 26, 2010, EMC “acting as Attorney-in-Fact” for Wells Fargo, executed a Substitution of
15 Trustee, substituting Quality Loan Service Corporation (“QLS”) for Marin Conveyancing Corp as
16 the trustee for the Mortgage. Compl. ¶ 60. On August 5, 2010, a Notice of Default – dated August
17 4, 2010 – was executed by QLS, indicating that Plaintiff was in default on his loan. ¶ 62.
18 Subsequently, QLS executed four Notices of Trustee’s Sale (“NOTS”) over the course of thirty-five
19 months. ¶ 69 (dated: November 8, 2010; July 15, 2011; November 29, 2012; October 18, 2013). All
20 of these documents – the Corporate Assignment of Deed of Trust, Substitution of Trustee, Notice of
21 Default, and Notice of Trustee’s Sale (collectively, “Documents”) – were recorded with the San
22 Mateo County Recorder’s Office. *See* Exhs. E, F, G, H, I.

23 III. DISCUSSION

24 A. Legal Standard

25 Under Federal Rules of Civil Procedure 12(b)(6), a party may move to dismiss based on the
26 failure to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). A motion to
27 dismiss based on Rule 12(b)(6) challenges the legal sufficiency of the claims alleged. *See Parks Sch.*
28 *of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir.1995). In considering such a motion, a court must

1 take all allegations of material fact as true and construe them in the light most favorable to the
2 nonmoving party, although “conclusory allegations of law and unwarranted inferences are
3 insufficient to avoid a Rule 12(b)(6) dismissal.” *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th
4 Cir.2009). Courts “are not required to accept as true conclusory allegations which are contradicted
5 by documents referred to in the complaint.” *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1296
6 (9th Cir.1998).

7 While “a complaint need not contain detailed factual allegations . . . it must plead ‘enough
8 facts to state a claim to relief that is plausible on its face.’” *Id.* “A claim has facial plausibility when
9 the plaintiff pleads factual content that allows the court to draw the reasonable inference that the
10 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009); *see*
11 *also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). “The plausibility standard is not akin to
12 a ‘probability requirement,’ but it asks for more than sheer possibility that a defendant acted
13 unlawfully.” *Id.*

14 B. Request for Judicial Notice

15 Defendants request judicial notice of the following documents in support of their Motion: the
16 DOT, Assignment, Substitution, NOD, NTS, and Deed Upon Sale. Docket No. 12. All of these
17 documents have been recorded with the San Mateo County Recorders Office. Additionally, all of
18 these documents were attached to the Complaint. *See* Exhs. A, C, D, E, F, G, H, I, J. Defendants
19 also request judicial notice of two letters sent to Plaintiff regarding the disputed loan. Docket No.
20 12. In their request, Defendants suggest these letters are public record, but do not provide any
21 support for that suggestion. *Id.*

22 Plaintiff does not object to the Court taking judicial notice of these documents. Docket No.
23 22. Rather, Plaintiff objects to the Court “accepting as true Defendants’ interpretation of [the]
24 documents.” *Id.*

25 “[A] court may take judicial notice of ‘matters of public record.’” *Lee v. City of Los Angeles*,
26 250 F.3d 668, 689 (9th Cir.2001) (quoting *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282
27 (9th Cir.1986)). At the same time, “a court may not take judicial notice of a fact that is ‘subject to
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1 reasonable dispute” even if the fact is stated in the public record. *Id.* at 689–90 (quoting Fed. R.
2 Evid. 201(b)).

3 The Court **GRANTS** Defendants’ request to take judicial notice of the documents that have
4 been recorded with the San Mateo County Recorders Office, because those documents are a matter
5 of public record. This order relies on those documents’ legal effects and inferences warranted from
6 these effects, but not on facts in the documents that Plaintiff disputes.

7 With respect to the other documents submitted in the request for judicial notice, this order
8 does not rely on them and those requests are therefore **DENIED** as moot.

9 C. Plaintiff’s Primary Contentions

10 The gravamen of Plaintiff’s complaint is that Defendants lack authority to foreclose because
11 of a “botched securitization of Plaintiff’s mortgage loan.” ¶ 59. Specifically, Plaintiff argues that:
12 (1) the 2005 assignment of its mortgage to the AR5 Trust was defective; (2) Greenpoint and
13 MERS’s beneficiary interest in the loan was extinguished in 2005 when the Loan was sold into the
14 AR5 Trust; and (3) JP Morgan does not have authority to foreclose because the botched
15 securitization destroyed the necessary chain of title to demonstrate that authority. The Court
16 addresses each of these arguments in turn.

17 1. Plaintiff Lacks Standing to Challenge the Effectiveness of the 2005 Assignments

18 Plaintiff claims that SAMI’s assignment of the loan to the AR5 trust was defective because it
19 did so without proper endorsement of the Note or assignment of the DOT. ¶ 14. According to
20 Plaintiff, such a defective transfer breached the governing terms of the PSA and was thus
21 ineffective. *Id.*

22 Plaintiff cannot prevail on the basis of this argument because Plaintiff lacks standing to
23 challenge the efficacy of the assignments. *See Banares v. Wells Fargo Bank, N.A.*, No.
24 13–cv–04896–EMC, 2014 WL 985532, at *5 (N.D. Cal. Mar. 7, 2014). As this Court explained in
25 *Banares*, “[a] third-party to an assignment lacks standing to challenge its effectiveness unless the
26 assignment is void, as opposed to voidable.” *Id.* at *3 (citing *Calderon v. Bank of America, N.A.*,
27 941 F. Supp. 2d 753, 764 (W.D.Tex.2013)). In that same case, this Court determined that violations
28 of the PSA – such as failing to assign the DOT or endorse the Note – render the assignment of a

1 mortgage voidable, and *not* void. *Id.* at *5 (rejecting the reasoning *Glaski v. Bank of America, N.A.*,
2 218 Cal. App. 4th 1079 (2013)).

3 Here, Plaintiff’s theory of standing – that the failure to assign the DOT or endorse the Note
4 rendered the assignment of its loan void – is the same theory this Court rejected in *Banares*. Plaintiff
5 relies on the reasoning of *Glaski* to support this theory. 218 Cal. App. 4th 1079. However, for the
6 reasons set forth extensively in *Banares*, the Court finds *Glaski* unpersuasive¹ and finds that alleged
7 defects in the assignment of Plaintiff’s loan rendered the assignment voidable, and *not* void. Thus,
8 Plaintiff lacks standing to challenge the effectiveness of the assignments of its loans.

9 2. The 2005 Sale of Plaintiff’s Mortgage Did Not Extinguish Defendants’ Rights

10 Plaintiff asserts that the August 24, 2005 transfer of its mortgage extinguished the rights of
11 both the seller – Greenpoint Mortgage – and the buyer – EMC Mortgage – because the transaction
12 was carried out “without the required assignment of the DOT and concurrent endorsement of the
13 underlying original Note from Greenpoint Mortgage to EMC Mortgage.” ¶ 10 (emphasis omitted).

14 As discussed above, Plaintiff lacks standing to challenge the effectiveness of the transfer of
15 its mortgage. Thus, Plaintiff’s second contention fails because it seeks to challenge the propriety of
16 a transfer which it has no standing to challenge. *See Banares*, 2014 WL 985532 at *6 (“Plaintiff
17 lacks standing [to challenge the endorsements] for the same reason she lacks standing to challenge
18 the assignments. It follows that Plaintiff also lacks standing to challenge the Substitution, NOD, and
19 the NTS, because their validity is determined by the validity of the Assignment.”). The Court also
20 notes, once more, that Plaintiff’s argument that a defective sale destroys the property rights of both
21 the seller and the buyer “defies common sense.” *Id.* Thus, all authority to foreclose on Plaintiff’s
22 property was not extinguished in 2005.

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27 ¹ Plaintiff’s counsel was informed of the Court’s view on this matter, but failed to amend its
28 complaint accordingly. Counsel was reminded of the Court’s position at the January 22, 2015
hearing (*see* Docket No. 30), wherein the Court dismissed its claims. The Court notes that such a
reminder was hardly appropriate, as Plaintiff’s counsel has *recently* litigated this exact theory before
this Court. *See Banares*, No. 13–cv–04896–EMC, 2014 WL 985532.

1 3. Securitization of the Loan Did Not Destroy MERS's Authority to Assign the DOT

2 Plaintiff contends that MERS cannot validly assign the DOT because the securitization
3 process (1) broke the requisite chain of title (§ 22); and (2) split the Note from the DOT (§ 23).

4 In support of its first point, Plaintiff asserts that the chain of title cannot be reconsecrated
5 because:

6 1) it would be far too late [i.e., now several years after the closing
7 date/startup date of the REMIC MBS Trust]; and 2) the assignment
8 and conveyance of mortgage loan would not follow the required
9 securitization chain of title if it transfers directly to the trust [i.e.,
10 broken chain of title and also destroying the MBS Trust's "bankruptcy
11 remote" shield as a REMIC and violating the requirement that it must
12 pass through each of the intermediary party in the securitization chain:
from original lender/loan originator => securitization sponsor/seller
=> depositor => trustee for the MBS trust; and 3) it will only occur
after the Plaintiffs' mortgage loan was allegedly in default and now
considered a non-qualified mortgage loan [contrary to the strict
REMIC stipulation in trust agreement that the loan must be
performing.]

13 ¶ 32. It is not entirely clear what that means. However, it seems to refer back to the alleged
14 violation of the governing PSA terms, which, as discussed, Plaintiff does not have standing to
15 challenge.

16 In support of its second point, Plaintiff asserts that:

17 MERS is neither the lender nor the authorized agent of the unknown
18 "successor lender" in the Note; it is not legally possible for MERS to
19 concurrently endorse the Note with its assignment of DOT because
MERS, in fact, is not the lender in the Note; MERS is not even
referenced in any capacity in the financial instrument.

20 ¶ 23.

21 Contrary to Plaintiff's assertions, MERS does have authority to assign a DOT to a third-party
22 to initiate foreclosure proceedings if MERS is provided the right to foreclose in the original deed of
23 trust. *See Sargent v. JPMorgan Chase Bank, N.A.*, No. C 13-01690 WHA, 2013 WL 3878167, at *2
24 (N.D. Cal. July 25, 2013) (citing *Tall v. Mortgage Electronic Registration Systems, Inc.*, 2012 WL
25 6680183, at *2 (N.D. Cal.2012); *see also Velasco v. Sec. Nat'l Mortg. Co.*, 823 F. Supp. 2d 1061,
26 1073 (D. Haw. 2011) ("... any argument that MERS lacked authority to assign its right to
27 foreclose . . . based on its role as 'nominee' cannot stand in light of *Cervantes v. Countrywide Home*
28 *Loans, Inc.*, 656 F.3d 1034 (9th Cir.2011)).

1 Here, the DOT provides:

2 MERS is a separate corporation that is acting solely as a nominee for
3 Lender and Lender’s successors and assigns. MERS is the beneficiary
4 under this Security Instrument

5 . . .

6 MERS (as nominee for Lender and Lender’s successors and assigns)
7 has the right: to exercise any or all of those interests, **including, but
8 not limited to, the right to foreclose and sell the Property**; and to
9 take any action required of Lender including, but not limited to,
10 releasing and canceling this Security Instrument.

11 Docket No. 12-1, Exhibit A, p. 2; 4 (emphasis added). Plaintiff’s DOT thus provides MERS with
12 explicit authority to foreclose as nominee for all “successors and assigns.” This authority is not
13 affected by the securitization process – which, even accepting many of Plaintiff’s legal conclusions
14 as correct, only changed the successor of Plaintiff’s loan. Such a change does not alter MERS’s
15 authority because, under the DOT, MERS has the authority to act as historical nominee regardless of
16 who becomes a successor on the loan. Hence, MERS had authority to foreclose and transfer
17 Plaintiff’s loan because Plaintiff contracted to provide it such authority in the original DOT.

18 To the extent that Plaintiff’s argument is reasserting that there is no viable successor in
19 interest to its loan – at all – the Court has already rejected that argument. To the extent that Plaintiff
20 is asserting that MERS’s authority is destroyed by its absence on the Note, the Court rejects that
21 argument as well, as it is entirely unsupported by the law. *Sargent*, 2013 WL 3878167 at *2
(explaining that the DOT provides sufficient authority to nominee).

22 Thus, the Court finds Plaintiff’s third primary contention lacks merit, and that MERS *did*
23 have authority to convey its right to foreclose on Plaintiff’s property to a third-party.

24 D. Causes of Action


25 Plaintiff alleges six causes of action: (1) Wrongful Foreclosure; (2) Quiet Title; (3) Fraud;
26 (4) Violation of Bus. & Profs. Code, § 17200, *et seq*; (5) Unjust Enrichment; and (6) Accounting.
27 Because all six of these causes of action are based on the allegedly invalid securitization of Ramos’s
28 loan and/or the allegedly invalid assignment of his DOT, Ramos’s complaint “must be dismissed in
its entirety.” *See Sottile v. JP Morgan Chase Bank N.A.*, 2014 WL 7139996, at *4 (N.D. Cal. Dec.
12, 2014) (dismissing plaintiff’s entire complaint where all of plaintiff’s asserted causes of action

1 are based on the argument that his loan was improperly securitized); *see also Dahnken v. Wells*
2 *Fargo Bank, N.A.*, No. C 13-2838 PJH, 2013 WL 5979356, at *2 (N.D. Cal. Nov. 8, 2013) (same);
3 *Flores v. GMAC Mortgage, LLC*, No. C 12794 SI, 2013 WL 2049388, at *3 (N.D. Cal. May 14,
4 2013) (same). The Court thus **GRANTS** Defendants' motion to dismiss **WITH PREJUDICE**.
5 Any amendment to the complaint would be futile.

6 This order disposes of Docket No. 37. The Clerk is instructed to enter judgment and close
7 the file.

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9 IT IS SO ORDERED.

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11 Dated: July 22, 2015

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14 EDWARD M. CHEN
15 United States District Judge
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