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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 TSUNEYOSHI SURUKI,

7 Plaintiff,

8 v.

9 OCWEN LOAN SERVICING, LLC, et al.,

10 Defendants.

Case No. 15-cv-00773-JST

**ORDER TO SHOW CAUSE WHY THE
CASE SHOULD NOT BE STAYED AND
CONTINUING CASE MANAGEMENT
CONFERENCE**

Re: ECF No. 21

11
12 Currently before the Court in this case is a motion to dismiss filed by Defendants. ECF
13 No. 21. Plaintiff Tsuneyoshi Suruki's complaint alleges that the foreclosure of his property was
14 wrongful because Plaintiff's lender sold and securitized Plaintiff's loan in a manner that did not
15 comply with the terms of the governing Mortgage Loan Purchase Agreement (MLPA) and the
16 Pooling and Servicing Agreement (PSA). ECF No. 1 at ¶¶ 9, 11.

17 Defendants' motion to dismiss argues that Plaintiff cannot challenge the "right, power, and
18 authority of a foreclosing 'beneficiary' or 'beneficiary's agent' to initiate and pursue foreclosure"
19 on the basis of alleged defects in the securitization process. ECF No. 21 at 4 (quoting Jenkins v.
20 JPMorgan Chase Bank, N.A., 216 Cal. App. 4th 497, 515 (2013)). Plaintiff argues in opposition
21 that this Court should apply the Fifth Appellate District's decision in Glaski v. Bank of Am., Nat'l
22 Ass'n, 218 Cal. App. 4th 1073, 1099 (2013), which permitted "claims that challenge a foreclosure
23 based on specific allegations that an attempt to transfer the deed of trust was void" and allowed
24 "borrowers to pursue questions regarding the chain of ownership" of a securitized loan. This
25 Court has previously noted that "Glaski represents a distinct minority view on the standing of third
26 parties to enforce or assert claims based on alleged violations of a PSA," and adopted "the
27 majority view that individuals who are not parties to a PSA cannot base wrongful foreclosure
28 claims on alleged deficiencies in the PSA/securitization process." Gieseke v. Bank of Am., N.A.,

1 No. 13-CV-04772-JST, 2014 WL 718463, at *3 (N.D. Cal. Feb. 23, 2014) (quoting Apostol v.
2 CitiMortgage, Inc., No. 13-CV-01983-WHO, 2013 WL 6328256, at *6-7 (N.D. Cal. Nov. 21,
3 2013)).

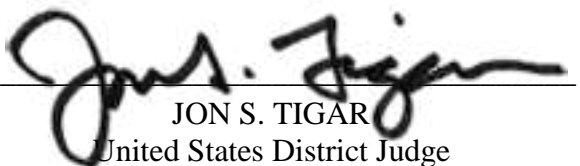
4 Subsequent to this Court’s adoption of that majority rule, however, the California Supreme
5 Court granted review of the following question: “In an action for wrongful foreclosure on a deed
6 of trust securing a home loan, does the borrower have standing to challenge an assignment of the
7 note and deed of trust on the basis of defects allegedly rendering the assignment void?” Yvanova
8 v. New Century Mortgage Corp., 331 P.3d 1275 (Cal. 2014). Following its grant of review in
9 Yvanova, the California Supreme Court also granted review of two other cases that have declined
10 to follow Glaski. See Mendoza v. JPMorgan Chase Bank, 337 P.3d 493 (Cal. 2014) and Keshtgar
11 v. U.S. Bank, 334 P.3d 686, 687 (Cal. 2014).

12 In light of the California Supreme Court’s present consideration of the issue of a
13 borrower’s standing to challenge alleged defects in the loan assignment process – an issue on
14 which it has not previously spoken – the Court hereby issues this order to show cause why the
15 above-captioned case should not be stayed, including the resolution of the pending motion to
16 dismiss, until the issuance of a decision in Yvanova. Any party opposing issuance of such a stay
17 shall file a brief of no longer than 10 pages by June 16, 2015. If no party files an opposition by
18 that date, the Court will stay the case. If both parties file an opposition, the matter will be placed
19 under submission unless the Court sets a hearing on the question of whether to stay the case. If
20 only one party files an opposition, the other party will have until June 26, 2015 to file a brief in
21 favor of staying the case, at which time the Court will take the matter under submission unless the
22 Court sets a hearing.

23 In light of the foregoing, the Case Management Conference currently scheduled for June
24 10, 2015 is continued to July 22, 2015 at 2:00 p.m.

25 IT IS SO ORDERED.

26 Dated: June 2, 2015

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28 JON S. TIGAR
United States District Judge