

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM E. HAMMONS,  
Plaintiff,  
v.  
WELLS FARGO BANK, N.A., et al.,  
Defendants.

Case No. [15-cv-04897-RS](#)

**ORDER GRANTING MOTION TO  
DISMISS WITH LEAVE TO AMEND**

**I. INTRODUCTION**

In this action, plaintiff William E. Hammons raises a host of state law violations arising out of the foreclosure sale of his property. Hammons maintains the parties who executed the foreclosure—defendants Wells Fargo Bank, N.A. (“Wells Fargo”) and NDeX West, LLC (“NDeX”)—lacked standing to enforce the power of sale clause in his deed of trust. Hammons insists an investigation revealed his loan was improperly securitized, thereby breaking the chain of title and simultaneously rendering the present beneficiary unknown. Defendants respond this action must be dismissed for failure to join Hammons’ co-signor, and also maintain the securitization theory is legally and factually meritless.

For the reasons explained below, Wells Fargo’s motion to dismiss will be granted in its entirety, but with leave to amend. Any amended complaint may not re-allege claims based on flaws in the securitization process or any alleged improper assignment of the note or deed of trust. Additionally, should Hammons elect to amend his pleading, he must include co-signor Gwendolyn M. Bridges as a party to this action.

1 **II. FACTUAL BACKGROUND<sup>1</sup>**

2 On or around October 6, 2006, Plaintiff William E. Hammons, along with Gwendolyn M.  
3 Bridges, entered into a “Pick-A-Payment” (“PAP”) loan agreement with World Savings Bank,  
4 FSB (“World Savings”). The loan was memorialized in a promissory note, secured by a deed of  
5 trust, and afforded the borrowers \$420,000 for a property located in Oakland, California. About  
6 one year later, World Savings changed its name to Wachovia Mortgage, FSB, and two years after  
7 the name change, Wachovia was acquired by Wells Fargo.<sup>2</sup>

8 In mid to late 2009, around the time of that acquisition, Hammons began having trouble  
9 making his loan payments. That led defendant NDeX—the substitute trustee appointed by Wells  
10 Fargo<sup>3</sup>—to record a notice of default in early 2010. Hammons apparently was unable to cure the  
11 delinquent amount, and on October 13, 2014, Wells Fargo recorded a notice of sale. The property  
12 sold at a public auction on July 6, 2015.

13 Two months thereafter, Hammons commenced this action in the Superior Court for  
14 Alameda County. Hammons maintains Wells Fargo lacked the authority to foreclose because it  
15 was not the present beneficiary of his loan. Specifically, Hammons avers he commissioned a  
16 “third party forensic mortgage securitization audit and analysis” revealing that World Savings sold  
17

18 \_\_\_\_\_  
19 <sup>1</sup> The factual background is based on the averments in the complaint, which must be taken as true  
20 for purposes of a motion to dismiss. This section also draws on certain records of which the Court  
21 takes judicial notice, as discussed below.

22 <sup>2</sup> Wachovia Mortgage, FSB was converted to Wells Fargo Bank Southwest, N.A., which then  
23 became a division of Wells Fargo Bank, N.A. See Request for Judicial Notice (“RJN”) Exs. A–E.

24 <sup>3</sup> The trustee that appears on the deed of trust is Golden West Savings Association Service  
25 Company (“Golden West Savings”). Golden West Financial Corporation—the parent company of  
26 Golden West Savings and World Savings Bank, FSB—merged with Wachovia Corporation in  
27 2006. Two years later, Wells Fargo acquired both Wachovia Corporation and its subsidiary  
28 Wachovia Mortgage, making Wells Fargo the beneficiary under the deed of trust. Wells Fargo  
then recorded a “Substitution of Trustee” on June 15, 2010, installing NDeX West, LLC. The  
substitution of trustee names the present beneficiary: “Wells Fargo Bank, N.A. successor by  
merger to Wells Fargo Bank Southwest, N.A. F/K/A Wachovia Mortgage FSB F/K/A World  
Savings Bank, FSB.” See Compl. Ex. E. This arrangement follows from the original deed of trust,  
where the beneficiary was identified as “World Savings Bank, FSB, its successors and/or  
assignees.” Compl. Ex. A (emphasis added).

1 his loan “to the secondary market for securitization into a mortgage-backed securities trust.”  
2 Compl. ¶ 12. According to Hammons, the pooling and servicing agreement governing that trust  
3 obligated World Savings to assign and transfer his loan to the trustee of the trust. World Savings  
4 apparently failed to comply with those procedures, leading Hammons to conclude there was an  
5 “irreversible break in the chain of title—with the successor lender and present beneficiary  
6 unassigned, undocumented and unknown to date.” Compl. ¶ 17. Hammons contends the loan was  
7 “then paid off in full by a credit default swap,” Compl. ¶ 24, a puzzling allegation given  
8 Hammons’ concession he “was not notified by [any relevant financial institution] that his loan had  
9 been paid in full.” Compl. ¶ 25. The upshot of these events, as best as can be deciphered from  
10 Hammons’ complaint, is that the loan did not belong to World Savings when the corporation was  
11 acquired by Wells Fargo. Thus, Hammons contends Wells Fargo lacked authority to record the  
12 “Substitution of Trustee,” the notice of default, and the four notices electing to proceed with a  
13 trustee’s sale.

14 All told, Hammons avers he has never seen evidence showing his loan was ever transferred  
15 from World Savings. He raises a host of complaints arising out of the alleged illegality of the  
16 foreclosure proceedings, including claims for: (1) wrongful foreclosure; (2) quiet title; (3) slander  
17 of title; (4) fraud; (5) cancellation of instruments; (6) violation of Cal. Civ. Code § 2934(a)(1)(A);  
18 (7) violation of Cal. Civ. Code § 2923.5; (8) violation of California’s Unfair Competition Law  
19 (“UCL”), Cal. Bus. & Prof. Code § 17200 et seq.; and (9) unjust enrichment. Hammons seeks  
20 permanently to enjoin the defendants from pursuing foreclosure activity, and also requests, among  
21 other things, various damages. Defendants removed this case to federal court on October 23,  
22 2015.

### 23 III. LEGAL STANDARD

24 A complaint must contain “a short and plain statement of the claim showing that the  
25 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual allegations are not  
26 required,” a complaint must have sufficient factual allegations to “state a claim to relief that is  
27 plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic v.*

1 Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the pleaded factual  
2 content allows the court to draw the reasonable inference that the defendant is liable for the  
3 misconduct alleged.” Id. This standard asks for “more than a sheer possibility that a defendant  
4 acted unlawfully.” Id. The determination is a context-specific task requiring the court “to draw on  
5 its judicial experience and common sense.” Id. at 679.

6 Additionally, Rule 9(b) of the Federal Rules of Civil Procedure requires that “[i]n  
7 allegations of fraud or mistake, a party must state with particularity the circumstances constituting  
8 fraud or mistake.” To satisfy the rule, a plaintiff must allege the “who, what, where, when, and  
9 how” of the charged misconduct. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997). In other  
10 words, “the circumstances constituting the alleged fraud must be specific enough to give  
11 defendants notice of the particular misconduct so that they can defend against the charge and not  
12 just deny that they have done anything wrong.” *Vess v. Ciba–Geigy Corp. U.S.A.*, 317 F.3d 1097,  
13 1106 (9th Cir. 2003).

14 A motion to dismiss a complaint under Rule 12(b)(6) of the Federal Rules of Civil  
15 Procedure tests the legal sufficiency of the claims alleged in the complaint. See *Parks Sch. of*  
16 *Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Dismissal under Rule 12(b)(6) may  
17 be based on either the “lack of a cognizable legal theory” or on “the absence of sufficient facts  
18 alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699  
19 (9th Cir. 1990). When evaluating such a motion, the court must accept all material allegations in  
20 the complaint as true, even if doubtful, and construe them in the light most favorable to the non-  
21 moving party. *Twombly*, 550 U.S. at 570. “[C]onclusory allegations of law and unwarranted  
22 inferences,” however, “are insufficient to defeat a motion to dismiss for failure to state a claim.”  
23 *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996); see also *Twombly*, 550 U.S. at  
24 555 (“threadbare recitals of the elements of the claim for relief, supported by mere conclusory  
25 statements,” are not taken as true).

26  
27  
28

1 **IV. DISCUSSION**

2 **A. Threshold Issues**

3 **1. Subject Matter Jurisdiction**

4 As a threshold matter, Hammons asserts removal was improper due to a defect in subject  
5 matter jurisdiction. A defendant may remove to federal court “any civil action brought in a State  
6 court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. §  
7 1441(a). Removal is therefore proper where a case presents a federal question or involves  
8 diversity of citizenship and meets the statutory amount in controversy. See 28 U.S.C. §§ 1331,  
9 1332.

10 Wells Fargo removed this case on the basis of diversity jurisdiction, claiming it hales from  
11 the state of South Dakota and Hammons from California. Hammons challenges only Wells  
12 Fargo’s assertion that it is a citizen of South Dakota.<sup>4</sup> Hammons notes “Wells Fargo, N.A.,”  
13 “Wells Fargo, National Association,” and “Wells Fargo Home Mortgage, Inc.” do not appear in  
14 South Dakota’s business database, or are listed as inactive.

15 Hammons’ argument is meritless. None of the entities he highlights are a defendant in this  
16 action. Further, the exhibit he attaches from the California Secretary of State’s office identifies  
17 “Wells Fargo Bank, N.A” as a citizen of South Dakota. Finally, not only has Wells Fargo  
18 demonstrated its main office is in South Dakota, see Not. of Removal Ex. F; Rouse v. Wachovia  
19 Mortgage, FSB, 747 F.3d 707, 715 (9th Cir. 2014) (“[A] national banking association is a citizen  
20 only of the state in which its main office is located.”), but the Ninth Circuit recently has held  
21 “Wells Fargo is a citizen only of South Dakota.” Id. Jurisdiction is therefore proper in this case.

22 **2. Incorporation by Reference and Judicial Notice**

23 When resolving a motion to dismiss for failure to state a claim, review is generally limited  
24

25 <sup>4</sup> Hammons does not deny the amount-in-controversy requirement is met, and it well appears to be  
26 so. Hammons seeks an injunction permanently enjoining Wells Fargo from enforcing its rights  
27 under the \$420,000 loan and deed of trust. “[W]here a complaint seeks to invalidate a loan secured  
28 by a deed of trust, the amount in controversy is the loan amount.” Ngoc Nguyen v. Wells Fargo  
Bank, N.A., 749 F. Supp. 2d 1022, 1028 (N.D. Cal. 2010).

1 to the four corners of the complaint. *Allarcom Pay Television. Ltd. v. Gen. Instrument Corp.*, 69  
2 F.3d 381, 385 (9th Cir. 1995). The court may, however, look to exhibits attached to the  
3 complaint, see *Hal Roach Studios. Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 n.19  
4 (9th Cir. 1989), and documents incorporated by reference into the complaint. See *Van Buskirk v.*  
5 *Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002). Documents upon whose contents  
6 the complaint necessarily relies—even if the complaint does not explicitly allege their contents—  
7 and whose authenticity and relevance are uncontested, are considered incorporated by reference.  
8 See *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010); *Knievel v. ESPN*, 393 F.3d  
9 1068, 1076–77 (9th Cir. 2005). The court may, in addition, take into account material that is  
10 properly the subject of judicial notice. *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir.  
11 2001). Judicial notice may be taken of a fact not subject to reasonable dispute because it either is  
12 generally known within the trial court’s territorial jurisdiction, or readily can be determined from  
13 sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

14 Here, Hammons attached nine documents to the complaint: the Deed of Trust dated  
15 October 6, 2006; Golden West Financial’s Form 10-Q for the quarterly period ending June 30,  
16 2006; Wachovia’s Form 10-Q for the quarterly period ending December 31, 2007; a Notice of  
17 Default and Election to Sell Under Deed of Trust dated May 5, 2010; a Substitution of Trustee  
18 form dated June 3, 2010; a Notice of Trustee’s Sale dated August 7, 2010; a Notice of Trustee’s  
19 Sale dated September 20, 2011; a Notice of Trustee’s Sale dated April 22, 2013; and a Notice of  
20 Trustee’s Sale dated October 9, 2014. These materials properly may be considered to resolve the  
21 motion to dismiss because they were submitted as part of the complaint.

22 Wells Fargo requests notice be taken of ten documents: (1) a Certificate of Corporate  
23 Existence dated April 21, 2006, issued by the Office of Thrift Supervision (“OTS”), certifying that  
24 World Savings Bank, FSB is a federal savings bank; (2) a letter dated November 19, 2007, on the  
25 letterhead of the OTS authorizing a name change from World Savings, Bank, FSB to Wachovia  
26 Mortgage, FSB; (3) the charter of Wachovia Mortgage, FSB, effective December 31, 2007, and  
27 signed by the Director of the OTS, reflecting that Wachovia is subject to the Home Owner’s Loan  
28

1 Act (“HOLA”) and the OTS; (4) official Certification of the Comptroller of the Currency stating  
2 that effective November 1, 2009, Wachovia Mortgage, FSB, converted to Wells Fargo Bank  
3 Southwest, N.A., which then merged with Wells Fargo Bank, N.A.; (5) a printout from the website  
4 of the Federal Deposit Insurance Corporation dated December 15, 2010, showing the history of  
5 Wachovia Mortgage, FSB; (6) the Deed of Trust dated October 6, 2006, and recorded in the  
6 Alameda County Recorder’s Office; (7) Hammons’ adjustable rate mortgage note, dated October  
7 6, 2006, signed by Hammons; (8) a Notice of Default and Election to Sell under Deed of Trust  
8 dated May 5, 2010, and recorded on May 6, 2010, in the official records of the Alameda County  
9 Recorder’s Office; (9) a Notice of Trustee’s Sale dated October 9, 2014, and recorded on October  
10 13, 2014, in the Alameda County Recorder’s Office; and (10) a trustee’s deed upon sale dated July  
11 23, 2015, and recorded on July 27, 2015, in the Alameda County Recorder’s Office.

12 Wells Fargo argues the first five documents properly are the subject of notice because they  
13 reflect official acts of the legislative and executive departments or were taken from governmental  
14 websites. Wells Fargo submits the mortgage note is incorporated by reference, and notice can be  
15 taken of the remaining documents because they are copies of official records. Hammons did not  
16 offer any opposition to Wells Fargo’s request.

17 Because notice may be taken of documents reflecting official acts of the executive branch,  
18 see Fed. R. Civ. P. 201(d), and information obtained from government websites, see, e.g.  
19 Paralyzed Veterans of Am. v. McPherson, No. C 06–4670 SBA, 2008 WL 4183981, at \*17–18  
20 (N.D. Cal. Sept. 9, 2008) (collecting cases), Wells Fargo’s request for notice is granted with  
21 respect to the first five documents. The mortgage note indeed is incorporated by reference into the  
22 complaint. See, e.g. Compl. ¶ 5. The request will be granted with respect to the remaining  
23 documents because they are copies of public records. See Kennedy v. World Savings bank, FSB,  
24 No. 14–cv–05516–JSC, 2015 WL 1814634, at \*5 (N.D. Cal. Apr. 21, 2015) (“[C]ourts in this  
25 District regularly take judicial notice of similar documents relating to real property that are  
26 publicly recorded in county recorder’s offices.”).

27  
28



1           **B. Hammons’ Claims**

2                   **1. Securitization Agreement**

3           All nine of Hammons’ claims are born of the allegation that a defect in securitization  
4 ruptured the chain of title such that Wells Fargo was not the beneficiary of Hammons’ loan and  
5 had no authority to enforce the power of sale clause in the deed of trust. Hammons’ argument  
6 lacks the legal and factual support he needs to avoid dismissal of his claims for relief.<sup>5</sup>

7           First, to the extent Hammons seeks to enforce the terms of the alleged securitization  
8 agreement, he lacks standing. As courts in California repeatedly have recognized, “even if [an]  
9 asserted improper securitization (or any other invalid assignments or transfers of the promissory  
10 note subsequent to [its execution]) occurred,” as Hammons avers here, “the relevant parties to  
11 such a transaction were the holders (transferors) of the third party note and the third party  
12 acquirers (transferees) of the note.” *Jenkins v. JP Morgan Chase Bank, N.A.*, 216 Cal. App. 4th  
13 497, 514–15 (2013). “As an unrelated third party to the alleged securitization, and any other  
14 subsequent transfers of the beneficial interest under the promissory note,” borrowers “lack[]  
15 standing to enforce any agreements, including [an] investment trust’s pooling and servicing  
16 agreement, relating to such transactions.” *Id.* at 515. See also *Hunt v. U.S. Bank N.A.*, 593 Fed.  
17 App’x 730, 732 (9th Cir. 2015) (noting even if “improper securitization occurred or the  
18 assignments were fraudulent,” the borrowers lack standing because they “are not a party to those  
19 transactions and are not the victims”).

20           Recognizing as much, Hammons contends he points to defects in securitization only “as  
21 evidence that the foreclosing party does not have standing.” Compl. ¶ 51. That argument is no  
22 more tempting, however, because it nevertheless maintains Wells Fargo was stripped of authority  
23 by virtue of the faulty securitization. Relying on *Jenkins*, and contrary to Hammons’ basic  
24

---

25 <sup>5</sup> As discussed below, dismissal is also appropriate under Rule 12(b)(7) for failure to join an  
26 indispensable party. As “[j]oinder is not itself jurisdictional,” however, it is prudent to address  
27 Hammons’ claims because they independently warrant dismissal at this juncture. *Alto v. Black*,  
28 738 F.3d 1111, 1125 (9th Cir. 2013).



1 argument in this case, courts in this district consistently have concluded “debtors may not pursue  
2 judicial challenges to the authority of a foreclosing beneficiary based on an improper  
3 securitization theory.” *Kennedy v. World Savings bank, FSB*, No. 14–cv–05516–JSC, 2015 WL  
4 1814634, at \*6–7 (N.D. Cal. Apr. 21, 2015). See, e.g., *Moran v. HSBC Bank*, No. 14–CV–00633–  
5 LHK, 2015 WL 139705, at \*5 (N.D. Cal. Jan. 9, 2015); *Dang v. Residential Credit Sols., Inc.*, No.  
6 C–14–02587–RMW, 2014 WL 5513754, at \*5 (N.D. Cal. Oct. 31, 2014); *Ordono v. U.S. Bank*  
7 *Nat. Ass’n, et al.*, No. 14–cv–00774–JD, 2014 WL 3610952, at \*3 (N.D. Cal. July 21, 2014);  
8 *Gieseke v. Bank of Am.*, No. 13–cv–04772–JST, 2014 WL 718463, at \*6 (N.D. Cal. Feb. 23,  
9 2014); *Zapata v. Wells Fargo Bank, N.A.*, No. C 13–04288 WHA, 2013 WL 6491377, at \*2–3  
10 (N.D. Cal. Dec. 10, 2013).

11 Dahnken v. Wells Fargo Bank, N.A., No. C 13–2838 PJH, 2013 WL 5979356, at \*2 (N.D.  
12 Cal. Nov. 8, 2013) is instructive. There, like here, the plaintiff maintained “his loan was  
13 improperly securitized, thus breaking the chain of title to his mortgage, and leaving defendants  
14 without standing to enforce his mortgage.” *Id.* at \*2. The plaintiff further insisted, as Hammons  
15 does here, “the true and valid beneficiary is unknown.” *Id.* The court nevertheless held the plaintiff  
16 lacked “standing to challenge the securitization of his loan,” and granted defendants’ motion to  
17 dismiss the complaint in its entirety. *Id.*

18 Retreating further, Hammons next insists it is best to buck Jenkins and instead rely on  
19 *Glaski v. Bank of America, N.A.*, 218 Cal. App. 4th 1079 (2013). There, the California Court of  
20 Appeal held a plaintiff can challenge the securitization of his loan if the defect asserted would void  
21 the alleged assignment. *Id.* at 1095. Hammons’ complaint, as best as can be deciphered, appears  
22 to latch on to this theory, as he claims faulty securitization rendered the present beneficiary of his  
23 loan unknown.<sup>6</sup> Importantly, “[e]very court in this district that has evaluated *Glaski* has found it is

24  
25 <sup>6</sup> The basis for this assertion is Hammons’ “forensic mortgage securitization audit,” but in light of  
26 the documents he attaches to the complaint, it is doubtful the inference he urges is warranted. The  
27 substitution of trustee names the present beneficiary: “Wells Fargo Bank, N.A. successor by  
28 merger to Wells Fargo Bank Southwest, N.A. F/K/A Wachovia Mortgage FSB F/K/A World  
Savings Bank, FSB.” See Compl. Ex. E. Similarly, the notice of default, identifies World Savings  
as the original beneficiary, then directs Hammons to contact “Wells Fargo Bank, N.A., A/K/A

1 unpersuasive and not binding authority.” Zapata, 2013 WL 6491377 at \*2 (collecting cases).  
2 Hammons’ suggestion to substitute Glaski for Jenkins will not be adopted.

3 Lastly, Hammons argues Wells Fargo lacked the ability to foreclose simply because he has  
4 never seen evidence showing his loan was transferred from World Savings.<sup>7</sup> Even assuming that  
5 is true, the deed of trust—which Hammons attached to his complaint—establishes as a factual  
6 matter that his argument lacks merit. The deed of trust identifies “World Savings Bank, FSB, its  
7 successors and/or assignees” as the lender and beneficiary. See Compl. Ex. A (emphasis added).  
8 The note similarly identifies “World Savings Bank, FSB, a federal savings bank, its successors  
9 and/or assignees, or anyone to whom this Note is transferred” as the lender. See RJN Ex. G  
10 (emphasis added). Wells Fargo is the successor-in-interest to World Savings. See RJN Ex. A–E.  
11 Thus, even accepting Hammons’ theory, Wells Fargo would possess the contractual right to  
12 enforce the note and deed of trust.

13 Hammons’ securitization theory is not viable under Jenkins, yet it lies at the heart of his  
14 claims for wrongful foreclosure, see Compl. ¶¶ 59–60, quiet title, see Compl. ¶ 78, slander of title,  
15 see Compl. ¶ 80, fraud, see Compl. ¶ 86, cancellation of instruments, see Compl. ¶¶ 97–98,  
16 violation of Civil Code § 2934a(a)(1)(A), see Compl. ¶¶ 103–04, violation of Civil Code § 2923.5,  
17 see Compl. ¶¶ 107–08, unfair competition, see Compl. ¶ 112, and unjust enrichment, see Compl.  
18 ¶¶ 118–20. Wells Fargo’s motion to dismiss will therefore be granted in its entirety, but with  
19 leave to amend. See, e.g., Ordone, 2014 WL 3610952 at \*3 (dismissing with leave to amend  
20 because “all eleven of plaintiff’s causes of action appear to depend on plaintiff’s attacks to the  
21 securitization process”); Dahnken v. Wells Fargo Bank, N.A., No. C 13–2838 PJH, 2013 WL  
22

---

23 Wachovia Mortgage, a Division of Wells Fargo Bank, N.A. and F/K/A Wachovia Mortgage, FSB”  
24 to find out the amount he must pay or arrange for payment to stop the foreclosure. See RJN Ex. H.  
25 Hammons responds the notice “suggests, but does not particularly state” whether Wells Fargo is  
the present beneficiary. Compl. ¶ 26(a).

26 <sup>7</sup> For instance, Hammons avers he “has never been provided with any evidence that the full and  
27 unencumbered interest in his mortgage loan was ever transferred from the original lender World  
Savings to Wachovia Mortgage, Wells Fargo, or to any person or entity.” Compl. ¶ 25.

1 5979356, at \*2 (N.D. Cal. Nov. 8, 2013) (dismissing with leave to amend because “all ten of  
2 plaintiff’s asserted causes of action are based on the argument that his loan was improperly  
3 securitized, thus breaking the chain of title to his mortgage, and leaving defendants without  
4 standing to enforce his mortgage”). Any amended complaint may not re-allege claims based on  
5 flaws in the securitization process.

## 6 **2. Failure to Join an Indispensable Party**

7 Wells Fargo also asserts dismissal is required under Rule 12(b)(7) for failure to join an  
8 indispensable party. Failure to join a party deemed “indispensable” under Rule 19 provides a  
9 basis for dismissal. Fed. R. Civ. P. 12(b)(7); *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1459, 1458  
10 (9th Cir. 1994). The requisite analysis under Rule 19 proceeds in three stages. *EEOC v. Peabody*  
11 *W. Coal Co.*, 610 F.3d 1070, 1078 (9th Cir. 2010) (“Peabody II”). First, a party “who is subject to  
12 service of process and whose joinder will not deprive the court of subject-matter jurisdiction” is  
13 “necessary” to the maintenance of the action if “that person claims an interest relating to the  
14 subject of the action and is so situated that disposing of the action in the person’s absence may: (i)  
15 as a practical matter impair or impede the person’s ability to protect the interest; or (ii) leave an  
16 existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent  
17 obligations because of the interest.” Fed. R. Civ. P. 19(a); *Peabody II*, 610 F.3d at 1078, *Quileute*,  
18 18 F.3d at 1458. In other words, a nonparty is “necessary” if joinder is “desirable in the interests  
19 of just adjudication.” *EEOC v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005)  
20 (“Peabody I”) (quoting Fed. R. Civ. P. 19 Advisory Committee Note (1966)). To perform this  
21 analysis, the Court “must determine whether the absent party has a legally protected interest in the  
22 suit,” and if so, whether “that interest will be impaired or impeded by the suit.” *Makah Indian*  
23 *Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990) (emphasis in original). ““There is no precise  
24 formula for determining whether a particular nonparty should be joined under Rule 19(a) . . . . The  
25 determination is heavily influenced by the facts and circumstances of each case.”” *Peabody II*, 610  
26 F.3d at 1081 (quoting *N. Alaska Env’tl. Ctr. v. Hodel*, 803 F.2d 466, 468 (9th Cir. 1986)).

27 If a party is deemed “necessary” under Rule 19(a), the second question is whether joinder  
28 is feasible. Joinder may be unavailable if, for instance, venue is improper, the Court lacks

1 personal jurisdiction over the party, or joinder would destroy subject matter jurisdiction. Peabody  
2 I, 400 F.3d at 779.

3 Third and finally, if joinder is not feasible, the Court must determine whether the party is  
4 “indispensable” under Rule 19(b), that is, whether “in equity and good conscience, the action  
5 should proceed among the existing parties or should be dismissed.” To make that determination,  
6 the Court is to consider: “(1) the extent to which a judgment rendered in the person’s absence  
7 might prejudice that person or the existing parties; (2) the extent to which any prejudice could be  
8 lessened or avoided . . . ; (3) whether a judgment rendered in the person’s absence would be  
9 adequate; and (4) whether the plaintiff would have an adequate remedy if the action were  
10 dismissed for nonjoinder.” Fed. R. Civ. P. 19(b); Peabody II, 610 F.3d at 1078 (an “indispensable  
11 party” is “one who not only has an interest in the controversy, but has an interest of such a nature  
12 that a final decree cannot be made without either affecting that interest, or leaving the controversy  
13 in such a condition that its final termination may be wholly inconsistent with equity and good  
14 conscience.”).

15 In order to determine whether Rule 19 requires the joinder of additional parties, the court  
16 may consider evidence outside of the pleadings. See *McShan v. Sherrill*, 283 F.2d 462, 464 (9th  
17 Cir. 1960). The party moving for dismissal under Rule 12(b)(7) “bear[s] the burden in producing  
18 evidence in support of the motion.” See *Biagro Western Sales, Inc. v. Helena Chem. Co.*, 160 F.  
19 Supp. 2d 1136, 1141 (E.D. Cal. 2001) (citing *Citizen Band Potawatomi Indian Tribe of Okla. v.*  
20 *Collier*, 17 F.3d 1292, 1293 (10th Cir. 1994)).

21 Here, Wells Fargo asserts co-borrower Gwendolyn M. Bridges is an indispensable party.  
22 Bridges signed the deed of trust alongside Hammons, thereby pledging her interest in the property  
23 as security for the loan. Hammons did not join Bridges as a party to this action, yet as Wells  
24 Fargo points out, seeks damages stemming from alleged injuries to their common title. Wells  
25 Fargo insists the loan agreement cannot be cancelled without Bridges’ consent, and argues her  
26 absence creates a significant risk of multiple litigation. Hammons does not offer any argument in  
27 response, and indeed fails to join issue on this subject entirely.

28

1 Bridges is a “necessary” party to this action, and the complaint must therefore be dismissed  
2 under Rule 12(b)(7). Hammons requests an order cancelling the deed of trust, declaring he and  
3 Bridges the rightful title holders, re-conveying the property in their favor, and awarding him, but  
4 not Bridges, damages. It appears that complete relief cannot be afforded in this proceeding  
5 because Bridges’ consent is required to cancel the deed of trust, yet Hammons’ action makes no  
6 allowance for her views.

7 Bridges’ absence also impedes her ability to protect her interests. As a signatory to the  
8 deed, she may not agree with Hammons’ strategy regarding the disposition of the property, and  
9 could be prejudiced in subsequent litigation by the adjudication of this action. As a co-borrower,  
10 Bridges would also presumably be entitled to share a portion of any damages awarded in this  
11 proceeding.

12 Lastly, Bridges’ absence creates a significant risk of repeated litigation. Regardless of the  
13 outcome of this suit, Bridges could assert the same claims in subsequent proceedings because she  
14 is a signatory to the precise contract at issue in this case. See *Va. Sur. Co. v. Northrop Grumman*  
15 *Corp.*, 144 F.3d 1243 (9th Cir. 1998) (“[I]n an action to set aside a lease or a contract, all parties  
16 who may be affected by the determination of the action are indispensable.”).

17 In sum, Bridges harbors a legally-protected interest integral to these proceedings. Her  
18 absence not only stymies the possibility of affording complete relief, but impedes her ability to  
19 protect her interests and puts Wells Fargo at risk of incurring multiple obligations.<sup>8</sup> Joinder here is  
20 “desirable in the interests of just adjudication.” *Peabody I*, 400 F.3d at 779.

21 Turning to step two, Hammons offers no argument why joinder would not be feasible, as  
22 required by Rule 19(c). In these circumstances, dismissal under Rule 12(b)(7) is appropriate. See  
23 *Bickoff v. Wells Fargo Bank, N.A.*, No. 11–CV–02452 BEN (WVG), 2012 WL 3637381, at \*3–4  
24 (S.D. Cal. Aug. 20, 2012). Wells Fargo’s motion to dismiss will be granted with leave to amend.  
25 Hammons is ordered to join Gwendolyn M. Bridges as a party if he opts to amend.

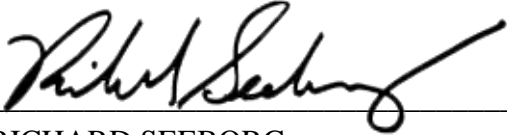
26 \_\_\_\_\_  
27 <sup>8</sup> There is no indication she cannot be served or that her joinder would defeat jurisdiction.  
28

1 **V. CONCLUSION**

2 Wells Fargo’s motion to dismiss will be granted in its entirety with leave to amend. Any  
3 amended complaint may not re-allege claims based on flaws in the securitization process or any  
4 alleged improper assignment of the note or deed of trust. Any amended complaint also must  
5 include Gwendolyn M. Bridges as a party to this action. Any new claims should be presented as  
6 clearly and concisely as possible. Should Hammons elect to amend his pleading, he must lodge an  
7 amended complaint within thirty (30) days from the date of this order.

8  
9 **IT IS SO ORDERED.**

10  
11 Dated: December 18, 2015

12   
13 \_\_\_\_\_  
14 RICHARD SEEBORG  
15 United States District Judge

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
United States District Court  
Northern District of California