UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FAREED SEPEHRY-FARD, Plaintiff, v. NATIONSTAR MORTGAGE LLC; JAY BRAY, and individual; HAROLD LEWIS, an individual; STACEY ROBERSON, an individual; JOHN D. DUNCAN, an individual; CLEAR RECON CORP.; RECONTRUST CO., N.A; U.S. BANK NATIONAL ASSOCIATION; GREENPOINT MORTGAGE FUNDING; CALIFORNIA RECONVEYANCE CO.; MARIN RECONVEYANCING CORP.; and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Defendants.	Case No.: 14-CV-03218-LHK ORDER GRANTING MOTIONS TO DISMISS WITHOUT LEAVE TO AMEND AND DENYING MOTION FOR SANCTIONS

Plaintiff Fareed Sepehry-Fard ("Plaintiff") brings this action against defendants Nationstar Mortgage LLC ("Nationstar"); Clear Recon Corp. ("Clear Recon"); ReconTrust Co. ("ReconTrust"); U.S. Bank National Association ("U.S. Bank"); GreenPoint Mortgage Funding ("GreenPoint"); California Reconveyance Co. ("California Reconveyance"); Marin Reconveyancing Corp. ("Marin Reconveyancing"); Mortgage Electronic Registration Corp. ("MERS"); Harold Lewis; Stacey Roberson; Jay Bray; and John D. Duncan (collectively,

"Defendants"). Before the Court is Defendants' various motions to dismiss Plaintiff's Complaint, as well as Plaintiff's motion for sanctions. The Court, having considered the record in this case, the applicable law, and the parties' briefs, GRANTS all Defendants' motions to dismiss without leave to amend and DENIES Plaintiff's motion for sanctions, for the reasons stated below.

I. BACKGROUND

A. Factual Background

1. Plaintiff's Purchase and Refinancing of the Saratoga Property

The following information can be gleaned from documents submitted in conjunction with various requests for judicial notice. On April 6, 1998, Plaintiff purchased the real property located at 12309 Saratoga Creek Drive in Saratoga, California with a single loan of $616,000. ECF No. 11-1. According to Defendants, Plaintiff refinanced the loan on his home several times. ECF No. 7, at 2. Of particular relevance to this lawsuit, on January 10, 2007, Plaintiff borrowed the sum of $1.3 million against the subject property, with GreenPoint acting as the lender, Marin Conveyancing acting as trustee, and MERS acting as the nominee for GreenPoint. ECF No. 11-2. According to the deed of trust executed to secure the loan, MERS, acting as the lender's nominee, could exercise all rights held by the lender. Id. at 3. The deed of trust also provided that the lender could sell Plaintiff's promissory note at any time without notice to Plaintiff. Id. at 11-12. In addition, the deed of trust specified that the lender could at any time substitute a new trustee. Id. at 13.

Also on January 10, 2007, Plaintiff executed a deed of trust to secure a $300,000 home equity line of credit ("HELOC"), with GreenPoint again acting as the lender, Marin Conveyancing acting as trustee, and MERS acting as the nominee for GreenPoint. ECF No. 11-3. The deed of trust executed for the HELOC also contained provisions permitting the lender to sell Plaintiff's promissory note or substitute a new trustee. Id. at 10-11.

According to Defendants, Plaintiff subsequently defaulted on his loan obligations. See ECF No. 7, at 2. On May 22, 2013 MERS assigned the deed of trust in connection with the $1.3 million loan to Nationstar. ECF No. 12-4. On November 15, 2013, Nationstar executed a substitution of trustee, making Clear Recon the trustee. See ECF No. 3-10.

2. Plaintiff's State Court Litigation in Connection with the Property

On September 23, 2011, Plaintiff filed a lawsuit in Santa Clara Superior Court, naming as defendants Aurora Bank FSB, GreenPoint,[1] Bank of America, and U.S. Bank. See ECF No. 11-6; Fareed Sepehry-Fard v. Aurora Bank FSB et al., Case No. 111CV209804. Plaintiff's complaint disputed whether the defendants validly owned or transferred the mortgage loans in connection with the subject property. Id. at 2-3. The defendants demurrered to Plaintiff's complaint, and the Superior Court granted the demurrer without leave to amend on October 16, 2012. See ECF No. 11-7. In so doing, the Superior Court held that to the extent Plaintiff was challenging defendants' right to foreclose on his property, "there is no authority providing that a homeowner may seek a determination as to whether the party initiating foreclosure has the authority to do so." Id. at 3. The Superior Court also rejected Plaintiff's contention that defendants are required to provide a "proof of claim" upon foreclosure, as well as Plaintiff's contention that Plaintiff's signature on the deed of trust was forged. Id. The Superior Court entered judgment for defendants on October 16, 2012. ECF No. 11-8. According to Defendants in this lawsuit, Plaintiff's state case is currently on appeal. ECF No. 7, at 3.

3. Plaintiff's First Federal Lawsuit in Connection with the Property

On February 22, 2012—while Plaintiff's suit in Santa Clara Superior Court was still pending—Plaintiff filed a complaint Before Judge Davila in this District. ECF No. 11-9; Fareed Sepehry-Fard v. Aurora Bank et al., No. 12-CV-00871 EJD ("Sepehry-Fard I"). Plaintiff named as defendants in Sepehry-Fard I GreenPoint and U.S. Bank, as well as Aurora Bank FSB, Bank of America, Severson & Werson, and an individual named Frank J. Kim. Id. Plaintiff filed an amended complaint on October 1, 2012, alleging that defendants had no ownership interest in the mortgage loans Plaintiff took out against the subject property, and therefore were not "entitl[ed] . . . to collect payment or declare default." ECF No. 11-10, at 5. Plaintiff further alleged that Plaintiff's loans were improperly securitized. Id. at 34 (alleging defendants' "entire securitization chain is a

[1] According to the Superior Court's subsequent order granting the defendants' demurrer in this case, Defendant erroneously sued GreenPoint as "GPM Heloc." ECF No. 11-7, at 2.

scam supporting a Ponzi scheme") (emphasis in original). Plaintiff also raised claims under 42 U.S.C. §§ 1983 and 1985. See id.

On January 29, 2013, Judge Davila dismissed Sepehry-Fard I with prejudice. See ECF No. 11-11. Judge Davila found that Plaintiff's allegation that defendants had no ownership interest in Plaintiff's mortgage loans stated a claim that defendants could not foreclose on the subject property without producing the property's promissory note. Id. at 5. Judge Davila then went on to state that there was no cognizable legal claim that "the foreclosure process is invalid if the trustee does not possess the original promissory note." Id. According to Judge Davila, California Civil Code § 2924 and its related statutes "establish a comprehensive and exclusive set of regulations for the conduct of nonjudicial foreclosures, and do not require the person initiating foreclosure to have physical possession of the promissory note." Id. Judge Davila also noted that "district courts in California have consistently rejected the contention that the foreclosure process is invalid if the trustee does not possess the original promissory note." Id. (citing cases).

As to Plaintiff's claim that his loan was improperly securitized, Judge Davila found that Plaintiff lacked standing to assert a claim for improper securitization. Id. at 5-6. Judge Davila also found that Plaintiff was not a party or a beneficiary to any securitization agreement, and that other courts had consistently "rejected a general theory based on securitization for failure to state a claim." Id. at 5-6 (collecting and citing cases). Finally, Judge Davila dismissed Plaintiff's claims under 42 U.S.C. §§ 1983 and 1985 on the grounds that none of the defendants were state actors. Id. at 8.

4. Plaintiff's Second Federal Lawsuit in Connection with the Property

On October 1, 2013, approximately eight months after the disposition of Sepehry-Fard I, Plaintiff filed another complaint again before Judge Davila in this District. ECF No. 12-5; Fareed Sepehry-Fard v. GreenPoint et al., 13-CV-04535 ("Sepehry-Fard II"). Plaintiff named as defendants GreenPoint, ReconTrust, U.S. Bank, California Reconveyance, Marin Conveyancing, MERS, and Does 1 through 50. Id. at 1. Again, Plaintiff asserted that defendants lacked authority to foreclose on his property, and demanded that defendants produced "valid enforceable proof of

claim." Id. at 12. Plaintiff also appeared to allege that his loans were improperly securitized and therefore were void. Id. at 11. On March 31, 2014, Judge Davila issued an order to show cause as to why the complaint should not be dismissed for lack of jurisdiction. ECF No. 12-6. Judge Davila noted that Plaintiff asserted one cause of action for quiet title under California law. Id. Judge Davila further noted that although Plaintiff raised a claim under the Fair Debt Collections Practices Act (15 US.C. § 1692 et seq.), Plaintiff failed to allege any facts to support this cause of action. Id. at 2-3. Judge Davila also stated that Plaintiff's claim under the Declaratory Judgment Act (28 U.S.C. § 2201) did not provide an independent basis of federal jurisdiction. Id. at 3. Judge Davila further found that because Plaintiff was a California resident, and because Plaintiff had sued at least two other California residents (California Reconveyance and Marin Conveyancing), Plaintiff had destroyed diversity jurisdiction pursuant to 28 U.S.C. § 1332. Id. at 3-4.

Plaintiff filed a reply to the order to show cause on April 7, 2014. ECF No. 12-7. On April 8, 2014, Judge Davila dismissed Plaintiff's complaint for lack of jurisdiction. ECF No. 12-8. Judge Davila noted that Plaintiff, in his response, attempted only to insert new allegations and theories not in his original complaint. Id. at 1-2.

Plaintiff subsequently filed a motion for leave to file a first amended complaint, which spanned approximately 210 pages. See ECF No. 12-9, 12-10, & 12-11. Plaintiff also filed a motion for reconsideration, ECF No. 12-14, which Judge Davila denied, ECF No. 12-16. On July 1, 2014, Plaintiff appealed the order dismissing his case to the Ninth Circuit Court of Appeals. ECF No. 12-17. Plaintiff's appeal is currently pending. ECF No. 8, at 5. In addition, on August 4, 2014, California Reconveyance filed an administrative motion asking Judge Davila to relate Sepehry-Fard II to the instant case. Case No. 13-CV-04535, ECF No. 154. Judge Davila denied the motion on August 19, 2014. ECF No. 162.

B. Procedural History

On July 16, 2014—approximately two weeks after Plaintiff filed his appeal with the Ninth Circuit in Sepehry-Fard II—Plaintiff filed the instant lawsuit before this Court. In his Complaint, Plaintiff alleges twenty-four causes of action constituting negligent misrepresentation; unfair

business practices; violations of the Fair Debt Collection Practices Act; violations of the Racketeering Influenced and Corrupt Organizations Act ("RICO"); violations of 18 U.S.C. §§ 1981 and 1982; claims for accounting; violations of the Truth in Lending Act; violations of the Real Estate Settlement Procedures Act; quiet title; wrongful foreclosure; breach of express and implied agreement; malicious and unlawful conduct; mail fraud; unjust enrichment; and securities fraud. Compl. ¶¶ 193-298. Plaintiff requests attorney's fees, at least $12 million in damages, and declaratory relief. Id. ¶¶ 61, 156, 293.

On August 8, 2014, various defendants filed three separate motions to dismiss Plaintiff's complaint. See ECF No. 7 (motion to dismiss filed by Nationstar, U.S. Bank, ReconTrust, and MERS); ECF No. 8 (motion to dismiss filed by California Reconveyance); ECF No. 9 (motion to dismiss filed by Bray, Lewis, Roberson, and Duncan); ECF No. 10 (motion to dismiss filed by GreenPoint and Marin Reconveyancing). Nationstar, U.S. Bank, ReconTrust, and MERS also filed a request for judicial notice of various documents. ECF No. 11. California Reconveyance also filed a request for judicial notice. ECF No. 12. On August 22, 2014, Plaintiff filed a consolidated opposition to the four motions to dismiss, as well as a request for judicial notice. ECF Nos. 29 & 30. The defendants that had filed motions to dismiss subsequently filed replies on August 29, 2014. See ECF Nos. 33, 34, 35 & 36,

On September 9, 2014, Plaintiff filed a motion for sanctions against all Defendants. ECF No. 45. On September 23, 2014, California Reconveyance filed an opposition to the motion for sanctions, ECF No. 49, as did Nationstar, U.S. Bank, ReconTrust, MERS, Bray, Roberson, and Lewis, ECF No. 52. Plaintiff filed a reply on September 26, 2014. ECF No. 60.

On September 25, 2014, Clear Recon and Duncan filed a motion to dismiss. ECF No. 58. Clear Recon and Duncan also filed a request for judicial notice. ECF No. 57. Plaintiff filed an opposition, which Plaintiff entitled "Objections to Defendants Clear Recon Corp's and John D. Duncan's Motion to Dismiss Plaintiff's Verified Complaint," on October 9, 2014, as well as a request for judicial notice. ECF Nos. 63 & 64. Clear Recon and Duncan filed a reply on October 21, 2014. ECF No. 65.

On December 2, 2014, this Court ordered supplemental briefing from Plaintiff and Clear Recon on the issue of whether the doctrine of res judicata barred Plaintiff's claims against Clear Recon. ECF No. 101. On December 8, 2014, both Clear Recon and Plaintiff timely filed court-ordered supplemental briefs on this issue. See ECF Nos. 105 & 106.

II. LEGAL STANDARD

A. Motion to Dismiss Under Rule 12(b)(6)

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency of a complaint. To withstand a motion to dismiss, a plaintiff must "plead enough facts to state a claim that is plausible on its face." Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007). "[A] formulaic recitation of the elements of a cause of action will not do." Id. A court must determine whether the facts in a complaint "plausibly give rise to an entitlement of relief." Ashcroft v. Iqbal, 556 U.S.662, 678 (2009). For purposes of ruling on a Rule 12(b)(6) motion, the Court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the non-moving party." Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008). "[A] court may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007). In addition, a court need not accept as true conclusory allegations, unreasonable inferences, legal characterizations, or unwarranted deductions of fact in the complaint. Clegg v. Cult Awareness Network, 18 F.3d 752, 754–55 (9th Cir.1994). Furthermore, "[a]lthough a pro se litigant . . . may be entitled to great leeway when the court construes his pleadings, those pleadings nonetheless must meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong." Brazil v. United States *Dep't* of Navy, 66 F.3d 193, 199 (9th Cir.1995).

Leave to amend should be granted unless it is clear that the complaint's deficiencies cannot be cured by amendment. Lucas v. Dep't of Corrections, 66 F.3d 245, 248 (9th Cir. 1995). If amendment would be futile, a dismissal may be ordered with prejudice. Dumas v. Kipp, 90 F.3d 386, 393 (9th Cir. 1996).

B. Motion for Sanctions Pursuant to Rule 11

Federal Rule of Civil Procedure 11(c) permits the imposition of any "appropriate sanction" on any attorney or party that makes a pleading, written motion, or other filing for, inter alia, any improper purpose. Fed. R. Civ. P. 11(c). "The central purpose of Rule 11 is to deter baseless filings ... [and] Rule 11 imposes a duty on attorneys to certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are well-grounded in fact, legally tenable, and not interposed for some improper purpose." U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 254 (9th Cir. 1992) (internal quotation marks omitted). An "improper purpose" is a purpose to "harass or to cause unnecessary delay or needless increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1).

III. DISCUSSION

A. Requests for Judicial Notice

The Court first addresses the parties' various requests for judicial notice. Although a district court generally may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion, the Court may take judicial notice of documents referenced in the complaint, as well as matters in the public record, without converting a motion to dismiss into one for summary judgment. See Lee v. City of L.A., 250 F.3d 668, 688-89 (9th Cir. 2001) overruled on other grounds by Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125-26 (9th Cir. 2002). In addition, the Court may take judicial notice of matters that are either "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Public records, including judgments and other court documents, are proper subjects of judicial notice. See, e.g., United States v. Black, 482 F.3d 1035, 1041 (9th Cir. 2007). Records filed with a county recorder are also judicially noticeable as undisputed public records. See Disabled Rights Action Comm. v. Las Vegas Events, Inc., 375 F.3d 861, 866 n.1 (9th Cir. 2004).

First, Nationstar, U.S. Bank, ReconTrust, and MERS request judicial notice of various documents. See ECF No. 11. The Court GRANTS this request for judicial notice as to ECF Nos.

11-1, 11-2, 11-3, and 11-5, as these are documents filed with the Santa Clara County Recorder's Office, and the type of documents of which courts routinely take judicial notice. See, e.g., Disabled Rights, 375 F.3d at 866 n.1; Liebelt v. Quality Loan Serv. Corp., No. 09-CV-05867-LHK, 2011 WL 741056, at *6 n.2 (N.D. Cal. Feb. 24, 2011) (taking judicial notice of trustee's deed upon sale); Gardner v. Am. Home Mortg. Servicing, Inc., 691 F. Supp. 2d 1192, 1196 (E.D. Cal. 2010) (taking notice of publicly-recorded documents related to foreclosure). The Court also GRANTS the request for judicial notice as to ECF Nos. 11-5, 11-6, 11-7, 11-8, 11-9, 11-10, 11-11, and 11-12, as these are filings in related state and federal court proceedings. See Black, 482 F.3d at 1041. However, the Court DENIES the request for judicial notice as to ECF No. 11-4, as this is merely a copy of defendant's request for judicial notice that appears to have been filed in error.[2]

Second, defendant California Reconveyance requests judicial notice of various documents filed in connection with its motion to dismiss. ECF No. 12. The Court GRANTS California Reconveyance's request for judicial notice as to ECF Nos. 12-1, 12-2, 12-3, and 12-4, as these are documents filed with the Santa Clara County Recorder's Office. See Disabled Rights, 375 F.3d at 866 n.1. The Court also GRANTS California Reconveyance's request for judicial notice as to the remaining 14 documents subject to its request for judicial notice, which consist of filings in related state and federal court proceedings. See Black, 482 F.3d at 1041.

Third, defendants Clear Recon and Duncan request judicial notice of various documents filed in conjunction with their motion to dismiss. See ECF No. 57. Most, if not all, of these documents are ones encompassed in the two other requests for judicial notice filed by the other defendants. The Court GRANTS Clear Recon's and Duncan's request for judicial notice as to ECF Nos. 57-1, 57-2, 57-3, 57-4, 57-6, and 57-8, as these are documents filed with the Santa Clara County Recorder's Office. See Disabled Rights, 375 F.3d at 866 n.1. The Court also GRANTS

[2] In their request for judicial notice, the defendants state that ECF No. 11-4 is a copy of the assignment of a deed of trust recorded by the Santa Clara County Recorder's Office on June 4, 2013, document number 22247184. ECF No. 11, at 1.

Clear Recon and Duncan's request for judicial notice as to ECF Nos. 57-5 and 57-7, as these are filings made in a related federal case.[3] See Black, 482 F.3d at 1041.

Plaintiff has filed two requests for judicial notice. See ECF Nos. 30 & 64. As a preliminary matter, the Court notes that Plaintiff requests judicial notice of individual documents that combine matters that are appropriate for judicial notice, such as filings with the Santa Clara County Recorder's Office, with matters that are not appropriate for judicial notice, such as private correspondence. The latter are not proper subjects of judicial notice, as these documents do not contain matters which are "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

Therefore, the Court GRANTS Plaintiff's request for judicial notice as to ECF No. 30-1 only insofar as this document consists of Plaintiff's Rule 45 subpoena to produce documents issued to Nationstar in this case, which was signed by the Clerk of the Court. The Court otherwise DENIES Plaintiff's request for judicial notice as to ECF No. 30-1, as the remainder of this document consists of Plaintiff's private correspondence. Similarly, the Court GRANTS Plaintiff's request as to ECF No. 30-3 only insofar as this document contains records filed with the Santa Clara County Recorder's Office. The Court otherwise DENIES Plaintiff's request for judicial notice as to ECF No. 30-3, as the remainder of this document consists of Plaintiff's private correspondence. The Court GRANTS Plaintiff's request for judicial notice of ECF No. 30-9, as this document consists of filings made with this Court, as well as responses to subpoenas for documents by Nationstar, GreenPoint, and Marin Conveyancing in this case. See Harris v. Stonecrest Care

[3] On October 9, 2014, Plaintiff filed an objection to Clear Recon and Duncan's request for judicial notice, which repeats much of the allegations in Plaintiff's Complaint. See ECF No. 62. Plaintiff also argues that all the documents at issue filed with the Santa Clara County Recorder's office are unauthentic or forged. Id. at 3-4. Plaintiff's arguments are unpersuasive. Public records, including records filed with a county recorder, are the proper subject of judicial notice. See Disabled Rights Action Comm. v. Las Vegas Events, Inc., 375 F.3d 861, 866 n.1 (9th Cir. 2004). Moreover, Plaintiff provides no support for his claim that any documents are unauthentic or forged, other than Plaintiff's own conclusory statements.

Auto Ctr., LLC, 559 F. Supp. 2d 1088, 1089 (S.D. Cal. 2008) (granting request for judicial notice of, among other things, discovery responses made in the case).

The Court DENIES the remainder of Plaintiff's first request for judicial notice. See ECF No. 30. Five of these remaining documents are private correspondence between Plaintiff and certain defendants. See ECF Nos. 30-2, 30-5, 30-6, 30-7 & 30-8. Another document is a brochure from a private bank. See ECF No. 30-4. These documents do not contain matters which are "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

As to Plaintiff's second request for judicial notice, see ECF No. 64, the Court GRANTS Plaintiff's request for judicial notice as to Exhibits 2 through 6. These are documents filed with the Santa Clara County Recorder's Office, and therefore appropriate subjects for judicial notice. See Disabled Rights, 375 F.3d at 866 n.1. The Court DENIES Plaintiff's request for judicial notice as to Exhibits 1 and Exhibits 7 through 9. Exhibit 1 is a copy of a contract between MERS and a third party. ECF No. 64, at 6-9. Exhibits 7 and 9 are private correspondence between the Plaintiff and certain third parties. ECF No. 64, at 20-24, 47-58. Exhibit 8 is a report prepared by a third-party. ECF No. 64, at 25-46. None of these documents are appropriate subjects for judicial notice. See Fed. R. Evid. 201(b).

B. Defendants' Motions to Dismiss

Defendants assert numerous grounds for the dismissal of Plaintiff's claims. Defendants Nationstar, U.S. Bank, ReconTrust, and MERS contend that Plaintiff's claims are barred by the doctrine of res judicata after the disposition of Sepehry-Fard I, or in the alternative that Plaintiff's claims are legally deficient and unsupported by judicially noticeable facts. See ECF No. 7. Defendant California Reconveyance argues that this Court lacks subject matter jurisdiction over this case because Plaintiff's second federal lawsuit, Sepehry-Fard II, has been appealed to the Ninth Circuit Court of Appeals. See ECF No. 8. In the alternative, California Reconveyance argues that Plaintiff's claim is barred by the doctrine of collateral estoppel. Id. California Reconveyance also argues that Plaintiff's lawsuit should be dismissed because it is duplicative, that Plaintiff has

failed to establish subject matter jurisdiction, or in the alternative, that Plaintiff fails to state a claim upon which relief could be granted. Id. Individual defendants Bray, Lewis, Roberson, and Duncan have filed a motion to dismiss for failure to state a claim and lack of personal jurisdiction, and also seek to join the motion to dismiss filed by Nationstar, U.S. Bank, ReconTrust, and MERS. See ECF No. 9. Defendants GreenPoint and Marin Conveyancing have argued that the doctrine of res judicata bars the present suit, and also seek to join the motion to dismiss filed by Nationstar, U.S. Bank, ReconTrust, and MERS. See ECF No. 10. Defendant Clear Recon, joined by individual defendant Duncan, claim that the Court lacks personal jurisdiction over Duncan because Plaintiff never properly served Duncan; that any claim against Clear Recon is barred by state statutory privilege; that Plaintiff's claim under the Truth in Lending Act is barred; and that Plaintiff's Complaint fails to state a claim. See ECF No. 58. In its court-ordered supplemental brief, Clear Recon also argues that the disposition of Sepehry-Fard I bars the instant lawsuit under the doctrine of res judicata.

As discussed more fully below, the Court rejects California Reconveyance's argument that subject matter jurisdiction over the instant lawsuit has vested exclusively in the Ninth Circuit. However, the Court also finds that Plaintiff fails to establish personal jurisdiction over defendants Bray, Lewis, Roberson, and Duncan; that Plaintiff's claims against certain defendants are barred by the doctrine of res judicata; and that Plaintiff otherwise fails to state a claim showing Plaintiff is entitled to relief. Accordingly, the Court need not discuss Defendants' numerous arguments in the alternative.

1. Effect of Pending Appeal on Subject Matter Jurisdiction

As a preliminary matter, the Court addresses California Reconveyance's argument that this Court lacks subject matter jurisdiction over the instant lawsuit because jurisdiction in another lawsuit has passed to the Ninth Circuit. In its motion to dismiss, California Reconveyance argues that Sepehry-Fard II, which according to California Reconveyance "arises out of the same operative facts" as the instant lawsuit, is currently on appeal before the Ninth Circuit. ECF No. 8, at 6. Therefore California Reconveyance argues that subject matter jurisdiction over this lawsuit,

"which is premised on allegations pertaining to the same Subject Property and the same Subject Loans," has likewise passed to the Ninth Circuit. Id. (emphasis in original).

It is generally true that "[w]hen a judgment is appealed, jurisdiction over the case passes to the appellate court." McClatchy Newspapers v. Cent. Valley Typographical Union No. 46, Intern. Typographical Union, 686 F.2d 731, 734 (9th Cit. 1982). However, this rule appears to only divest jurisdiction over the specific case in which judgment was entered. See Sumida v. Yumen, 409 F.2d 654, 656-57 (9th Cir. 1969) ("A properly filed notice of appeal vests jurisdiction of the matter in the court of appeal; the district court thereafter had no power to modify its judgment in the case or proceed further . . . .") (emphasis added). "The rationale for this general rule is that it avoids 'the confusion and waste of time that might flow from putting the same issues before two courts at the same time.'" Stein v. Wood, 127 F.3d 1187, 1189 (9th Cir. 1997) (quoting Kern Oil & Refining Co. v. Tenneco Oil Co., 840 F.2d 730, 734 (9th Cir.1988)).

The Court is not persuaded that Plaintiff's appeal of Judge Davila's order in Sepehry-Fard II divested this Court of subject matter jurisdiction in the instant lawsuit, which is a separate case. California Reconveyance cites no authority—and this Court located none—which states that the filing of a notice of appeal divests any district court of subject matter jurisdiction over a separate case. Moreover, the Ninth Circuit has recognized that in a situation where judgment is entered against a party, that party files a notice of appeal, and then initiates another lawsuit which arises out of the same operative facts, that second case may be dismissed on the grounds of res judicata, not for lack of subject matter jurisdiction. See, e.g., Eichman v. Fotomat Corp., 759 F.2d 1434, 1439 (9th Cir. 1985) ("the pendency of an appeal does not suspend the operation of an otherwise final judgment for purposes of res judicata"); Sosa v. DIRECTV, Inc., 437 F.3d 923, 928 (9th Cir. 2006) ("a district court judgment is 'final' for purposes of res judicata . . . even during the pendency of an appeal") (internal quotation marks omitted); Tripati v. Henman, 857 F.2d 1366, 1367 (9th Cir. 1988) ("The established rule in the federal courts is that a final judgment retains all of its res judicata consequences pending decision of the appeal . . . .") (internal quotation marks omitted).

Accordingly, the Court DENIES California Reconveyance's motion to dismiss on the grounds that subject matter jurisdiction over the instant lawsuit has vested exclusively in the Ninth Circuit.

2. Motion to Dismiss for Lack of Personal Jurisdiction

Individual defendants Bray, Lewis, Roberson, and Duncan move to dismiss the instant lawsuit on the grounds that this Court does not have personal jurisdiction over them. ECF No. 9, at 6-8. Bray, Lewis, Roberson, and Duncan are employees of defendant Nationstar. ECF No. 7, at 5 (identifying the individual defendants as employees of Nationstar). However, Bray, Lewis, Roberson, and Duncan contend that they are residents of Texas, where they work and are domiciled. Id.

Where no applicable federal statute governs personal jurisdiction, the court applies the law of the state in which it sits. See Fed. R. Civ. P. 4(k)(1)(A); *Panavision Int'*l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998). "Because California's long-arm jurisdictional statute is coextensive with federal due process requirements, the jurisdictional analyses under state law and federal due process are the same." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800-01 (9th Cir. 2004). "For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least 'minimum contacts' with the relevant forum such that the exercise of jurisdiction 'does not offend traditional notions of fair play and substantial justice.'" Id. at 801 (quoting *Int'*l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

Personal jurisdiction may be founded on either general jurisdiction or specific jurisdiction. General jurisdiction exists when a nonresident defendant is domiciled in the forum state or his activities in the forum are "substantial" or "continuous and systematic." Panavision, 141 F.3d at 1320 (internal quotation marks omitted). When the nonresident defendant's contacts with the forum are insufficiently pervasive to subject him to general personal jurisdiction, the court must ask whether the "nature and quality" of his contacts are sufficient to exercise specific personal jurisdiction over him. Data Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1287 (9th Cir. 1977). To determine whether a defendant's contacts with the forum state are sufficient to establish

specific jurisdiction, the Ninth Circuit employs a three-part test: (1) whether the non-resident defendant purposefully directed his activities toward the forum state or a resident thereof, or purposefully availed himself of the privilege of conducting activities in the forum; (2) whether the claim is one which arises out of or relates to the defendant's forum-related activities; and (3) whether the exercise of jurisdiction is reasonable. Schwarzenegger, 374 F.3d at 802. Where, as here, a motion to dismiss for lack of personal jurisdiction is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts. Id. at 800.

Here, Plaintiff alleges no facts showing why this Court has personal jurisdiction over defendants Bray, Lewis, Roberson, and Duncan. Indeed, in his Complaint, Plaintiff acknowledges that Bray, Lewis, Roberson, and Duncan are "under the jurisdiction of the state of Texas." Compl. ¶¶ 35, 37, 39, 41. Plaintiff does not otherwise allege how or why these defendants should be subject to personal jurisdiction in California. Plaintiff's opposition to these defendants' motion to dismiss similarly fails to shed any light on this issue. The only detail Plaintiff offers is that Roberson's signature appears on a document filed in the Santa Clara County Recorder's office. See, e.g., Compl. ¶¶ 135-36. But Plaintiff offers no reason why the fact that Roberson's signature appears on a document in the County Recorder's Office would subject her to personal jurisdiction in California. In addition, the fact that Nationstar, the individual defendant's employer, may be subject to personal jurisdiction in California does not establish personal jurisdiction over Nationstar's employees. Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 781 n.13 (1984) (stating that "jurisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him."). To the contrary, "[e]ach defendant's contacts with the forum state must be assessed individually." Calder v. Jones, 465 U.S. 783, 790 (1984). Plaintiff must allege sufficient facts to establish personal jurisdiction over the individual defendants, and Plaintiff has simply failed to do so.

For these reasons, individual defendants Bray, Lewis, Roberson, and Duncan are correct that Plaintiff does not show they are subject to personal jurisdiction in California. However, as

discussed more fully below, the Court also finds that Plaintiff's claims against Bray, Lewis, Roberson, and Duncan are barred by the doctrine of res judicata.

3. Preclusive Effect of Res Judicata

In the instant case, defendants Nationstar, Clear Recon, U.S. Bank, ReconTrust, Marin Conveyancing, GreenPoint, MERS, Bray, Lewis, Roberson, and Duncan contend that the claims raised in this lawsuit are barred because they were raised or could have been raised in Sepehry-Fard I.[4] In general, "[r]es judicata, or claim preclusion, prohibits lawsuits on any claims that were raised or could have been raised in a prior action." Stewart v. U.S. Bancorp, 297 F.3d 953, 956 (9th Cir. 2002) (emphasis omitted). To determine the res judicata effect of Sepehry-Fard I on the instant lawsuit, the court looks to whether "there is (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties." United States v. Liquidators of European Fed. Credit Bank, 630 F.3d 1139, 1150 (9th Cir. 2011). The Court will address each factor in turn.

a) Identity of Claims

To determine whether there is an identity of claims, courts in the Ninth Circuit apply four criteria: "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts." Id. at 1150 (quoting Costantini v. Trans World Airlines, 681 F.2d 1199, 1201–02 (9th Cir. 1982). The fourth criterion is the most important. Id. Accordingly, the Court addresses this factor first.

(1) Same Transactional Nucleus of Facts

"Identity of claims exists when two suits arise from the same transactional nucleus of facts." Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1078 (9th Cir. 2003) (internal quotation marks omitted). "Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could

[4] Of all the defendants in this lawsuit, only California Reconveyance does not move to dismiss Plaintiff's Complaint on the grounds of the res judicata effect of Sepehry-Fard I. See ECF No. 8.

conveniently be tried together." Int'l Union of Operating Engineers-Employers Constr. Industry Pension, Welfare & Training Trust Funds v. Karr, 994 F.2d 1426, 1429 (9th Cir. 1993) (internal quotation marks omitted). "Newly articulated claims based on the same nucleus of facts may still be subject to a res judicata finding if the claims could have been brought in the earlier action." Tahoe-Sierra, 322 F.3d at 1078.

Here, the Court finds that the vast majority of the claims in Plaintiff's instant lawsuit arise from the same transactional nucleus of facts as Sepehry-Fard I. Sepehry-Fard I stemmed from a dispute over defendants' authority to foreclose on the subject property and enforce Plaintiff's $1.3 million mortgage and $300,000 HELOC. See ECF No. 11-10. Plaintiff's claims in Sepehry-Fard I stemmed from two sets of alleged facts: (1) that defendants could not enforce the terms of Plaintiff's mortgages because they did not possess the original promissory note; and (2) that Plaintiff's loans were improperly securitized, and therefore invalid. See ECF No. 11-11, at 5-7.

Here, nearly every single one of Plaintiff's allegations is premised on one of these two sets of alleged facts that Plaintiff raised in Sepehry-Fard I. Indeed, nearly all of the allegations in the instant lawsuit stem from Plaintiff's claim that Defendants cannot enforce the terms of Plaintiff's mortgages because Defendants do not own Plaintiff's debt or possess the promissory note to the property. For example, Plaintiff's first cause of action for negligent misrepresentation is based on Plaintiff's claim that Defendants made "improper demands for payment to Plaintiff and unlawfully clouding the title to Plaintiff's real property . . . even though no payment[] was due to any of the Defendants." Compl. ¶ 194. Plaintiff's second cause of action for unfair business practices originates in Plaintiff's claim that "there was not and is not any debt owed by Plaintiff to Defendants." Compl. ¶ 199. Plaintiff's fourth through eighth causes of action for civil RICO are based on the allegation that there are no documents that "prove[d] alleged Defendants are damaged parties, parties of interest and holder in due course" See id. ¶ 226; see also id. ¶ 212 (alleging that "Defendants are holding Plaintiff liable to a contract where Plaintiff was an undisclosed third party which was not subscribed to or memorialized by the Plaintiff."). Plaintiff's ninth and tenth causes of action, brought pursuant to 42 U.S.C. §§ 1981 and 1982, as well as Plaintiff's eleventh cause of

action for accounting, are based on Plaintiff's claim that "Defendants maliciously and unlawfully cloud[ed] the title to Plaintiff's real property" based on "an unsubstantiated debt." Id. ¶ 232; see also id. ¶ 242 (alleging that Defendants "were "unlawfully collecting from Plaintiff on an unsubstantiated debt"). Plaintiff's twelfth cause of action for violations of the Truth in Lending Act is drawn from Plaintiff's contention that "Defendants falsely and fraudulently demanded Payment from Plaintiff when no payment was and is due to any of them." Id. ¶ 246.

Much of the rest of Plaintiff's allegations continue in this refrain. See Compl. ¶ 250 (thirteenth cause of action alleges that "all Defendants . . . faked that they are Plaintiff's creditor and lender, when they are not and obtained [sic] monies from Plaintiff") (sic); id. ¶ 253 (fourteenth cause of action for quiet title is premised on the allegation that Defendants filed false documents that "cite transactions that never ever happened in fact and in law" and that "the alleged Defendants are complete strangers to Plaintiff with no privity with Plaintiff"); id. ¶ 256 (fifteenth cause of action for wrongful foreclosure alleges that "Defendants lack the authority to foreclose because they are not the real party of interest, holder in due course and damaged party"); id. ¶ 262 (sixteenth and seventeenth causes of action allege that Defendants are "not damaged party, party of interest and holder in due course"); id. ¶ 272 (eighteenth cause of action alleges that Defendants "unlawfully mak[e] demand for payments when no payments is due and was due [sic]"); id. ¶ 275 (nineteenth cause of action alleges that Defendants were "making demands for payment when no payment was and is due to any of then [sic]"); id. ¶¶ 285-86 (twenty-first cause of action that Defendants were "unjustifiably enriched . . . as a result of an unsubstantiated debt and collection of monies from Plaintiff when no monies is due [sic] or was due to any of the Defendants"); id. ¶ 298 (twenty-fourth cause of action based on general fraud due to Defendants profiting from payments "that do not belong to them, it belongs to Plaintiff . . . not to Defendants that did not risk a bent penny into this deal").

At bottom, all of the above enumerated claims allege that Defendants cannot collect on Plaintiff's debt or foreclose on Plaintiff's property, because Defendants do not own any of the mortgage loans to the subject property. Indeed, Plaintiff attaches to his Complaint two letters that

Plaintiff mailed to Nationstar, challenging Nationstar to produce evidence of the promissory note or debt underlying the subject property. See ECF No. 3-10, at 17-18 (June 4, 2014 letter to Nationstar requesting production of "the amount of the debt" and "the name of the creditor to whom the debt is owed"); ECF No. 3-11, at 11-13 (May 19, 2014 letter addressed to Nationstar demanding that Nationstar "provide for their proof of claim [of] . . . debt" and by producing "the alleged Mortgage and/or note"). Therefore, the allegations here are the same as the ones Plaintiff raised in Sepehry-Fard I, in which Plaintiff alleged that defendants were not "entitl[ed] . . . to collect payment or declare default" on Plaintiff's debt. ECF No. 11-10, at 5. Accordingly, the above enumerated causes of action in the instant lawsuit are based on the same nucleus of transactional facts—the terms of Plaintiff's loans with Defendants, and whether they granted Defendants the right to enforce Plaintiff's loans—on which Plaintiff based his claims in Sepehry-Fard I.

Moreover, at least two of Plaintiff's other causes of action in the instant lawsuit arise from the second set of alleged facts Plaintiff raised in Sepehry-Fard I, specifically that Plaintiff's loans were improperly securitized and that this somehow made it impossible for Defendants to enforce the terms of Plaintiff's loans. In Sepehry-Fard I, Plaintiff alleged that Plaintiff's loans were securitized in such a way as to make the loans enforceable. ECF No. 11-10, at 15-16 (alleging that "trust sales" required for securitization never occurred and therefore "Defendants did not acquire any legal, equitable, and pecuniary interest in Plaintiff's Note and Mortgage"). In the instant lawsuit, Plaintiff alleges that his "loan, once securitized is permanently converted in a stock," and because the loan was securitized when Plaintiff defaulted, "the debt is discharged . . . . The Plaintiff alleges that the debt has been discharged in full." Id. ¶¶ 115-17. Plaintiff then appears to base his twenty-third and twenty-fourth causes of action on his contention that defendants sold these "underlying 'DEFECTIVE' loans." Id. ¶ 296; see id. (twenty-third cause of action alleging that defendants engaged in a "complex plan of false claims of securitization") (emphasis added); id. ¶ 298 (twenty-fourth cause of action alleging that Defendants engaged in "securities fraud and unlawful conduct"). Accordingly, Plaintiff's twenty-third and twenty-fourth causes of action in the

instant lawsuit are based on the same nucleus of transactional facts—the securitization of Plaintiff's mortgage loans—on which Plaintiff based his claims in Sepehry-Fard I.

In sum, nearly all of Plaintiff's causes of action in the instant lawsuit are based on one of the two grounds Plaintiff raised in Sepehry-Fard I: that the foreclosure process was invalid because the defendants do not possess the original promissory note, or that Plaintiff's loans were improperly securitized. See ECF No. 11-11, at 5-7. Therefore, both Sepehry-Fard I and the claims described above "arise from the same transactional nucleus of facts," which satisfies the most important prong of the identity of claims inquiry. See Tahoe-Sierra, 322 F.3d at 1078.

In his opposition, Plaintiff argues that he could not have asserted any of the causes of action in the instant lawsuit because Plaintiff recently received a notice of default from Nationstar on July 25, 2014. Opp'n at 28. However, res judicata still would bar claims "based on the same nucleus of facts . . . if the claims could have been brought in the earlier action." Tahoe-Sierra, 322 F.3d at 1078; Seevers v. United States, 19 F. App'x 626, 627 (9th Cir. 2001) (affirming dismissal of case on res judicata grounds where plaintiff's "claims could have been raised in his prior actions regarding the same injury"). Here, nearly all of Plaintiff's claims are based on facts that existed before Plaintiff filed Sepehry-Fard I. These facts include the terms of Plaintiff's loans with various defendants, whether those documents granted any defendant the authority to foreclose on the subject property, and whether Plaintiff's loans were securitized. Indeed, the documents Plaintiff attaches to his Complaint in the instant lawsuit are related to Plaintiff's loans with defendants executed in January 2007, before Plaintiff filed Sepehry-Fard I. See, e.g., ECF 3-2, at 8-9 (deed of trust for $1.3 million loan executed on January 10, 2007); id. at 32 (documents reflecting balance of $1.3 million loan). The fact that Plaintiff most recently received a notice of foreclosure on July 25, 2014 does not give Plaintiff the right to re-assert already-litigated claims, especially where those claims are not based on any new facts.

However, two of Plaintiff's causes of action in the instant lawsuit—the third, for violations of the Fair Debt Collection Practices Act ("FDCPA"), and the twentieth, for mail fraud—appear to be premised at least in part on facts Plaintiff claims to have discovered after the disposition of

Sepehry-Fard I. Plaintiff's third and twentieth causes of action appear to be based on an allegation that certain documents were robo-signed. Compl. ¶ 208 (FDCPA cause of action alleging that Defendants took "unlawful actions against Plaintiff in robo notarizing and robo signing instruments"); id. ¶ 281 (mail fraud cause of action alleging that "Defendants participated. . . as robo notary and robo signer as set forth above"). Liberally construing the complaint of a pro se litigant, Plaintiff appears to allege that Defendants violated the FDCPA and committed mail fraud by robo-signing various documents. Plaintiff further claims that evidence of his allegations of robo-signing came to light in 2014, one year after the disposition of Sepehry-Fard I. See, e.g., Compl. ¶¶ 133-38 (attaching signature of defendant that Plaintiff obtained on June 30, 2014). Assuming the truth of Plaintiff's allegations, see Manzarek, 519 F.3d at 1031, Plaintiff arguably could not have brought his claims based on alleged robo-signing of documents in Sepehry-Fard I, as the alleged evidence of robo-signing did not surface until after Sepehry-Fard I was dismissed. Accordingly, the doctrine of res judicata would not bar Plaintiff's third and twentieth causes of action. Tahoe-Sierra, 322 F.3d at 1078 (res judicata bars unasserted claims based on the same nucleus of facts only "if the claims could have been brought in the earlier action.") (emphasis added).[5]

In sum, all of Plaintiff's twenty-four causes of action except for his third and his twentieth are based on the same transactional nucleus of facts as Sepehry-Fard I. Therefore, the most important prong of the identity of claims inquiry is satisfied with respect to twenty-two of Plaintiff's twenty-four claims.

(2) Whether Rights or Interests Would be Destroyed or Impaired

The next prong of the identity of claims inquiry is whether "rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action." Liquidators of European Fed. Credit Bank, 630 F.3d at 1150. Here, the rights or interests established in the court order dismissing Sepehry-Fard I—specifically the right of Defendants to

[5] The Court will discuss the sufficiency of Plaintiff's third and twentieth causes of action in Section III.B.3, infra.

foreclose on Plaintiff's property and collect on Plaintiff's loans—would be impaired by the prosecution of the instant action. Therefore, this prong is satisfied.

(3) Substantially the Same Evidence at Issue

Next for the purposes of the identity of claims inquiry, the Court examines "whether substantially the same evidence is presented in the two actions." Liquidators of European Fed. Credit Bank, 630 F.3d at 1150. Here, based on Plaintiff's claims, the instant lawsuit would require presentation of evidence related to the validity of Defendants' authority to enforce Plaintiff's mortgage loans or foreclose on the subject property. See Compl. ¶¶ 193-298. This evidence would include the deeds of trust assigned to various defendants in connection with the $1.3 million loan and $300,000 HELOC. ECF Nos. 11-1 & 11-3. This is the same evidence that was at issue in Sepehry-Fard I. See ECF No. 11-11, at 1-2 (citing loan documents and deeds of trust executed in conjunction with $1.3 million mortgage and $300,000 HELOC). Therefore, this element is met.

(4) Infringement of the Same Right

The final prong of the identity of claims inquiry is "whether the two suits involve infringement of the same right." Liquidators of European Fed. Credit Bank, 630 F.3d at 1150. In Sepehry-Fard I, the right at issue was whether Plaintiff had a right to possess the subject property against Defendants' attempts to foreclose. ECF No. 11-11, at 4-7. This is the same right at issue in the instant lawsuit. See Compl. ¶¶ 193-298 (allegations disputing defendants' right to foreclose on Plaintiff's property). Thus, this prong is satisfied. Moreover, all the elements of the identity of claims inquiry are met with respect to each of Plaintiff's causes of action, except for the third and twentieth causes of action. Therefore, the Court proceeds to examine whether Sepehry-Fard I reached final judgment on the merits, and whether there is privity between the parties.

b) Final Judgment on the Merits

"An involuntary dismissal generally acts as a judgment on the merits for the purposes of res judicata . . . ." In re Schimmels, 127 F.3d 875, 884 (9th Cir. 1997). In Sepehry-Fard I, the court granted the defendants' motion to dismiss after considering the merits of Plaintiff's claim. See ECF No. 11-11. In so doing, the court found there was no recognizable legal claim that "the foreclosure

process is invalid if the trustee does not possess the original promissory note." Id. at 5. The court also rejected Plaintiff's claim that Plaintiff's loans were improperly securitized, on the grounds that Plaintiff lacked standing to assert a claim of improper securitization, and because courts had consistently "rejected a general theory based on securitization for failure to state a claim." Id. at 5-6 (collecting and citing cases). Therefore, because Sepehry-Fard I was involuntarily dismissed, it reached adjudication on the merits.

c) Privity Between the Parties

Finally, the Court looks at whether Sepehry-Fard I and the current lawsuit involve parties in privity with each other. The Ninth Circuit has defined privity in the res judicata context as "a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" In re Schimmels, 127 F.3d at 881 (9th Cir. 1997) (quoting Sout*hwest Airlines Co. v. Texas Int'*l Airlines, Inc., 546 F.2d 84, 94 (5th Cir. 1977)). Privity exists if there is sufficient commonality of interests between the parties. Tahoe-Sierra, 322 F.3d at 1081. Here, there is no dispute that Plaintiff was the complainant in Sepehry-Fard I. See ECF No. 11-9. The operative inquiry therefore becomes whether there is privity between the defendants in Sepehry-Fard I and the defendants in the instant lawsuit. Given the number of defendants in the instant lawsuit, the Court will examine them in groups.

(1) Privity as to Defendants GreenPoint and U.S. Bank

In Sepehry-Fard I, Plaintiff sued among other parties GreenPoint and U.S. Bank. ECF No. 11-9. Both GreenPoint and U.S. Bank are also named as defendants in the instant action. See ECF No. 1. Therefore, privity is established for these defendants. Liquidators of European Fed. Credit Bank, 630 F.3d at 1150 (privity established where parties are identical).

(2) Privity as to Defendants MERS, Marin Conveyancing, Nationstar, and Clear Recon

Privity may exist, even when the parties are not identical, if "there is a substantial identity between parties, that is, when there is sufficient commonality of interest." Tahoe-Sierra, 322 F.3d

at 1081 (citation omitted); see also Stratosphere Litig. L.L.C. v. Grand Casinos, Inc., 298 F.3d 1137, 1142 n. 3 (9th Cir. 2002) (finding privity when a party is "so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved") (citation omitted). "Nonparty preclusion may be based on a pre-existing substantive legal relationship between the person to be bound and a party to the judgment, e.g., assignee and assignor." Taylor v. Sturgell, 553 U.S. 880, 894 (2008); see also In re Schimmels, 127 F.3d at 881 (9th Cir. 1997) ("[A] non-party who has succeeded to a party's interest in property is bound by any prior judgment against the party."). In the context of home foreclosures, other district courts have found that subsequent trustees, assignees, or assignors of a mortgage are in privity with one another. See, e.g., Barnes v. Homeward Residential, Inc., No. 13-3227 SC, 2013 WL 5217393, at *3 (N.D. Cal. Sept. 17, 2013) (finding sufficient commonality of interests for purposes of res judicata between mortgage servicer on the one hand, and former and current holders of the beneficial interest of the deed of trust and substitute trustee of the deed of trust on the other hand); Apostol v. CitiMortgage, Inc., No. 13-CV-01983-WHO, 2013 WL 6328256, at *5 (N.D. Cal. Nov. 21, 2013) (finding substituted trustee that initiated foreclosure was so "identified in interest" with mortgage originator as to be in privity); Lee v. Thornburg Mortgage Home Loans Inc., No. 14-CV-00602 NC, 2014 WL 4953966, at *6 (N.D. Cal. Sept. 29, 2014) (successor trustee and servicers of mortgage loan in privity with original lender, nominee, and trustee sued in prior lawsuit).

Here, defendant GreenPoint—which was also a defendant in Sepehry-Fard I—was the originator of both the $1.3 million mortgage and the $300,000 HELOC at issue in the instant lawsuit. See ECF No. 11-11, at 1-2. Defendants MERS, Marin Conveyancing, Nationstar, and Clear Recon acted as either a trustee or nominee for GreenPoint, or as a successor nominee in relation to GreenPoint's loans. Defendant MERS acted as the nominee for GreenPoint upon execution of both the $1.3 million loan and the HELOC. ECF Nos. 11-2, 11-3. Defendant Marin Conveyancing acted as a trustee for GreenPoint in connection with the $1.3 million loan and the HELOC. ECF No. 11-2, 11-3. MERS subsequently assigned the deed of trust to Plaintiff's property in connection with the $1.3 million loan to defendant Nationstar. ECF No. 12-4. Nationstar

subsequently conveyed the deed of trust to Defendant Clear Recon. ECF No. 3-10. All of these parties "succeeded to a party's interest in property" and therefore are "bound by any prior judgment" regarding the property. In re Schimmels, 127 F.3d at 881. Accordingly, MERS, Marin Conveyancing, Nationstar, and Clear Recon have a sufficient commonality of interest with GreenPoint, a defendant in Sepehry-Fard I, and privity is established.

(3) Privity as to Individual Defendants Bray, Lewis, Roberson, and Duncan

Plaintiff has also sued individual defendants Bray, Lewis, Roberson, and Duncan. As previously discussed, these individual defendants are employees of Nationstar. ECF No. 7, at 5 (identifying the individual defendants as employees of Nationstar). Plaintiff alleges the four individual defendants engaged in the same misconduct as the defendants in Sepehry-Fard I, specifically that the individual defendants did not have the authority to enforce the terms of Plaintiff's loans or foreclose on the subject property. See, e.g., Compl. ¶ 246 (alleging that Bray, Lewis, and other named defendants "severely cloud[ed] the title to Plaintiff's real property when alleged Defendants did not lend a bent penny to Plaintiff or for Plaintiff's property"); id. ¶¶ 285-86 (alleging that Bray, Lewis, and other named defendants were "enriched as a result of an unsubstantiated debt and collection of monies from Plaintiff when no monies [were] due"). Accordingly, because these individual defendants stand accused of the same misconduct raised in Sepehry-Fard I, and are employees of parties in privity with defendants in that earlier lawsuit, they "are so identified in interest with a party to former litigation that [they] represent[] precisely the same right in respect to the subject matter involved." In re Schimmels, 127 F.3d at 881 (internal quotation marks omitted). Privity is therefore established between defendants Bray, Lewis, Roberson, and Duncan and the defendants in Sepehry-Fard I.

In his opposition, Plaintiff argues that res judicata does not bar his present suit against individual defendants Bray, Lewis, Roberson, and Duncan, as well as defendants Nationstar and Clear Recon, because these parties were not defendants in Plaintiff's earlier federal lawsuits. Opp'n at 28. However, the fact that defendants were not named in a prior lawsuit does not bar the application of res judicata if privity exists between the newly-named defendants and a defendant in

a prior action. See Scott v. Kuhlmann, 746 F.2d 1377, 1378 (9th Cir. 1984) (per curiam) (finding privity between the parties in a case barred by res judicata and stating "[d]ifferent individuals are named defendants in the two suits, but all are employees of the FCC"); Cobb v. Juarez, Nos. 13-55394, 13-55478, 2014 WL 3747304, at *1 (9th Cir. July 31, 2014) (unpublished memorandum disposition) (affirming dismissal of federal civil rights action on res judicata grounds and finding privity between defendants in first action with defendants in second action even though defendants in second action were not named in the first, but all were employees of the University of California at San Diego's police department); Conway v. Geithner, No. 12–0264 CW, 2012 WL 1657156, at *3 (N.D. Cal. May 10, 2012) (finding privity between defendant in first action, who was employed by the Department of Veterans Affairs, and defendant in second action, who was employed by the Internal Revenue Service, because they were both employed by the same federal agency, i.e., the Department of Treasury); see also Airframe Systems, Inc. v. Raytheon Co., 601 F.3d 9, 17 (1st Cir. 2010) ("We, along with other circuits, have long held that claim preclusion applies if the new defendant is closely related to a defendant from the original action—who was not named in the previous law suit, not merely when the two defendants are in privity.") (internal quotation marks omitted); 18A C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 4464.1, at 720 n.6 (2d ed. 2002) (collecting cases in which new defendants successfully asserted non-mutual claim preclusion). Therefore, Plaintiff's argument fails.

(4) Privity as to Defendant ReconTrust

The Court finds that privity does not exist between any of the defendants in Sepehry-Fard I and defendant ReconTrust in the instant action. None of the documents supplied by either party disclose how, if at all, ReconTrust is connected with the mortgage loans that form the crux of Plaintiff's allegations here. According to documents attached to Plaintiff's Complaint, on January 19, 2007, MERS conveyed a deed of trust for the subject property to ReconTrust. ECF No. 3-9, at 3. However, the deed of trust was originally executed on July 21, 2005, and therefore appears to be unconnected to the mortgage loans at issue in the instant lawsuit, which were executed on January 10, 2007. See id. Moreover, although ReconTrust, along with defendants Nationstar, U.S. Bank,

and MERS, argues that Plaintiff's Complaint should be dismissed on the grounds of res judicata, ReconTrust does not explain how it is in privity with the defendants in Sepehry-Fard I. See ECF No. 7, at 4-5.

Accordingly, the Court DENIES ReconTrust's motion to dismiss on the grounds of res judicata.

d) Conclusion Regarding Res Judicata

For the reasons stated above, the Court finds that Plaintiff's third and twentieth causes of action are not barred by res judicata as they could not have been asserted in Sepehry-Fard I. In addition, the Court finds that Plaintiff's claims against defendant ReconTrust is not barred by res judicata as ReconTrust does not appear to have been in privity with any of the defendants in Sepehry-Fard I.

The Court concludes that res judicata otherwise bars Plaintiff's claims. Therefore, the Court GRANTS the motions to dismiss of Nationstar, Clear Recon, GreenPoint, U.S. Bank, Marin Conveyancing, MERS, Bray, Lewis, Roberson, and Duncan with respect to all of Plaintiff's claims except for the third and twentieth causes of action. Moreover, because the Court dismisses Plaintiff's Complaint as to these defendants on the grounds of res judicata, amendment would be futile. Accordingly, Plaintiff's claims as to these defendants are dismissed without leave to amend.

4. Sufficiency of Plaintiff's Remaining Allegations

The Court now addresses the sufficiency of Plaintiff's twenty-four causes of action against ReconTrust and California Reconveyance,[6] as Plaintiff's claims against these two defendants are not barred by res judicata. The Court will also address the sufficiency of Plaintiff's third and twentieth causes of action against all Defendants, as these claims are also not precluded by res judicata.

As a preliminary matter, California Reconveyance moves to dismiss Plaintiff's Complaint on the grounds that Plaintiff's "insufficient and incoherent" allegations fail to put California Reconveyance on notice of its allegedly wrongful conduct, as required by the Federal Rules of

[6] As previously discussed, California Reconveyance did not move to dismiss Plaintiff's Complaint on the grounds of res judicata. See supra note 4.

Civil Procedure. ECF No. 8, at 12. It is axiomatic that a plaintiff plead a claim with "facial plausibility" that "allow[s] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 663 (emphasis added). In addition, the Federal Rules of Civil Procedure require a pleading to give a defendant "fair notice" of the claim being asserted and the "grounds upon which it rests." Yamaguchi v. United States Dept. of Air Force, 109 F.3d 1475, 1481 (9th Cir. 1997); Fed. R. Civ. P. 8(a)(2) (requiring that a complaint provide a "short and plain statement of the claim showing that the pleader is entitled to relief"). Accordingly, "[t]he plaintiff must allege with at least some degree of particularity overt acts which defendants engaged in that support the plaintiff's claim." Jones v. Cmty. Redevelopment Agency of City of Los Angeles, 733 F.2d 646, 649 (9th Cir. 1984) (internal quotation marks omitted). Furthermore, where "all defendants are lumped together in a single, broad allegation," without "any specificity [of] how each . . . defendant allegedly" committed illegal acts, the plaintiff's complaint fails to put defendants on notice of the claims asserted against them. Gauvin v. Trombatore, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988); Gen-Probe, Inc. v. Amoco Corp., 926 F. Supp. 948, 961 (S.D. Cal. 1996) (holding that "confusion of which claims apply to which defendants would require that the complaint be dismissed").

Here, twenty of Plaintiff's twenty-four causes of action are alleged against "All Defendants and Doe Defendants." See Compl. ¶¶ 193-298. Plaintiff by and large does not allege, in any of his causes of action, any overt acts in which California Reconveyance—or ReconTrust, for that matter—engaged that would support Plaintiff's claims. See, e.g., Compl. ¶ 198 (alleging that "all Defendants' acts and practices are unlawful, unfair, and fraudulent"); id. ¶ 214 (alleging that "all Defendants[']' unlawful actions enable them to receive income . . . from a pattern of racketeering activity"); id. ¶ 220 (alleging that "Defendants' unlawfully cloud[ed] the title to Plaintiff's real property"); id. ¶ 298 (alleging "Defendants' securities fraud and unlawful conduct"). In addition, although four of Plaintiff's causes of action are alleged against ReconTrust specifically (along with GreenPoint, Nationstar, Bray, Lewis, U.S. Bank, MERS, California Reconveyance, and Marin Reconveyancing), Plaintiff likewise fails to allege any act by any of the named defendants in

support of Plaintiff's allegations. See, e.g., id. ¶ 241 (alleging that "Defendants stole from Plaintiff"); id. ¶ 246 (alleging that "Defendants falsely and fraudulently demanded Payment from Plaintiff when no payments was and is due [sic]"); id. ¶ 285 (alleging that "Defendants have been unjustifiably enriched by collection of monies"); id. ¶ 290 (alleging that "Defendants faked securitization of Plaintiff's loans" while "Defendants continued to receive monies from Plaintiff"). Plaintiff fails to allege any overt acts of California Reconveyance and therefore fails to put California Reconveyance on notice of Plaintiff's allegations against it.

However, Plaintiff's Complaint suffers from a more fatal defect, which is that all of Plaintiff's claims fail as a matter of law and therefore Plaintiff cannot possibly win relief. Plaintiff's causes of action are premised on one of three theories: (1) that Defendants lack the authority to foreclose on the subject property because they do not own the rights to Plaintiff's mortgages or the original promissory note; (2) that Defendants securitized Plaintiff's loans and therefore voided them; or (3) that Defendants engaged in the robo-signing of documents related to Plaintiff's mortgages. As discussed more fully below, all of these premises fail to support a cognizable legal claim.

a) Claims Based on Lack of Authority to Initiate Foreclosure

Where, as here, a plaintiff alleges that defendants improperly tried to collect on a mortgage because those defendants are not "present holders in due course," or because those defendants have no "legal relationship with" the plaintiff, such allegations state a "produce the note" theory of liability. See, e.g., Trinh v. Citibank, NA, No. 5:12-CV-03902 EJD, 2012 WL 6574860, at *4 (N.D. Cal. Dec. 17, 2012) (allegation that "none of Defendants were present holders in due course of Plaintiff's Note such that they can enforce Plaintiff's obligation and demand mortgage payments" was a "produce the note" theory of liability); Andrade v. U.S. Bank Nat'l *Ass'*n, No. CIV. 13-00255 LEK, 2013 WL 4552186, at *10 (D. Haw. Aug. 27, 2013) (allegation that "Defendant did not have the right to foreclose on the Property because it did not own, nor does it have any legal relationship with" plaintiff was a "produce the note" theory of liability). Indeed, Plaintiff's claims here are substantially the same as those raised in Sepehry-Fard I, which Judge Davila found formed a

"produce the note" theory of liability. ECF No. 11-11, at 5 (allegation that, inter alia, defendants did not have ownership interest in Plaintiff's mortgage was a "produce the note" theory of liability).

Specifically, in the instant case, Plaintiff alleges a "produce the note" theory of liability in twenty of his causes of action against all Defendants.[7] See Compl. ¶ 194 (first cause of action alleging that Defendants made "improper demands for payment to Plaintiff and unlawfully clouding the title to Plaintiff's real property . . . even though no payment[] was due to any of the Defendants."); id. ¶ 199 (second cause of action alleging that "there was not and is not any debt owed by Plaintiff to Defendants."); id. ¶ 226 (fourth through eighth causes of action for civil RICO alleging that there are no documents that "prove[d] alleged Defendants are damaged parties, parties of interest and holder in due course"); id. ¶ 232 (ninth, tenth and eleventh causes of action based on claim that "Defendants maliciously and unlawfully cloud[ed] the title to Plaintiff's real property" based on "an unsubstantiated debt."); id. ¶ 246 (twelfth cause of action alleging "Defendants falsely and fraudulently demanded Payment from Plaintiff when no payment was and is due to any of them."); id. ¶ 250 (thirteenth cause of action alleges that "all Defendants . . . faked that they are Plaintiff's creditor and lender, when they are not and obtained [sic] monies from Plaintiff") (sic); id. ¶ 253 (fourteenth cause of action for quiet title is premised on the allegation that Defendants filed false documents that "cite transactions that never ever happened in fact and in law" and that "the alleged Defendants are complete strangers to Plaintiff with no privity with Plaintiff"); id. ¶ 256 (fifteenth cause of action for wrongful foreclosure alleges that "Defendants lack the authority to foreclose because they are not the real party of interest, holder in due course and damaged party"); id. ¶ 262 (sixteenth and seventeenth causes of action allege that Defendants are "not damaged party, party of interest and holder in due course"); id. ¶ 272 (eighteenth cause of action alleges that Defendants "unlawfully mak[e] demand for payments when no payments is due and

[7] Although no party produced evidence tying ReconTrust or California Reconveyance to the mortgages at issue here, Plaintiff still alleges that "all Defendants"—including California Reconveyance and ReconTrust—have attempted to collect on Plaintiff's debt or foreclose on the subject property. See, e.g., Compl. ¶ 255 (asserting claim of "Wrongful Foreclosure" against "All Defendants").

was due [sic]"); id. ¶ 275 (nineteenth cause of action alleges that Defendants were "making demands for payment when no payment was and is due to any of then [sic]"); id. ¶¶ 285-86 (twenty-first cause of action that Defendants were "unjustifiably enriched . . . as a result of an unsubstantiated debt and collection of monies from Plaintiff when no monies is due [sic] or was due to any of the Defendants"); id. ¶ 298 (twenty-fourth cause of action based on general fraud due to Defendants profiting from payments "that do not belong to them, it belongs to Plaintiff . . . not to Defendants that did not risk a bent penny into this deal").

It is well-established that "under California law, there is no requirement that the trustee have possession of the physical [promissory] note before initiating foreclosure proceedings." Kimball v. BAC Home Loans Servicing, LP, No. 10-CV-05670-LHK, 2011 WL 577418, at *2 (N.D. Cal. Feb. 9, 2011); Aguilera v. Hilltop Lending Corp., No. C 10-0184 JL, 2010 WL 3340566, at *3-4 (N.D. Cal. Aug. 25, 2010) (collecting cases); Gandrup v. GMAC Mortg., No. 11-CV-0659-LHK, 2011 WL 703753, at *2 (N.D. Cal. Feb. 18, 2011) (holding "there is no requirement that the trustee have possession of the physical note before initiating foreclosure proceedings."). Indeed, as Judge Davila noted in Sepehry-Fard I, a "produce the note" theory of liability has been "consistently rejected" by district courts in California. ECF No. 11-11, at 5 (collecting cases). Therefore, the Court dismisses Plaintiff's first; second; fourth through nineteenth; twenty-first; and twenty-fourth causes of action against defendants ReconTrust and California Reconveyance. Moreover, because these claims fail as a matter of law, amendment would be futile. See Dumas, 90 F.3d at 393. Accordingly, the Court dismisses these claims against ReconTrust and California Reconveyance without leave to amend.

b) Claims Based on Robo-Signing

Two of Plaintiff's causes of action—his third, for violation of the FDCPA, and his twentieth, for mail fraud—are premised on Plaintiff's allegation that defendants engaged in the robo-signing of documents filed in conjunction with the transfer of Plaintiff's various deeds of trusts. Plaintiff's FDCPA claim stems from Plaintiff's allegation that "[a]ll Defendants . . . who acted as an accessory to the unlawful actions taken against Plaintiff in robo notarizing and robo

signing instruments and filing those instruments in Santa Clara county recorder to divest Plaintiff from money and property." Compl. ¶ 208. In addition, Plaintiff's claim of mail fraud is based on the allegation that "all Defendants participated either as accessory . . . as robo notary and robo signer . . . by sending mail to Plaintiff to defraud Plaintiff, to obtain money from Plaintiff, threaten Plaintiff with foreclosure of Plaintiff's home." Id. ¶ 281.

However, the "robo-signing" of documents in the "transfer process does not itself constitute harm to the borrower because it does not affect the foreclosure, which is the only injury suffered by the homeowner." Moran v. GMAC Mortgage, LLC, No. 5:13-CV-04981-LHK, 2014 WL 3853833, at *4 (N.D. Cal. Aug. 5, 2014). Therefore, Plaintiff lacks standing to assert a cause of action based on robo-signing.[8] Id.; see also Javaheri v. JP Morgan Chase Bank, N.A., No. 10-08185 ODW, 2012 WL 3426278, at *7 (C.D. Cal. Aug. 13, 2012) ("While the allegation of robo-signing may be true, the Court ultimately concludes that [Plaintiff] lacks standing to seek relief under such an allegation.... [T]he only injury [Plaintiff] alleges is the pending foreclosure on his home, which is the result of his default on his mortgage. The foreclosure would occur regardless of what entity was named as trustee, and so [Plaintiff] suffered no injury as a result of this substitution."); Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 272 (2011) ("If [defendant] indeed lacked authority to make the assignment, the true victim was not plaintiff but the original lender, which would have suffered the unauthorized loss . . . .").

[8] Plaintiff also attaches to his complaint a declaration from a private investigator that Plaintiff hired to investigate the chain of custody of Plaintiff's loans. See ECF No. 3-1. According to the declaration, which was executed on June 26, 2014, the investigator concluded that GreenPoint "appears to have committed hypothecation fraud" by selling Plaintiff's note and deed of trust to Nationstar on May 22, 2013 after GreenPoint had pledged or sold the same note and deed of trust to another entity on April 30, 2007. Id. ¶ 14. Although Plaintiff does not explicitly raise the argument in either his complaint or his opposition, Plaintiff appears to try to state a claim of "hypothecation fraud." However, this claim would suffer from the same defect as Plaintiff's claims premised on robo-signing. Specifically, "[t]hird-party borrowers lack standing to assert problems in the assignment of the loan" because the borrowers have not suffered an injury in fact. Flores v. GMAC Mortg., LLC, No. 12-00794 SI, 2013 WL 2049388, at *3 (N.D. Cal. May 14, 2013). Assignment defects do not injure borrowers because "[e]ven if there were some defect in the [subsequent] assignment of the deed of trust, that assignment would not have changed plaintiff's payment obligations." Simmons v. Aurora Bank, FSB, No. 13-00482 HRL, 2013 WL 5508136, at *2 (N.D. Cal. Sept. 30, 2013). Accordingly, Plaintiff here could not assert any claim based on alleged fraud in connection with the assignment of Plaintiff's loans, as Plaintiff's obligation to repay his mortgage is unaffected by any assignment defects.

The Court also notes that Plaintiff's claim for mail fraud fails as a matter of law because in general "there is no private right of action for mail fraud." Wilcox v. First Interstate Bank, 815 F.2d 522, 533 n. 1 (9th Cir.1987). Therefore, in a civil action, "mail fraud . . . claims are completely inappropriate. These are criminal violations, and it is clear that there is no private right of action to bring them as individual claims in a civil suit." Orcilla v. Bank of Am., N.A., No. C10-03931 HRL, 2010 WL 5211507, at *4 (N.D. Cal. Dec. 16, 2010). For this additional reason, Plaintiff's claim for mail fraud is legally foreclosed.

For the reasons stated above, Plaintiff's third and twentieth causes of action against all Defendants fail as a matter of law. The Court therefore dismisses them without leave to amend. See Dumas, 90 F.3d at 393.

c) Claims Based on Improper Securitization

To the extent they can be understood, Plaintiff's remaining two causes of action—his twenty-third, for attorney's fees, and his twenty-fourth, for securities fraud—appear to be premised on Plaintiff's allegation that the securitization of Plaintiff's loans voided the debt, and therefore his loans were improperly securitized. In his Complaint, Plaintiff alleges that his "loan, once securitized is permanently converted in a stock," and because the loan was securitized when Plaintiff defaulted, "the debt is discharged . . . . The Plaintiff alleges that the debt has been discharged in full." Id. ¶¶ 115-17. Plaintiff then appears to base his twenty-third and twenty-fourth causes of action on his contention that defendants sold these "underlying 'DEFECTIVE' loans." Id. ¶ 296; see id. (twenty-third cause of action alleging that defendants engaged in a "complex plan of false claims of securitization") (emphasis added); id. ¶ 298 (twenty-fourth cause of action alleging that Defendants engaged in "securities fraud and unlawful conduct").

First, the Court notes that Plaintiff's twenty-third cause of action for attorney's fees appears to be a request for a remedy, not an independent cause of action. See Snatchko v. Westfield LLC, 114 Cal. Rptr. 3d 368, 391 (Ct. App. 2010) (noting that attorneys' fees "are not part of the underlying cause of action, but are incidents to the cause and are properly awarded after entry of a . . . judgment"). Second, even if Plaintiff asserts a cause of action based on the theory that

securitization of Plaintiff's loans renders them unenforceable, such a theory has been consistently rejected by district courts. See, e.g., Lane v. Vitek Real Estate Indus. Group, 713 F. Supp. 2d 1092, 1099 (E.D. Cal. 2010) ("[T]he argument that parties lose their interest in a loan when it is assigned to a trust pool has also been rejected by many district courts."); Hague v. Wells Fargo Bank, N.A., No. C11-02366 TEH, 2011 WL 6055759, at *6 (N.D. Cal. Dec. 6, 2011) ("To the extent that Plaintiffs' claims rely on the securitization of the loan . . . into a mortgage-backed security, there is no merit to the contention that securitization renders the lender's loan in the property invalid."); Wadhwa v. Aurora Loan Servs., LLC, No. CIV. S-11-1784 KJM, 2011 WL 2681483, at *4 (E.D. Cal. July 8, 2011) ("To the extent the court comprehends this position—apparently suggesting the assignment of the note to a Real Estate Mortgage Investment Conduit (REMIC) renders any interest in the property other than plaintiffs' somehow invalid—this position has been rejected by numerous courts and plaintiffs have provided no authority suggesting why this court should decide otherwise."). Plaintiff cannot assert a claim based on the theory that a securitization defect rendered Plaintiff's mortgage loans unenforceable. Therefore, Plaintiff's claims based on this theory fail.

Finally, Plaintiff's twenty-fourth cause of action for securities fraud suffers from yet another infirmity, which is that Plaintiff lacks standing to sue for securities fraud. In general, "[o]nly a purchaser or seller of securities has standing to bring an action" for securities fraud. Binder v. Gillespie, 184 F.3d 1059, 1067 (9th Cir. 1999); Gutter v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 644 F.2d 1194, 1196 (6th Cir. 1981) (explaining that only purchasers of securities have standing to sue under 15 U.S.C. § 77q(a)). Here, Plaintiff does not claim to have been a purchaser or seller of securities related to Plaintiff's mortgages, or a purchaser or seller of securities connected with Defendants. Rather, Plaintiff appears to base his claim of securities fraud on his general allegation that Plaintiff's loans were securitized. See Compl. ¶ 185 (referring to, among other documents attached to Plaintiff's Complaint, documents related to the securitization of Plaintiff's mortgages); ECF No. 3-1, ¶ 19 (declaration of private investigator stating that Plaintiff's "loan/debt" was securitized in a trust of "mortgage-backed securities"). Even assuming that Plaintiff's mortgage loans were securitized, this fact would not qualify Plaintiff as a purchaser

or seller of the security. See Harms v. Recontrust Co., 2010 WL 2573144, at * 2 (N.D. Cal. June 24, 2010) (explaining that plaintiffs mortgagees lack standing to allege securities fraud in connection with the sale of their mortgage on the stock market); Bukhari v. T.D. Serv. Co., 2010 WL 2762794, at * 5 (D. Nev. July 13, 2010) (holding that plaintiff could not base a claim for securities fraud based on the fact that his lender sold his promissory note, bundled with others, to a third party).

For these reasons, Plaintiff's twenty-third and twenty-fourth causes of action against defendants ReconTrust and California Reconveyancing fail as a matter of law. These claims are also dismissed without leave to amend. See Dumas, 90 F.3d at 393.

In summary, the Court rules on the various motions to dismiss as follows:

- Plaintiff's third and twentieth causes of action against all Defendants are DISMISSED without leave to amend because they fail as a matter of law.
- All remaining claims against defendants Nationstar, Clear Recon, GreenPoint, U.S. Bank, Marin Conveyancing, MERS, Bray, Lewis, Roberson, and Duncan are DISMISSED without leave to amend on the grounds of res judicata.
- All remaining claims against defendants ReconTrust and California Reconveyance are DISMISSED without leave to amend on the grounds that these claims fail as a matter of law.

C. Plaintiff's Motion for Sanctions

The Court now turns to Plaintiff's motion for sanctions pursuant to Federal Rule of Civil Procedure 11. "Rule 11 requires the imposition of sanctions when a motion is frivolous, legally unreasonable, or without factual foundation, or is brought for an improper purpose." Conn v. Borjorquez, 967 F.2d 1418, 1420 (9th Cir. 1992). "The central purpose of Rule 11 is to deter baseless filings ... [and] Rule 11 imposes a duty on attorneys to certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are well-grounded in fact, legally tenable, and not interposed for some improper purpose." Borneo, Inc., 971 F.2d at 254 (internal quotation marks omitted). An "improper purpose" is a purpose to "harass or to cause

unnecessary delay or needless increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1). The test for improper purpose is an objective one. G.C. and K.B. Invs., Inc. v. Wilson, 326 F.3d 1096, 1109 (9th Cir. 2003).

Here, Plaintiff has filed a motion for sanctions against all Defendants and their attorneys. See ECF No. 45, at 3. The basis for Plaintiff's motion for sanctions is that Defendants filed documents containing false statements with this Court. Id. Specifically, Plaintiff alleges that Defendants filed "forged, untrue and fraudulent instruments" in the Santa Clara County Recorder's office. Id. Plaintiff then argues that because Defendants requested judicial notice of these allegedly forged documents, Defendants perpetuated fraud on the Court. See, e.g., id. (accusing defendants of filing requests for judicial notice "when the face of the instruments are self explanatory which have robo signers, robo notary"). Plaintiff requests the Court award $5 million in sanctions, and that the Court strike multiple pleadings filed by defendants. Id. at 8. Defendants deny that the documents at issue are forged or fraudulent, or that Defendants have committed fraud on the Court. See, e.g., ECF No. 49, at 5-7.

The Court finds that Plaintiff fails to assert a claim for sanctions pursuant to Rule 11. In support of his claim that Defendants filed forged, untrue, or fraudulent documents, Plaintiff cites only to a declaration from a private investigator that Plaintiff attached to his Complaint. See ECF No. 3-1. In that declaration, the investigator states that defendant GreenPoint may "have committed hypothecation fraud by selling the Plaintiff's Note and Deed of Trust" to two different parties. Id. at ¶ 14. The investigator also states that general instances of hypothecation fraud may involve "counterfeit documents." Id. ¶ 29. This is not evidence that Defendants filed fraudulent documents in relation to this matter, or that Defendants referenced fraudulent documents to this Court. The declaration of Plaintiff's investigator does not state that counterfeit documents were filed in connection with the subject property, and Plaintiff provides no other evidence of his claim. Accordingly, Plaintiff has failed to show that defendants filed documents that were "frivolous,

legally unreasonable, or without factual foundation," as required to impose Rule 11 sanctions. Conn, 967 F.2d at 1420. Plaintiff's motion for sanctions is therefore DENIED.[9]

IV. CONCLUSION

In summary, the Court DISMISSES Plaintiff's third and twentieth causes of action against all Defendants without leave to amend because these claims fail as a matter of law. The Court DISMISSES without leave to amend all remaining claims against Nationstar, Clear Recon, GreenPoint, U.S. Bank, Marin Conveyancing, MERS, Bray, Lewis, Roberson, and Duncan on the grounds of res judicata. The Court DISMISSES all remaining claims against ReconTrust and California Reconveyance without leave to amend because Plaintiff's claims fail as a matter of law. Plaintiff's motion for sanctions is DENIED. The Court DENIES all pending motions as moot. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: January 26, 2015

Lucy H. Koh

LUCY H. KOH
United States District Judge

[9] In its opposition to Plaintiff's motion for sanctions, California Reconveyance requests that the Court award California Reconveyance reasonable attorneys' fees pursuant to Federal Rule of Civil Procedure 11 for the cost of opposing Plaintiff's motion. See ECF No. 49, at 8-9. California Reconveyance's request for sanctions failed to comply with Civil Local Rule 7-8, which states that any motion for sanctions "must be separately filed" and set for hearing in conformance with Civil Local Rule 7-2. See U.S. District Court, Northern District of California, Civil Local Rules, available at http://www.cand.uscourts.gov/localrules/civil. Accordingly, California Reconveyance's request is DENIED.