United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CHRISTOPHER GRIEVES,

Plaintiff,

v.

MTC FINANCIAL INC., et al.,

Defendants.

Case No. 17-CV-01981-LHK

ORDER GRANTING WITH PREJUDICE JPMORGAN CHASE BANK'S AND MTC FINANCIAL'S MOTIONS TO DISMISS

Re: Dkt. No. 18, 34, 42

Plaintiff Christopher Grieves ("Grieves") sues Defendants MTC Financial Inc. ("MTC"), JPMorgan Chase Bank, N.A. ("Chase"), California Reconveyance Company ("CRC"), U.S. Bank, N.A. ("U.S. Bank"), and U.S. Bank Trust, N.A. (collectively, "Defendants"), for causes of action relating to Grieves's residential mortgage. Before the Court are Chase's and MTC's motions to dismiss the First Amended Complaint ("FAC"). ECF Nos. 18, 34. MTC has also filed a motion to join Chase's motion to dismiss the FAC. ECF No. 42. The Court finds these matters suitable for resolution without oral argument, vacated the July 20, 2017 on Chase's motion to dismiss, and hereby VACATES the August 17, 2017 hearing on MTC's motion to dismiss. Having considered the submissions of the parties, the relevant law, and the record in this case, the Court hereby GRANTS MTC's motion to join Chase's motion to dismiss, and GRANTS with prejudice Chase's

and MTC's motions to dismiss the FAC.

I. BACKGROUND

A. Factual Background

1. Plaintiff's Deed of Trust

On May 9, 2006, Grieves borrowed $656,000.00 from Washington Mutual Bank, N.A. ("WaMu"), secured by a deed of trust encumbering property located at 2618 Estates Drive in Aptos, California ("the Property"). ECF No. 3-22 (First Amended Complaint, or "FAC"), at ¶¶ 3, 105. The deed of trust ("Deed of Trust") was recorded against the Property on May 17, 2006. *Id.* ¶ 111; *see* Chase RJN, Ex. 1. California Reconveyance Company ("CRC") was listed as the Trustee. *Id.* ¶ 114.

Grieves alleges that, although WaMu recorded the May 17, 2006 Deed of Trust, Grieves's residential home loan "was the product of an illegal table-funded loan originated and perpetrated by WaMu." *Id.* ¶ 112. Specifically, Grieves alleges that, "[f]rom 2000 to 2008," WaMu was able to originate "trillions in mortgage loans" because WaMu was able to "'securitize' the mortgages into privately held investment conduits that allowed [WaMu] to draft [its] own underwriting guidelines." *Id.* ¶ 17. Grieves alleges that "[o]nce the mortgages were securitized," the mortgages were owned by "special purpose entities" and the mortgages were taken off of WaMu's balance sheets. *Id.* ¶ 18. Grieves alleges that, "[a]lthough securitization was originally created as a post-origination transaction where bundles of mortgages [were] pooled together and sold off in bulk to [special purpose entities], as demand grew for mortgage-back[ed] securities in the market place, originators started creating [special purpose entities] prior to any loan being originated." *Id.* ¶ 19. According to Grieves, these special purpose entities could "anonymously fund loans based off of any underwriting guidelines" allowed. *Id.* Grieves alleges that "[i]n these 'stranger funded' transactions," WaMu called itself a "lender," but WaMu in fact drew its loan funds from these "pre-funded [special purpose entities]." *Id.* ¶ 20. In effect, Grieves states, WaMu acted "as a broker, that facilitated these stranger-funded loans, maintaining only" the servicing rights to

Grieves's mortgage. *Id.* ¶ 20.

Grieves alleges that this "process of stranger funding loans is commonly known as 'table-funding,'" which is a process in which "the brokering originator brings a third-party funding source (usually unknown to the broker) to the closing table at escrow to complete the transaction." *Id.* at 21. Grieves alleges that, because his home loan was "table funded" at its origination, Grieves's Deed of Trust was void *ab initio*. *See, e.g., id.* ¶ 129.

2. Closing of WaMu, Chase's Assignment of the Deed of Trust to U.S. Bank, and First Notice of Default

On September 25, 2008, the Office of Thrift Supervision closed WaMu and appointed the Federal Deposit Insurance Corporation ("FDIC") as Receiver. On that same date, Chase entered into a Purchase and Assumption Agreement ("P&A Agreement") with the FDIC, through which Chase acquired WaMu's assets. *See* Pl. RJN, Ex. B.

On June 16, 2011, Chase assigned Grieves's Deed of Trust to U.S. Bank. *Id.* ¶ 118; *see* Chase RJN, Ex. 2. The assignment was recorded on June 23, 2011. *See* FAC ¶118; Chase RJN, Ex. 2. Grieves alleges that, despite this "purported" assignment of the Deed of Trust to U.S. Bank, Grieves's Deed of Trust was "void at that time" because of WaMu's illegal table funding. FAC ¶ 119. Grieves further alleges that U.S. Bank never provided Grieves with "any written notice whatsoever of the assignment." *Id.* ¶ 124.

On June 23, 2011, CRC as Trustee recorded a Notice of Default and Election to Sell Under Deed of Trust against the Property. *Id.* ¶ 127–28; *see* Chase RJN, Ex. 3. Grieves alleges that "[a]t the time of the execution and recording of the [June 23, 2011] Notice of Default," Grieves's Deed of Trust "had been void for five (5) years" because of WaMu's illegal table funding. *Id.* ¶ 129.

On September 26, 2011, CRC as Trustee executed and recorded a Notice of Trustee's sale. *Id.* ¶ 132; *see* RJN, Ex. 4. Grieves alleges, however, that "the Grieves [Deed of Trust] was void at that time" because of WaMu's illegal table funding. FAC ¶ 132.

3. The *Potter* Action in State Court

Also in 2011, Grieves and 426 other individuals ("the *Potter* Plaintiffs") brought suit in the

Superior Court for the County of Los Angeles against Chase; Chase Home Finance, LLC; Long Beach Mortgage Company; EMC Mortgage Corporation; Bear Stearns; EAppraiseit; First American Corporation; CRC; and the FDIC (collectively, "the *Potter* Defendants"). *See* Chase RJN, Ex. 9 ("*Potter* Compl."). The operative complaint in the state court lawsuit, *Potter, et al. v. JPMorgan Chase Bank, N.A.*, Case No. BC459627 (hereinafter, "the *Potter* Action"), was the fourth amended complaint, which was filed on December 21, 2012. *Id.*

The fourth amended complaint in the *Potter* Action was 150 pages in length. *Id.* The fourth amended complaint alleged a "massive and centrally directed fraud by which [the *Potter*] Defendants placed homeowners into loans which [the *Potter*] Defendants *knew* [the *Potter*] Plaintiffs could not afford, abandoned industry standard underwriting guidelines, and intentionally inflated the appraisal values of homes throughout California for the sole purpose of herding as many borrowers as they could into the largest loans possible which [the *Potter*] Defendants would then sell on the secondary market." *Id.* ¶ 2. The *Potter* Action alleged that, beginning in early 2000, WaMu "shifted its focus from originating a more limited number of prudently-underwritten safe loans to an all-out volume model in which" WaMu sold home loans to secondary market investors. *Id.* ¶ 76. Further, the *Potter* Action complaint alleged that WaMu "fuel[ed] the ever growing securitization machine" by originating and funding new loans through various divisions of WaMu. *Id.* ¶¶ 77–79. WaMu "sold or securitized most of the subprime home loans [WaMu] acquired," *id.* ¶ 88, which caused a "race to the bottom" wherein the *Potter* Defendants "disregarded underwriting standards" and "induced [the *Potter*] Plaintiffs into mortgage products they knew would devastate both [the *Potter*] Plaintiffs and the economy," "[a]ll in the name of selling mortgages on the secondary market for spectacular profit." *Id.* ¶ 99.

The *Potter* Action complaint alleged that, from 2003 to 2008, the *Potter* Defendants misrepresented and concealed "[t]hat [the *Potter*] Defendants were in fact dependent on selling loans [they] originated into the secondary mortgage market," and that the *Potter* Defendants had "morphed into a loan conveyor belt, packaging loans with little if any regard for their underwriting

standards, and selling those loans at extravagant profit to investors on the secondary market." *See id.* at ¶ 213. The *Potter* Plaintiffs alleged that, "[a]s a result of [the *Potter*] Defendants' improper scheme, [the *Potter*] Plaintiffs lost equity in their homes [and] their credit ratings and histories were damaged or destroyed." *Id.* ¶ 119.

The *Potter* Action complaint further alleged that the *Potter* Defendants, including WaMu and Chase, made money by initiating foreclosure proceedings "without having any true possessory or ownership interest in the deed of trust." *Id.* ¶ 274. According to the *Potter* Plaintiffs, "[s]ecuritizing a loan generally entails the sale of a loan to private investors," which the *Potter* Plaintiffs alleged resulted in the ultimate note holders being "many, disparate and unrelated entities, no one of which can lawfully enforce the note without the participation of all the other anonymous note holders to partial interests in a single home loan." *Id.* ¶ 277. The *Potter* Plaintiffs alleged that the *Potter* Defendants continued to demand payments under the *Potter* Plaintiffs' respective promissory notes and deeds of trust, despite the fact that the *Potter* Defendants "have no proof that they own the notes and deeds of trust they seek to enforce." *Id.* ¶ 278.

Counts One, Two, and Three of the operative *Potter* Action complaint alleged that the *Potter* Defendants engaged in fraudulent concealment, intentional misrepresentation, and negligent misrepresentation by, beginning in January 2003, "pool[ing] [home] loans, fraudulently inflat[ing] the value of these pooled loans[,] and then sell[ing] the pools to unsuspecting investors for grossly unmerited profits." *See, e.g.*, *id.* ¶¶ 327, 358. The *Potter* Plaintiffs alleged that the *Potter* Defendants failed to disclose, among other facts, that the *Potter* Defendants "were selling their loans to investors rather than holding their loans," and that the *Potter* "Defendants were making loans simply to create sufficient product to sell to investors for profit." *Id.* ¶¶ 333, 382. The *Potter* Plaintiffs alleged that, as a proximate result of the *Potter* Defendants' conduct, the *Potter* Plaintiffs suffered "loss of equity in their houses, costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, reduced availability of goods and

services tied to credit ratings, increased costs of those services, as well as fees and costs." *Id.* ¶¶ 350, 399.

Count Four alleged that Defendants violated California's UCL. *See id.* ¶ 416. Among other allegations, the complaint alleged that the *Potter* Defendants violated the Patriot Act by "failing to adequately identify the source of funds used to fund mortgages and fund the securitization pools that purchased mortgages," *id.* ¶ 432; that the *Potter* Defendants "violated California common law by pursuing foreclosures through mere nominees . . . and without proof [Defendants] owned the notes and deeds of trust underlying their foreclosure actions," *id.* ¶ 435; and that the *Potter* Defendants violated UCC 3-301 by "foreclosing on [the *Potter*] Plaintiffs without being 'holders' or in possession of their respective Notes," *id.* ¶ 439. According to Plaintiffs, Defendants' violations caused "loss of equity in [the *Potter* Plaintiffs'] houses, costs and expenses related to protecting themselves, reduced credit scores, unavailability of credit, increased costs of credit, reduced availability of goods and services tied to credit ratings, increased costs of those services, as well as fees and costs." *Id.* ¶ 449.

In addition, a subset of the *Potter* Plaintiffs whose homes had already been sold at foreclosure—a subset of plaintiffs that did not include Grieves—alleged in Count Five of the *Potter* Action that the *Potter* Defendants had engaged in wrongful foreclosure. *See id.* ¶ 459.

After the *Potter* Plaintiffs filed the fourth amended complaint, the FDIC removed the *Potter* Action to the U.S. District Court for the Central District of California on February 8, 2013, and asserted federal jurisdiction because the FDIC was a defendant. *See Potter v. JPMorgan Chase Bank, N.A.*, 2013 WL 1912718, at *1 (C.D. Cal. May 8, 2013). However, on May 8, 2013, the district court granted FDIC's motion to dismiss FDIC as defendant, and the district court declined to exercise supplemental jurisdiction over the state law claims. *Id.* Accordingly, the *Potter* Action was remanded to the Los Angeles County Superior Court on May 10, 2013. *Id.*

On June 2, 2014, the Los Angeles County Superior Court issued an order in the *Potter* Action dismissing the fourth amended complaint with prejudice. *See* Chase RJN, Ex. 10. The

state court noted that the fourth amended complaint "track[ed] the allegations in *Ronald v. Bank of America*, 198 Cal. App. 4th 862 (Cal. Ct. App. 2011), in addition to another set of cases against Wells Fargo, the *Wells Fargo Bank Mortgage Cases*, Coordinated Docket No. JCCP4711. *Id.* at 6. Indeed, because the state court found the allegations in the *Potter* Action were so similar to these earlier cases, the state court concluded that "repetition is pointless" and the state court incorporated the reasoning of *Ronald* and the *Wells Fargo Bank Mortgage Cases* into the state court's order dismissing the *Potter* Action. *Id.* The state court also noted that the *Potter* Plaintiffs were "trying to fight on in the face of their defeat against FDIC in federal court on the theory that somehow [Chase] is responsible for the pre-liquidation torts of WaMu," which had already been rejected. *Id.* at 7. Accordingly, the state court sustained Chase's demurrer to the fourth amended complaint without leave to amend. *Id.* at 6–7.

On July 18, 2014, the state court entered judgment in favor of Chase and against the *Potter* Plaintiffs. RJN, Ex. 11.

4. Substitution of MTC as Trustee under Grieves's Deed of Trust, and the 2016 Trustee's Sale

On March 3, 2015, U.S. Bank recorded a Substitution of Trustee, which substituted MTC as Trustee under the Deed of Trust. *See* Chase RJN, Ex. 5.

On April 23, 2015, MTC recorded a Notice of Default and Election to Sell Under Deed of Trust against the Property. FAC ¶ 133; *see* Chase RJN, Ex. 6. According to Grieves, the Deed of Trust was void at the time that MTC recorded the Notice of Default because of WaMu's illegal table funding. *See* FAC ¶ 133.

On December 3, 2015, MTC recorded a Notice of Trustee's Sale against the Property, which scheduled a Trustee's Sale for January 13, 2016. *See* Chase RJN, Ex. 7. On January 20, 2016, MTC recorded a Trustee's Deed upon sale. *See* Chase RJN, Ex. 8.

B. Procedural History of the Instant Case

On March 15, 2016, Grieves and 7 other individuals filed a complaint against MTC and Chase in Orange County Superior Court. *See* ECF No. 1-2. The complaint alleged only state law

causes of action for (1) intentional misrepresentation; (2) negligent misrepresentation; (3) violation of California's Homeowner Bill of Rights, Cal. Civ. Code § 2924.17; (4) violation of California's Homeowner Bill of Rights, Cal. Civ. Code § 2923.55; (5) violation of California's UCL; and (6) wrongful foreclosure. *Id.*

MTC filed Motions to Multifurcate and Change Venue, which sought to sever each set of plaintiffs' actions and change venue to the locations of the separate subject properties. *See* ECF No. 1, at 3; ECF No. 1-11. Chase joined in MTC's motions and also filed a demurrer to the complaint. *See* ECF No. 1-7; ECF No. 1-3.

On February 17, 2017, prior to the hearing on MTC's and Chase's motions, plaintiffs filed the instant FAC, which added CRC, U.S. Bank, and U.S. Bank Trust, N.A. as Defendants. *See* FAC. The FAC also changed several of the causes of action. *Id.*

Specifically, Counts One and Three of the FAC alleged that Defendants violated the Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. §§ 1692(e) & (f), and California's Rosenthal Act ("Rosenthal Act"), Cal. Civ. Code § 1788.1, respectively. *Id.* ¶¶ 141, 164. The FAC alleged that Defendants violated these statutes by using false, misleading, or deceptive representations to collect a debt by "claiming that the Notes were secured when they were not," "threatening to foreclose against the properties" even though Defendants "do not have a valid security interest in the properties," and filing the Notices of Default and Notices of Trustees' sales against the plaintiffs' properties even though Defendants had no authority to do so. *Id.* ¶ 147.

Count Two of the FAC alleged that Chase, U.S. Bank, and U.S. Bank Trust violated the Truth in Lending Act ("TILA"), 15 U.S.C. § 1641. *Id.* ¶ 150. As relevant here, the FAC alleged that Chase assigned the Deed of Trust to U.S. Bank on June 16, 2011, but Grieves was never notified of the assignment, in violation of § 1641(g) of TILA. *Id.* ¶ 156.

Count Four of the FAC alleged that Defendants violated California's UCL. *Id.* ¶ 172. Specifically, Grieves alleged that WaMu listed itself as a "lender" on Grieves's deeds of trust, even though WaMu had "table-funded" the loans and thus "was not the funding source," in

violation of California Business and Professional Code § 10234. *Id.* ¶ 175. According to the FAC, WaMu thus allowed "void" deeds of trust to be recorded against properties, including Grieves's property. *Id.* ¶176–77. In addition, the FAC alleged that Chase and MTC violated the UCL by attempting to collect a debt while knowing that the debts were the result of WaMu's table funding. *Id.* ¶¶ 195, 205–06. The FAC alleged that, because of "WaMu's illegal table funding and recording of the void [deeds of trust]," plaintiffs' properties were devalued and their credit scores were destroyed. *Id.* ¶180.

Count Five of the FAC sought "[c]ancellation of instruments." *Id.* ¶ 212. Specifically, the FAC sought cancellation of the plaintiffs' deeds of trust because the deeds of trust resulted from WaMu's illegal table funding. *See, e.g.*, ¶¶ 214–15. The FAC further sought cancellation of the various purported assignments of plaintiffs' void deeds of trust, in addition to cancellation of the notices of default and notices of trustee's sales filed against plaintiffs' properties because, at the time that the notices were filed, plaintiffs' deeds of trust had all been "void for years" because WaMu had illegally table funded the loans. *Id.* ¶ 226. Similarly, Count Six of the FAC alleged slander of title. *Id.* ¶ 234–39.

Count Seven of the FAC alleged wrongful foreclosure against Defendants. *Id.* ¶ 242. Specifically, the FAC alleged that, at the time of the respective foreclosure sales on plaintiffs' homes, plaintiffs' deeds of trust had been void for years as a result of WaMu's alleged table funding. *See, e.g.*, *id.* ¶ 252.

On March 10, 2017, the Orange County Superior Court severed Grieves from the other plaintiffs and transferred Grieves's case to the Santa Cruz County Superior Court. On March 16, 2017, Chase filed a notice of removal and removed Grieves's case to federal court. *See* ECF No. 1. However, at the time of removal, Grieves's action had not yet been transferred to the Santa Cruz County Superior Court. ECF No. 11. Accordingly, Grieves's action was initially removed to the U.S. District Court for the Central District of California. *See* ECF No. 1. The parties stipulated on March 23, 2017 to transfer Grieves's case to the U.S. District Court for the Northern

District of California. *See* ECF No. 11. Grieves's case was transferred to this Court on April 10, 2017. ECF No. 16.

On April 13, 2017, Chase filed a motion to dismiss the FAC, in addition to a request for judicial notice. ECF Nos. 13 ("Chase RJN"), 12 & 18 ("Chase Mot."). On April 27, 2017, Grieves opposed Chase's motion to dismiss and Chase's request for judicial notice. ECF Nos. 30 ("Pl. Opp. to Chase Mot.") & 31 ("Pl. Opp. to Chase RJN"). Grieves also filed a request for judicial notice. ECF No. 32 ("Pl. RJN"). On May 12, 2017, Chase filed a reply. ECF No. 37 ("Chase Reply").

On May 1, 2017, MTC filed a motion to dismiss the FAC, in addition to a request for judicial notice. ECF Nos. 34 ("MTC Mot.") & 35 ("MTC RJN"). On May 16, 2017, Grieves filed an opposition to MTC's motion to dismiss and request for judicial notice. ECF No. 38 ("Pl. Opp. to MTC Mot."). On May 22, 2017, MTC filed a reply. ECF No. 41 ("MTC Reply"). On June 11, 2017, MTC filed a motion for joinder in Chase's motion to dismiss. ECF No. 42.

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint that fails to meet this standard may be dismissed pursuant to Rule 12(b)(6). Rule 8(a) requires a plaintiff to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (internal quotation marks omitted). 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 nonmoving party." *Manzarek v. St.*

Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008).

The Court, however, need not accept as true allegations contradicted by judicially noticeable facts, *see Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and it "may look beyond the plaintiff's complaint to matters of public record" without converting the Rule 12(b)(6) motion into a motion for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 1995). Nor must the Court "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per curiam) (internal quotation marks omitted). Mere "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss." *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

B. Leave to Amend

If the Court determines that the complaint should be dismissed, it must then decide whether to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend "should be freely granted when justice so requires," bearing in mind that "the underlying purpose of Rule 15 . . . [is] to facilitate decision on the merits, rather than on the pleadings or technicalities." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks omitted). Nonetheless, a court "may exercise its discretion to deny leave to amend due to 'undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . , [and] futility of amendment.'" *Carvalho v. Equifax Info. Servs., LLC*, 629 F. 3d 876, 892–93 (9th Cir. 2010) (alterations in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

III. DISCUSSION

A. Request 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). A matter may be judicially noticed if it is either "generally known within the territorial jurisdiction of the trial court" or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

In connection with their motions to dismiss, Chase and MTC both request that the Court take judicial notice of the following documents:

- Exhibit 1: Deed of Trust, recorded in the Official Records of Santa Cruz County, California, on May 17, 2006, Document #2006-0018875
- Exhibit 2: Assignment of Deed of Trust, recorded in the Official Records of Santa Cruz County on June 23, 2011, Document #2011-0025169
- Exhibit 3: Notice of Default, recorded in the Official Records of Santa Cruz County on June 23, 2011, Document #2011-0025169
- Exhibit 4: Notice of Trustee's Sale, recorded in the Official Records of Santa Cruz County on September 26, 2011, Document #2011-0038843
- Exhibit 5: Substitution of Trustee, recorded in the Official Records of Santa Cruz County on March 3, 2015, Document #2015-0015376
- Exhibit 6: Notice of Default, recorded in the Official Records of Santa Cruz County on April 23, 2015, Document #2015-0015376
- Exhibit 7: Notice of Trustee's Sale, recorded in the Official Records of Santa Cruz County on December 3, 2015, Document #2015-0048056
- Exhibit 8: Notice of Trustee's Deed Upon Sale, recorded in the Official Records of Santa Cruz County on January 20, 2016, Document $2016-002022
- Exhibit 9: Fourth Amended Complaint in *Potter et al. v. JPMorgan Chase Bank, N.A., et al.*, Los Angeles County Superior Court Case No. BC459627
- Exhibit 10: June 2, 2014 order in *Potter et al. v. JPMorgan Chase Bank, N.A., et al.*, Los Angeles County Superior Court Case No. BC459627
- Exhibit 11: July 18, 2014 Judgment in *Potter et al. v. JPMorgan Chase Bank, N.A., et al.*, Los Angeles County Superior Court Case No. BC459627

Further, Grieves requests that the Court take judicial notice of the following two

documents: (1) Bill Analysis for the Assembly Committee on Banking and Finance hearing held on January 12, 1998, regarding Assembly Bill 1203, and (2) September 25, 2008 Purchase and Assumption Agreement. Pl. RJN, Exs. A & B.

Each of these documents is a matter of public record "not subject to reasonable dispute [and] capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201. Additionally, many of the documents are public documents filed in other courts. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (holding that judicial notice of court documents is proper). However, to the extent that any of the above documents contain facts that are subject to reasonable dispute, the Court does not take judicial notice of those facts. *See Lee*, 250 F.3d at 689 ("A court may take judicial notice of matters of public record . . . . But a court may not take judicial notice of a fact that is subject to reasonable dispute.") (internal quotation marks omitted), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

Accordingly, the Court GRANTS the parties' requests for judicial notice. *See Lee*, 250 F.3d at 688 (noting that a court may take judicial notice of matters of public record in ruling on a motion to dismiss); *Julio v. Wells Fargo Bank*, 2011 WL 11048327, at *1 (N.D. Cal. July 21, 2011) (taking judicial notice of similar foreclosure documents); *Sepehry-Fard v. Bank of N.Y. Mellon, N.A.*, 2012 WL 4717870, at *1 (N.D. Cal. Oct. 2, 2012) (same).

B. Motion to Dismiss

As Grieves acknowledges, Count One and Counts Three through Seven of the FAC are all based on Grieves's allegation that Grieves's Deed of Trust is void because WaMu used illegal "table funding" in originating Grieves's mortgage in 2006. *See* Opp. to Chase Mot. at 6, 10 ("Despite the breadth of the claims, each cause of action (with the exception of the [TILA] claim) all are rooted in the allegation that the deed of trust is void."). According to Grieves, because the Deed of Trust is void due to WaMu's illegal table funding, *all* subsequent actions taken under the Deed of Trust are void. *See* Opp. to Chase Mot. at 6, 10. In addition, Grieves alleges in Count

Two of the FAC that Chase violated TILA by failing to notify Grieves that Chase assigned the Deed of Trust to U.S. Bank on June 16, 2011. *See* FAC ¶ 118.

Chase and MTC move to dismiss all of Grieves's causes of action. Specifically, Chase and MTC argue that all of Grieves's claims in the FAC are barred by res judicata. *See* Chase Mot. at 11–17. In addition, Chase and MTC both argue that Grieves's claims are time barred and, in any event, fail to state a claim. *See, e.g.*, Chase Mot. at 17–31. In resolving the instant motions to dismiss, the Court first discusses whether Count One and Counts Three through Seven, which are all based on WaMu's alleged illegal table funding, are barred by res judicata. The Court then addresses Grieves's allegations in Count Two that Chase violated TILA.

1. Count One and Counts Three through Seven: WaMu's Alleged "Table Funding"

In Count One and Counts Three through Seven of the FAC, Grieves alleges causes of action against Defendants for violations of (1) the FDCPA; (2) the Rosenthal Act; (3) the UCL; (4) cancellation of instruments; (5) slander of title; and (6) wrongful foreclosure. According to Grieves, all of these claims "are rooted in the allegation that the deed of trust is void" because WaMu "used table-funding when it brought money to escrow to close [Grieves's] residential finance loan." Opp. to Chase Mot. at 6, 10; Opp. to MTC Mot. at 8 ("The obvious crux of the Complaint is that the [deed of trust] is and was an illegal void encumbrance placed on California residential property to secure a table-funded residential loan."). Specifically, Grieves alleges that WaMu "securitize[d]" Grieves's mortgage and pooled Grieves's mortgage with other mortgages in order to sell these pooled mortgages to investors on the secondary market for profit. *See* FAC ¶¶ 17–19. Grieves alleges that these investors are the true "lenders," and because WaMu listed *itself* as the "lender" on Grieves's Deed of Trust, WaMu "table funded" his residential home loan and the Deed of Trust is void. *Id.* ¶ 17–28. Thus, according to Grieves, all subsequent action taken under the Deed of Trust is invalid. *See id.* at 17–31.

Chase and MTC argue that Grieves's causes of action in Count One and Counts Three through Seven are barred by res judicata because these claims were raised or could have been

raised in the *Potter* Action. Chase Mot. at 16–18. Significantly, although Chase devotes a substantial portion of its motion to dismiss to its res judicata argument, Grieves does not discuss the res judicata issue in his opposition. Although Grieves asserts in an introductory paragraph that Grieves "will show below [that] res judicata is unavailable," Grieves does not discuss res judicata *at all* in the remaining pages of his opposition. *See* Opp. to Chase Mot. at 6. Thus, by failing to contest the res judicata argument, Grieves has in effect conceded that res judicata bars his claims. In any event, for the reasons discussed below, the Court agrees that res judicata precludes Grieves's claims in Count One and Counts Three through Seven.

Res judicata "precludes the parties or their privies from relitigating issues that were or could have been raised" in a prior action that resulted in a final judgment on the merits. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). "Claim preclusion is a broad doctrine that bars bringing claims that were previously litigated as well as some claims that were never before adjudicated." *Clements v. Airport Auth. of Washoe Cty.*, 69 F.3d 321, 327 (9th Cir. 1995).

"[A] federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Holcombe v. Hosmer*, 477 F.3d 1094, 1097 (9th Cir. 2007) (internal quotation marks omitted). Accordingly, the Court applies California law concerning claim preclusion to the California state court judgment in the *Potter* Action. Under California law, claim preclusion applies when (1) the party to be precluded was a party or in privity with a party to the previous adjudication; (2) the second lawsuit involves the same "cause of action" as the first; and (3) there was a final judgment on the merits in the first lawsuit. *San Diego Police Officers' Ass'n v. San Diego City Emps. Ret. Sys.*, 568 F.3d 725, 734 (9th Cir. 2009). The Court discusses these three factors in turn.

a. Identity of the Parties

The first factor is whether "the party to be precluded was a party or in privity with a party to the previous adjudication." *Id.* Grieves was a plaintiff in the *Potter* Action, and Chase was a defendant. *See Potter* Compl., at 1–5 (listing plaintiffs and defendant in caption of fourth

amended complaint). In addition, although MTC was not a defendant in the *Potter* Action, MTC is Trustee to the Deed of Trust and is thus in privity with Chase. *See Sepehry-Fard v. Nationstar Morg., LLC*, 2015 WL 332202, at *13 (N.D. Cal. Jan. 26, 2015) (finding originator of mortgage, trustee, and successor nominees to all be in privity with one another in the context of foreclosure proceedings). "In any event, under California claim preclusion rules, the only identity of parties required is the identity of the party against whom preclusion is sought." *Harper v. City of Monterey*, 2012 WL 195040, at *4 (N.D. Cal. Jan. 23, 2012). Here, the relevant party is "the party to be precluded," Grieves, who was unquestionably a party to the previous state court action. *San Diego Police Officers' Ass'n*, 568 F.3d at 734. Thus, the first requirement of claim preclusion is met.

b. Same Cause of Action

The second factor is whether the second lawsuit involves the same "cause of action" as the first lawsuit. *San Diego Police Officers' Ass'n*, 568 F.3d at 734. California law defines a "cause of action" for purposes of res judicata by employing a "'primary rights' theory." *Maldonado v. Harris*, 370 F.3d 945, 952 (9th Cir. 2004). Under the primary rights theory, "a cause of action is (1) a primary right possessed by the plaintiff, (2) a corresponding primary duty devolving upon the defendant, and (3) a harm done by the defendant which consists in a breach of such primary right and duty." *City of Martinez v. Texaco Trading & Transp., Inc.*, 353 F.3d 758, 762 (9th Cir. 2003) (citing *Citizens for Open Access to Sand & Tide, Inc. v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1065 (1998)). The key to the analysis is "the harm suffered." *San Diego Police Officers' Ass'n*, 568 F.3d at 734 (quoting *Agarwal v. Johnson*, 25 Cal. 3d 932 (1970)). "[I]f two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery." *Id.* (quoting *Eichman v. Fotomat Corp.*, 147 Cal. App. 3d 1170, 1174 (1983)); *see also Kay v. City of Rancho Palos Verdes*, 504 F.3d 803, 809 (9th Cir. 2007) ("California's primary rights theory does not mean that different

causes of action are involved just because relief may be obtained under either of two legal theories." (internal quotation marks, citations, and alterations omitted)). In other words, so long as the same primary right is at issue, res judicata "prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Kay*, 504 F.3d at 809 (internal quotation marks and citations omitted).

The prior state court lawsuit was brought by Grieves and 426 other individuals against WaMu and Chase, in addition to other bank defendants. The fourth amended complaint in the *Potter* Action alleged that the *Potter* Defendants had engaged in an overarching scheme related to the *Potter* Plaintiffs' mortgages. Specifically, the *Potter* Plaintiffs alleged that the *Potter* Defendants "abandoned industry standard underwriting guidelines" and lured the *Potter* Plaintiffs into home loans that the *Potter* Plaintiffs could not afford. *See Potter* Compl. ¶¶ 8–12. The *Potter* Defendants allegedly lured the *Potter* Plaintiffs into these home loans because, from early 2000 until 2008, the *Potter* Defendants—led by WaMu—"stood to reap so much more profit by securitizing and selling [the *Potter* Plaintiffs'] loans on the secondary market" to investors. *Id.* ¶10. In addition, the *Potter* Plaintiffs alleged that *Potter* Defendants were seeking to enforce notes and deeds of trust against the *Potter* Plaintiffs without evidencing their ownership interest in the notes or deeds of trust. *See id.* ¶¶ 267–303. The *Potter* Plaintiffs alleged that the *Potter* Defendants did not have proper chain of title in the notes or deeds of trust because of the *Potter* Defendants' improper securitization practices. *See id.* The *Potter* plaintiffs alleged that, as a result of the *Potter* Defendants' conduct, the *Potter* Plaintiffs had lost equity in their homes and suffered reduced credit ratings. *See, e.g., id.* ¶ 350.

In the instant FAC, Grieves alleges that WaMu and Defendants have committed substantially the same wrongdoings with respect to the Property and Deed of Trust. Specifically, Grieves alleges in the FAC that "[f]rom 2000 to 2008, lenders across the nation, including WaMu, originated trillions in mortgage loans" because the banks were able to "'securitize' the mortgages

into privately held investment conduits that allowed [the banks] to draft [their] own underwriting guidelines" and "underwrite any type of loan [they] wanted." FAC ¶¶ 17–19. The FAC in the instant case alleges, as the *Potter* Complaint alleged, that Defendants are improperly enforcing the Deed of Trust against Grieves as a result of these improper securitization practices. *Compare* FAC ¶ 27–31 ("Defendants herein, and each of them, never had any actual authority to execute or record the Assignments or [Notices of Default] against the Property . . . due to a void [Deed of Trust."), *with Potter* Compl. ¶¶ 267–303 ("Plaintiffs believe and thereon allege that because Defendants are not the holders of Plaintiffs' notes and deeds of trust and are not operating under a valid power from the various current holders of the notes and deeds of trust, Defendants may not enforce the notes or deeds of trust."). Further, the FAC in the instant case alleges, as the *Potter* Complaint alleged, that Defendants' practices have caused Grieves to suffer the "devaluation of [his] propert[y]" and "negative credit reporting." *See, e.g.*, FAC ¶160, 180.

Although Grieves alleges different causes of action and additional facts in the instant case than Grieves alleged in the *Potter* Action, Grieves cannot escape res judicata simply by "plead[ing] different theories of recovery" or "seek[ing] different forms of relief" in the current action than Grieves sought in the *Potter* Action. *San Diego Police Officers' Ass'n*, 568 F.3d at 734; *see Janson v. Deutsche Bank Nat'l Trust Co.*, 2015 WL 1250092, at *8 (N.D. Cal. Mar. 18, 2015) (finding res judicata barred a plaintiff's subsequent attempt to challenge the validity of a Notice of Sale, even though the plaintiff "allege[d] different facts and assert[ed] different legal theories" in the subsequent action than the plaintiff alleged in the initial action). "California, as most states, recognizes that the doctrine of res judicata will bar not only those claims actually litigated in a prior proceeding, but also claims that could have been litigated." *Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d 362, 364 (9th Cir. 1993). As Grieves himself recognizes in his oppositions, Grieves's causes of action in Claim One and Claims Three through Seven "all are rooted in the allegation that the deed of trust is void" because WaMu "used table-funding when it brought money to escrow to close [Grieves's] residential finance loan" in

2006. *See* Opp. to Chase Mot. at 6, 10; Opp. to Trustee Corp Mot. at 8 ("The obvious crux of the Complaint is that the [deed of trust] is and was an illegal void encumbrance placed on California residential property to secure a table-funded residential loan."). Grieves's "table-funding" theory is based on Grieves's allegations that WaMu engaged in improper securitization practices with regards to Grieves's Deed of Trust. *See* FAC ¶¶ 17–21. These same securitization practices were alleged at length in the *Potter* Action, and those securitization practices formed the basis of the causes of action in the *Potter* Action. *See Potter* Compl. ¶¶ 8–12, 267–303 (alleging that WaMu and other *Potter* Defendants were securitizing mortgages and "selling those loans at extravagant profit to investors on the secondary market to whom the risk would be passed on").

Thus, although Grieves brings different causes of action in the instant case than Grieves brought in the *Potter* case, "the harm suffered" in both the *Potter* case and the instant case is identical. *San Diego Police Officers' Ass'n*, 568 F.3d at 734. Specifically, both actions allege that WaMu engaged in improper securitization practices in originating Grieves's home loan, which has caused Grieves to lose equity in his home and suffer a reduced credit score. *See, e.g.*, FAC ¶ 160, 180. Accordingly, the Court finds that the instant case and the *Potter* case both involve the same "primary right." *Rodriguez v. Bank of N.Y. Mellon, et al.*, 2014 WL 229274, at *5 (S.D. Cal. Jan. 17, 2014) (finding prior case and current case involved same primary right where plaintiff sought in both cases redress for "defects in the loan documents and securitization process"); *Janeece Fields v. Bank of N.Y. Mellon*, 2017 WL 1549464, at *2 (N.D. Cal. May 1, 2017) (finding prior action involved same primary right as current action where "the claims involve the same property" and allegations of illegality regarding "the same Deed of Trust"); *Pearson v. U.S. Bank N.A., et al.*, 2017 WL 2805489, at *2 (C.D. Cal. June 28, 2017) (finding prior action involved same primary right as current action where the both actions "raise[d] virtually the same facts, cite[d] and append[ed] the same mortgage documents, and involve[d] the same property").

Indeed, the same "primary right" is at stake in both this action and the *Potter* Action even though Grieves raises in the FAC allegations regarding foreclosure documents that were not in

existence at the time of the *Potter* Action, such as the April 23, 2015 Notice of Default filed by MTC. *See, e.g.*, FAC ¶ 138. The district court's opinion in *Janeece Fields v. Bank of New York Mellon*, 2017 WL 1549464, at *2 (N.D. Cal. May 1, 2017), is instructive. There, the plaintiff had brought a prior action alleging causes of action relating to her deed of trust and the foreclosure proceedings against her property. *Id.* After the plaintiff's initial lawsuit was voluntarily dismissed with prejudice, the plaintiff attempted to bring a subsequent lawsuit that alleged different causes of action for cancellation of instruments, slander of title, violation of the FDCPA, violation of the Rosenthal Act, and violation of California's UCL. *See id.* The district court held that plaintiff's claims were barred by res judicata because her subsequent action and her initial action "involve[d] the same property and the same Deed of Trust." *Id.* at *2–3. Moreover, the district court held that the plaintiff' subsequent claims were barred by res judicata even though the bank had filed additional foreclosure documents after the plaintiff's first lawsuit was dismissed. *Id.* The district court reasoned that the plaintiff's allegations all "depend[ed] on the illegality of the Deed of Trust, an issue that was resolved on the merits when [the plaintiff] voluntarily dismissed [her earlier lawsuit] with prejudice." *Id.* at *2. The district court held that "[d]espite the fact that [new foreclosure] documents came into existence after [plaintiff] filed her [original lawsuit], her claims based on [the new foreclosure documents] are derivative of the Deed of Trust claims that were dismissed with prejudice, and are therefore barred by res judicata." *Id.*

The same reasoning applies here. Although Grieves raises new factual allegations in the FAC, including factual allegations about foreclosure documents filed after the *Potter* Action was completed, Grieves's allegations are all "derivative" of Grieves's allegations that the Deed of Trust is void *ab initio* because of WaMu's illegal table funding. *Id.*; *see* FAC ¶ 135 ("At the time of [MTC's] execution and recording of the [2015 Notice of Default], the Grieves [Deed of Trust] had been void for nine (9) years."). Thus, Grieves's allegations regarding the foreclosure proceedings against him all "depend on the illegality of the Deed of Trust, an issue that was resolved on the merits when" the state court sustained Chase's demurrer in the *Potter* Action

without leave to amend. *Janeece Fields*, 2017 WL 1549464, at *2. Grieves cannot avoid res judicata "by tacking [on] new allegations regarding" foreclosure documents recorded after the *Potter* prior action, "which were documents filed by [Grieves's lenders] in exercise of their rights" under the Deed of Trust. *Id*. Accordingly, because the same "primary right" is at issue in the instant action as was at issue in the *Potter* Action, the Court finds that the second res judicata factor is satisfied.

c. Final Judgment on the Merits

Finally, the third factor is whether there "was a final judgment on the merits in the first lawsuit." *San Diego Police Officers' Ass'n*, 568 F.3d at 734. "In California, a judgment entered after sustaining of a general demurrer is a judgment on the merits, and, to the extent that it adjudicates that the facts alleged do not establish a cause of action, it will bar a second cause of action on the same facts." *Palomar*, 989 F.2d at 364. Here, the Superior Court sustained Chase's demurrer to Plaintiff's complaint without leave to amend for failure to state a cause of action, and ordered that the action be dismissed with prejudice as to Chase. *See* ECF No. 13-1, at 6. Judgment was entered in favor of Chase and against the *Potter* Plaintiffs, including Grieves, on July 18, 2014. Chase RJN, Ex. 11. Accordingly, the third res judicata factor is satisfied.

d. Summary

In sum, the Court finds that all three factors support a finding of res judicata with regards to Count One and Counts Three through Seven. Moreover, as stated above, Grieves does not present *any* substantive argument in his opposition regarding res judicata, and Grieves has thus in effect conceded that res judicata bars his claims. Thus, the Court GRANTS Chase's and MTC's motions to dismiss Count One and Counts Three through Seven. "Because [Grieves'] claims are barred by res judicata, the Court finds that amendment would be futile." *Solis v. Nat'l Default Serv. Corp.*, 2017 WL 1709355, at *7 (N.D. Cal. May 3, 2017). Accordingly, the Court dismisses Count One and Counts Three through Seven with prejudice.[1]

[1] In any event, even if the Court did not find that Count One and Counts Three through Seven

2. Count Two: Violation of TILA

In Grieves's second cause of action, Grieves alleges that Chase violated the disclosure requirements of TILA, 15 U.S.C. § 1638, by failing to disclose that Chase assigned Grieves's Deed of Trust to U.S. Bank on June 16, 2011. *Id.* ¶ 156. TILA provides that "not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer." 15 U.S.C. § 1641(g). Chase argues that this claim fails because it (1) is barred by res judicata; (2) is barred by TILA's one-year statute of limitations; and (3) fails on the merits. For the reasons discussed below, the Court agrees with Chase that Count Two is barred by TILA's one-year statute of limitations.[2]

"An individual may bring an action for violation of TILA in district court 'within one year from the date of the occurrence of the violation.'" *Le v. 1st Nat'l Lending Serv.*, 2013 WL 6170630, at *4 (N.D. Cal. Nov. 20, 2013) (quoting 15 U.S.C. § 1640(e)). Here, Chase assigned Grieves's Deed of Trust to U.S. Bank on June 16, 2011, and the assignment was recorded on June

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were barred by res judicata, the Court would nonetheless conclude that these claims lacked merit. Grieves bases all of these claims on WaMu's alleged "table funding" of his loan in violation of California Business & Professional Code § 10234. However, California Business & Professional Code § 10234 requires real estate brokers who negotiate mortgage loans to close those residential mortgage loans in the name of the lender, rather than the real estate broker's own name. *See* Cal. Bus. & Prof. Code § 10234; *see also Preciado v. Aurora Loan Serv. LLC*, 2017 WL 410150, at *5 (Cal. Ct. App. Jan. 31, 2017) (unpublished) (discussing § 10234 and collecting secondary sources on the statutory meaning); *see also Palmer v. MTC Financial, Inc.*, 2017 WL 2311680, at *1–4 (E.D. Cal. May 26, 2017) (dismissing allegations that California Business & Professional Code § 10234 applied to plaintiff's claim that the bank's alleged "table funding" rendered his deed of trust void); *Kaping v. Barrett Daffin Frappier Treder & Weiss, LLP*, 2017 WL 2505194, at *5 (E.D. Cal. June 9, 2017) (recommending that district court dismiss with prejudice claims that bank illegally table funded residential home in violation of California Business & Professional Code § 10234). Grieves does not cite any cases, and the Court is not aware of any, suggesting that § 10234 applies to the conduct alleged here. Moreover, even if § 10234 did apply to WaMu's conduct, the Court is not aware of any authority suggesting that the remedy for a violation of § 10234 would be a cancellation of Grieves's Deed of Trust. *See Palmer*, 2017 WL 2311680, at *1–4 (dismissing nearly identical allegations based on alleged "table funding" in violation of § 10234).

[2] Count Two may also be barred by res judicata. However, because the Court agrees with Chase that Count Two is barred by TILA's one-year statute of limitations, the Court need not decide whether res judicata also bars Count Two.

23, 2011. *See* Chase RJN, Ex. 2. However, Grieves did not bring the instant TILA cause of action until February 17, 2017, which is approximately *five years* after the one-year limitations period elapsed.

Despite this untimeliness, Grieves argues that the statute of limitations does not bar his TILA claim because his TILA claim is subject to equitable tolling. "Equitable tolling is generally applied in situations 'where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.'" *O'Donnell v. Vencor, Inc.*, 465 F.3d 1063, 1068 (9th Cir. 2006) (quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)). "When a complaint is otherwise time-barred on its face, the plaintiff must allege specific facts explaining the failure to learn the basis for the claim within the statutory period rather than relying on generalities." *Abels v. Bank of Am., N.A.*, 2012 WL 691790, at *3 (N.D. Cal. Mar. 2, 2012). Equitable tolling under federal law is reserved for "extreme cases" and "extraordinary circumstances." *Ilaw v. Daughters of Charity Hlth. Sys.*, 2012 WL 381240, at *5 (N.D. Cal. Feb. 6, 2012).

Here, Grieves alleges that, because Chase and U.S. Bank "fail[ed] to notify" Grieves of the assignment, Chase "actively hid the fact of the assignment and kept anyone who did not have access to title records and the knowledge to understand them from discovering the TILA violation any earlier." FAC ¶ 152. According to Grieves, he was not aware of the June 16, 2011 assignment until Grieves "conducted a thorough title search on [his] propert[y] in late 2016." *Id.* ¶ 152. However, for several reasons, these allegations do not establish a basis for equitable tolling of Grieves's TILA claim. As an initial matter, although Grieves conclusively alleges that Chase "actively hid" the June 16, 2011 assignment from Grieves, Grieves bases this allegation only on Grieves's assertion that Chase "fail[ed] to notify" Grieves of the June 16, 2011 assignment, in violation of TILA. *Id.* However, "[a] plaintiff cannot simply rely on the same factual allegations to both show a violation of [TILA] and to toll the limitations period for bringing a claim under the

statute," otherwise the TILA limitations period would be rendered "'completely meaningless.'" *Palmer v. MTC Financial, Inc.*, 2017 WL 2311680, at *7 (E.D. Cal. May 26, 2017) (quoting *Vargas v. JPMorgan Chase Bank, N.A.*, 30 F. Supp. 3d 945, 949 (C.D. Cal. 2014)); *see also Jacob v. Aurora Loan Servs.*, 2010 WL 2673128, at *3 (N.D. Cal. July 2, 2010) ("Plaintiff cannot rely on the same factual allegations to show that Defendants violated federal statutes and to toll the limitations periods that apply to those statutes" because otherwise "equitable tolling would apply in every case").

Moreover, "[n]othing prevented [Grieves] from examining the Deed of Trust and other documents generated during the purchase of the property or making inquiries and/or investigations during the limitations period." *Pedersen v. Greenpoint Mortg. Funding, Inc.*, 900 F. Supp. 2d 1071, 1079 (E.D. Cal. Sept. 30, 2012). Indeed, Grieves's prior involvement in the *Potter* Action shows that Grieves *did* examine his Deed of Trust and related documents during the limitations period. *See* Opp. at 14–15. As set forth above, Grieves was a plaintiff in the *Potter* Action, which involved allegations that WaMu and Chase violated statutory and California common law in connection with Grieves's Deed of Trust and related loan documents. Significantly, the fourth amended complaint in the *Potter* Action, which was filed on December 21, 2012, alleged that all of the *Potter* Plaintiffs had timely brought their claims against the *Potter* Defendants because the *Potter* Plaintiffs "did not, and due to [the *Potter*] Defendants' fraudulent acts described throughout this Complaint, could not have discovered Defendants' acts and omissions, until various times between 2010 and 2012, and only after an initial consultation with legal counsel at Brookstone Law, and only after a complete and thorough investigation of the loan documents as well as a discussion of the surrounding facts." *Potter* Compl. ¶ 70.

Thus, Grieves was a plaintiff in the *Potter* Action, which involved the Property, Grieves's home loan, and the Deed of Trust involved in the instant case. *Id.* The fourth amended complaint in that action was filed on December 21, 2012, which is over a year after the June 16, 2011 assignment from Chase to U.S. Bank, and nearly five years before Grieves filed the instant action.

Id. Grieves alleged in the *Potter* Complaint that Grieves had consulted a lawyer about his Deed of Trust and related loan documents, and that Grieves had performed "a complete and thorough investigation of [his] loan documents." *Id.* Accordingly, Grieves cannot now plausibly allege that he could not uncover the alleged June 16, 2011 TILA violation until Grieves performed a "thorough" review of his loan documents in "late 2016." FAC ¶ 156. Indeed, although Chase explicitly raises this argument in its motion to dismiss, Grieves does not respond to this argument in his opposition. *See* Opp. at 14–15.

Accordingly, the Court GRANTS Chase's motion to dismiss Grieves's TILA claim.[3] The Court grants Chase's motion to dismiss with prejudice because the statute of limitations period has passed and Grieves cannot demonstrate entitlement to equitable tolling because Grieves was a plaintiff in the *Potter* Action relating to the Property and Deed of Trust, and Grieves alleged in December 21, 2012 that Grieves had performed a "thorough" review of his loan documents. Thus, the Court finds that further amendment of this claim would be futile, in bad faith, and would unduly prejudice Chase, who has been a defendant in both of Grieves's lawsuits involving the Property and Deed of Trust. *See Leadsinger*, 512 F.3d at 532 ("[L]eave to amend may be denied if the moving party has acted in bad faith, or if allowing amendment would unduly prejudice the opposing party, cause undue delay, or be futile.").

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS with prejudice Chase's and MTC's motions to dismiss the FAC. The Clerk shall close the file.

[3] In any event, even if the Court were to conclude that Grieves's TILA claim was not time barred, the Court would nonetheless still dismiss Grieves's TILA claim because it fails on the merits. Grieves brings his TILA claim against Chase under § 1641(g) of TILA, and argues that Chase failed to notify Grieves in writing within thirty days of Chase's assignment of the Deed of Trust to U.S. Bank. "However, § 1641 makes clear that the duty is on the entity that *purchases or is assigned* the beneficial interests in the loan on a property." *McBride v. First Cal. Mortg. Co.*, 2012 WL 12921308, at *4 (N.D. Cal. Sept. 24, 2012) (emphasis added). Chase was the *assignor* of the Deed of Trust to U.S. Bank on June 16, 2011, not the assignee. *See* FAC ¶156. Thus, even if the Court were to find that the claim was not time barred, the Court would nonetheless grant Chase's motion to dismiss Grieves's TILA claim.

IT IS SO ORDERED.

Dated: July 25, 2017

Lucy H. Koh

LUCY H. KOH
United States District Judge

United States District Court
Northern District of California