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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FIRAS HADDAD,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC  
HOME LOAN SERVICING, LP;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.  
(MERS); LaSALLE BANK, N.A.; and  
MERRILL LYNCH MORTGAGE  
INVESTORS TRUST SERIES 2006-  
HE6,

Defendants.

CASE NO. 12cv3010-WQH-  
JMA

ORDER

HAYES, Judge:

The matters before the Court are the Motions to Dismiss Plaintiff's First Amended Complaint, filed by all Defendants. (ECF Nos. 22, 25).

**I. Background**

In August 2006, Plaintiff borrowed \$770,000 from Novastar Mortgage, Inc. (ECF No. 25-3 at 2).<sup>1</sup> The loan was secured by a Deed of Trust encumbering the real property at issue, 3256 Greystone Drive, Jamul, California. *Id.* at 6. The Deed of Trust lists Novastar Mortgage, Inc. as the lender, Quality Loan Services as the trustee and

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<sup>1</sup> Pursuant to Federal Rule of Evidence 201 and Civil Local Rule 7.1(f)(3)(c), the unopposed Requests for Judicial Notice are granted. (ECF Nos. 22-2, 25-2).

1 Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) as the  
2 beneficiary. (ECF No. 25-4 at 2).

3 On March 24, 2011, MERS assigned the beneficial interest under the Deed of  
4 Trust to “U.S. Bank, National Association, As Successor Trustee to Bank of America,  
5 N.A. As Successor By Merger to LaSalle Bank, N.A., As Trustee For The Certificate  
6 Holders Of The MLMI Trust, Mortgage Loan Asset-Backed Certificates, Series  
7 2006-HE6.” (ECF No. 25-5 at 2). This document was recorded on April 5, 2011. *Id.*  
8 On March 28, 2011, a Notice of Default and Election to Sell under Deed of Trust was  
9 recorded. (ECF No. 25-6 at 2). On June 20, 2012, a “Notice of Rescission of  
10 Declaration of Default and Demand for Sale and of Notice of Default and Election to  
11 Sell” was recorded as to the Deed of Trust. (ECF No. 25-8 at 2).

12 On December 19, 2012, Plaintiff, proceeding pro se, initiated this action by filing  
13 a Complaint in this Court. (ECF No. 1).

14 On August 21, 2013, the Court granted the motion to dismiss the Complaint filed  
15 by all Defendants. (ECF No. 19). The Court dismissed the Complaint without  
16 prejudice for lack of personal jurisdiction as to Defendants Bank of America, N.A.  
17 (“Bank of America”) and Merrill Lynch Mortgage Lending, Inc. (“Merrill Lynch”), and  
18 dismissed the Complaint without prejudice for failure to state a claim as to all remaining  
19 Defendants.

20 On September 20, 2013, Plaintiff filed the First Amended Complaint, which is  
21 the operative pleading. (ECF No. 20).

22 **A. Allegations of the First Amended Complaint**

23 Novastar Mortgage, Inc. was the original lender, and “the failure of Novastar  
24 Mortgage, Inc. to record a transfer or assignment of the Deed of Trust to [Defendant  
25 Merrill Lynch Mortgage Investors Trust Series 2006-HE6 (‘MLMI Trust’)] is a  
26 violation of the Pooling and Servicing Agreement (‘PSA’) of the MLMI Trust and  
27 therefore the underlying transaction or sale of the Plaintiff’s Promissory Note to the  
28 MLMI Trust is void.” *Id.* at 10. “The parties involved in the alleged securitization and

1 transfer of Plaintiff's Promissory Note and Mortgage failed to adhere to §2.01 of the  
2 PSA which requires that Plaintiff's Promissory Note and Mortgage be properly  
3 endorsed, transferred, accepted and deposited with the securitized trust ... on or before  
4 the 'closing date' as indicated on the prospectus." *Id.* at 11. "The failure to deposit  
5 Plaintiff's Promissory Note into the MLMI Trust before the closing date is a violation  
6 of the PSA and of New York Trust Law. Consequently, the MLMI Trust cannot claim  
7 any legal or equitable right, title or interest in ... Plaintiff's Promissory Note and Deed  
8 of Trust/Mortgage since neither the MLMI Trust, Bank of America, N.A. or any other  
9 entity cannot take any action which is not authorized by the securitization agreements  
10 that created and governed the MLMI Trust." *Id.* "Due to the fact that Novastar  
11 Mortgage, Inc. is now out of business, there is no party that can actually and validly  
12 enforce the terms of the underlying and original Promissory Note allegedly entered into  
13 between Plaintiff and Novastar Mortgage, Inc." *Id.* at 14.

14 The First Amended Complaint asserts the following causes of action: (1) quiet  
15 title, (2) slander of title, (3) declaratory relief, and (4) violation of California Business  
16 and Professions Code § 17200. The Complaint alleges diversity subject-matter  
17 jurisdiction pursuant to 28 U.S.C. § 1332.

18 **B. Motions to Dismiss**

19 On October 7, 2013, Defendants Bank of America (individually and as successor  
20 by merger to BAC Home Loans Servicing, LP and LaSalle Bank, N.A.), Merrill Lynch  
21 (sued as the MLMI Trust), and MERS filed a Motion to Dismiss the First Amended  
22 Complaint. (ECF No. 22). On October 25, 2013, Defendant Nationstar Mortgage, LLC  
23 filed a Motion to Dismiss the First Amended Complaint. (ECF No. 25). Bank of  
24 America moves to dismiss the First Amended Complaint for lack of personal  
25 jurisdiction for failure to properly serve Bank of America pursuant to Federal Rule of  
26 Civil Procedure 4. All Defendants move to dismiss the First Amended Complaint for  
27 failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).  
28 Defendants contend that Plaintiff's underlying legal theory is without merit, and

1 Plaintiff lacks standing to maintain his claims. Defendants contend that each of  
2 Plaintiff's individual claims fail for other reasons. Defendants request that the First  
3 Amended Complaint be dismissed with prejudice.

4 On November 7, 2013 and November 25, 2013, Plaintiff filed oppositions to the  
5 pending Motions to Dismiss. (ECF Nos. 28, 30). Plaintiff contends that the First  
6 Amended Complaint adequately states claims for relief pursuant to the holding of  
7 *Glaski v. Bank of America, N.A.*, 218 Cal. App. 4th 1079 (2013). Plaintiff contends that  
8 each of his individual causes of action are adequately pled. Plaintiff states: "[I]f any  
9 claims are insufficiently pled, Plaintiff requests leave to amend." (ECF No. 28 at 17;  
10 ECF No. 30 at 17).

11 On November 11, 2013 and December 5, 2013, Defendants filed replies in  
12 support of the Motions to Dismiss. (ECF Nos. 29, 31).

## 13 **II. Standard of Review**

14 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state  
15 a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "A pleading that  
16 states a claim for relief must contain ... a short and plain statement of the claim showing  
17 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal under Rule  
18 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or sufficient  
19 facts to support a cognizable legal theory. *See Balistreri v. Pac. Police Depot*, 901 F.2d  
20 696, 699 (9th Cir. 1990).

21 "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'  
22 requires more than labels and conclusions, and a formulaic recitation of the elements  
23 of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
24 (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to dismiss, a court must  
25 accept as true all "well-pleaded factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662,  
26 679 (2009). However, a court is not "required to accept as true allegations that are  
27 merely conclusory, unwarranted deductions of fact, or unreasonable inferences."  
28 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "In sum, for a

1 complaint to survive a motion to dismiss, the non-conclusory factual content, and  
2 reasonable inferences from that content, must be plausibly suggestive of a claim  
3 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
4 2009) (quotations omitted).

5 Pro se complaints are held to a less stringent standard than formal pleadings by  
6 lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). A pro se plaintiff’s  
7 complaint must be construed liberally to determine whether a claim has been stated.  
8 *See Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). “Although a pro se litigant  
9 ... may be entitled to great leeway when the court construes his pleadings, those  
10 pleadings nonetheless must meet some minimum threshold in providing a defendant  
11 with notice of what it is that it allegedly did wrong.” *Brazil v. U.S. Dep’t of Navy*, 66  
12 F.3d 193, 199 (9th Cir. 1995).

### 13 **III. Discussion**

#### 14 **A. Personal Jurisdiction**

15 Defendant Bank of America contends that the Court lacks personal jurisdiction  
16 over it because the Court previously held that Plaintiff failed to effect proper service on  
17 Bank of America pursuant to Federal Rule of Civil Procedure 4, and Plaintiff has not  
18 corrected the previous improper attempt at service. In his opposition to Bank of  
19 America’s Motion to Dismiss, Plaintiff failed to address Bank of America’s contentions  
20 regarding personal jurisdiction and service of process.

21 Pursuant to Federal Rules of Civil Procedure 12(b)(4) and 12(b)(5) and Civil  
22 Local Rule 7.1(f)(3)(c), the Motion to Dismiss Bank of America is granted. *See*  
23 *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004) (“Once service is challenged,  
24 plaintiff[] bear[s] the burden of establishing that service was valid.”) (citation omitted);  
25 *Direct Mail Specialists, Inc. v. Eclat Computerized Techs.*, 840 F.2d 685, 687 (9th Cir.  
26 1988) (“A federal court does not have jurisdiction over a defendant unless the defendant  
27 has been served properly [with the summons and complaint].... Without substantial  
28 compliance with [the Federal Rules of Civil Procedure] neither actual notice nor simply

1 naming the defendant in the complaint will provide personal jurisdiction.”) (citations  
2 omitted).

### 3 **B. Standing**

4 Defendants contend that each of the causes of action of the First Amended  
5 Complaint must be dismissed because Plaintiff lacks standing to maintain claims based  
6 on alleged securitization violations and/or breaches of a pooling and servicing  
7 agreement. Plaintiff contends that he has standing for the reasons stated in *Glaski v.*  
8 *Bank of America, N.A.*, 218 Cal. App. 4th 1079 (2013).

9 “[D]istrict courts have held that borrowers who were not parties to the assignment  
10 of their deed—and whose rights were not affected by it—lacked standing to challenge  
11 the assignment’s validity because they had not alleged a concrete and particularized  
12 injury that is fairly traceable to the challenged assignment.” *Marques v. Fed. Home*  
13 *Loan Mortg. Corp.*, No. 12-cv-1873-IEG, 2012 WL 6091412, at \*4 (S.D. Cal. Dec. 6,  
14 2012) (citations omitted); *see id.* at \*5 (“[T]he validity of the assignment does not affect  
15 whether [the] borrower owes its obligations, but only to whom [the] borrower is  
16 obliged.”) (quotation omitted). “To the extent [a] plaintiff bases her claims on the  
17 theory that [defendant] allegedly failed to comply with the terms of the [pooling and  
18 servicing agreement], the court finds that she lacks standing to do so because she is  
19 neither a party to, nor a third party beneficiary of, that agreement.” *McLaughlin v.*  
20 *Wells Fargo Bank, N.A.*, No. CV12-1114-DOC, 2012 WL 5994924, at \*6 (C.D. Cal.  
21 Nov. 30, 2012) (citing *Sami v. Wells Fargo Bank*, No. C12-108-DMR, 2012 WL  
22 967051, at \*5 (N.D. Cal. Mar. 21, 2012)); *see also Siliga v. Mortg. Elec. Reg. Sys., Inc.*,  
23 219 Cal. App. 4th 75, 85 (2013) (“The Siligas do not dispute that they are in default  
24 under the note. The assignment of the deed of trust and the note did not change the  
25 Siligas’ obligations under the note, and there is no reason to believe that Accredited as  
26 the original lender would have refrained from foreclosure in these circumstances.  
27 Absent any prejudice, the Siligas have no standing to complain about any alleged lack  
28 of authority or defective assignment.”); *Jenkins v. JP Morgan Chase Bank, N.A.*, 216

1 Cal. App. 4th 497, 514-15 (2013) (“As an unrelated third party to the alleged  
2 securitization, and any other subsequent transfers of the beneficial interest under the  
3 promissory note, [plaintiff] lacks standing to enforce any agreements, including the  
4 investment trust’s pooling and servicing agreement, relating to such transactions.  
5 Furthermore, even if any subsequent transfers of the promissory note were invalid,  
6 [plaintiff] is not the victim of such invalid transfers because her obligations under the  
7 note remained unchanged.”) (citations omitted); *cf. Murphy v. Allstate Ins. Co.*, 17 Cal.  
8 3d 937, 944 (1976) (“A third party should not be permitted to enforce covenants made  
9 not for his benefit, but rather for others.... As to any provision made not for his benefit  
10 but for the benefit of the contracting parties or for other third parties, he becomes an  
11 intermeddler.”).

12 Plaintiff relies upon *Glaski v. Bank of America, N.A.*, 218 Cal. App. 4th 1079  
13 (2013). In *Glaski*, the California Court of Appeal held that, under New York trust law,  
14 a transfer of a deed of trust in contravention of the trust documents is “void, not merely  
15 voidable,” and, under California law, “a borrower can challenge an assignment of his  
16 or her note and deed of trust if the defect asserted would void the assignment.” *Id.* at  
17 1095 (citation omitted). Based upon this theory, the *Glaski* court held that the plaintiff  
18 had standing and stated a claim for quiet title, declaratory relief and unfair business  
19 practices under California Business and Professions Code § 17200. *See id.* at 1100-01.  
20 This Court finds the reasoning in the above-cited caselaw to be more persuasive than  
21 the reasoning in *Glaski*. *See Rivac v. Ndex W. LLC*, No. 13-1417-PJH, 2013 WL  
22 6662762, at \*4 (N.D. Cal. Dec. 17, 2013) (“This court is persuaded by the majority  
23 position of courts within this district, which is that *Glaski* is unpersuasive, and that  
24 plaintiffs lack standing to challenge noncompliance with a PSA in securitization unless  
25 they are parties to the PSA or third party beneficiaries of the PSA.”) (quotation and  
26 citations omitted); *Boza v. U.S. Bank Nat’l Ass’n*, No. CV12-6993-JAK, 2013 WL  
27 5943160, at \*6 (C.D. Cal. Oct. 28, 2013) (“The majority of federal district courts that  
28 have addressed the issue whether a borrower has standing to challenge securitization

1 of a note by its transfer to a trust in an allegedly defective manner, are in accord with  
2 *Jenkins*. And, several state and district courts that have analyzed the effect of New  
3 York law on post-closing date acquisitions, like the one at issue in *Glaski*, have  
4 concluded that such transfers are voidable rather than void.”) (citations omitted);  
5 *Newman v. Bank of New York Mellon*, No. 12-CV-1629-AWI, 2013 WL 5603316, at  
6 \*3 n.2 (E.D. Cal. Oct. 11, 2013) (“[N]o courts have yet followed *Glaski* and *Glaski* is  
7 in a clear minority on the issue. Until either the California Supreme Court, the Ninth  
8 Circuit, or other appellate courts follow *Glaski*, this Court will continue to follow the  
9 majority rule.”) (citations omitted).

10 Even if *Glaski* was correctly decided, this case is distinguishable from *Glaski*.  
11 In *Glaski*, the operative complaint alleged specific, detailed facts which plausibly  
12 alleged that the deed of trust was transferred more than three years after the closing date  
13 of the trust at issue. *See Glaski*, 218 Cal. App. 4th at 1084-87, 1093. In this case, the  
14 First Amended Complaint contains a conclusory allegation that “Novastar Mortgage  
15 Inc., the original owner and payor of the Plaintiff’s Promissory Note never transferred  
16 the ownership of said Promissory Note to the MLMI Trust or to any other party.” (ECF  
17 No. 20 at 14). Elsewhere, the First Amended Complaint alleges that “Novastar  
18 Mortgage, Inc. sold the Promissory Note to the ‘Sponsor’ within thirty days of the  
19 origination of the loan,” and “[t]he Sponsor sold the Promissory Note to the ‘Depositor’  
20 on the closing date the MLMI Trust.” *Id.* at 7. The First Amended Complaint does not  
21 reconcile this apparent inconsistency in its allegations. The Court finds that, unlike the  
22 operative pleading in *Glaski*, the First Amended Complaint fails to plausibly allege that  
23 Plaintiff’s loan was not properly transferred into the trust at issue. *Cf. Twombly*, 550  
24 U.S. at 555.

25 The Court finds that the First Amended Complaint must be dismissed because  
26 Plaintiff lacks standing to maintain each of the claims asserted. In addition, the  
27 deficiencies identified in the Court’s August 21, 2013 Order dismissing the original  
28 Complaint’s causes of action for quiet title, slander of title, declaratory relief, and




1 California Business & Professions Code § 17200 have not been corrected in the First  
2 Amended Complaint. *See* ECF No. 19 at 5-11 (dismissing the quiet title claim because  
3 Plaintiff failed to adequately allege an adverse claim and tender; dismissing the slander  
4 of title claim because Plaintiff failed to adequately allege that the recorded documents  
5 are unprivileged; dismissing the declaratory relief claim because Plaintiff failed to  
6 allege an actual controversy; and dismissing the California Business & Professions  
7 Code § 17200 claim because Plaintiff failed to adequately allege any other claim or  
8 allege fraud with the particularity required by Federal Rule of Civil Procedure 9(b)).  
9 For these additional reasons, the First Amended Complaint is dismissed.

10 **IV. Conclusion**

11 IT IS HEREBY ORDERED that the Motions to Dismiss are GRANTED. (ECF  
12 Nos. 22, 25). The First Amended Complaint is DISMISSED without prejudice.  
13 Plaintiff's request for leave to amend is GRANTED. Plaintiff shall file any second  
14 amended complaint no later than thirty (30) days from the date this Order is filed. If  
15 Plaintiff fails to file a second amended complaint within thirty days, this action will  
16 remain closed without further order of the Court.

17 DATED: January 8, 2014

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19 **WILLIAM Q. HAYES**  
United States District Judge

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