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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

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10 RODNEY HOLT,

11 Plaintiff,

12 v.

13 US BANK N.A.,

14 Defendant.

Case No. 2:12-CV-00463-KJD-CWH

ORDER

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16 Before the Court is Defendant US Bank’s Motion to Dismiss (#32). Plaintiff Rodney Holt
17 has filed an opposition (#46) and Defendant has filed a reply (#49).

18 Also before the Court is Plaintiff’s Motion to Remand (#9) to which Defendant has replied
19 (#14) and Plaintiff has responded (#18).

20 **I. Background**

21 Plaintiff purchased real property located at 2259 Buckingham Court, Henderson, Nevada (the
22 Property”) and the deed was recorded on August 9, 2001. On August 11, 2005, Plaintiff executed a
23 Deed of Trust (the “Deed of Trust”) from Wells Fargo Bank, N.A. The amount of the loan was
24 \$617,500. On May 30, 2006, Plaintiff executed an “Open-End Deed of Trust” whereby Wells Fargo
25 Bank, N.A. was the Lender and Beneficiary and American Securities Company of Nevada was the
26 Trustee. The amount of the second loan was \$50,000.

1 On November 10, 2010, a “Notice of Default and Election to Cause Sale” was recorded by
2 National Default Servicing Corporation (“National Default”) acting as agent for Wells Fargo, which
3 noted that Plaintiff had failed to make payments on the Deed of Trust. As of November 11, 2010,
4 Plaintiff was in arrears in the amount of \$38,720.55. A Substitution of Trustee was signed on
5 January 27, 2011 and was recorded February 14, 2011, whereby the Beneficiary on the Deed of Trust
6 substituted National Default as Trustee.

7 On February 14, 2011, a “Corporation Assignment of Deed of Trust” was recorded providing
8 notice pursuant to N.R.S. § 106.210 of a transfer in the beneficial interest in the Deed of Trust to
9 Bank of America N.A. A certificate from the Nevada Foreclosure Mediation Program was recorded
10 on February 14, 2011 indicating that mediation had been declined. Also on February 14, 2011, a
11 “Notice of Trustee’s Sale” was recorded setting a sale date for March 8, 2011. As of February 14,
12 2011, the balance of the mortgage was \$618,236. The sale date was reset several more times.

13 On January 5, 2012, the Property was sold at a foreclosure sale and on January 13, 2012, the
14 Deed of Trust was assigned to Defendant. On January 13, 2012, a Trustee’s Deed Upon Sale was
15 recorded indicating that Defendant purchased the Property at the foreclosure sale for \$445,000. As
16 of the date of the sale, the amount owed on the mortgage was \$661,958.

17 On September 29, 2011, Plaintiff filed an action in state court against Wells Fargo and
18 National Default. That action was removed to federal court as case 2:12-cv-PMP-CWH. Judge Pro
19 granted motions to dismiss in that case and it was terminated on February 21, 2012. On February 9,
20 2012, Plaintiff filed this action in state court against Bank of America and Defendant and on March
21 19, 2012, it was removed it to this Court. Plaintiff voluntarily dismissed Bank of America on April
22 18, 2012.

23 Plaintiff’s Complaint contains requests relief for quiet title, aiding and abetting wrongful
24 foreclosure, unlawful foreclosure, unlawful reliance on falsified documents against property rights,
25 false recordation concerning title to real property, broken chain of custody, cancellation of
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1 instruments, unjust enrichment, injunctive relief, declaratory relief, slander of title, and
2 retaliatory/wrongful filing of unlawful detainer.

3 II. Motion to Remand

4 Plaintiff's Motion to Remand lacks merit. Judicially noticeable documents demonstrate that
5 the amount in controversy far exceeds the jurisdictional requirement, and Defendant is diverse in
6 citizenship from Plaintiff. Plaintiff's complaint does not present novel claims of law, and in fact,
7 cases of this exact nature comprise a significant portion of the Court's docket. Accordingly, the
8 Motion for Remand is denied.

9 III. Motion to Dismiss

10 A. Legal Standard

11 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
12 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short
13 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
14 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require
15 detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic
16 recitation of the elements of a cause of action." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)
17 (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise
18 above the speculative level." Twombly, 550 U.S. at 555. Thus, to survive a motion to dismiss, a
19 complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its
20 face." Iqbal, 129 S. Ct. at 1949 (internal citation omitted).

21 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when
22 considering motions to dismiss. First, a district court must accept as true all well-pled factual
23 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
24 Id. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory
25 statements, do not suffice. Id. at 1949. Second, a district court must consider whether the factual
26 allegations in the complaint allege a plausible claim for relief. Id. at 1950. A claim is facially

1 plausible when the plaintiff’s complaint alleges facts that allows the court to draw a reasonable
2 inference that the defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint
3 does not permit the court to infer more than the mere possibility of misconduct, the complaint has
4 “alleged—but not shown—that the pleader is entitled to relief.” Id. (internal quotation marks
5 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,
6 the complaint must be dismissed. Twombly, 550 U.S. at 570.

7 Plaintiff is representing himself *pro se*. Courts must liberally construe the pleadings of pro se
8 parties. See United States v. Etinger, 902 F.2d 1383, 1385 (9th Cir. 1990). However, “pro se
9 litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of
10 record.” Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir.1986).

11 B. Quiet Title and Slander of Title

12 Under Nevada law, a quiet title action may be brought by someone who claims an adverse
13 interest in property. N.R.S.§ 40.010. “In a quiet title action, the burden of proof rests with the
14 plaintiff to prove good title in himself.” Breliant v. Preferred Equities Corp., 918 P.2d 314, 318 (Nev.
15 1996). Specifically, when an adverse claim exists, the party seeking to have another party’s right to
16 property extinguished, must overcome the “presumption in favor of the record titleholder.” Id. (citing
17 Biasa v. Leavitt, 101 Nev. 86, 692 P.2d 1301, 1304 (Nev.1985). A borrower cannot quiet title to a
18 property without discharging any debt owed. See Fuleihan v. Wells Fargo, 2010 WL 3724186 at *5
19 (D.Nev. 2010). Courts of this District have held that an action for quiet title “should be dismissed
20 where plaintiff’s claim is not based on a cognizable legal theory.” Manderville v. Litton Loan
21 Servicing, 2011 WL 2149105, at *3 (D.Nev. May 31, 2011) (internal quotation marks omitted).

22 Plaintiff’s argument that Defendant acted improperly fails to state a cognizable legal theory.
23 Even if the Court accepted Plaintiff’s claim that Defendant lacked standing to obtain title to the
24 Property, Plaintiff’s Complaint fails to state any plausible claim that he has good title in himself or
25 that his title was slandered. Further, Plaintiff has provided no indication that the debt he owes on the
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1 Property has been extinguished. Accordingly, Plaintiff’s quiet title and slander of title claims fail as
2 a matter of law and are dismissed.

3 C. Wrongful Foreclosure and Aiding and Abetting Wrongful Foreclosure

4 Nevada recognizes the tort of wrongful foreclosure only where a homeowner alleges a lender
5 wrongfully exercised the power of sale and foreclosed upon his or her property when the homeowner
6 was not in default on the mortgage loan. See Collins v. Union Federal Sav. & Loan Ass’n, 662 P.2d
7 610, 623 (Nev.1983) (reversing summary judgment where there was a dispute of fact about whether
8 nonpayment was appropriate); see also Haley v. Elegen Home Lending, LP, 2010 WL 1006664, *1
9 (D.Nev. 2010) (“[a]n action for wrongful foreclosure requires that, at the time of the foreclosure sale,
10 the plaintiff was not in breach of the mortgage contract.”)

11 Plaintiff has failed to allege that he was current on his mortgage. Accordingly, he fails to state
12 a claim for wrongful foreclosure and these causes of action are dismissed.

13 D. Statutorily Defective Foreclosure, Unlawful Reliance on Falsified Documents, False
14 Representation Concerning Title to Real Property, Broken Chain of Custody, Retaliatory and
15 Wrongful Filing of Unlawful Detainer

16 Each of these claims arises out of Plaintiff’s assertion that Defendant has failed to show
17 proper chain of custody in Plaintiff’s Note, that the Note was split from the deed of trust, and that
18 various assignments were invalid.

19 Nevada law provides that a deed of trust is an instrument that may be used to “secure the
20 performance of an obligation or the payment of any debt.” NRS § 107.020. Upon default, the
21 beneficiary, the successor in interest of the beneficiary, or the trustee may foreclose on the property
22 through a trustee’s sale to satisfy the obligation. NRS § 107.080(2)(c). The procedures for
23 conducting a trustee’s foreclosure sale are set forth in NRS § 107.080.¹ Case law within this district
24 holds that N.R.S. § 107.080 “does not require a lender to produce the original note or prove its status

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26 ¹ The version of NRS § 107.080 in force at the time the foreclosure began did not require production of the note
or proof of holder status to proceed with a trustee’s sale.

1 as a real party in interest, [a] holder in due course, current holder of the note, nominee of the current
2 holder of the note, or any other synonymous status as a prerequisite to nonjudicial foreclosure
3 proceedings.” Kwok v. Recontrust Company, N.A., 2010 WL 4810704, at *4 (D.Nev.2010); see also
4 Ritter v. Countrywide Home Loans, Inc., 2010 WL 3829378, at *3 (D.Nev.2010). Further, the theory
5 that a party is not entitled to foreclose because the note was split from the deed of trust has been
6 repeatedly rejected. See Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1044 (9th
7 Cir.2011).

8 Plaintiff claims that Defendant acted improperly because it cannot conclusively demonstrate a
9 chain of title in the Note. Nevada law does not require that assignments of beneficial interest be
10 recorded, and the provisions of the Deed of Trust have been interpreted to provide the broadest
11 possible authority for the owner of the beneficial interest and its agents to assign or sell the interest in
12 the debt. See Lasao v. Stearns Lending Co., 2011 WL 3273923, at *3 (D. Nev. July 29, 2011); see
13 also N.R.S. § 106.210. Plaintiff also claims that the parties issuing the notice of default and notice of
14 trustee’s sale lacked authority because they were not the beneficiary, the successor in interest to the
15 beneficiary, or the trustee appointed by the lender. However, the original Notice of Default shows
16 that, when it was recorded, National Default was acting as agent for Wells Fargo. Plaintiff has
17 provided no authority stating that a beneficiary cannot record a Notice of Default through an agent.
18 The subsequent notices of default were recorded after National Default had been duly substituted as
19 trustee. Plaintiff has failed to plead any plausible claim for relief which would demonstrate that
20 Defendant did not substantially comply with the foreclosure statutes. N.R.S. § 107.080(5).
21 Accordingly, all claims arising out of Plaintiff’s chain of title and invalid assignment theories fail as
22 a matter of law.²

23 E. Cancellation of Written Instruments

25 ² To the extent that Plaintiff asserts claims under N.R.S. § 205, the claims are invalid. That section governs
26 crimes against property and criminal statutes cannot form the basis of a civil suit without express civil enforcement
provision. See Burgess v. City and County of San Francisco, 49 F. App’x 122 (9th Cir.2002).

1 Cancellation of the contract or rescission “is a remedy, equitable in nature, that allows an
2 aggrieved party to a contract to abrogate totally, or cancel, the contract, with the final result that the
3 parties are returned to the position they occupied prior to formation of the contract. Great American
4 Ins. Co. v. General Builders, Inc., 113 Nev. 346, 354 (Nev. 1997) citing Bergstrom v. Estate of
5 DeVoe, 109 Nev. 575, 577 (1993). A plaintiff, seeking rescission “must restore the defendant to the
6 position he occupied before the transaction in question. Such restoration entails the restoration of all
7 benefits and profits which the plaintiff may have realized from the transaction.” Stanley v. Limberys,
8 74 Nev. 109, 113, 323 P.2d 925, 927 (Nev.1958).

9 Plaintiff does not dispute that he is default on his mortgage. The pleadings do not indicate
10 that Plaintiff has sought or would be able to place Defendant back into the position it was in prior to
11 the transaction in question and Plaintiff has not alleged any facts showing that he is entitled to
12 equitable cancellation of the written instruments at issue here. Accordingly, this claim is dismissed.

13 F. Unjust Enrichment

14 Unjust enrichment occurs where “a person has and retains a benefit which in equity and good
15 conscience belongs to another.” Mainor v. Nault, 101 P.3d 308, 317 (Nev. 2004) (citation omitted).
16 This standard is met where there is “a benefit conferred on the defendant by the plaintiff,
17 appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such
18 benefit.” Topaz Mut. Co. v. Florence Marsh, 839 P.2d 606, 613 (Nev. 1992) (citation omitted).

19 Plaintiff states no plausible claim that Defendant has retained a benefit that equitably belongs
20 to him. Foreclosure is a fair, legally supported, and appropriate remedy for Plaintiff’s failure to pay
21 his mortgage. Accordingly, this claim fails as a matter of law.

22 G. Injunctive Relief and Declaratory Relief

23 Injunctive relief is not a separate cause of action or an independent ground for relief. See In re
24 Wal-Mart Wage & Hour Employ. Practices Litig., 490 F.Supp.2d 1091, 1130 (D.Nev. 2007)
25 (dismissing the count for injunctive relief because it was not an independent ground for relief or a
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1 separate cause of action). Since the Court has dismissed each of Plaintiff's underlying claims, he is
2 not entitled to injunctive relief.

3 G. Leave to Amend

4 Rule 15(a)(2) provides that courts "should freely give leave [to amend] when justice so
5 requires." Fed. R. Civ. P. 15(a)(2). Under this standard, there is a general "policy to permit
6 amendment with 'extreme liberality.'" Chodos v. West Publ'g Co., 292 F.3d 992, 1003 (9th Cir.
7 2002) (quoting Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)).

8 The Court has serious doubts that Plaintiff will be able to state any plausible claims if he
9 chooses to amend his Complaint. Furthermore, given the prolific nature of Plaintiff's pleadings in
10 this and the other action filed in this district, the Court recognizes the burden on Defendant in
11 responding to Plaintiff. However, because of the liberal standard for amendment, the Court will not
12 expressly forbid Plaintiff from filing a motion for leave to amend, which includes a proposed
13 amended complaint. The Court warns Plaintiff that he is forbidden to seek leave to amend his
14 Complaint to state claims based on any of the invalid legal theories dismissed in this Order.
15 Specifically, Plaintiff may not base any claim in any proposed amended complaint on arguments that
16 Defendant is required to produce the original note or prove chain of title, that Defendant is required
17 to prove its status as a real party in interest, that securitization rendered his mortgage unenforceable,
18 that foreclosure is invalid because the note and the deed of trust have split, or that he can recover for
19 wrongful foreclosure while he is in default. Failure to follow this direction will result in Plaintiff
20 being ordered to pay attorney's fees incurred by Defendant in responding to these claims. Further,
21 Plaintiff is advised that the Court will not entertain any motion for reconsideration of this Order.

22 IV. Motion to Expunge Lis Pendens

23 Also before the Court is Defendant's Motion to Expunge Lis Pendens (#50). Plaintiff filed a
24 response (#59).

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1 NRS § 14.010 allows a Notice of Pendency or a Lis Pendens to be filed for an action pending
2 in the United States District Court for the District of Nevada when there is “a notice of an action
3 affecting real property, which is pending,” in any such court. NRS § 14.010(2).

4 This Order dismisses this action. Accordingly, the Motion to Expunge Lis Pendens is
5 granted.

6 V. Conclusion

7 **IT IS HEREBY ORDERED THAT** Defendant’s Motion to Dismiss (#32) is **GRANTED**
8 and this action is **DISMISSED**.


9 **IT IS FURTHER ORDERED THAT** the Plaintiff’s Motion for Remand (#9) is **DENIED**.

10 **IT IS FURTHER ORDERED THAT** the Motion to Expunge Lis Pendens (#50) is
11 **GRANTED**.

12 **IT IS FURTHER ORDERED THAT** Plaintiff may file a motion for leave to amend which
13 complies in every respect with this Order. Should Plaintiff choose to file a motion for leave to
14 amend, he must do so within 14 days of the date of this Order.

15 **IT IS FURTHER ORDERED** that this action is dismissed and Plaintiff’s Motion for
16 Declaratory Relief to Determine Defendant’s True Standing to Collect (#8), Plaintiff’s Motion for
17 Declaratory Relief (#11), Plaintiff’s Emergency Motion for Declaratory Relief (#22), Plaintiff’s Ex
18 Parte Motion for Order Granting Plaintiff’s Unopposed Motion for Preliminary Injunction (#23)
19 Plaintiff’s Motion to Strike (#25), Defendant’s Motion for Hearing (#51), Defendant’s Motion for
20 Protective Order (#57) and Plaintiff’s Motion for Order to Show Cause (#66) are **DENIED** as moot.

21 DATED this 7th day of September 2012.

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25 _____
26 Kent J. Dawson
United States District Judge