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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BELLA T. PEREZ and ENRIQUE C.
PEREZ,

Plaintiffs,

v.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and
U.S. BANK, NATIONAL ASSOCIATION
as Trustee for the LEHMAN XS TRUST
2006-14N MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-14N,

Defendants.

No. 2:17-cv-01790-TLN-EFB

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

This matter is before the Court pursuant to Defendant Mortgage Electronic Registration Systems, Inc.'s ("MERS") and Defendant U.S. Bank, National Association's ("U.S. Bank") (collectively, "Defendants") Motion to Dismiss Complaint. (ECF No. 3.) Plaintiffs Bella T. Perez and Enrique C. Perez (collectively, "Plaintiffs") oppose the motion. (ECF No. 8.) After carefully considering the parties' briefing, the Court hereby GRANTS Defendants' Motion to Dismiss (ECF No. 3) WITHOUT LEAVE TO AMEND.

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1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 Plaintiffs allege in the Complaint that they own residential property in West Sacramento,
3 California (“Property” or “Subject Property”). (ECF No. 1-1 at ¶ 1.) Defendant MERS is a
4 subscription-based service which tracks ownership interests and servicing rights in mortgage
5 loans and holds title to mortgages as a nominee for subscriber banks. (ECF No. 1-1 at ¶ 2.)
6 Defendant U.S. Bank is a banking subsidiary of U.S. Bancorp. (ECF No. 1-1 at ¶ 3.)

7 On June 16, 2006, Plaintiffs executed an MTA-indexed adjustable rate mortgage with a
8 110% Negative Amortization feature regarding the Subject Property which contains an
9 Adjustable Rate Note (“Note”) and Deed of Trust (“DOT”) with an adjustable rate rider. (ECF
10 No. 1-1 at ¶ 6.) The DOT identifies Dollar Mortgage Corporation (“Dollar”) as the lender,
11 Defendant MERS as the nominal beneficiary, and Placer Title Company as the trustee. (ECF No.
12 1-1 at ¶ 6.) Plaintiffs allege that Dollar acted as table lender for wholesale table funder IndyMac
13 Bank (“IndyMac”), who arranged prefunding of the loan with a short-term credit line. (ECF No.
14 1-1 at ¶ 7.)

15 Plaintiffs allege a series of four “true sales” of the mortgage loan, as follows, the first
16 being Dollar’s sale to IndyMac. (ECF No. 1-1 at ¶ 16.) On September 1, 2005, IndyMac
17 allegedly sold the mortgage loan to Lehman Capital (“Lehman”), Sponsor and Seller in a
18 securitization transaction identified as the Lehman XS Trust 2006-14N Mortgage Pass-through
19 Certificates, Series 2006-14N (“Lehman XS Trust 2006-14N”). (ECF No. 1-1 at ¶ 9.) On an
20 unspecified date, Lehman allegedly sold Plaintiffs’ loan to Structured Asset Securities
21 Corporation (“SASC”) as Depositor. (ECF No. 1-1 at ¶ 9.) Plaintiffs allege that SASC then sold
22 the mortgage loan to Defendant U.S. Bank, trustee for Lehman XS Trust 2006-14N, on August 1,
23 2006, ahead of the August 31, 2006 closing date of the trust. (ECF No. 1-1 at ¶ 9.) Plaintiffs
24 allege each of the foregoing sales occurred without a required intervening assignment of their
25 DOT and endorsement of the Note. (ECF No. 1-1 at ¶ 17.) Plaintiffs allege the sales, thus,
26 violated the governing trust document and show that U.S. Bank never received effective
27 assignment of any interest in Plaintiffs’ loan during the securitization process. (ECF No. 1-1 at ¶
28 17.)

1 Plaintiffs then allege that on June 18, 2009, MERS held itself out as nominee for Dollar
2 and assigned the beneficial interest in Plaintiffs' DOT to OneWest Bank, which was recorded on
3 September 25, 2009 ("Assignment 1"). (ECF No. 1-1 at ¶ 19.) Plaintiffs allege that Assignment
4 1 is "fatally defective, null and void" and amounts to an ineffective assignment because (1) the
5 sale of Plaintiffs' loan by Lehman to SASC in 2006 extinguished all interest Dollar and MERS
6 held in the loan and ended MERS's agency relationship with Dollar because SASC does not
7 subscribe to the MERS registry; (2) under the governing trust documents, only the Depositor —
8 namely, SASC — is permitted to assign the mortgage loan to U.S. Bank in its capacity as trustee
9 for the securities trust; and (3) the assignment from MERS to OneWest Bank took place beyond
10 the time permitted under the trust documents, which "require the assignment from August 31,
11 2006 or, in limited circumstances, 90 days thereafter." (ECF No. 1-1 at ¶ 19.) Plaintiffs allege
12 MERS cannot establish an agency relationship with U.S. Bank because U.S. Bank is not a
13 successor or assign of Dollar. (ECF No. 1-1 at ¶ 11.)

14 Based on the assertions that Assignment 1, executed in 2009, was null and void, Plaintiffs
15 allege that a series of subsequent transactions are also null and void, including: (1) a Substitution
16 of Trustee by OneWest Bank, substituting MTDS, Inc. for original trustee Placer Title Company,
17 executed on June 18, 2009 and recorded on September 25, 2009 ("SOT 1"); (2) a Notice of
18 Trustee's Sale issued against Plaintiffs' Property by MTDS, Inc. on September 23, 2009
19 (although the scheduled sale did not take place); (3) an assignment of the beneficial interest in
20 Plaintiffs' DOT by OneWest Bank to U.S. Bank, executed on July 20, 2011 and recorded on
21 August 3, 2011 ("Assignment 2"); (4) a second assignment by Ocwen, as attorney-in-fact for
22 OneWest Bank, to U.S. Bank as trustee for the Lehman XS Trust 2006-14N, executed on May 19,
23 2015 and recorded on June 2, 2015 ("Assignment 3"); and (5) a Substitution of Trustee by
24 Ocwen, as servicer for U.S. Bank as trustee for the Lehman XS Trust 2006-14N, substituting
25 Western Progressive Trustee, LLC as the foreclosing trustee under the DOT, executed on June 26,
26 2015 and recorded on July 10, 2015 ("SOT 2"). (ECF No. 1-1 at ¶¶ 21–25.) Notably, Plaintiffs
27 do not challenge as null and void a Notice of Default issued against them on June 18, 2009 by
28

1 Service Link, as agent for MTDS, Inc., as agent for Dollar, recorded on June 22, 2009, and
2 rescinded by Western Progressive on August 26, 2015. (ECF No. 1-1 at ¶¶ 18 & 26.)

3 Based on the foregoing allegations, Plaintiffs assert claims for declaratory relief and
4 cancellation of instruments as to U.S. Bank and MERS, and quiet title as to U.S. Bank only.
5 (ECF No. 1-1 at 4.) Defendants move to dismiss the entire Complaint. (ECF No. 3.)

6 II. STANDARD OF LAW

7 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
8 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Federal Rule of
9 Civil Procedure 8(a) requires that a pleading contain “a short and plain statement of the claim
10 showing that the pleader is entitled to relief.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79
11 (2009). Under notice pleading in federal court, the complaint must “give the defendant fair notice
12 of what the claim . . . is and the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S.
13 544, 555 (2007) (internal quotations omitted). “This simplified notice pleading standard relies on
14 liberal discovery rules and summary judgment motions to define disputed facts and issues and to
15 dispose of unmeritorious claims.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

16 On a motion to dismiss, the factual allegations of the complaint must be accepted as true.
17 *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court is bound to give plaintiff the benefit of every
18 reasonable inference to be drawn from the “well-pleaded” allegations of the complaint. *Retail*
19 *Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege
20 “‘specific facts’ beyond those necessary to state his claim and the grounds showing entitlement to
21 relief.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads
22 factual content that allows the court to draw the reasonable inference that the defendant is liable
23 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. 544, 556 (2007)).

24 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of
25 factual allegations.” *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir.
26 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than an
27 unadorned, the defendant–unlawfully–harmed–me accusation.” *Iqbal*, 556 U.S. at 678. A
28 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the

1 elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678
2 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
3 statements, do not suffice.”). Moreover, it is inappropriate to assume that the plaintiff “can prove
4 facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not
5 been alleged[.]” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*,
6 459 U.S. 519, 526 (1983).

7 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough
8 facts to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 697 (quoting
9 *Twombly*, 550 U.S. at 570). Only where a plaintiff has failed to “nudge[] [his or her] claims . . .
10 across the line from conceivable to plausible[.]” is the complaint properly dismissed. *Id.* at 680.
11 While the plausibility requirement is not akin to a probability requirement, it demands more than
12 “a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. This plausibility inquiry is
13 “a context–specific task that requires the reviewing court to draw on its judicial experience and
14 common sense.” *Id.* at 679.

15 If a complaint fails to state a plausible claim, “[a] district court should grant leave to
16 amend even if no request to amend the pleading was made, unless it determines that the pleading
17 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,
18 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 484, 497 (9th Cir. 1995));
19 *see also Gardner v. Marino*, 563 F.3d 981, 990 (9th Cir. 2009) (finding no abuse of discretion in
20 denying leave to amend when amendment would be futile). Although a district court should
21 freely give leave to amend when justice so requires under Rule 15(a)(2), “the court’s discretion to
22 deny such leave is ‘particularly broad’ where the plaintiff has previously amended its
23 complaint[.]” *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 520 (9th Cir.
24 2013) (quoting *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004)).

25 III. ANALYSIS

26 Defendants move to dismiss the Complaint on grounds that Plaintiffs fail to state a claim
27 for declaratory relief, quiet title, and cancellation of instruments. (ECF No. 3 at 8.) As to the
28 claim for declaratory relief, Defendants make several sub-arguments broadly challenging as a

1 matter of law, Plaintiffs' allegation that MERS's assignment of the DOT to OneWest Bank was
2 ineffective. (ECF No. 3 at 11–16.) As to the quiet title claim, Defendants assert that Plaintiffs
3 make contradictory allegations and that Plaintiffs cannot quiet title to property they offered as
4 security without offering or alleging tender. (ECF No. 3 at 9.) Finally, Defendants argue that
5 Plaintiffs' claim for cancellation of instruments is insufficient because the facts alleged do not fall
6 within the equitable scheme permitting cancellation of instruments. (ECF No. 3 at 17–18.) The
7 Court need only discuss two of the sub arguments of the motion as to declaratory relief — namely
8 MERS's authority to assign the DOT to OneWest Bank and the related issue of Suchan Murray's
9 authority as signatory — because these issues demonstrate a lack of standing and are therefore
10 dispositive.

11 A. Declaratory Relief

12 i. *MERS's Authority to Assign the Deed of Trust to OneWest Bank*

13 Plaintiffs allege in the Complaint that MERS could not assign the DOT to OneWest Bank
14 in 2009 because Dollar Mortgage Corporation sold its loan to SASC, a non-MERS member, in
15 2006. (ECF No. 1-1 at ¶ 30.) Plaintiffs also allege the assignment is void because it occurred
16 after the August 31, 2006 closing date. (ECF No. 1-1 at ¶ 19.) Defendants assert that the 2006
17 sale to SASC does not show the 2009 assignment to OneWest Bank was void, and that the late or
18 defective assignment of Plaintiffs' loan to the securitized trust rendered the transfer at most
19 voidable, not void. (ECF No. 3 at 13–14.) Defendants further assert that borrowers lack standing
20 to challenge voidable assignments. (ECF No. 3 at 8–9.) In opposition, Plaintiffs contend the
21 2009 assignment to OneWest Bank is void *ab initio* because neither MERS nor any purported
22 principal had authority to transfer the beneficial interest in the DOT. (ECF No. 8 at 9.) Plaintiffs
23 also aver that they do not challenge the securitization of their loan or the defective assignments
24 made during the securitization process and only review the securitization of their loan to show
25 that U.S. Bank could not have received effective assignment of any interest in their loan under
26 any plausible circumstances. (ECF No. 8 at 10.)

27 There is no shortage of authority in this district recognizing the rule from *Gomes v.*
28 *Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, 1156 (2011), which says that a borrower

1 does not have standing to challenge a beneficiary's authority to initiate a foreclosure absent a
2 specific factual basis for alleging that the wrong party has initiated foreclosure. *See Hansen v.*
3 *Western Progressive, LLC*, No. 2:15-cv-01426-MCE-CKD, 2017 WL 2722014, at *4 (E.D. Cal.
4 June 23, 2017); *Valenzuela v. Wells Fargo Bank Nat'l Ass'n*, No. CV F 13-1620 LJO JLT, 2014
5 WL 309438, at *7-8 (E.D. Cal. Jan. 28, 2014); *Nastrom v. New Century Mortg. Corp.*, No.
6 1:11cv01998 DLB, 2012 WL 2090145, at *4 (E.D. Cal. June 8, 2012). Additionally, the court in
7 *Jenkins v. JP Morgan Chase Bank, N.A.* later established a California majority rule that borrowers
8 who are not parties to a trust agreement or other agreement governing securitization lack standing
9 to enforce such agreements where their obligations under the promissory note remain unchanged.
10 *Jenkins v. JP Morgan Chase Bank, N.A.*, 216 Cal. App. 4th 497, 515 (2013), *disapproved on*
11 *other grounds by Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th 919 (2016); *see also*
12 *Gutierrez v. Bank of America, N.A.*, No. 2:14-CV-01246-TLN-AC, 2016 WL 310332, at *6
13 (E.D. Cal. Jan. 26, 2016); *Flores v. EMC Mortg. Co.*, 997 F. Supp. 2d 1088, 1104-05 (E.D. Cal.
14 2014); *Madlaing v. JPMorgan Chase Bank, N.A.*, No. CV F 12-2069 LJO SMS, 2013 WL
15 2403379, at *8 (E.D. Cal. May 31, 2013). In other words, a plaintiff relying on specific factual
16 allegations of violations or deficiencies in the securitization process does not have standing to
17 challenge a foreclosing party's authority because the plaintiff is not a party to the agreement
18 governing the securitization. *Jenkins*, 216 Cal. App. 4th at 515 ("As an unrelated third party to
19 the alleged securitization, and any other subsequent transfers of the beneficial interest under the
20 promissory note, [plaintiff] lacks standing to enforce any agreements . . . relating to such
21 transactions."); *see also Hansen*, No. 2:15-cv-01426-MCE-CKD, 2017 WL 2722014, at *5
22 ("Nor can Plaintiff point to an alleged violation of the PSA to confer standing on his challenge to
23 Defendant's right to foreclose . . . Improper securitization under a PSA does not support any
24 such challenge under California case law.").

25 In their opposition, Plaintiffs attempt to distinguish their action from *Gomes* and *Jenkins*.
26 (ECF No. 8 at 7.) Plaintiffs assert that they provide a specific factual basis involving "evidence
27 that their loan was sold to a non-MERS member in 2006 thereby depriving MERS with authority
28 to assign the beneficial interest in the loan to OneWest in 2009." (ECF No. 8 at 8.) Under

1 *Jenkins*, this is an insufficient basis to confer standing for Plaintiffs to challenge U.S. Bank’s
2 authority to foreclose on their Property. *Jenkins*, 216 Cal. App. 4th at 514–15 (holding that
3 plaintiff did not have standing to pursue her claim for declaratory relief based on allegations that
4 defendants lacked foreclosure authority due to violations of the pooling and servicing agreement).
5 Although Plaintiffs insist they do not challenge the securitization of their loan, Plaintiffs rely
6 heavily on facts arising out of the securitization process as a basis for contesting U.S. Bank’s
7 authority to initiate foreclosure. The following excerpts from the Complaint clearly demonstrate
8 Plaintiffs’ reliance on the securitization process to support their claims:

9 Accordingly, Dollar and MERS, its nominee, exited the chain of
10 title to the loan upon the sale to SASC (ECF No. 1-1 at ¶ 11.)

11 The plain fact is that MERS is unable to establish an agency
12 relationship with Defendant US Bank, the purported beneficiary of
13 Plaintiffs’ loan. Moreover, it is equally plain that the attempt to
14 securitize Plaintiffs’ loan failed. (ECF No. 1-1 at ¶ 12.)

15 The Trust Agreement governing the securitization . . . provides that
16 only the Depositor, and no other entity, is permitted to make the
17 final assignment and transfer of each mortgage loan to the REMIC
18 MBS trust, and the assignment must be made as of the Closing
19 Date of the trust (August 31, 2006), or within 90 days
20 thereafter (ECF No. 1-1 at ¶ 15.)

21 The foregoing sales were made without the required intervening
22 assignment of Plaintiffs’ Deed of Trust and endorsement of the
23 Note in contravention of the governing trust documents.
24 Accordingly, Plaintiffs have established that U.S. Bank never
25 received effective assignment of any interest in their mortgage loan
26 during the securitization process. (ECF No. 1-1 at ¶ 17.)

27 As Dollar and MERS, its nominal beneficiary, no longer held any
28 interest in Plaintiffs’ mortgage loan, having alienated all interest in
the loan in 2006, Assignment 1 is fatally defective, null and void.
It is void for the additional reasons that only the trust depositor,
that is, SASC is permitted under the governing trust documents to
assign the mortgage loan to US Bank in its capacity as trustee for
the securities trust. Moreover, the assignment is way out of time.
The trust documents require the assignment from August 31, 2006
or, in limited circumstances, 90 days thereafter. (ECF No. 1-1 at ¶
19.)

1 It is clear from the face of the Complaint that Plaintiffs rely on allegations of violations of
2 the trust agreement to assert that U.S. Bank did not receive effective assignment of any interest in
3 their loan and lacks the power to foreclose. However, as non-parties to the trust agreement,
4 Plaintiffs lack standing to challenge U.S. Bank’s foreclosure authority. *See Jenkins*, 216 Cal.
5 App. 4th at 515. Moreover, Plaintiffs fail to allege any change in their obligations under the Note
6 that supports the presence of an actual controversy between Plaintiffs and Defendants. *See id.*
7 Plaintiffs cite to a series of cases in an attempt to support their assertion that their case is
8 distinguishable from *Gomes* and *Jenkins* in that Plaintiffs have standing to bring suit against
9 Defendants. (ECF No. 8 at 7–8.) However, the relevant law that Plaintiffs rely on from each case
10 applies in the context of a wrongful foreclosure where a foreclosure sale has already taken place
11 and deprived a borrower of his or her interest in the note. *See Subramani v. Wells Fargo Bank,*
12 *N.A., et al.*, No. C 13–1605 SC, 2013 WL 5913789, at *4 (N.D. Cal. Oct. 31, 2013); *Cheung v.*
13 *Wells Fargo Bank, N.A.*, No. C 13–01756 RS, 987 F. Supp. 2d 972, 978–79 (N.D. Cal. 2013);
14 *Barrionuevo v. Chase Bank, N.A.*, 885 F. Supp. 2d 964, 974 (N.D. Cal. 2012); *Robinson v.*
15 *Countrywide Home Loans, Inc.*, 199 Cal. App. 4th 42, 47 n.5 (2011) (noting that the borrower can
16 seek to enjoin or set aside a trustee’s *sale*, as distinguished from initiation of foreclosure claims
17 which are subject to dismissal). Like in *Robinson*, Plaintiffs here filed a pre-foreclosure suit to
18 stop a party from initiating foreclosure.

19 Additionally, Plaintiffs attempt to distinguish between challenging the securitization
20 process itself and reviewing defects in the securitization process in order to challenge the validity
21 of the assignment to U.S. Bank. (ECF No. 8 at 10.) However, the court in *Reyes-Aguilar v. Bank*
22 *of America, N.A.*, No. 13–cv–05764–JCS, 2014 WL 2153792, at *4 (N.D. Cal. Mar. 20, 2014),
23 rejected a similar argument because the plaintiffs’ claims relied solely on irregularities in the
24 securitization process that allegedly violate a governing trust document. The court held that
25 “[plaintiffs] do not have standing to enforce the PSA, nor do they have standing to challenge the
26 Assignment . . . on the basis of a violation of the PSA.” *Id.*

1 Plaintiffs' claim depends on allegations that irregularities in the securitization process
2 violate the trust agreement, and Plaintiffs therefore lack standing to challenge MERS's
3 assignment to OneWest Bank.

4 *ii. Allegation that Suchan Murray was an Unauthorized Signatory*

5 As an alternative challenge to the validity of the 2009 assignment, Plaintiffs assert that
6 Suchan Murray falsely represented herself to be an authorized signatory for MERS and that Ms.
7 Murray's signature appears to be forged, making the assignment void *ab initio*.¹ (ECF No. 1-1 at
8 ¶ 20.) Defendants challenge Plaintiffs' assertion that Ms. Murray was not authorized to sign on
9 behalf of MERS as a "logical fallacy" and an act that is, at most, voidable because an
10 unauthorized signature can be ratified by a principal. (ECF No. 3 at 15.) Defendants re-assert
11 that borrowers lack standing to challenge assignments that are merely voidable. (ECF No. 3 at
12 15.) Plaintiffs reassert in their opposition that Ms. Murray's allegedly unauthorized signature
13 rendered the assignment void *ab initio*. (ECF No. 8 at 10.)

14 The California Court of Appeal rejected an argument similar to Plaintiffs' in *Saterbak v.*
15 *JPMorgan Chase Bank, N.A.*, 245 Cal. App. 4th 808, 814 (2016), holding that the plaintiff lacked
16 standing to challenge the assignment on the theory that the signatory forged or robo-signed the
17 assignment document. The court held that the suit was preemptive because the plaintiff's
18 challenge to the defendant's ability to foreclose was asserted pre-foreclosure. *Id.* at 815. Like the
19 *Saterbak* plaintiff, Plaintiffs here bring their action pre-foreclosure and thus lack standing to
20 pursue their claims at this early juncture. Importantly, even if Plaintiffs brought the action post-
21 foreclosure and asserted a claim under this theory, courts have determined that defects in
22 assignment documents involving unauthorized signatories only render the assignment voidable,
23 not void, and that plaintiffs do not have standing to challenge voidable assignments. *Kaurlo v.*
24 *U.S. Bank, N.A., et al.*, No. 16-cv-06652-JFW-GJSx, 2016 WL 6808117, at *5 (C.D. Cal. Nov.
25 17, 2016) ("To the extent that an assignment was in fact robo-signed, it would be voidable, not
26

27 ¹ Plaintiffs also allege that because there was a delay between the execution and notarization of the
28 assignment, it is likely that Ms. Murray did not personally appear before the notary. (ECF No. 1-1 at ¶ 20.) Aside
from the fact that this argument makes little sense, it is too conclusory to pass muster under *Twombly* and *Iqbal*. The
Court declines to rule on this allegation.

1 void, at the injured party's option — the injured party would be the assignee . . . , not
2 Plaintiff Therefore, robo-signing allegations do not give the Plaintiff standing to challenge
3 the MERS assignment.”); *Reed v. Wilmington Trust, N.A.*, No. 16-cv-01933-JSW, 2016 WL
4 3124611, at *5 (N.D. Cal. June 3, 2016) (“[T]he alleged defect [of robo-signing] would only
5 render the assignment voidable, rather than void.”).

6 For the foregoing reasons, this Court finds that Plaintiffs lack standing to bring a claim for
7 declaratory relief challenging a signatory's authority to make an assignment on the theory that the
8 signatory forged or robo-signed. Accordingly, Plaintiffs' claim for declaratory relief is dismissed
9 for lack of standing.

10 B. Quiet Title and Cancellation of Instruments

11 Plaintiffs also assert claims to quiet title and for cancellation of instruments. However,
12 these claims rely on the same facts as set forth in Plaintiffs' claim for declaratory relief. In *Flores*
13 *v. GMAC Mortg., LLC*, No. C 12-794 SI, 2013 WL 2049388 (N.D. Cal. May 14, 2013), the court
14 dismissed all claims that relied on plaintiffs' allegations of a defective assignment or substitution,
15 including claims for declaratory relief, injunctive relief, and cancellation of instruments. After
16 rejecting the plaintiffs' theory that MERS lacked authority to assign their deed of trust due to
17 deficiencies in the securitization process, the court found that “[e]ven assuming . . . that there was
18 some deficiency in MERS' assignment or substitution with respect to the deed of trust, plaintiffs
19 do not have standing to assert any of the seven causes of action that they claim arise out of that
20 deficiency.” *Id.* at *3. *See also Madlaing*, No. CV F 12-2069 LJO SMS, 2013 WL 2403379, at
21 *8 (“Defendants are correct that Mr. Madlaing lacks standing to assert PSA-based claims and the
22 complaint's claims fail to the extent based on wrongs in connection with the PSA”). By
23 virtue of their connection to Plaintiffs' factual allegations arising out of trust agreement violations
24 and the securitization process, Plaintiffs' claims for quiet title and cancellation of instruments
25 must also fail for lack of standing.

26 C. Leave to Amend

27 Federal Rule of Civil Procedure 15 broadly advises courts that “leave shall be freely given
28 when justice so requires.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.

1 2003). In *Foman v. Davis*, 371 U.S. 178, 182 (1962), the Supreme Court held that, although it is
2 within the discretion of district courts to grant or deny leave to amend, “outright refusal to grant
3 the leave without any justifying reason appearing for the denial is not an exercise of discretion; it
4 is merely an abuse of discretion” District courts are further instructed that:

5 In the absence of any apparent or declared reason — such as undue
6 delay, bad faith or dilatory motive on the part of the movant,
7 repeated failure to cure deficiencies by amendments previously
8 allowed, undue prejudice to the opposing party by virtue of
allowance of the amendment, futility of amendment, etc. — the
leave sought should, as the rules require, be ‘freely given.’

9 *Id.* at 182; see also *Sharkey v. O’Neal*, 778 F.3d 767, 774 (9th Cir. 2015); *In re Tracht Gut, LLC*,
10 836 F.3d 1146, 1151–52 (9th Cir. 2016).

11 “A proposed amendment is futile only if no set of facts can be proved under the
12 amendment to the pleadings that would constitute a valid and sufficient claim or defense.”
13 *Thompson v. JPMorgan Chase Bank, N.A.*, No. 16-cv-06134-BLF, 2017 WL 897440, at *8 (N.D.
14 Cal. Mar. 7, 2017) (quoting *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988))
15 (internal quotation marks and brackets omitted). “The Ninth Circuit has alternatively stated that
16 the test of whether amendment would be futile is ‘identical to the one used when considering the
17 sufficiency of a pleading challenged under Rule 12(b)(6).’” *Id.* (quoting *Miller*, 845 F.2d at 214).
18 In *Thompson*, the plaintiff sought injunctive relief for a wrongful foreclosure that had not yet
19 occurred, alleging that the defendants lacked authority to institute foreclosure proceedings against
20 her property because an assignment of the deed of trust was invalidly executed by an
21 unauthorized signatory. *Thompson*, No. 16-cv-06134-BLF, 2017 WL 897440, at *1–2. The court
22 dismissed the complaint as preemptive and denied leave to amend on futility grounds, stating:

23 [Plaintiff]’s theory relating to assignments of DOT is not sound
24 and without a proper basis in statutes or case law [Plaintiff]
25 has also provided no other facts or alternative legal theory other
26 than her theory of erroneous assignment of DOT. Since [plaintiff]
has given no indication of any factual or legal basis to render her
claims viable, the Court DISMISSES the complaint with prejudice
and without leave to amend.

27 *Id.* at 8.

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1 Here, Plaintiffs' claims are premised, in part, on an unauthorized signatory theory. As in
2 *Thompson*, the claim fails as a matter of law for lack of standing because Plaintiffs do not allege
3 that any foreclosure has taken place, nor can they sufficiently allege prejudice based on any
4 misconduct or deficiency of assignment in the absence of a foreclosure. As described extensively
5 in the foregoing analysis, the only other theory Plaintiffs rely on — namely, that MERS's
6 assignment to OneWest Bank was ineffective because MERS violated the trust agreement — also
7 fails as a matter of law because Plaintiffs lack standing to bring claims premised on violations of a
8 trust agreement. Like the plaintiff in *Thompson*, Plaintiffs here have not asserted any alternative
9 theories or facts to indicate that they have a viable claim. Based on these findings, the Court finds
10 that Plaintiffs could not amend the Complaint in such a way that constitutes a valid and sufficient
11 claim and it would merely be futile to permit leave to amend.

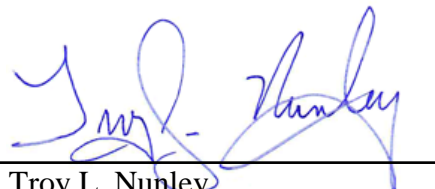
12 **IV. CONCLUSION**

13 For the reasons stated above, the Court finds Plaintiffs have failed to state a claim as to all
14 causes of action. The Court hereby GRANTS Defendants' Motion to Dismiss Complaint (ECF
15 No. 3) WITHOUT LEAVE TO AMEND.

16 IT IS SO ORDERED.

17 Dated: August 2, 2018

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Troy L. Nunley
United States District Judge