APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

APPENDIX TABLE OF CONTENTS (Cont.)

REHEARING ORDERS

OTHER DOCUMENTS

ORDER OF THE SUPREME COURT OF CALIFORNIA DENYING PETITION FOR REVIEW (MARCH 17, 2021)

IN THE SUPREME COURT OF CALIFORNIA

VINCENT TANG,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK, N.A. ET AL.,

Defendants and Respondents.

VINCENT TANG,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK, N.A.,

Defendants and Respondent.

S266733

Court of Appeal, Sixth Appellate District - No. H045898, H046697

The petition for review is denied.

/s/
Chief Justice

OPINION OF THE COURT OF APPEALS OF THE STATE OF CALIFORNIA FOR THE SIXTH APPELLATE DISTRICT (DECEMBER 9, 2020)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

VINCENT TANG,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK, N.A. ET AL.,

Defendants and Respondents.

H045898

(Santa Clara County Super. Ct. No. 17CV307324)

VINCENT TANG,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK, N.A.,

Defendants and Respondent.

H046697

Before: GREENWOOD, P.J., GROVER, J., and DANNER, J.

Appellant Vincent Tang took out a loan to purchase a home, secured the loan with a deed of trust, and defaulted on the loan. The property was subsequently sold in a nonjudicial foreclosure sale. After the foreclosure sale, Tang brought suit against multiple entities and an individual who had handled the deed of trust—including respondents JPMorgan Chase Bank, N.A. (Chase), Select Portfolio Servicing (SPS), U.S. Bank, N.A. (U.S. Bank), and Deborah Brignac (collectively, defendants).[1] The trial court sustained defen-

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[1] Tang's then-wife also executed the deed of trust, but she did not participate in this lawsuit. Tang also sued the entities that purchased the property at the trustee's sale in 2017, but later dismissed those parties (Orchard Terrace Inc., Monte Vista Oaks, Inc., Monte Vista Oaks DB Plan, and Kip Dream Homes) from the lawsuit. In addition, Tang sued Quality Loan Service Corporation (QLS), the trustee at the time of the nonjudicial foreclosure sale in 2017. QLS is not a party to these appeals. According to Tang, QLS was "dismissed pursuant to a declaration

dants' demurrers to Tang's complaint and entered judgments of dismissal against him. Tang has appealed the judgments, alleging a number of errors by the trial court. For the reasons explained further below, we reject Tang's contentions of error and affirm the judgments of dismissal.

In a separate appeal, Tang argues that the trial court erred in awarding contractual attorney fees under Civil Code section 1717 to Chase. We agree and reverse the trial court's order.

I. Facts and Procedural Background

A. Allegations in the Complaint

In 2005, Tang executed a deed of trust securing a note for $825,500 on a residential property in San Jose (property).[2] The complaint alleges that, beginning in 2005, defendants Chase, U.S. Bank, and SPS engaged in a joint venture and conspiracy to "illegally attempt[] to claim a beneficial interest" in the property and to unlawfully sell it in a nonjudicial foreclosure sale.

Washington Mutual Bank, FA (WaMu) was Tang's original lender and beneficiary of the trust deed.

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of non-monetary status pursuant to California Civil Code [section] 2924*l*" since it was "nothing more [than] the foreclosure trustee." The dismissal of QLS is not included in the record on appeal.

2 The factual summary is based on the complaint and publicly recorded documents attached to the complaint. We assume the truth of all properly pleaded allegations in Tang's complaint, as well as those that are judicially noticeable. (*Heckart v. A-1 Self Storage, Inc.* (2018) 4 Cal.5th 749, 753.)

California Reconveyance Company (CRC) was the original trustee named in the deed of trust. Defendant Deborah Brignac worked at CRC as a foreclosure specialist and supervisor.

On or about February 26, 2010, Brignac executed an assignment of the deed of trust on the property to assign the deed of trust from Chase to a securitized trust named "WaMu Mortgage Pass-Through Certificates Series 2005-AR19 Trust" (securitized trust). On March 1, 2010, CRC recorded the assignment with the Santa Clara County Recorder. Tang's claims on appeal largely center on this 2010 assignment executed by Brignac.

The complaint alleges Brignac in the February 26, 2010 assignment falsely claimed to be a "Vice President" of Chase and "fraudulently executed" the document. The complaint does not explain how she fraudulently executed the assignment other than that she "never was a Vice President of JPMorgan Chase Bank." The assignment, which is attached to the complaint as an exhibit, reflects that the assignment was signed by Chase as successor in interest to WaMu and contains Brignac's signature above a caption that reads "Deborah Brignac, Vice President."

According to the complaint, Brignac executed the assignment at the direction of CRC, and her claim that she was a vice president at Chase was fraudulent. The complaint does not explicitly allege that Brignac did not have Chase's authority to sign the assignment on its behalf, although in the first cause of action it states that Tang seeks to have the assignment voided "for reasons of fraud, lack of authority, and forgery."

More generally, the complaint alleges Brignac fraudulently executed other unspecified documents on behalf of CRC. The complaint does not indicate that these documents bear any relationship to the property. The complaint alleges that Brignac has a "troubled past" and submitted "questionable" documents in Massachusetts. The complaint also attaches purported letters from an individual with the title of "Register of Deeds" from Massachusetts that reference "robo-signers" generally but that do not name Brignac. Brignac's name appears in a document attached to the complaint titled "McDonnell Property Analytics Approved Robo-signers List."

On March 1, 2010, CRC recorded a notice of default on the property that stated that the past due payments as of February 26, 2010, amounted to $14, 954.54. No other notice of default was recorded prior to the foreclosure sale, which occurred approximately seven years later. Based on the time between the recording of the notice of default and the actual sale, the complaint alleges the 2010 notice of default is "stale."

The complaint alleges that, on or about March 10, 2014, defendant U.S. Bank "inserted itself into the chain or links of title." The complaint attaches a substitution of trustee pertaining to the deed of trust that indicates an entity called "ALAW" was now the trustee. In that same document, U.S. Bank is named as the institutional trustee of the securitized trust and "successor trustee to Bank of America, NA." The recorded document further notes defendant SPS is an "Attorney in Fact" for U.S. Bank.

Through another substitution of trustee recorded in March 2016, QLS became the trustee under the

deed of trust. The substitution of trustee was executed by SPS as an attorney in fact for U.S. Bank (the trustee for the securitized trust). QLS recorded several notices of trustee's sale at Chase's direction.

In February 2017, QLS sold the property at a trustee's sale. The recorded trustee's deed upon sale, referencing the 2010 notice of default, states that a default had occurred, and Tang's unpaid debt on the property together with costs amounted to $1,228, 617.12. The complaint does not dispute the fact of, or the amount in, default.

B. Trial Court Proceedings

Shortly following the foreclosure sale of the property in 2017, Tang filed a wrongful foreclosure lawsuit in Santa Clara County Superior Court. The trial court sustained Chase's demurrers to the original complaint and first amended complaint and granted Tang leave to amend.

In September 2017, Tang filed the operative complaint at issue here, the second amended complaint (complaint), against defendants. He alleged six causes of action: (1) declaratory relief (first cause of action); (2) "statutory violations," referencing various statutes, including provisions under the California Homeowner Bill of Rights (the HBOR) (second cause of action); (3) unlawful foreclosure (third cause of action); (4) slander of title (against Chase and QLS only) (fourth cause of action); (5) cancellation of recorded instruments (fifth cause of action); and (6) violation of California's unfair competition law (Bus. & Prof. Code, § 17200 et seq.) (sixth cause of action).

Defendants filed demurrers to all six causes of action on various grounds and asserted Tang lacked standing to bring his claims. Chase also filed a separate motion to strike the first cause of action for declaratory relief and argued that Tang had added this claim without leave of court following its ruling on the demurrer to the first amended complaint. Tang opposed the demurrers and the motion to strike.

The trial court appears to have issued a tentative ruling in favor of Chase on its demurrer, although that ruling does not appear in the record on appeal. Shortly thereafter, Tang submitted a document, entitled "Statement of How Plaintiff Will Amend the Pleading." In this document, Tang proposed amending the complaint to allege the notice of default was "stale," that Brignac committed "forgery," and that the other defendants conspired to "perpetuate and profit from this forgery." Tang stated Brignac's criminal actions of forgery "exceed that of alleged robo-signing" and "constitute forgery under California Penal Code [section] 470 and specifically [section] 470(d)," and that "[a] forged deed (or its assignment) is completely void and ineffective to transfer any title to the grantee."

Following a hearing, the trial court issued a written order in February 2018 sustaining Chase's demurrer to the complaint on numerous grounds, including that Tang lacked standing to challenge Brignac's execution of the assignment as a defect in the foreclosure. The trial court also addressed various arguments applicable to the individual causes of action, ruling for instance that Tang could not plead a claim for declaratory relief (first cause of action) because he had not received leave from the court to do so and that his slander of title (fourth cause of action) failed

because he did not adequately plead malice. The trial court rejected Tang's theory of forgery as insufficient to cure Tang's lack of standing. The trial court did not grant Tang leave to amend the complaint. In a separate written order, the trial court sustained SPS's and U.S. Bank's demurrer based in part on Tang's lack of standing.

The trial court also issued a written order sustaining Brignac's demurrer to all causes of action. Among other rulings, the trial court concluded that Tang lacked standing. The trial court denied Tang's request for leave to amend the complaint against Brignac. The trial court's order on Brignac's demurrer admonished Tang's counsel for unprofessional attacks on Brignac made in a written submission to the court.

The trial court subsequently issued judgments of dismissal in favor of all defendants. Tang timely appealed the judgments of dismissal, and this court assigned docket No. H045898 to the appeal.

Following the judgment dismissing it as a party, Chase filed a motion in the trial court seeking to recover its attorney fees pursuant to Civil Code section 1717 and an attorney fee provision in the deed of trust. Tang opposed the motion, arguing that Chase had no contractual right to enforce the attorney fee provision based on its assignment of the loan in 2010 and asserting Chase's request for over $30,000 in attorney fees was excessive. Chase replied that it was entitled to recover its fees in its capacity as a prior servicer of the loan.

On January 2, 2019, the trial court ordered Tang to pay Chase $28,645 in attorney fees. The trial court also entered a separate order granting Chase costs in

the amount of $1,691.84 and granting Tang's motion to tax costs as to messenger fees.

Tang timely appealed the trial court's January 2, 2019 order granting Chase attorney fees, and this court assigned docket No. H046697 to the appeal. This court ordered that Tang's two appeals, docket Nos. H045898 and H046697, be considered together for oral argument and disposition.

II. Discussion

In his appeal of the judgments of dismissal, Tang argues the trial court erred in its conclusion that he lacks standing to challenge the 2010 assignment executed by Brignac. He contends he sufficiently pleaded that Brignac forged the 2010 assignment of the beneficial interest under the deed of trust, rendering that assignment void, and the trial court erred in deciding he lacked standing to challenge this wrongful conduct. He also argues the trial court erred in refusing him permission to amend his complaint, was biased against him, and should have provided a court reporter to him in light of his "modest means."

In his appeal of the postjudgment attorney fee order, Tang contends the trial court erred in determining that Chase was entitled to attorney fees pursuant to the terms of the deed of trust.

We turn first to Tang's appeal of the judgments of dismissal.

A. Standards of Review

We review de novo the trial court's decision to sustain the demurrers. "'In reviewing an order sustaining a demurrer, we examine the operative complaint

de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory.' [Citation.] '"'"We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. . . . We also consider matters which may be judicially noticed." . . . Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context.'"'" (*Mathews v. Becerra* (2019) 8 Cal.5th 756, 768.)

We review the trial court's refusal to permit further amendment for abuse of discretion. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Where the demurrer was sustained without leave to amend, we consider whether Tang could cure the defect by an amendment. (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162.) Tang bears the burden of proof on this issue. (*Ibid.*)

Chase contends, and we agree, that Tang has forfeited any appeal of the trial court's decision sustaining the demurrer to the causes of action for declaratory relief (first cause of action) and cancellation of recorded instruments based on Civil Code section 3412 (fifth cause of action) by failing to present any argument in his appellate briefing on these points. In his opening brief, Tang neither argues how the trial court erred in its rulings on these causes of action nor explains how he might amend these causes of action in a new complaint and therefore has forfeited any argument challenging the trial court's sustaining of the demurrers to these causes of action. (*See Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 9.)

We now turn to the four other causes of action in the complaint: (1) statutory violations (second cause of

action), (2) unlawful foreclosure (third cause of action), (3) slander of title (fourth cause of action), and (4) violation of California's unfair competition law (Bus. & Prof. Code, § 17200 et seq.) (UCL) (sixth cause of action). Tang's allegation that the 2010 assignment was void because Brignac fraudulently executed or forged the assignment underpins these causes of action.[3] For example, in the wrongful foreclosure cause of action, the complaint alleges the 2010 assignment by Brignac "was fraudulent, unlawful, and void" and therefore certain documents emanating from that assignment were "invalid and void" and thus defendants did not have the legal right to conduct or participate in the foreclosure sale.

Defendants on appeal maintain that Tang has no standing to challenge the 2010 assignment. We first consider the question of Tang's standing and then examine two other arguments made by Tang related to the second and sixth causes of action.

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[3] The complaint also alleges the 2010 assignment was void as untimely, because the securitized trust closed in 2005. The trial court rejected that claim based on its finding that a defect in the securitization process rendered the assignment voidable and not void, and therefore Tang lacked standing to the extent his action was predicated on the alleged untimely transfer. (*See Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 43 [holding that "a securitized trust made after the trust's closing date is merely voidable"].) On appeal, Tang does not challenge that determination, and therefore we do not address it further.

B. Tang's Standing to Challenge the 2010 Assignment

1. Standing Allegations in the Complaint

Tang's complaint alleges he has standing to challenge the foreclosure because the foreclosing party "lacked the authority to initiate the foreclosure because it held no beneficial interest under the deed of trust," and the deed of trust grants him the right to challenge the 2010 assignment and defendants' rights to foreclose upon his property.

In a section titled "factual allegations," the complaint alleges that, on or about February 26, 2010, Brignac "fraudulently executed" the assignment from Chase to the securitized trust and falsely claimed to be a "Vice President" of Chase. Among her "troubled past," the complaint generally alleges she engaged in robo-signing of recorded documents.[4] In addition to alleging she lacked authority to execute the assignment, the complaint also generally alleges that Brignac committed "forgery." The complaint does not provide any details about the alleged forgery.

2. Legal Principles Regarding Standing to Challenge Assignment

"Standing is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff." (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 810 (*Mendoza*).) In this context, standing denotes

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[4] "The use of automated signatures" has been "colloquially referred to as 'robo-signing.'" (Greenwald & Bank, Cal. Practice Guide: Real Property Transactions (The Rutter Group 2018) ¶ 6:536.16.)

"a borrower's legal authority to challenge the validity of an assignment." (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 928, fn. 3 (*Yvanova*).)

The California Supreme Court addressed standing in the postforeclosure context in *Yvanova*, *supra*, 62 Cal.4th 919. *Yvanova* held that a home loan borrower who has suffered a nonjudicial foreclosure has standing to challenge an invalid assignment to the foreclosing entity that was "void" as opposed to merely "voidable." (*Id.* at pp. 942-943.) The California Supreme Court stated that the borrower's standing to challenge a void assignment and sale derives from his or her interest in ensuring that the beneficiary had legal authority to foreclose (*id.* at p. 924), noting that "[t]he borrower owes money not to the world at large but to a particular person or institution, and only the person or institution entitled to payment may enforce the debt by foreclosing on the security." (*Id.* at p. 938.) *Yvanova* explained that a void transaction is "without legal effect." (*Id.* at p. 929.)

By contrast, an assignment that is merely voidable does not afford standing to a non-party. As described in a later decision by the Court of Appeal, "'California law,' the *Yvanova* court explained, 'does not give a party personal standing to assert rights or interests belonging solely to others. [Citations.] When an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties takes steps to make it so. A borrower who challenges a foreclosure on the ground that an assignment to the foreclosing party bore defects rendering it voidable could thus be said to assert an interest belonging solely to the parties to the

assignment rather than to herself.'" (*Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252, 1256-1257 (*Yhudai*).) "A voidable transaction, in contrast, 'is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance.'" (*Yvanova*, *supra*, 62 Cal.4th at p. 930.)

Yvanova did not decide whether the specific allegations at issue in that case (involving alleged defects in the securitization process) constituted a void or voidable transaction. (*Yvanova*, *supra*, 62 Cal.4th at p. 924.) However, post-*Yvanova*, several appellate courts have explored the distinction between a void and voidable assignment. For example, *Saterbak v. JPMorgan Chase, N.A.* (2016) 245 Cal.App.4th 808 (*Saterbak*) considered whether a post-closing transfer of a note and deed of trust into a securitized trust renders the assignment void. The court in *Saterbak* held that an untimely assignment is voidable, not void. (*Id.* at p. 815.) *Saterbak* further addressed the allegation that a signature on the instrument was "forged or robo-signed" and decided that the borrower lacked standing to pursue those theories. (*Id.* at pp. 811, 814.) Similarly, *Mendoza* considered the assignment of plaintiff's deed of trust to the investment trust after the trust's closing date and alleged robo-signing of the documents and concluded such defects make an assignment voidable—not void. (*Mendoza*, *supra*, 6 Cal.App.5th at pp. 811, 817-820.)

3. Analysis

Tang's central claim on appeal is that he sufficiently pleaded facts that the 2010 assignment is

void, and therefore he has standing to challenge it under the principles announced in *Yvanova*, *supra*, 62 Cal.4th 919. He acknowledges that if Brignac were a "bonafide" executive of Chase who had robosigned "hundreds of documents daily without reading them," he would not have standing to challenge the assignment as a matter of law. Tang argues, however, that the facts he pleaded in his case are different in nature because Brignac executed the assignment without any authority from Chase and committed "forgery."

Having carefully reviewed his complaint, we are not persuaded that Tang has met his burden of sufficiently pleading facts, as opposed to legal or factual conclusions, that the 2010 assignment is void. Tang generally points to the "standing" section in his complaint, but this section discusses legal principles and quotes from the *Yvanova* decision and other case law. These allegations do not contain any facts.

We are further not required to accept his assertion that the 2010 assignment was "void," because that is a legal—not a factual—conclusion. (*Yhudai*, *supra*, 1 Cal.App.5th at p. 1257.) Similarly, we are not required to accept the conclusory allegations that Brignac acted without authority or committed "forgery." "'[L]egal conclusions,' 'adjectival descriptions' . . . or 'unsupported speculation'" are insufficient to withstand a demurrer. (*Doe v. Roman Catholic Archbishop of Los Angeles* (2016) 247 Cal.App.4th 953, 960; *see also Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App. 4th 1544, 1554.)

The only pertinent factual allegations pleaded in the complaint are that Brignac signed the 2010 assignment as the "Vice President" of Chase when in

fact she was not a Chase officer and was only employed by the then-acting trustee, CRC. We do not agree that this assertion, even if accepted as true, renders the assignment void.

"A deed of trust to real property acting as security for a loan typically has three parties: the trustor (borrower), the beneficiary (lender), and the trustee." (*Yvanova*, *supra*, 62 Cal.4th, at p. 926.) "The trustee of a deed of trust is not a true trustee with fiduciary obligations, but acts merely as an agent for the borrower-trustor and lender-beneficiary." (*Id.* at p. 927.) There is no dispute that CRC was the trustee under the deed of trust and therefore an agent of Chase, the then-beneficiary. Tang's complaint does not explicitly allege, nor does it allege any facts that would give rise to a fair inference, that Brignac acted without Chase's authority.

Tang's unsupported legal conclusion that Brignac committed forgery is also insufficient to survive demurrer. A forgery is a ""'writing which falsely purports to be the writing of another,'" and is executed with the intent to defraud." (*Schiavon v. Arnaudo Brothers* (2000) 84 Cal.App.4th 374, 382.) As a general matter, signing someone else's name is legally significant only if it was unauthorized and perpetrated with fraudulent intent. (See Pen. Code, § 470 [forgery requires signer's intent to defraud and knowledge that he or she lacks authority to sign the name of another person]; *Lewis v. Superior Court* (1990) 217 Cal.App.3d 379, 387 [crime of forgery under Pen. Code, § 470 derives from common law definition of forgery].) Tang does not allege that Brignac signed someone else's name, the signature as it appears in the 2010 assignment attached to the complaint is not Brignac's signature, or the document

was somehow altered. He does not specifically allege that Brignac signed the document without Chase's permission. The complaint does not allege Chase ever disputed the legitimacy of the 2010 assignment.

Even assuming arguendo that the complaint adequately alleged that Brignac either acted without Chase's authority when she signed the assignment or that she committed forgery (and the complaint alleges no specific facts supporting those conclusions), Chase could have ratified these actions. (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73-74 [holding that a principal may ratify a forgery done by its agent]; Cal. U. Com. Code § 3403(a) (stating that "[a]n unauthorized signature may be ratified" and noting in a comment that "'[u]nauthorized' signature is defined . . . as one that includes a forgery as well as a signature made by one exceeding actual or apparent authority"]; *Navrides v. Zurich Ins. Co.* (1971) 5 Cal.3d 698, 703-704 [holding a principal may ratify agent's unauthorized act].) Because an unauthorized or forged signature can be ratified, such defects render the assignment voidable, not void. (*See Yvanova*, *supra*, 62 Cal.4th at p. 930.)

In support of his contention the 2010 assignment is void, Tang relies on the holding of *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552 (*Sciarratta*). However, *Sciarratta* is materially distinguishable. It involved the problem that a successor of the original lender (Chase) made two successive assignments of the same deed of trust (first to Deutsche Bank and then to Bank of America), and Bank of America foreclosed despite having received nothing under the second assignment. (*Id.* at p. 564.) That holding has no relevance to the allegations at issue here, which do not describe competing assignments

of the same deed of trust. In this case, even accepting the properly pleaded allegations in the complaint as true, the defects in the 2010 assignment render it voidable, rather than void. Accordingly, Tang does not have standing to challenge the defects in that assignment.

In reaching our conclusion, we have considered *WFG National Title Insurance Company v. Wells Fargo Bank, N.A.* (2020) 51 Cal.App.5th 881 (*WFG*).[5] In *WFG*, Wells Fargo Bank, N.A. (the undisputed beneficiary of a valid deed of trust) and SPS (the loan servicer) argued that a subsequent deed that recorded a sham conveyance had been forged, and therefore

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[5] After this appeal was fully briefed, on July 15, 2020, Tang filed a document captioned "Notice of Recently Published Case" that cited to *WFG*. SPS and U.S. Bank filed a response to Tang's document arguing at length that *WFG* did not support Tang's claims. In response, Tang filed an objection and request to strike SPS's and U.S. Bank's responsive document. Shortly thereafter, in a separate filing, Chase and Brignac submitted an objection to Tang's July 15, 2020 original notice, arguing the document violates California Rules of Court, rule 8.254(b), which permits the citation of new authority to be by letter in which only the citation of authority is presented, without "argument or other discussion of the authority."

Having reviewed the various submissions related to Tang's July 15, 2020 notice, we conclude that the notice does include argument and discussion of *WFG* and therefore does not comply with California Rules of Court, rule 8.254(b). We therefore have only considered the authority cited by Tang and have disregarded his discussion and argument contained in that document. In light of the limited consideration we have given that document, we decline to strike it in its entirety. Turning to Tang's objection to, and request to strike SPS and U.S. Bank's submission, we likewise decline to strike their submission. Nevertheless, we have not considered the substance of their response.

the forged deed was void. (*Id.* at pp. 884-886.) The trial court agreed the forged deed was void. The Court of Appeal held that the trial court did not err as a matter of law in finding the deed of trust was void as opposed to voidable because the deed of trust was forged, given that the face of the deed falsely stated the deed was recorded by the trustee. (*Id.* at p. 890.)

WFG does not support Tang's contention in this appeal that he has standing because it does not address the question of whether a third-party (in this case Tang) rather than the beneficiary (in *WFG*, the bank) has standing. Indeed, it does not address the concept of standing at all. Moreover, for the reasons stated above, Tang's unsupported allegation that Brignac committed forgery in the assignment was a legal conclusion insufficient to withstand demurrer. *WFG*, therefore, does not assist Tang in his contention that he has standing to challenge the validity of the 2010 assignment.

Tang's complaint, at best, establishes that the 2010 assignment was voidable by Chase—not void *ab initio*. Because the complaint does not allege sufficient facts to establish that the assignment in 2010 was void, his challenge to the assignment through the four causes of action for statutory violations, unlawful foreclosure, slander of title, and violation of the UCL fails as a matter of law for lack of standing.

4. Standing Based on Language in the Deed of Trust

Tang further contends that language in the deed of trust granted him, as the borrower, the right to sue "to assert the non-existence of a default or any

other defense of Borrower to acceleration and sale." Tang has not asserted the nonexistence of a default, and his only purported "defense" to foreclosure is that the 2010 assignment is void. We have rejected that contention. Accordingly, the contractual language does not assist him here. (*Yhudai*, *supra*, 1 Cal.App.5th at p. 1260 [considering nearly identical language in deed of trust and rejecting claim of standing to attack validity of assignment based on that language].)

Tang also emphasizes the deed of trust was prepared by WaMu (the predecessor in interest to Chase) and, citing generally to Civil Code section 1654, argues that any ambiguity should be construed in his favor. However, Civil Code section 1654 states: "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." This interpretive rule has no relevance here. Tang does not point to any ambiguity, and furthermore Civil Code section 1654 "does not stand for the proposition that, in every case where one of the parties to a contract points out a possible ambiguity, the interpretation favored by the nondrafting party will prevail." (*Rainier Credit Co. v. Western Alliance Corp.* (1985) 171 Cal.App.3d 255, 263.)

C. HBOR Claims

Alternatively, Tang contends he has standing and has pleaded claims under the Homeowner's Bill of Rights (HBOR). We understand his contention to apply to his second cause of action (for statutory violations) and sixth cause of action (UCL claim), which expressly refer to and quote certain provisions of the HBOR.

The HBOR was enacted in 2012, "while California was 'still reeling from the economic impacts of a wave of residential property foreclosures that began in 2007[.]' [T]he legislation sought to 'modify[] the foreclosure process to ensure that borrowers who may qualify for a foreclosure alternative are considered for, and have a meaningful opportunity to obtain, available loss mitigation options.' (Stats. 2012, ch. 87, § 1, subds. (a), (b))." (*Lucioni v. Bank of America, N.A.* (2016) 3 Cal.App.5th 150, 157 (*Lucioni*).) The HBOR went into effect in January 2013. (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 86, fn. 14.) The HBOR does not apply retroactively and does not independently grant Tang standing to challenge the 2010 assignment. (*See Saterbak*, *supra*, 245 Cal.App.4th at p. 818.)

To the extent his claims pertain to events subject to the HBOR (the foreclosure sale that occurred in 2017), Tang does not mention or discuss the trial court's finding that his HBOR claims were largely conclusory and unsupported by any facts. Having independently reviewed the complaint, we agree with the trial court's determination that the conclusory nature of his allegations that defendants violated the HBOR are not sufficient to survive demurrer. For example, the complaint alleges defendants violated Civil Code section 2924.17, subdivision (b) of the HBOR, which requires that, prior to recording or filing any foreclosure-related documents, "a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information." (Civ. Code, § 2924.17, subd. (b).) With respect to that HBOR pro-

vision, the complaint alleges that defendants foreclosed on the subject property "without ensuring that they had reviewed competent and reliable evidence to [*sic*] giving them the right to foreclose." The complaint does not plead any facts explaining how defendants violated this provision of the HBOR including what evidence they failed to review prior to foreclosure. Therefore, Tang's causes of action in the complaint based on purported violations of the HBOR fail as a matter of law.[6]

D. UCL Claim Based on "Stale" Notice of Default

Tang also asserts that he sufficiently pleaded claims based on the complaint's allegations that the 2010 notice of default (NOD) was "stale." The UCL claim (sixth cause of action) in the complaint expressly alleges that the nonjudicial foreclosure sale was premised on a "stale, and no longer valid due to staleness, notice of default recorded in 2010." The complaint alleges the NOD was stale because the foreclosure sale did not actually occur until approximately seven years later, in 2017.

As this allegation that the NOD was stale does not appear to hinge on Tang's standing, we review the complaint to determine whether the trial court erred in concluding that it failed to state any cognizable claim on this point. The trial court decided that any argument predicated on the NOD's staleness failed

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[6] We note that Tang's statutory violations cause of action also alleged violations of provisions of the Penal Code related to the procurement, offering, or filing of forged instruments. Tang raises no claim on appeal as to these alleged violations, and the trial court correctly concluded Tang has no standing to enforce criminal statutes.

because there "are no statutory provisions requiring a foreclosing entity to re-issue a notice of default after a specified time."

The nonjudicial foreclosure process is formally initiated when the trustee records a notice of default. (*Yvanova*, *supra*, 62 Cal.4th at p. 927.) "The statutory notice of default is intended to give notice of the trustor's default to 'the trustor, the trustor's successors, to junior lienors, other interested persons, and . . . to the world.'" (*Kachlon v. Markowitz* (2008) 168 Cal.App. 4th 316, 339.) At the time the NOD was recorded in March 2010, there was no requirement that the NOD be reissued. (*See Lucioni*, *supra*, 3 Cal.App.5th at p. 157 [noting that most of the HBOR provisions contain "procedures to help borrowers obtain alternatives to foreclosure" and also noting that most of the provisions "place duties upon a lender before it may record a notice of default" (*id.* at p. 158) (italics added)].) Further, Tang does not allege that the lender failed to satisfy any of the explicit statutory requirements applicable to the NOD. (*See* former Civ. Code, § 2924 [listing required statements to be included in a notice of default]; former Civ. Code, § 2923.5; *Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 213-214 [former Civ. Code, § 2923.5 requires, "before a notice of default may be filed, that a lender contact the borrower in person or by phone to 'assess' the borrower's financial situation and 'explore' options to prevent foreclosure"].)

On appeal, Tang argues the HBOR imposed "new" requirements on notices of default that made notices of default "recorded prior to January 1, 2013 out of date, *i.e.*, stale." Tang fails to provide any authority supporting his position, and the HBOR does not apply

retroactively. (*See Saterbak*, *supra*, 245 Cal.App.4th at p. 818.) Our independent research has not uncovered any such requirement. Nor does our review of the HBOR suggest that the Legislature intended that a pre-HBOR notice of default would become invalid upon enactment of the HBOR. Therefore, the trial court did not err in sustaining the demurrer to the complaint for failing to state a cognizable claim.

We also reject Tang's unsupported claim that the 2010 NOD was invalid because it contained an older default figure. Tang does not provide any legal authority for the proposition that the NOD was invalid because it did not contain an updated default amount, and he does not dispute that he received notice of his default and was in default during the pertinent time period. Nor does he dispute (as reflected in the trustee's deed upon sale attached to the complaint) that the loan was in default in an even greater amount by 2017 than it had been in 2010. He does not contend he paid any amount of the default.

For the above reasons, we conclude the trial court did not err in sustaining the demurrer as to Tang's UCL claim that alleged the NOD was stale or invalid because it did not contain an updated figure of the amount in default.

E. Leave to Amend

As noted earlier, after a demurrer is sustained without leave to amend, on appeal we consider "whether there is a 'reasonable possibility' that the defect in the complaint could be cured by amendment. [Citation.] The burden is on plaintiffs to prove that amendment could cure the defect." (*King v. Comp-Partners, Inc.* (2018) 5 Cal.5th 1039, 1050.) Tang

addresses this issue by pointing to his statement of decision filed with the trial court that proposed amending the complaint to allege the notice of default was "stale" into each cause of action, and that Brignac committed "forgery" and the other defendants conspired to "perpetuate and profit from this forgery." He stated Brignac's criminal actions of forgery "exceed that of alleged robo-signing," and that "[a] forged deed (or its assignment) is completely void and ineffective to transfer any title to the grantee." These assertions do not assist Tang for the reasons we have explained above, namely that they are comprised of either unsupported conclusions (*i.e.*, the instruments are "void" or Brignac committed forgery) or are based on the faulty legal premise that the notice of default become "stale" over time and had to be reissued prior to foreclosure.

Because there is no reasonable possibility that the defects in Tang's complaint could be cured by amendment, the trial court did not abuse its discretion in sustaining the demurrers without leave to amend. (*Barroso v. Ocwen Loan Servicing, LLC* (2012) 208 Cal. App.4th 1001, 1008.)[7]

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[7] In light of this conclusion, we need not address defendants' arguments that the judgment should be affirmed on alternative grounds, such as that Tang failed to allege willingness or ability to tender the outstanding amount of the debt, the recordings at issue in the slander of title cause of action were privileged, and Tang failed to allege an injury caused by defendants' purported UCL violations.

F. Other Claims Related to Demurrer Proceedings

1. Lack of Court Reporter

Tang also suggests that his rights were violated because the Santa Clara County Superior Court no longer provides court reporters in civil matters, and that persons of "modest means" such as himself are faced with paying for a reporter at "significant cost." The record on appeal does not contain any reporter's transcripts.

In his written filings with the trial court that are included in the record, Tang did not request that the trial court provide him with a court reporter nor object to the lack of a court reporter. Tang filed a statement explaining how he would amend his complaint in which he noted that court reporters were not provided, but he made no objection on that ground. Based on these circumstances, we conclude Tang has forfeited any challenge to the lack of a court-provided court reporter. (*See Children's Hosp. & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 776.)

Moreover, even if we were to deem the claim not forfeited, Tang has not established prejudicial error. (Cal. Const., art. VI, § 13; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780.) Tang does not articulate any legal error, let alone prejudicial error, connected to his failure to procure a court reporter. He does not assert or explain how the lack of a reporter's transcript in the appellate record prevents our review of his claims. It is well settled that we must independently review his complaint (*see City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865), and we have done so.

We are also able to review Tang's claim that the trial court should have permitted him to amend the complaint for a third time. Tang filed a statement of how he would amend his complaint, and the trial court permitted him to "orally argue from the document." For the reasons we have explained, we reject, on its merits, his claim that the trial court abused its discretion in refusing to grant him leave to amend. Moreover, he had the opportunity to present new facts on appeal; he has not done so. (*See Total Call Internat. Inc. v. Peerless Ins. Co.* (2010) 181 Cal.App. 4th 161, 166.) Given the circumstances of this case, we decline Tang's invitation that we articulate "guidelines" for the trial court to follow to preserve the record whenever a litigant is of "modest means."

2. Judicial Bias

Tang asserts the trial court demonstrated improper bias when it took offense to statements made by Tang's counsel that compared Brignac to a Nazi soldier. We have reviewed the court's statements cited by Tang, and we do not agree they show any improper bias by the trial court. Our review of the record has found nothing that suggests "a reasonable person would entertain doubts concerning the judge's impartiality" (*Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 776) or that "'would cause us to lack confidence in the fairness of the proceedings such as would necessitate reversal'" (*Haluck v. Ricoh Electronics, Inc.* (2007) 151 Cal.App.4th 994, 1008). We therefore reject Tang's argument of improper judicial bias.

For these reasons, we reject Tang's arguments against the trial court's orders sustaining the demurrers

and therefore affirm the judgments of dismissal.[8] We turn now to his appeal of the postjudgment order awarding Chase attorney fees.

G. Appeal of Attorney Fee Award (Docket No. H046697)

Following the judgment of dismissal of the complaint against it, Chase moved for attorney fees.[9] In support of its request, Chase relied on contractual provisions in the deed of trust. In particular, it contended it was a beneficiary of section 9 of that contract in its capacity as a former servicer of the loan and primarily cited Civil Code section 1717 in support of its fee motion.[10] On January 2, 2019, the trial court

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[8] We deny Tang's request for judicial notice of an article purportedly published in the Daily Journal on September 11, 2019, and titled "UCLA professor uncovers nationwide scams involving fake court orders." Chase and Brignac opposed Tang's request on numerous grounds. Having reviewed all the submissions related to Tang's request, we are not persuaded this article is relevant to any material issue here. (*See People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) We therefore deny Tang's request.

[9] It appears only Chase sought attorney fees in the trial court from Tang. The other defendants are not parties to docket No. H046697.

[10] Appellant's opening brief suggests he also seeks to appeal the trial court's award of $1,691.84 in costs to Chase. However, his notice of appeal does not reflect an appeal of that order and does not mention costs at all. Likewise, his civil case information statement attaches only the attorney fee order as the order being appealed. On this record, we conclude we do not have jurisdiction to consider any appeal of the order awarding costs to Chase. (Cal. Rules of Court, rule 8.100(a)(2).)

entered an order awarding Chase $28,645 in attorney fees.

Tang contends the trial court erred in this order because the language in the deed of trust, the contract underpinning Chase's attorney fee request, does not provide for an award of attorney fees to Chase. Tang appeals only the legal basis for the attorney fee award and does not argue the trial court abused its discretion in the calculation of the award.

1. Additional Background

Chase primarily cites to sections 9 and 14 as the provisions of the deed of trust (DOT) relevant to its entitlement to attorney fees.[11] Section 9 of the DOT, titled "Protection of Lender's Interest in the Property and Rights Under this Security Instrument," provides in relevant part: "If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, [or] (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument . . . then Lender may do and pay for whatever is reason-

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[11] Chase also argues on appeal that sections 11 and 22 in the DOT expressly provide for an award of attorney fees. We have reviewed those provisions and do not agree they specifically provide for the award of attorney fees. Section 11 is titled "Assignment of Miscellaneous Proceeds; Forfeiture" and does not discuss the provision of attorney fees but rather is directed to the "proceeds of any award or claim for damages." Section 22 is titled "Acceleration; Remedies" and states the lender, when "pursing the remedies provided in this Section 22," is entitled to "including, but not limited to, reasonable attorneys' fees and costs of title evidence." We do not read this language as reasonably allowing attorney fees to be recovered in a postforeclosure litigation.

able or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including . . . (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument."

Section 9 of the DOT also states: "Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment."

Section 14 of the DOT, titled "Loan Charges," states in relevant part, "Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees."

In July 2018, citing to section 9 of the DOT, Chase moved for attorney fees relying on Civil Code section 1717, Code of Civil Procedure sections 1021 and 1033, subdivision (a)(10), and California Rules of Court, rule 3.1702(a). Chase conceded that it was not a signatory to the deed of trust but nevertheless asserted it was entitled to fees as a servicer of the loan from 2008 until 2013. Chase filed a request for judicial notice requesting the trial court take notice of the DOT (dated June 2005) and other documents.

Chase requested an award of $31,338.18, which it contended represented its reasonable fees, and included "prospective fees expected to be incurred in the prosecution of this Motion (opposition review, reply,

hearing attendance)." Chase submitted declarations connected with the fees requested that included billing statements.

Tang filed an opposition to Chase's request, contending, among other arguments, that Chase had no contractual basis to seek attorney fees as the foreclosure sale had extinguished the deed of trust, Chase was not the lender under section 22 of the deed of trust, and Chase was not an intended third party beneficiary of that contract.

In September 2018, the trial court entered an order granting attorney fees in favor of Chase but requested that Chase submit a more detailed chart setting out the hours expended by each attorney and the amounts charged by hour for that attorney. On October 11, 2018, Chase filed a supplemental declaration that attached a spreadsheet setting out the total amount of time and fees sought by Chase. Chase stated that the total amount spent through the filing of the motion was $28,645.

On January 2, 2019, the trial court issued the attorney fee order underlying this appeal. The trial court granted Chase's motion for attorney fees in part and ordered Tang to pay Chase fees in the amount of $28,645. Regarding Chase's entitlement to fees, the trial court's written order stated, "The Court finds that, as argued by [Chase], the subject agreement was not extinguished by the foreclosure on the subject property, only the security; that the agreement in question provided for attorney fees to the prevailing party in any litigation; and[] that Chase is the prevailing party and is entitled to an award of attorney fees." The trial court did not explain which "agreement" it was referring to, but the parties on

appeal cite the DOT as the sole contractual basis for the trial court's attorney fee award.

2. Legal Principles

We review de novo the legal basis for an attorney fee award. (*Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 751 (*Mountain Air*).) "Under the American rule, each party to a lawsuit ordinarily pays its own attorney fees. [Citation.] Code of Civil Procedure section 1021, which codifies this rule, provides: 'Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties. . . . ' . . . Thus, "'[p]arties may validly agree that the prevailing party will be awarded attorney fees incurred in any litigation between themselves, whether such litigation sounds in tort or in contract.'"" (*Ibid.*)

"If such litigation does sound in contract, however, an agreement allocating attorney fees may be 'within the scope of [Civil Code] section 1717' and subject to its restrictions. [Citation.] 'Before section 1717 comes into play, it is necessary to determine whether the parties entered an agreement for the payment of attorney fees, and if so, the scope of the attorney fee agreement.' [Citation.] This determination requires us to apply traditional rules of contract interpretation." (*Mountain Air*, *supra*, 3 Cal.5th at p. 752, fn. omitted.) In accordance with the parties' arguments on appeal, we consider only the DOT as the relevant agreement allocating attorney fees.

3. Analysis

Having considered the language of the deed of trust provisions and the authorities cited by both parties, we conclude that the language in the deed of trust does not support the attorney fee award to Chase ordered by the trial court. In *Hart v. Clear Recon Corp.* (2018) 27 Cal.App.5th 322, 325, 326-329 (*Hart*), which involved a wrongful foreclosure action, the Second District Court of Appeal, Division Eight, analyzed section 1717 and a deed of trust provision identical to section 9 of the DOT. Based on the same language contained in section 9 here, which provided that amounts incurred by lender would become additional debt of borrower, the Court of Appeal concluded that the plain language of the provision did not satisfy section 1717's requirement that there be a contractual provision that specifically provides that attorney's fees and costs "'shall be awarded'" either to one of the parties or the prevailing party. (*Id.* at pp. 325, 327.) Rather, the pertinent provision stated "that attorney's fees, like any other expenses the lender may incur to protect its interest, will be added to the secured debt." (*Id.* at p. 327.) Based on that language, the court concluded that the agreement did not contemplate the provision of attorney fees. (*Ibid.*)

The parties to the DOT here similarly agreed that attorney fees incurred as described under section 9 would become additional debt secured by the deed of trust and that the lender could "charge" the borrower fees for services performed in connection with the borrower's default, including attorney fees, under section 14. In our view, the plain language of these provisions in the DOT do not specifically provide for

a freestanding attorney fee award to a party or a prevailing party. Thus, section 1717 does not apply.

Chase in its briefing cites to *Chacker v. JPMorgan Chase Bank, N.A.* (2018) 27 Cal.App.5th 351 (*Chacker*) as support for the trial court's attorney fee order. However, *Chacker* does not assist Chase. In *Chacker*, the Second District Court of Appeal, Division Five, construed a claim by Chase and CRC for attorney fees based on a deed of trust with language identical to that in the DOT at issue in this appeal. The court in *Chacker* concluded that the language of the deed of trust did not entitle Chase and CRC to a freestanding attorney fee award as had been ordered by the trial court, stating that it was "essentially" construing section 9 in the same way as in *Hart*. (*Id.* at p. 358, fn. 6.) Moreover, the *Chacker* court further analyzed the import of section 14, an issue not reached in *Hart*, and held that that provision did not allow for an attorney fee award. (*Id.* at pp. 357, 358, fn. 6.)

The court in *Chacker* explained, "Where not authorized by statute, entitlement to attorney fees derives from the contractual terms chosen. Just as parties may limit or expand the circumstances under which attorney fees are awardable [citation], they may also limit or expand how those attorney fees may be obtained. Here, the parties to the deed of trust agreed attorney fees incurred as described under section 9 would become additional debt secured by the deed of trust. They also agreed the lender could 'charge' the borrower fees for services performed in connection with the borrower's default, including attorney fees, under section 14. As we have explained, the trust deed is properly read (only) to permit attorney fees to be added to the borrower's promissory note obligation,

and the terms of the trust deed itself are all the 'authority' that is necessary under the circumstances." (*Chacker*, *supra*, 27 Cal.App.5th at p. 357.)

We recognize that *Chacker* is a preforeclosure case. However, as we are interpreting the same attorney fee provision language here and the DOT makes no distinction in this regard, this factual difference does not affect the analysis of the contractual language. Thus, even if we were to follow *Chacker*, as Chase urges, the decision at most supports the conclusion that sections 9 and 14 of the DOT provide only that attorney fees may be added to the borrower's promissory note obligation. *Chacker*'s reasoning does not support the trial court's attorney fee order here, which ordered attorney fees after the property was sold at a nonjudicial foreclosure sale, which extinguished any obligation Tang had under the promissory note.

The other cases Chase relies on to support the attorney fee order also do not assist Chase, because those other cases relied on additional contractual language to support the fee award. In *Lacayo v. Seterus, Inc.*, Case No. CV1702783-AB (JEMx) (CD Cal., June 25, 2018,) [2018 WL 3326662] (*Lacayo*), the federal district court relied in part on a provision in the promissory note that stated, in the event of a default, the defendant has "'the right to be paid back by [Plaintiffs] for all of its costs and expenses in enforcing this [n]ote. . . . Those expenses include, for example, reasonable attorney's fees.'" (*Id.* at *3.) Chase relied upon no such provision here and, based on our review, the promissory note was not included as part of Chase's motion for attorney fees and does not appear elsewhere in the record on appeal.

In *Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, the promissory note stated if it were "not paid, the makers would 'pay all costs of collection including, . . . reasonable attorneys' fees, and all expenses in connection with the protection or realization of the collateral securing th[e] Note.'" (*Id.* at p. 544.) In addition, the guarantee of the note contained a provision for attorney fees in "'proceedings involving Guarantors that in any way affect the exercise by Lender of its rights and remedies hereunder.'" (*Ibid.*) This language is materially different from that in the DOT here, which does not affirmatively permit an attorney fee award but rather only permits the lender to "charge" the fees to the outstanding amount due.

Chase does not point to any other contractual language in the DOT that supports its entitlement to attorney fees following the nonjudicial foreclosure sale of the property. For these reasons, we conclude the trial court erred in its award of attorney fees to Chase.

III. Disposition

In appeal No. H045898, the judgments of dismissal are affirmed. In appeal No. H046697, the trial court's January 2, 2019 order awarding Chase its attorney fees is reversed. In the interests of justice, the parties shall bear their own costs on appeal.

/s/
Danner, J.

WE CONCUR:

/s/ Greenwood, P.J. /s/ Grover, J.

JUDGMENT ORDER OF THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SANTA CLARA IN FAVOR OF JPMORGAN CHASE BANK, N.A. AND DEBORAH BRIGNAC (JUNE 18, 2018)

SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE
COUNTY OF SANTA CLARA

VINCENT TANG,

Plaintiff,

v.

JPMORGAN CHASE BANK; QUALITY LOAN SERVICE CORPORATION; DEBORAH BRIGNAC; U.S. BANK, NA; SELECT PORTFOLIO SERVICING; ORCHID TERRACE INC. (25%); MONTE VISTA OAKS, INC. (25%); MONTE VISTA OAKS DB PLAN (25%); KIP DREAM HOMES (25%); and DOES 1-20,

Defendants.

Case No.: 17CV307324

Before: Mary E. ARAND, Judge.

JUDGMENT IN FAVOR OF JPMORGAN CHASE BANK, NA AND DEBORAH BRIGNAC

Action Filed: March 15, 2017

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

Having sustained the demurrers of Defendants JPMorgan Chase Bank, NA. ("Chase") and Deborah Brignac ("Brignac"), to the second amended complaint ("SAC") of plaintiff Vincent Tang ("Plaintiff") on February 7, 2018, in its entirety without leave to amend and GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The action is hereby dismissed with prejudice as to Defendant Chase.
2. The action is hereby dismissed with prejudice as to Defendant Brignac.
3. Plaintiff shall take and recover nothing by way of the action as against Defendant Chase.
4. Plaintiff shall take and recover nothing by way of the action as against Defendant Brignac.
5. Judgment of dismissal is entered in favor of Defendant Chase and against Plaintiff.
6. Judgment of dismissal is entered in favor of Defendant Brignac and against Plaintiff.
7. Defendant Chase may submit a memorandum of costs.
8. Defendant Brignac may submit a memorandum of costs.

IT IS SO ORDERED.

/s/ Hon. Mary E. Arand
Judge of the Superior Court

DATE: May 25, 2018

KIRKLAND & ELLIS LLP

By: /s/ Jonathan M. Weiss
Attorneys for Defendant
Deborah Brignac

DATE: April 16, 2018

PARKER, IBRAHIM & BENG

By: /s/ Bryant S. Delgadillo
Mariel Gerlt-Ferraro
Louis Chang
Attorneys for Defendant
JPMorgan Chase Bank, N.A.

DATED: April 24, 2018

JUDGMENT OF THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SANTA CLARA AFTER DEMURRER IN FAVOR OF U.S. BANK AND SPS (APRIL 6, 2018)

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SANTA CLARA

VINCENT TANG,

Plaintiff,

v.

JPMORGAN CHASE BANK; QUALITY LOAN SERVICE CORPORATION; DEBORAH BRIGNAC; U.S. BANK, NA; SELECT PORTFOLIO SERVICING; ORCHID TERRACE INC. (25%); MONTE VISTA OAKS, INC. (25%); MONTE VISTA OAKS DB PLAN (25%); KIP DREAM HOMES (25%); and DOES 1-20,

Defendants.

Case No.: 17CV307324

Before: Mary E. ARAND, Judge.

JUDGMENT AFTER DEMURRER

Date: January 30, 2018
Time: 9:00 a.m.
Dept.: 9
Action Filed: 3/15/17
Trial Date: TBD

On January 30, 2018, the Court issued its Order Re: Demurrer in response to the demurrer of Defendants SELECT PORTFOLIO SERVICING, INC, and U.S. BANK, N.A., SUCCESSOR TRUSTEE TO BANK OF AMERICA, NA, SUCCESSOR IN INTEREST TO LASALLE BANK NA, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE WAMU MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR19 ("Defendants") to Plaintiff VINCENT TANG's Second Amended Complaint. The Order is attached as Exhibit A.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's action against Defendants is DISMISSED WITH PREJUDICE. A final JUDGMENT OF DISMISSAL is hereby entered against Plaintiff and in favor of Defendants SELECT PORTFOLIO SERVICING, INC. and U.S. BANK, N.A., SUCCESSOR TRUSTEE TO BANK OF AMERICA, NA, SUCCESSOR IN INTEREST TO LASALLE BANK NA, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE WAMU MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR19. Plaintiff shall take nothing by way of their claims against these Defendants. These Defendants are the prevailing party entitled to recover such costs of suit as are allowed by law.

/s/ Hon. Mary E. Arand
Judge of the Superior Court

Dated: 3-16-2018

Approved as to Form.

By: /s/
Thomas Spielbauer
Attorney for Plaintiff Vincent Tang

Dated:

ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA RE: DEMURRER AND MOTION TO STRIKE BY DEFENDANT DEBORAH BRIGNAC (FEBRUARY 7, 2018)

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SANTA CLARA

VINCENT TANG,

Plaintiff,

v.

JPMORGAN CHASE BANK; ET AL.,

Defendants.

Case No.: 17-CV-307324

Before: Mary E. ARAND, Judge.

ORDER RE: DEMURRER AND MOTION TO STRIKE BY DEFENDANT DEBORAH BRIGNAC

DECISION ON SUBMITTED MATTER

The demurrer to the second amended complaint and motion to strike filed by defendant Deborah Brignac came on for hearing before the Honorable Mary E. Arand on February 6, 2018, at 9:00 a.m. in

Department 9.[1] The matter having been submitted, the Court orders as follows:

This is a wrongful foreclosure action initiated by plaintiff Vincent Tang ("Plaintiff") against defendants JPMorgan Chase Bank ("JPMorgan"), Quality Loan Service Corporation ("QLS"), Deborah Brignac ("Brignac"), U.S. Bank, N.A. ("U.S. Bank"), Select Portfolio Servicing ("SPS"), Orchid Terrace Inc. ("Orchid Terrace"), Monte Vista Oaks, Inc. ("MVO"), Monte Vista Oaks DB Plan ("DB Plan"), and KIP Dream Homes ("KIP").

According to the operative second amended complaint ("SAC"), Plaintiff owns property located at 2739 Clover Meadow Court, San Jose, CA ("Subject Property"). (SAC, ¶ 2.) On June 27, 2005, Plaintiff obtained a loan from Washington Mutual Bank ("WaMu") in the amount of $825,000.00 and secured the loan by a deed of trust ("DOT") on the Subject Property. (*Id.* at ¶ 42.) The DOT and promissory note ("Note") named WaMu as the beneficiary and California Reconveyance Company ("CRC") as the trustee. (*Id.* at ¶ 43.) On October 2, 2008, JPMorgan purchased WaMu as a result of a receivership ordered by the Federal Deposit Insurance Corporation ("FDIC"). (*Id.* at ¶ 44.)

On March 1, 2010, CRC recorded a notice of default on the Subject Property ("NOD"). (SAC, ¶ 45.) That same day, an assignment of the DOT ("ADOT") to Bank of America ("BANA"), as successor by merger to LaSalle Bank NA and as trustee to the WaMu

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[1] The hearing on the demurrer and motion to expunge filed by Defendants Orchid Terrace, et al., have been vacated, based on notice to the Court that the case as to those defendants has settled.

Mortgage Pass-Through Certificate Series 2005-AR19 ("WaMu AR19"), was recorded. (*Id.* at ¶ 47.) The ADOT is void because its executor, Brignac, represented that she signed it "under the authority of being a Vice President of [JPMorgan]," she but never held that position. (*Id.* at ¶ 50.) Instead, she was a foreclosure specialist and supervisor for CRC. (*Ibid.)* The ADOT is additionally void because it purported to transfer the DOT into WaMu AR19 on or about February 26, 2010, almost five years after the pool had closed. (*Id.* at ¶ 52.)

Thereafter, U.S. Bank, through SPS, substituted ALAW as trustee ("SOT1"). (SAC, ¶ 56-57.) There is no recorded document transferring interest to U.S. Bank. (*Ibid.)* The SOT1 is void because neither U.S. Bank, SPS, nor WaMu AR19 had a beneficial interest in the DOT or Note at that time, and therefore had no interest to assign. (*Ibid.)* Two years later, QLS was substituted as trustee ("SOT2"). (*Id.* at ¶ 58.) The SOT2 is void because neither U.S. Bank, SPS, nor WaMu AR19 had a beneficial interest in the DOT or Note at that time. (*Id.* at ¶ 59.) QLS then recorded three notices of trustee sale on March 24, 2016, June 14, 2016, and November 1, 2016 ("Three NOTS"). (*Id.* at ¶ 60.)

QLS subsequently sold the Subject Property to Orchid Terrace, MVO, DB Plan, and KIP (collectively "Investors") at a foreclosure sale. (SAC, ¶ 62.) Their status as bona fide purchasers is "void and voidable at the option of the Plaintiff" because they do not have certificates of qualification as required for foreign business entities and are not registered with the California Secretary of State. (*Id.* at ¶ 63.) After the sale, a trustee's deed upon sale ("TDUS") was recorded,

which is also void because defendants did not have the lawful authority to foreclose. (*Id.* at ¶¶ 64-65.)

Plaintiff asserts causes of action for: (1) declaratory judgment; (2) "statutory violations;" (4) unlawful foreclosure; (5) slander of title; (6) cancellation of instruments; and (7) unfair business practices.

Presently before the Court are: (1) Brignac's demurrer to the SAC; and (2) Brignac's joinder to JPMorgan's motion to strike portions of the pleading.

I. Brignac's Demurrer

A. Request for Judicial Notice

First, Brignac requests judicial notice of the Notice of Ruling on Demurrer and Motion to Strike Portions of Plaintiff's First Amended Complaint and Ruling Taking Pending Demurrers Off Calendar, filed on August 1, 2017 by JPMorgan in this action. This court record is a proper subject of judicial notice under Evidence Code section 452, subdivision (d). In addition, it is relevant to issues raised herein. (*See People ex rel. Lockyer v. Shamrock Foods Co., supra*, 24 Cal.4th at p. 422, fn. 2.)

Next, Brignac requests judicial notice of a federal district court trial ruling. This request is misguided because she fails to demonstrate how a court document from an unrelated case is relevant to any matter under review herein. (*See People ex rel. Lockyer v. Shamrock Foods Co., supra*, 24 Cal.4th at p. 422, fn. 2.)

In light of the above, the request for judicial notice is GRANTED IN PART AND DENIED IN PART. The request is GRANTED as to the Notice of

Ruling and DENIED as to the federal district court trial ruling.

B. Merits of the Demurrer

Brignac demurs to the entire SAC on the ground of failure to state sufficient facts to constitute a cause of action, arguing Plaintiff lacks standing. She also demurs to each individual cause of action on the ground of failure to state sufficient facts to constitute a cause of action based on a variety of other arguments.

As an initial matter, for the same reasons discussed above relative to Investors' demurrer, the first cause of action is additionally stricken from the SAC as to Brignac.[2] As such, the demurrer to the first cause of action on the ground of failure to state sufficient facts to constitute a cause of action is MOOT.

As a preliminary matter, the Court previously sustained JPMorgan's demurrers to the complaint and the first amended complaint. Those pleadings asserted five causes of action for "statutory violations," unlawful foreclosure, slander of title, cancellation of instruments, and unfair business practices. Although the prior orders did not permit Plaintiff to amend the pleading to include a new cause of action, he asserts

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[2] In opposition, Plaintiff notes the Court previously stated in its ruling on JPMorgan's demurrer to the SAC that the first cause of action for declaratory relief could survive a demurrer. This is inaccurate. The Court held that the standing arguments advanced by JPMorgan did not address each part of the first cause of action. The Court did not state the first cause of action otherwise has merit. To the contrary, Brignac's other arguments directed to the first cause of action are well-taken. (See *Mendoza, supra*, 6 Cal.App.5th at pp. 820-821.)

a declaratory relief cause of action for the first time in the SAC.

"Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order. The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." (*Harris v. Wachovia Mortg., FSB* (2010) 185 Cal.App.4th 1018. 1023, internal citations omitted.) A court may, in its discretion, strike new causes of action when they are not drawn in conformity with its prior order. (*See* Code Civ. Proc., § 436, subd. (b); *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528 ["[Section 436] is commonly invoked to challenge pleadings filed in violation of a deadline, court order, or requirement of prior leave of court"].) As Plaintiff did not seek permission to include the declaratory relief cause of action, it is hereby stricken. It is therefore unnecessary to discuss the merits of the demurrer relative to the first cause of action.[3] The demurrer to the first cause of action on the grounds of failure to state sufficient facts to constitute a cause of action and uncertainty is thus MOOT.

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[3] Even if the Court were to address them, Brignac's arguments have merit. (*See Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 820-821 ("*Mendoza*") [declaratory relief claim is inadequately stated when merely duplicative of other causes of action and, in a foreclosure case, the property has already been sold].)

1. Failure to State Sufficient Facts

Brignac argues Plaintiff fails to state sufficient facts as to the third, fifth, and sixth causes of action because he lacks standing to sue. There are two bases alleged by Plaintiff to assert standing to initiate this action. First, the ADOT is void based on Brignac's lack of authority to execute it. Second, the ADOT is void because the DOT was not timely assigned into WaMu AR19.[4] Brignac asserts Plaintiff does not have standing under either theory.

"Standing is a threshold issue, because without it no justiciable controversy exists. Standing goes to the existence of a cause of action. Pursuant to Code of Civil Procedure section 367, '[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.'" (*Saterbak v. JPMorgan Chase Bank N.A.* (2016) 245 Cal.App.4th 808, 813 ("*Saterbak*"), internal citations and quotation marks omitted.) A plaintiff who initiates a post-foreclosure action has standing to challenge the validity of an assignment if it is void. (*Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 943 ("*Yvanova*").) The difference between void and voidable is crucial for the discussion of standing as "[a] void contract is without legal effect" and may not be ratified by the parties, while a voidable contract is still subject to ratification by the parties. (*Id.* at pp. 929-930.) Thus,

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[4] Plaintiff also suggests that perhaps the DOT was never actually placed in WaMu AR19 because such transfer was not listed on a website. Based on the pleading, it does not appear that this allegation was intended to form a separate and distinct basis for Plaintiff's claims. This interpretation is supported by Plaintiff's opposition, as he does not dispute Brignac' characterization of his claims as only focusing on the timeliness of the transfer.

while a plaintiff has standing to challenge a void assignment, he or she lacks standing to challenge one that is merely voidable. (*Saterbak, supra*, 245 Cal.App. 4th at p. 815.) To plead an assignment is void, a plaintiff may not simply allege as much as a conclusion; rather, he or she must allege a factual basis supporting the conclusion. (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1156.)

First, Plaintiff alleges Brignac's recording of the ADOT was fraudulent because she executed it "under the authority of being a Vice President of Defendant," however, she never held that position. (SAC, ¶ 50.) Plaintiff pleads Brignac was actually a foreclosure specialist and supervisor for the California Reconveyance Company. (*Ibid.*)

This allegation fails to confer standing on Plaintiff; allegations that a written instrument is void because the signatory was allegedly employed by another entity are insufficient to invalidate the instrument. (*See Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 46; *see also Rahbarian v. JP Morgan Chase* (E.D. Cal., Nov. 10, 2014, No. 2:14-CV-01488 JAM) 2014 WL 5823103, at *8 ["The mere fact that Derborah [sic] Brignac was not an employee of JPMorgan and Colleen Irby was not an employee of CRC does not give rise to a reasonable inference that they did not have the authority to sign documents on behalf of those companies."].) Being an employee of one entity does not necessarily disqualify a signatory from being authorized to sign on another entity's behalf. (*Mendoza, supra*, 6 Cal.App.5th at p. 819.) Moreover, contrary to Plaintiff's arguments, the emphasis of his allegations is on Brignac's employment, not her lack of authority to execute the ADOT. (*See* SAC, ¶ 50.)

Plaintiff does not actually allege she was not authorized to execute the ADOT.

The allegations are additionally insufficient to confer standing because where a plaintiff alleges that a document is void due to the signatory's lack of authority to execute the document, yet does not contest the validity of the underlying debt, the plaintiff lacks standing to contest the assignment. (*Pratap v. Wells Fargo Bank, NA.* (N.D. Cal. 2014) 63 F.Supp.3d 1101, 1109.) Further, it is well-established that these allegations render an assignment only voidable, not void. (*Mendoza, supra*, 6 Cal.App.5th at p. 819; *Javaheri v. JPMorgan Chase Bank, NA.* (C.D. Cal., Aug. 13, 2012, No. 2:10-CV-08185-ODW) 2012 WL 3426278, at *6.) Because the ADOT would only be voidable, Plaintiff lacks standing to challenge the foreclosure based on Brignac's execution of the document.[5]

Next, Plaintiff alleges the ADOT is void because the DOT was transferred into WaMu AR19 on or about February 26, 2010, almost five years after the pool had closed. (SAC, ¶ 52.) Brignac also contends Plaintiff lacks standing to challenge the transfer to the pool because a defect in the securitization only renders the assignment voidable and not void. This argument is well-taken. Plaintiff does not address this argument in opposition, tacitly conceding its merit. A defect in the securitization process only renders the

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[5] Plaintiff's argument that the ADOT was a forgery does not support a contrary conclusion. An express allegation that the document was forged does not alter the standing analysis. (*See Saterbak, supra*, 245 Cal.App.4th at p. 814 [lack of standing when plaintiff expressly alleged assignment was forged].)

assignment voidable, not void.[6] (*See Saterbak, supra*, 245 Cal.App.4th at p. 815.) Because a plaintiff does not have standing to challenge an assignment that is merely voidable, Plaintiff lacks standing here to the extent the action is predicated on the transfer of the DOT into the pool.

Plaintiff does not advance any arguments supporting the conclusion that he has standing to sue. Plaintiff asserts he has standing pursuant to paragraph 22 of the DOT. Paragraph 22 of the DOT states Plaintiff shall have the right to bring a court action to assert the non-existence of a default or any other defense to the sale. Plaintiff insists the DOT is essentially a contract and should be governed by contract law and not foreclosure statutes. Paragraph 22 does not purport to grant Plaintiff standing in any context to initiate an action; it states that prior to "acceleration," the lender must provide Plaintiff with written notice of certain information, including that he has "the right to bring a court action to assert the non-existence of a default or any other defense . . . to acceleration and sale." Insuring Plaintiff is informed of his ability to initiate an action does not confer standing on him. (*See Saterbak, supra*, 245 Cal.App.4th at p. 816 [stating similar "provisions do not change [a plaintiff's] standing obligations under California law"]; *see also Yhudai v. Impac Funding Corporation* (2016) 1 Cal.App.5th 1252,

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[6] Plaintiff's only reference to securitization is that the cases cited rely on New York law governing the securitization process. However, the outcome is the same regardless whether the Court applies New York or California law. (*See Gutierrez v. Bank of America, N.A.* (E.D. Cal., Apr. 8, 2014, No. 2:13-CV-01695-TLN-AC) 2014 WL 1379883, *at* *6, fn. 2 [a plaintiff may not challenge securitization process under California law].)

1260.) As such, paragraph 22 of the DOT does not confer standing on Plaintiff.

In sum, Plaintiff lacks standing and the demurrer is therefore sustainable to the second, third, fourth, fifth, and sixth causes of action. Plaintiff's lack of standing is a non-curable defect. Plaintiff has twice amended the pleading and failed to allege new facts curing this deficiency.[7] In addition, he fails to provide any facts suggesting he would be able to do so. As noted above, the newly claimed theory of forgery does not cure the standing problems. (*See Saterbak, supra*, 245 Cal.App.4th at p. 814 [lack of standing when plaintiff expressly alleged assignment was forged].) It also does not appear that any argument predicated on the "staleness" of the NOD would cure such defect as there are no statutory provisions requiring a foreclosing entity to re-issue a notice of default after a specified time. As such, leave to amend is not warranted. (*See Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 [a "[p]laintiff must show in what manner he [or she] can amend his [or her] complaint and how that amendment will change the legal effect of the pleading"].) Accordingly, Brignac' demurrer to the first through sixth causes of action on the ground of failure to state sufficient facts to constitute a cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.

II. Brignac's Motion to Strike

As the demurrer to the entirety of the SAC was sustained, the motion to strike is MOOT.

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[7] In light of this conclusion, it is unnecessary to evaluate the remainder of Brignac' arguments.

III. Professionalism

In his opposition to Brignac's demurrer, Plaintiff's counsel compared Brignac to a Nazi soldier who was simply following orders. These statements are outrageous and deeply offensive.

The Judges of the Santa Clara County Superior Court have adopted by standing order the Santa Clara County Bar Association's Code of Professionalism and expect attorneys to comport themselves in accordance with the guidelines set forth therein. Section 7 of the Code of Professionalism provides that written materials submitted to the court should not unfairly attack the opposing party, such as degrading his or her ethics, morals, or personal behavior, unless such issues are specifically at issue in the proceeding. Plaintiff's counsel Thomas Spielbauer certainly violated this rule by comparing Brignac's behavior of executing foreclosure-related documents to the acts of Nazis. Plaintiff's counsel is admonished to comply with the Code of Professionalism in the future.

Defendant shall submit a proposed judgment either approved as to form or with proof of compliance with Rules of Court, Rule 3.1312.

/s/ Hon. Mary E. Arand
Judge of the Superior Court

Date: February 7, 2018

ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA RE: JPMORGAN BANK DEMURRER AND MOTION TO STRIKE (FEBRUARY 7, 2018)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

VINCENT TANG,

Plaintiff,

v.

JPMORGAN CHASE BANK; ET AL.,

Defendants.

Case No.: 17-CV-307324

Before: Mary E. ARAND, Judge.

ORDER RE: DEMURRER
AND MOTION TO STRIKE

DECISION ON SUBMITTED MATTER

The demurrer to the second amended complaint and motion to strike portions of the pleading filed by defendant JPMorgan Chase Bank came on for hearing before the Honorable Mary E. Arand on January 23, 2018, at 9:00 a.m. in Department 9. The matter having been submitted, the Court orders as follows:

This is a wrongful foreclosure action initiated by plaintiff Vincent Tang ("Plaintiff") against defendants JPMorgan Chase Bank ("JPMorgan"), Quality Loan Service Corporation ("QLS"), Deborah Brignac ("Brignac"), U.S. Bank, N.A. ("U.S. Bank"), Select Portfolio Servicing ("SPS"), Orchid Terrace Inc., Monte Vista Oaks, Inc., Monte Vista Oaks DB Plan, and KIP Dream Homes.

According to the operative second amended complaint ("SAC"), Plaintiff owns property located at 2739 Clover Meadow Court, San Jose, CA ("Subject Property"). (SAC, ¶ 2.) On June 27, 2005, Plaintiff obtained a loan from Washington Mutual Bank ("WaMu") in the amount of $825,000.00 and secured the loan by a deed of trust ("DOT") on the Subject Property. (*Id.* at ¶ 42.) The DOT and promissory note ("Note") named WaMu as the beneficiary and California Reconveyance Company ("CRC") as the trustee. (*Id.* at ¶ 43.) On October 2, 2008, JPMorgan purchased WaMu as a result of a receivership ordered by the Federal Deposit Insurance Corporation ("FDIC"). (*Id.* at ¶ 44.)

On March 1, 2010, CRC recorded a notice of default on the Subject Property ("NOD"). (SAC, ¶ 45.) That same day, an assignment of the DOT ("ADOT") to Bank of America ("BANA"), as successor by merger to LaSalle Bank NA and as trustee to the WaMu Mortgage Pass-Through Certificate Series 2005-AR19 ("WaMu AR19"), was recorded. (*Id.* at ¶ 47.) The ADOT is void because its executor, Brignac, represented she signed it "under the authority of being a Vice President of [JPMorgan]," she but never held that position. (*Id.* at ¶ 50.) Instead, she was a foreclosure specialist and supervisor for CRC. (*Ibid.*) The ADOT is additionally void because it purported to transfer the DOT into

WaMu AR19 on or about February 26, 2010, almost five years after the pool had closed. (*Id.* at ¶ 52.)

Thereafter, U.S. Bank, through SPS, substituted ALAW as trustee ("SOT1"). (SAC, ¶¶ 56-57.) There is no recorded document transferring interest to U.S. Bank. (*Ibid.*) The SOT1 is void because neither U.S. Bank, SPS, nor WaMu AR19 had a beneficial interest in the DOT or Note at that time, and therefore had no interest to assign. (*Ibid.*) Two years later, QLS was substituted as trustee ("SOT2"). (*Id.* at ¶ 58.) The SOT2 is void because neither U.S. Bank, SPS, nor WaMu AR19 had a beneficial interest in the DOT or Note at that time. (*Id.* at ¶ 59.) QLS then recorded three notices of trustee sale on March 24, 2016, June 14, 2016, and November 1, 2016 ("Three NOTS"). (*Id.* at ¶ 60.)

QLS subsequently sold the Subject Property to Orchid Terrace, Inc., Monte Vista Oaks Inc., Monte Visa Oaks DB Plan, and KIP Dream Homes at a foreclosure auction. (SAC, ¶ 62.) Their status as bona fide purchasers is "void and voidable at the option of the Plaintiff" because they do not have certificates of qualification as required for foreign business entities and are not registered with the California Secretary of State. (*Id.* at ¶63.) After the sale, a trustee's deed upon sale ("TDUS") was recorded, which is also void because "defendants" did not have the lawful authority to foreclose. (*Id.* at ¶¶ 64-65.)

Plaintiff asserts causes of action for: (1) declaratory judgment; (2) "statutory violations;" (4) unlawful foreclosure; (5) slander of title; (6) cancellation of instruments; and (7) unfair business practices.

JPMorgan ("Defendant") presently demurs to the SAC on the ground of failure to state sufficient facts to constitute a cause of action and moves to strike portions of the pleading. Plaintiff opposes the demurrer and motion to strike.[1]

I. Request for Judicial Notice

In support of its demurrer and motion to strike, Defendant first requests judicial notice of nine documents recorded in connection with the Subject Property. These documents may be judicially noticed pursuant to Evidence Code section 452, subdivision (h), which allows a court to take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (*See Fontenot v. Wells Fargo Bank; NA.* (2011) 198 Cal.App.4th 256, 264-265, disapproved of on other grounds in *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919.)

In opposition, Plaintiff states that while these documents are attached to the SAC, their veracity is in dispute and he does not agree to their authenticity.

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[1] The Court observes Plaintiff's opposition was untimely filed. Code of Civil Procedure section 1005, subdivision (b) provides a party must file an opposition nine court days prior to the hearing. Here, the hearing date is set for January 23, 2018, thus the opposition should have been filed and served nine court days ahead of that date on January 9, 2018. However, Plaintiff only filed his opposition on January 11, 2018. Defendant does not appear to be prejudiced by the late filing. because it was able to timely file a reply brief. Further, it does not argue the opposition should be disregarded on the basis it was untimely filed. Plaintiff is admonished to timely file his papers in the future.

Even so, he does not actually assert they are forgeries; rather, as discussed in more detail relative to the merits of the demurrer, he argues they are void because a signatory lacked authority to sign the ADOT. Because the authenticity of the documents themselves are not actually in dispute, they may be judicially noticed. (*See Fontenot v. Wells Fargo Bank, NA., supra*, 198 Cal.App.4th at p. 265 [courts may judicially notice documents if the authenticity is not disputed].) Plaintiff additionally asserts that if the Court judicially notices these recorded documents, it cannot accept the truth of anything stated therein. "Although the court recognized that it would have been improper to take judicial notice of the truth of statements of fact recited within the [recorded] documents, the trial court was permitted to take judicial notice of the legal effect of the documents' language when that effect was clear," such as "the date of the notice's recording, and the amount stated as owing in the notice." (*Ibid.*, internal citation omitted.) Thus, while the Court will not accept the truth of the matters stated in the documents, it will take judicial notice of their legal effect. In addition, the documents are relevant to the underlying issues to be resolved in the demurrer. (*See People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 [any matter to be judicially noticed must be relevant to a material issue].) Consequently, the recorded documents are proper subjects of judicial notice.

Next, Defendant requests judicial notice of the Purchase and Assumption Agreement between the FDIC and itself. While that document is a proper subject of judicial notice (*see Scott v. JPMorgan Chase Bank, NA* (2013) 214 Cal.App.4th 743, 753), it is not

relevant to any material issue raised in the demurrer. Defendant does not actually rely on that document to support any substantive argument; instead, it mentions it as part of the background of how it came to have an interest in the Subject Property. Accordingly, the agreement is not a proper subject of judicial notice. (*See People ex rel. Lockyer v. Shamrock Foods Co., supra*, 24 Cal.4th at p. 422, fn. 2.)

Last, Defendant seeks judicial notice of an excerpt of WaMu AR19's pooling and servicing agreement pursuant to Evidence Code section 452, subdivision (h), which, as stated above, permits a court to judicially notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. In opposition, Plaintiff advances three arguments as to why this document should not be subject to judicial notice.

Plaintiff first simply insists the agreement is not a proper subject of judicial notice, without elaborating any further on his argument. While, in general, it is improper to judicially notice the existence of a contract between private parties (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145), there are several exceptions to this rule. As applicable here, a court may judicially notice an agreement if it is referred to in the pleading and the parties do not dispute the existence of the agreement (*see Ascherman v. General Reinsurance Corp.* (1986) 183 Cal.App.3d 307, 310-311; *see also Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1285, fn. 3; *Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1026-1027, disapproved of on other grounds by *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193).

Here, neither party disputes the existence of the agreement and Plaintiff references it in the pleading; therefore, it may be judicially noticed. (*See* SAC, ¶ 54.) Second, Plaintiff argues the Court cannot consider the statements set forth in the document for their truth. While that is true, it does not prevent a court from judicially noticing the existence of a document. (*See Trinity Park L.P. v. City of Sunnyvale, supra,* 193 Cal.App.4th at p. 1027.) Last, Plaintiff contends the document is not relevant because Defendant fails to discuss it anywhere in its supporting papers. This is simply incorrect. (*See* Mem. Ps. & As., p. 5:1-4 [referring to the agreement].) The Court otherwise finds the document is relevant to a material issue discussed herein. (*See People ex rel. Lockyer v. Shamrock Foods Co., supra*, 24 Cal.4th at p. 422, fn. 2.) Accordingly, it is a proper subject for judicial notice.

Finally, Defendant requests judicial notice of this Court's ruling as to its previous demurrer and motion to strike directed to the first amended complaint ("FAC"). This document is subject to judicial notice pursuant to Evidence Code section 452, subdivision (d), which provides court records are proper subjects of judicial notice. In addition, it is relevant to an issue raised herein. (*See People ex rel. Lockyer v. Shamrock Foods Co., supra*, 24 Cal.4th at p. 422, fn. 2.)

Accordingly, the request for judicial notice is GRANTED IN PART and DENIED IN PART. The request is DENIED as to the Purchase and Assumption Agreement, and is otherwise GRANTED.

II. Demurrer

Defendant advances arguments applicable to all causes of action in addition to arguments applicable to

individual causes of action. The Court will first address the arguments applicable to all causes of action.

A. Arguments Applicable to All Causes of Action

1. Standing

Defendant contends there are three allegations forming the basis for Plaintiff's standing to initiate this action. First, the ADOT is void based on Brignac's lack of authority to execute it. Second, the ADOT is void because the DOT was not timely assigned into WaMu AR19.[2] Third, paragraph 22 of the DOT confers standing on him. Defendant contends Plaintiff does not have standing under any of the three theories.

For context, as stated above, Defendant previously demurred to the FAC arguing, among other things, Plaintiff lacked standing to sue. In the FAC, Plaintiff's claims were similarly predicated on Brignac's purported lack of authority, the untimely assignment into WaMu AR19, and the language in paragraph 22 of the DOT. The Court sustained the demurrer to each cause of action, holding Plaintiff lacked standing based on the above three allegations. Defendant contends Plaintiff has alleged no new facts suggesting he now has standing to pursue his claims.

"Standing is a threshold issue, because without it no justiciable controversy exists. Standing goes to

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[2] Plaintiff also suggests that perhaps the DOT was never actually placed in WaMu AR19 because such transfer was not listed on a website. Based on the pleading, it does not appear that this allegation was intended to form a separate and distinct basis for Plaintiff's claims. This interpretation is supported by Plaintiff's opposition, as he does not dispute Defendant's characterization of his claims as only focusing on the timeliness of the transfer.

the existence of a cause of action, Pursuant to Code of Civil Procedure section 367, [e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.'" (*Saterbak v. JPMorgan Chase Bank, NA.* (2016) 245 Cal.App.4th 808, 813 ("*Saterbak*"), internal citations and quotation marks omitted.) A plaintiff who initiates a post-foreclosure action has standing to challenge the validity of an assignment if it is void. (*Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 943 ("*Yvanova*").) The difference between void and voidable is crucial for the discussion of standing as "[a] void contract is without legal effect" and may not be ratified by the parties, while a voidable contract is still subject to ratification by the parties. (*Id.* at pp. 929-930.) Thus, while a plaintiff has standing to challenge a void assignment, he or she lacks standing to challenge one that is merely voidable. (*Saterbak, supra*, 245 Cal.App.4th at p. 815.) To plead an assignment is void, a plaintiff may not simply allege as much as a conclusion; rather, he or she must allege a factual basis supporting the conclusion. (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1156.)

First, Plaintiff alleges Brignac's recording of the ADOT was fraudulent because she executed it "under the authority of being a Vice President of Defendant," however, she never held that position. (SAC, ¶ 50.) Plaintiff pleads Brignac was actually a foreclosure specialist and supervisor for the California Reconveyance Company. (*Ibid.*)

Defendant characterizes this allegation as one of "robo-signing." Robo-signing is the failure to conduct a review of the evidence substantiating a borrower's default prior to recording or filing certain documents,

including an assignment of a deed of trust. (*Michael J. Weber Living Trust v. Wells Fargo Bank, NA.* (N.D. Cal., Mar. 25, 2013, No. 13-CV-00542-JST) 2013 WL 1196959, at *4.) Similar to his opposition to the prior demurrer, Plaintiff disputes this characterization and maintains the allegation is not one of "robo-signing" but one of a lack of authority to execute the documents in the first instance. Plaintiff insists that instead of alleging Brignac is a robo-signer, he pleads she never worked for Defendant.

In the prior ruling, the Court held this allegation failed to confer standing on Plaintiff. As discussed by the Court, robo-signing claims are often predicated on a plaintiff alleging an employee of an entity without the proper authority executed an assignment. (*See Pratap v. Wells Fargo Bank N.A.* (N.D. Cal. 2014) 63 F.Supp.3d 1101, 1109; *see also Baldoza v. Bank of America, NA.* (N.D. Cal., Mar. 12, 2013, No. C-12-05966 JCS) 2013 WL 978268, at *13 [characterizing a claim that an employee did not work for MERS but executed an assignment on its behalf as "robo-signing"].) Regardless of whether Plaintiff's allegation amounts to robo-signing, allegations that a written instrument is void because the signatory was allegedly employed by another entity are insufficient to invalidate the instrument. (*See Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 46; *see also Rahbarian v. JP Morgan Chase* (E.D. Cal., Nov. 10, 2014, No. 2:14-CV-01488 JAM) 2014 WL 5823103, at *8 ["The mere fact that Derborah [sic] Brignac was not an employee of JPMorgan and Colleen Irby was not an employee of CRC does not give rise to a reasonable inference that they did not have the authority to sign documents on behalf of those companies."].) Being an

employee of one entity does not necessarily disqualify a signatory from being authorized on behalf of another entity to sign on its behalf. (*See ibid.)* Moreover, contrary to Plaintiff's arguments, the emphasis of Plaintiff's allegations is on Brignac's employment, not her lack of authority to execute the ADOT. (*See* SAC, ¶ 50.) Plaintiff does not actually allege Defendant did not authorize her to execute the ADOT. Plaintiff alleged no new facts that would support a different conclusion or materially change the substance of his claims.

The allegations are additionally insufficient to confer standing because "where a plaintiff alleges that a document is void due to robo-signing, yet does not contest the validity of the underlying debt, and is not a party to the assignment, the plaintiff does not have standing to contest the alleged fraudulent transfer." (*Pratap v. Wells Fargo Bank, NA.* (N.D. Cal. 2014) 63 F.Supp.3d 1101, 1109.) Such is the case here. Further, it is well-established that allegations of robo-signing render an assignment only voidable, not void. (*Javaheri v. JPMorgan Chase Bank, NA.* (C.D. Cal., Aug. 13, 2012, No. 2:10-CV-08185-ODW) 2012 WL 3426278, at *6.) Because the ADOT would only be voidable, Plaintiff lacks standing to challenge Defendant's authority based on Brignac's execution of the document.

At the hearing, Plaintiff attempted to file with the Court a new pleading, that apparently would describe how the complaint could be amended. The Court declined to allow Plaintiff to file this document, as other counsel appeared by phone, this document had not been served, and sur-replies are not authorized under the Code. However, the Court allowed counsel to argue in what way the complaint could be amended to state a claim, and counsel indicated that he intended

to add new allegations that Brignac's signature on the ADOT was a forgery as defined in the Penal Code. Despite the Court's denial of counsel's request to file this document, after the hearing and after the matter had been taken under submission, Plaintiff filed a document entitled "Statement of How Plaintiff Will Amend the Pleading," which does nothing more than reiterate the arguments made at the hearing.[3] Whether Plaintiff argues that the execution of the ADOT was robo-signing or a forgery does not support a contrary conclusion. Even an express allegation that the document was forged does not alter the standing analysis. (*See Saterbak supra*, 245 Cal.App.4th at p. 814 [lack of standing when plaintiff expressly alleged assignment was forged].) Such an allegation is still, at best, voidable and not void.

Next, Plaintiff alleges the ADOT is void because the DOT was transferred into WaMu AR19 on or about February 26, 2010, almost five years after the pool had closed. (SAC, ¶ 52.) Defendant also contends Plaintiff lacks standing to challenge the transfer to the pool because a defect in the securitization only renders the assignment voidable and not void. This argument is well-taken. Plaintiff does not address this argument in opposition, tacitly conceding its merit. As explained in detail relative to the court's prior ruling, a defect in the securitization process only renders the assignment voidable, not void. (*See*

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[3] Plaintiff claims he had to file this document after the hearing because "court reporters are no longer provided for motions brought before the Court." However, as counsel is aware, the Court allows the parties to stipulate to bring private court reporters for law and motion matters, and Plaintiff's counsel chose not to bring his own court reporter.

Saterbak, supra, 245 Cal.App.4th at p. 815.) Because a plaintiff does not have standing to challenge an assignment that is merely voidable, Plaintiff lacks standing here to the extent the action is predicated on the transfer of the DOT into the pool.

Last, Plaintiff alleges paragraph 22 of the DOT grants him the right to challenge the ADOT. Paragraph 22 of the DOT states Plaintiff shall have the right to bring a court action to assert the non-existence of a default or any other defense to the sale. Plaintiff insists the DOT is essentially a contract and should be governed by contract law and not foreclosure statutes. The Court already thoroughly addressed these allegations in its prior ruling, finding Plaintiff did not have standing on this basis. As explained in the prior ruling, Paragraph 22 does not purport to grant Plaintiff standing in any context to initiate an action; it states that prior to "acceleration," the lender must provide Plaintiff with written notice of certain information, including that he has "the right to bring a court action to assert the non-existence of a default or any other defense . . . to acceleration and sale." Insuring Plaintiff is informed of his ability to initiate an action does not confer standing on him. (*See Saterbak, supra*, 245 Cal.App.4th at p. 816 [stating similar "provisions do not change [a plaintiff's] standing obligations under California law"]; *see also Yhudai v. Impac Funding Corporation* (2016) 1 Cal.App.5th 1252, 1260.) As such, paragraph 22 of the DOT does not confer standing on Plaintiff.

In sum, Plaintiff lacks standing to assert each cause of action to the extent they are predicated on Brignac's lack of authority, the assignment of the DOT

into the pool, and the language of paragraph 22 of the DOT.

With that said, Plaintiff's lack of standing does not entirely dispose of every cause of action. The first cause of action is not solely predicated on these three allegations; it is also based on the "staleness" of the NOD, specifically whether it could properly be the basis for issuing the Three NOTS five years after its execution.[4] (*See* SAC, ¶ 80.) The staleness of the NOD is a distinct issue from whether the DOT was timely transferred into WaMu AR19 and Brignac lacked authority to execute the ADOT. Defendant completely fails to address the staleness of the NOD in its discussion regarding standing. As such, the demurrer is not sustainable as to the first cause of action solely on the basis that Plaintiff lacks standing. On the other hand, the demurrer is sustainable as to the remaining causes of action on this basis.[5]

2. Consent Judgment

Plaintiff alleges the major servicers of mortgages in California, such as BANA and JPMorgan, agreed to the National Mortgage Settlement in April 2012. (SAC, ¶ 67.) Plaintiff pleads that the settlement entered

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[4] While Plaintiff discusses the issue of staleness, he only does so generally and does not address it relative to a specific cause of action. It appears from the pleading that it only explicitly relates to the first cause of action.

[5] In addition to presenting the issue of standing as a global argument, Defendant re-asserts the standing argument when individually addressing each cause of action. It is unnecessary for the Court to address the argument in connection with each cause of action given the ruling here.

into by these entities imposed on them the obligation to prove they had authority to foreclose, and Defendant failed to comply with this requirement. (*Ibid.*).

Defendant refers to this requirement as the "consent judgment" and asserts Plaintiff has no standing to enforce it. Defendant concludes the claims premised on such allegations therefore fail. Defendant's argument is problematic because, as argued by Plaintiff, none of the claims are premised on these allegations. This allegation appears to be background information providing an introduction into Plaintiffs allegations relating to the Homeowner Bill of Rights. The demurrer is therefore not sustainable on this basis.

3. Proper Party

Defendant asserts it is not the "proper party" to Plaintiffs claims to the extent they relate to the SOT1, SOT2, Three NOTS, and TDUS. Defendant contends the exhibits to the SAC reveal it was not the loan servicer when they were recorded and, as a result, it cannot be liable for any claim.

Defendant previously advanced this argument in support of its demurrer to the FAC and the Court then found it meritless. Here, Defendant reasserts the argument without change. For the same reasons previously discussed, the fact Defendant did not record the subject documents does not shield it from all liability. As previously stated, Defendant's liability is predicated on the existence of a conspiracy and joint venture. (*See* SAC, ¶¶ 19-21.) Because Plaintiff pleads Defendant was a member of the conspiracy, it may be held liable for the wrongful acts of the other defendants. (*See Applied Equipment Corp. v. Litton Saudi Arabia Ltd* (1994) 7 Cal.4th 503, 510 [stating

conspiracy imposes liability on parties who share in the design of a wrongful plan].) Notably, Defendant does not challenge the sufficiency of the conspiracy and joint venture allegations. Consequently, there is nothing apparently shielding Defendant from liability as to defects arising from the SOT1, SOT2, Three NOTS, and TDUS.

B. Arguments Applicable to Individual Causes of Action

1. First Cause of Action — Declaratory Judgment

The first cause of action alleges an actual controversy has arisen between Plaintiff and Defendant concerning their respective rights and duties. (SAC, ¶ 76.) Plaintiff seeks a judicial determination that: (1) the DOT was illegally moved into WaMu AR19; (2) WaMu AR19 was closed at the time of the transfer, thereby voiding it; (3) WaMu AR19 did not, and does not, have any beneficial interest in the DOT; (4) the ADOT, SOT1, SOT2, Three NOTS, and TDUS are void and invalid for reasons of fraud, lack of authority, and forgery by Brignac; (5) the NOD is invalid as it is stale; and (6) Defendant, BANA, SPS, QLS, and Brignac violated and conspired to violate California Penal Code sections 115 and 115.5. (*Id.* at ¶¶ 77-84.)

Defendant contends Plaintiff fails to state sufficient facts to constitute a cause of action because this cause of action was not asserted in the FAC and the Court's prior order sustaining the demurrer to the FAC did not provide leave to add another cause of action.

Defendant's argument is well-taken. "Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order. The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." (*Harris v. Wachovia Mortg., FSB* (2010) 185 Cal.App.4th 1018, 1023, internal citations omitted [affirming the sustaining of a demurrer on the basis the cause of action was improperly added to a complaint]; *People By and Through Dept. of Public Works v. Clausen* (1967) 248 Cal.App.2d 770, 785.) Here, this cause of action was not asserted in the FAC; that pleading contained four causes of action for "statutory violations," unlawful foreclosure, slander of title, cancellation of instruments, and unfair business practices. In addition, the prior order did not permit Plaintiff to amend the pleading to include a new cause of action.

Plaintiff's argument in opposition does not support a contrary conclusion. Plaintiff insists that "[d]eclaratory Judgment is in reality pled for each of the other causes of action" and "[t]his cause of action is very much involved with the statutory violations, unlawful foreclosure, slander of title, cancellation of recorded instruments, as well as the unfair business practices." (Opp., p.14:26-28.) Though not clearly stated, it appears Plaintiff intended to argue that this claim does not advance any new legal theory, and thus is permissible. Plaintiff fails to substantiate his contention that such an amendment is permissible as he cites no legal authority supporting that position. (*See People v.*

Dougherty (1982) 138 Cal.App.3d 278, 282 [a point made without argument or legal authority does not require discussion].)

Accordingly, the demurrer to the first cause of action is sustained on this basis. In light of this conclusion, it is unnecessary for the Court to address Defendant's other arguments in support of its demurrer to this cause of action.

2. Second Cause of Action — Statutory Violations

Plaintiff pleads Defendant violated Civil Code sections 2924.17, subdivision (b) ("Section 2924.17(b)") and 2924f, subdivision (b)(1) ("Section 2924f(b)(1)"), which are provisions of the Homeowner Bill of Rights ("HBOR"), as well as Penal Code sections 115, subdivision (a) ("Section 115(a)") and 115.5, subdivision (a) ("Section 115.5(a)"). The violations of these statutes are predicated on defects in the NOD, ADOT, SOT1, SOT2, Three NOTS, and TDUS.

First, Defendant asserts another argument that this Court has already disposed of in its prior demurrer. Specifically, Defendant again insists Plaintiff does not state a violation of the HBOR with respect to the recordation of the NOD in 2010 because the statute is not retroactive. As explained more thoroughly in the prior ruling, the demurrer is not sustainable on this basis because this cause of action is predicated on the SOT1, SOT2, Three NOTS, and TDUS in addition to the NOD. Thus, Plaintiff's failure to plead a violation of the HBOR based on the NOD does not dispose of the entire claim. Consequently, it is not susceptible to demurrer on the basis the HBOR does not apply

retroactively. (*See PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682.)

Second, Defendant maintains Plaintiff fails to allege any conduct violative of Section 2924.17, which "place[s] a burden on the foreclosing party to file a declaration with the notice of default, and provide[s] requirements for the lender's diligence prior to filing that declaration." (*Lucioni v. Bank of America, NA.* (2016) 3 Cal.App.5th 150, 163.) Subdivision (b) of that statute requires that, prior to recording or filing any foreclosure-related documents, "a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information." (Civ. Code, § 2924. 17, subd. (b).) Defendant's argument is not well-taken. Plaintiff alleges Defendant recorded the property documents without reviewing competent and reliable evidence (SAC, ¶ 88), which is behavior Section 2924.17 prohibits.

Apparently recognizing the flaw in its argument, Defendant next asserts any allegation that it failed to comply with Section 2924.17 is inadequate because Plaintiff's allegations are conclusory and nonspecific. This argument has merit. Statutory claims must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783.) This requires plaintiffs to "set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied" because "[g]eneral allegations are regarded as inadequate." (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5.) Plaintiff fails to meet this standard. Plaintiff only pleads the

legal conclusion that Defendant failed to review the proper material. (SAC, ¶ 88.) There are no detailed allegations relating to Defendant's review of material reflecting Plaintiffs loan status and how that review was inadequate.

In addition, Defendant persuasively argues Plaintiff fails to allege any material violations of Section 2924.17. Civil Code section 2924.12 provides that a plaintiff may only bring an action based on Section 2924.17 if the violation is material. "Courts have interpreted the term 'material' to refer to whether the alleged violation affected a plaintiff's loan obligations[.]" (*Cornejo v. Ocwen Loan Servicing, LLC* (E.D. Cal. 2015) 151 F. Supp.3d 1102, 1113.) Here, Plaintiff does not allege whether Defendant's purported violation of Section 2924.17 affected his loan obligations. As a result, he fails to plead that any violation of Section 2924.17 was material.

Next, Section 2924f(b)(1) provides that prior to the sale of property pursuant to the power of sale contained in any deed of trust or mortgage, "notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the county seat of the county where the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks." Defendant aptly argues Plaintiff fails to allege any violation of this statute. Defendant allegedly violated this statute by listing QLS as the foreclosing

trustee, even though it legally was not and could not have been the trustee. (SAC, ¶ 90.) However, Section 2924f(b)(1) does not relate to whether an entity has authority to foreclose on the property; rather it prescribes the time and place for providing notice of a sale. As such, even if QLS had no authority to foreclose as trustee, that would not result in Defendant violating this statute. Accordingly, Plaintiff fails to allege facts suggesting a violation of Section 2924f (b)(1).

Turning to the alleged violations of the Penal Code, Defendant asserts Plaintiff does not state a claim for a violation of Sections 115(a) and 115.5(a) because he has no standing to enforce criminal statutes. Defendant already successfully challenged this cause of action in its previous demurrer on the same basis. Plaintiff appears to have disregarded the Court's prior ruling as this portion of the pleading remains unchanged. As previously discussed, Plaintiff cannot properly maintain an action based on these statutes. "Generally, criminal statutes do not confer private rights of action, and thus any party asserting such a private right bears the burden of establishing its existence." (*Grajeda v. Bank of America, NA.* (S.D. Cal., June 10, 2013, No. 12-CV-1716-IEG NLS) 2013 WL 2481548, at *2 [dismissing claim under Section 115(a) in a wrongful foreclosure case because the plaintiff provided no authority supporting contention a private right of action exists].) Once again, Plaintiff provides no authority demonstrating a private right of action exists and does not address this argument in opposition. (*See People v. Dougherty, supra*, 138 Cal.App.3d at p. 282.) Courts have otherwise held Section 115 does not provide citizens with a private right of action.

(*Patino v. Franklin Credit Management Corporation* (N.D. Cal., Aug. 29, 2016, No. 16-CV-02695-LB) 2016 WL 4549001, at *3.) As such, Plaintiff fails to state a claim for violations of Sections 115(a) and 115.5(a).

As the second cause of action fails to allege facts supporting any statutory violation or that Plaintiff has standing to assert this claim, the demurrer to this cause of action is sustained.

3. Third Cause of Action — Unlawful Foreclosure

Plaintiff alleges Defendant wrongfully foreclosed on the Subject Property because the DOT and Note were improperly moved into WaMu AR19 and Brignac fraudulently executed the ADOT. (SAC, ¶¶ 99-101.) As a result, the subsequently executed documents are void. (*Id.* at ¶ 101.)

Defendant contends Plaintiff fails to plead he tendered the sum of indebtedness. Defendant previously successfully asserted this same argument in its prior demurrer. As before, the argument has merit. As a general rule, a debtor cannot set aside a foreclosure without also alleging he or she paid the secured debt before the action is commenced. (*Lona v. Citibank N.A.* (2011) 202 Cal.App.4th 89, 112; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 86-87.) This is often referred to as the "tender rule." (*See Lona v. Citibank NA., supra*, 202 Cal.App.4th at p. 115.) Here, Plaintiff does not allege he tendered the amount due on his loan or made an offer to do so. Instead, he insists the tender rule is inapplicable because he alleges the documents initiating the foreclosure are void. Tender is not required where "the trustor is not required to rely on equity to attack the

deed because the trustee's deed is void on its face." (*Id.* at pp. 112-113.) As discussed above, even assuming he adequately alleges Brignac lacked authority and the securitization was defective, these defects only render the ADOT voidable, not void. Therefore, the exception to the tender rule is inapplicable and Plaintiff is required to plead he tendered the amount due.

Plaintiff's argument in opposition does not support a contrary conclusion. Plaintiff asserts that, under *Yvanova*, *a* borrower is not required to plead compliance with the tender rule. *Yvanova*, however, does not stand for that proposition. On the issue of tender, the California Supreme Court noted that tender is excused when the underlying deed of trust is void, and then stated it "[e]xpress[es] no opinion as to whether [the] plaintiff . . . must allege tender to state a cause of action for wrongful foreclosure under the circumstances of this case." (*Yvanova, supra*, 62 Cal.4th at p. 929, fn. 4.) Thus, *Yvanova* reiterated the above-stated law, and then explicitly declined to rule on that point. Consequently, *Yvanova* does not stand for the proposition that Plaintiff is excused from pleading he tendered the amount due.

Accordingly, the demurrer to the third cause of action is sustained on the bases Plaintiff failed to plead he tendered the amount due and lacks standing.

4. Fourth Cause of Action — Slander of Title

Plaintiff alleges the DOT and Note were "improperly moved" into WaMu ARl9 and Brignac fraudulently executed the ADOT. (SAC, ¶¶ 109, 11.) As a result, all subsequently executed documents, including the

NOD, SOT1, SOT2, Three NOTS, and TDUS, are void. (*Id.* at¶ 111.)

Defendant first insists this cause of action is barred by the statute of limitations. Specifically, Defendant maintains the limitations period is three years and this action was only initiated in 2017, more than three years after when it ceased being the mortgage servicer in 2013. Defendant unsuccessfully advanced an identical argument in its demurrer to the FAC. The argument remains problematic for the same reasons here.

A general demurrer will lie where a statute of limitations defense appears clearly and affirmatively from the face of the complaint. (*E-Fab., Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315-16.) In determining whether a claim is time-barred, a court must determine (1) which statute of limitations applies and (2) when the plaintiff's claim accrued. (*Id.* at p. 1316.)

Defendant correctly states the claim is governed by the three-year statute of limitations set forth in Code of Civil Procedure section 338, subdivision (g), which provides an action for slander of title is subject to a three-year limitation period. However, as the Court noted in its prior ruling, Defendant fails to address when Plaintiff's claim accrued. This is particularly problematic because the cause of action is predicated on the recording of eight separate documents, each forming a basis for the cause of action. Defendant's failure to identify when the claim accrued relative to each document renders its argument unsubstantiated. Although the Court already indicated Defendant must provide a more in-depth analysis to

successfully advance this argument, it has failed to do so here.

Defendant's argument is additionally defective because, as stated above, the claim is predicated on the existence of eight allegedly fraudulent documents. Defendant's argument relies on the premise that it cannot be liable for any conduct arising after 2013 because it was not the mortgage servicer. As discussed above, this position is flawed because Plaintiff adequately alleges Defendant was engaged in a conspiracy, which could render it liable for its conspirators' actions. Accordingly, the demurrer cannot be sustained on the basis the claim is time-barred because the demurrer would not dispose of the entire claim. (*See PH II, Inc. v. Superior Court, supra,* 33 Cal.App.4th at p. 1682.)

Next, Defendant argues Plaintiff fails to allege he suffered a pecuniary loss, which is an essential element of a slander of title cause of action. (*Stalberg v. Western Title Ins. Co.* (1994) 27 Cal.App.4th 925, 929.) This argument is underdeveloped and not well-taken. "[W]here title was disparaged in a recorded instrument, attorney fees and costs necessary to clear title or remove the doubt cast on it by defendant's falsehood are, by themselves, sufficient pecuniary damages for purposes of a cause of action for slander of title." (*Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1031, original italics.) Plaintiff alleges he incurred attorney fees and costs by initiating this action to clear title. (SAC, ¶ 116.) Defendant does not actually address this allegation or advance any arguments as to why it insufficiently alleges a loss.

Regardless, Defendant correctly states that the fourth cause of action fails to state sufficient facts to constitute a cause of action for slander of title because the subject publications are privileged. Slander of title occurs when there is an unprivileged publication of a false statement which disparages title to the property and causes pecuniary loss. (*Stalberg v. Western Title Ins. Co., supra,* 27 Cal.App.4th at p. 929.) The mailing, publication, and delivery of foreclosure notices and performance of statutory non-judicial foreclosure procedures constitute privileged communications under Civil Code section 2924, subdivision (d). (*Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 340-41.) This privilege does not apply if the defendant acted with actual malice, *i.e.*, motivated by hatred or ill will, or in reckless disregard of the plaintiff's rights. (*Id.* at p. 336.) Here, the slander of title claim is predicated on the numerous recorded documents. Those publications are privileged unless Plaintiff alleges Defendants acted with malice. Although Plaintiff does allege Defendant acted maliciously, this allegation is a bare legal conclusion and does not adequately plead malice. (*See* SAC, ¶ 115.) To adequately plead malice, a plaintiff must do more than "use the words 'malicious' and 'maliciously[;]'" he or she must allege facts supporting that conclusion. (*Locke v. Mitchell* (1936) 7 Cal.2d 599, 603; *Boyich v. Howell* (1963) 221 Cal.App. 2d 801, 803.) Plaintiff's allegations fall short of this standard. Thus, Plaintiff does not sufficiently plead malice, and the mortgage documents cannot serve as a basis for a slander of title claim.

Accordingly, the demurrer to the fourth cause of action is sustained on the bases the subject documents are privileged and Plaintiff lacks standing.

5. Fifth Cause of Action — Cancellation of Instruments

Plaintiff seeks a judicial determination that the DOT was illegally and improperly moved into WaMu AR19 and the transfer was void. (SAC, ¶ 120.) Plaintiff additionally seeks to have the ADOT declared null and void because it was fraudulently executed. (*Id. at* ¶ 121.) Last, Plaintiff seeks to have the subsequently executed documents, including the NOD, SOT1, SOT2, Three NOTS, and TDUS, declared null and void as they are fruit of the poisonous tree. (*Id. at* ¶¶ 122-123.)

Defendant insists the claim is barred by the statute of limitations "to the extent the claim seeks to cancel instruments that were recorded on or before March 15, 2014." (Mem. Ps. & As., p. 14: lis. 10-11.) For the same reasons discussed above relative to the fourth cause of action, Defendant fails to substantiate its argument because it does not address when the claim accrued. In addition, the demurrer is not sustainable because the claim is predicated on documents recorded after March 15, 2014. The demurrer does not dispose of the entire claim and is therefore not sustainable on the ground that it is time-barred. (*See PH II, Inc. v. Superior Court, supra*, 33 Cal.App.4th at p. 1682.)

However, as discussed above, the demurrer to the fifth cause of action for cancellation of instruments is sustained on the basis Plaintiff lacks standing.

6. Sixth Cause of Action — Unfair Business Practices

Plaintiff alleges Defendant violated Business and Professions Code section 17200, *et seq.* ("UCL") by proceeding with an unlawful nonjudicial foreclosure and causing the invalid property documents to be recorded. (SAC, ¶¶ 131-139.)

"The UCL prohibits, and provides civil remedies for, unfair competition, which it defines as 'any unlawful, unfair or fraudulent business act or practice.' Its purpose 'is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services.'" (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320, citations omitted.) "Because . . . section 17200 is written in the disjunctive, it establishes three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In other words, a practice is prohibited as unfair or deceptive even if not unlawful and vice versa." (*Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 644, citations and quotations marks omitted.) While not clearly articulated, it appears from the pleading that Plaintiff's claim is based on the unlawful and unfair prongs.

As to the unlawful prong, Defendant argues the predicate claims lack merit, and thus this claim also lacks merit. This argument is well-taken. As Plaintiff fails to allege <u>any</u> unlawful activity, it therefore follows that he cannot state a claim for violation of the UCL based on the same allegations. (*See Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 610; *see also Avila v. Wells Fargo Bank National Association* (N.D. Cal., Dec. 23, 2016, No. C 16-05904 WHA) 2016 WL 7425925, *6 [sustaining demurrer as

to a UCL claim because the plaintiff's other theories of "defendant's impropriety fail"].)

Turning to the unfair prong, Defendant contends Plaintiff does not plead it with requisite specificity. While it is true that a plaintiff asserting a UCL claim must plead it with particularity (*see Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619), Defendant fails to substantiate its argument that Plaintiff does not do so here. Defendant simply states Plaintiff fails to plead this claim with particularity without further explanation. It otherwise appears Plaintiff alleges facts supporting this cause of action with requisite specificity as he specifically alleges the actions he contends are unfair and the injury he suffered, namely the loss of his home. As such, the demurrer is not sustainable on the basis Plaintiff failed to adequately allege this claim with requisite particularity.

Relative to both prongs, Defendant asserts Plaintiff fails to allege a loss of money or property caused by its purported misconduct. Defendant argues Plaintiff's only alleged injury-the loss of his home—was not caused by its actions. A plaintiff must plead he or she "has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204.) This requires showing a "causal link between [the alleged] economic injury, [the loss or impending loss of property to foreclosure]" and the defendant's allegedly unfair or unlawful business practices. (*Jenkins v. JP Morgan Chase Bank, NA.* (2013) 216 Cal.App.4th 497, 523, disapproved of on other grounds by *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919.) A plaintiff fails to satisfy the causation prong of the statute if he or she would

have suffered "the same harm whether or not a defendant complied with the *law*." (*Darn v. Superior Court* (2007) 151 Cal.App.4th 1079, 1099.)

Here, Plaintiff fails to adequately allege Defendant caused his injuries. Plaintiff does not allege that he would not have suffered the loss of home absent Defendant's actions and it does not appear he would be able to do so. (SAC, ¶ 137.) The foreclosure process is triggered by a plaintiff defaulting on a mortgage loan, and there are no allegations here that any actions of Defendant triggered Plaintiff's default. (*See Rahbarian v. JP Morgan Chase* (E.D. Cal., Nov. 10, 2014, No. 2:14-CV-01488 JAM) 2014 WL 5823103, at *11.) As such, Plaintiff fails to allege his injury was caused by Defendant's actions.

Accordingly, the demurrer to the sixth cause of action as Plaintiff fails to state a claim under the unfair and unlawful prongs, fails to plead the element of causation, and lacks standing.

C. Conclusion

For the foregoing reasons, the demurrer to the first through sixth causes of action on the ground of failure to state sufficient facts to constitute a cause of action is SUSTAINED WITHOUT LEAVE TO AMEND. Plaintiff's lack of standing is a non-curable defect. Plaintiff has twice amended the pleading and failed to allege new facts curing this deficiency. In addition, he fails to provide any facts suggesting he would be able to do so. As noted above, the newly claimed theory of forgery does not cure the standing problems. (*See Saterbak, supra*, 245 Cal.App.4th at p. 814 [lack of standing when plaintiff expressly alleged assignment was forged].) It also does not appear

that any argument predicated on the "staleness" of the NOD would cure the defects as there are no statutory provisions requiring a foreclosing entity to re-issue a notice of default after a specified time. As such, leave to amend is not warranted. (*See Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 [a "[p]laintiff must show in what manner he [or she] can amend his [or her] complaint and how that amendment will change the legal effect of the pleading"].) As noted, the arguments made at the hearing do not provide a sufficient basis to grant leave to amend.

III. Motion to Strike

As all causes of action have been eliminated by this Court's ruling on the demurrer, the motion to strike punitive damages is MOOT.

Defendant shall submit a proposed judgment either approved as to form or with proof of compliance with Rules of Court, Rule 3.1312.

/s/ Hon. Mary E. Arand
Judge of the Superior Court

Date: February 7, 2018

ORDER RE: DEMURRER FILED BY DEFENDANTS SELECT PORTFOLIO SERVICING AND U.S. BANK (JANUARY 31, 2018)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

VINCENT TANG,

Plaintiff,

v.

JPMORGAN CHASE BANK; ET AL.,

Defendants.

Case No.: 17-CV-307324

Before: Mary E. ARAND, Judge.

The demurrer to the second amended complaint filed by defendants Select Portfolio Servicing and U.S. Bank, N.A. came on for hearing before the Honorable Mary E. Arand on January, 30, 2018, at 9:00 a.m. in Department 9. The matter having been submitted, the Court orders as follows:

This is a wrongful foreclosure action initiated by plaintiff Vincent Tang ("Plaintiff") against defendants JPMorgan Chase Bank ("JPMorgan"), Quality Loan Service Corporation ("QLS"), Deborah Brignac ("Brignac"), U.S. Bank, N.A. ("U.S. Bank"), Select Portfolio Servicing ("SPS"), Orchid Terrace Inc., Monte Vista

Oaks, Inc., Monte Vista Oaks DB Plan, and KIP Dream Homes.

According to the operative second amended complaint ("SAC"), Plaintiff owns property located at 2739 Clover Meadow Court, San Jose, CA ("Subject Property"). (SAC, ¶ 2.) On June 27, 2005, Plaintiff obtained a loan from Washington Mutual Bank ("WaMu") in the amount of $825,000.00 and secured the loan by a deed of trust ("DOT") on the Subject Property. (*Id.* at ¶ 42.) The DOT and promissory note ("Note") named WaMu as the beneficiary and California Reconveyance Company ("CRC") as the trustee. (*Id.* at ¶ 43.) On October 2, 2008, JPMorgan purchased WaMu as a result of a receivership ordered by the Federal Deposit Insurance Corporation ("FDIC"). (*Id.* at ¶ 44.)

On March 1, 2010, CRC recorded a notice of default on the Subject Property ("NOD"). (SAC, ¶ 45.) That same day, an assignment of the DOT ("ADOT") to Bank of America ("BANA"), as successor by merger to LaSalle Bank NA and as trustee to the WaMu Mortgage Pass-Through Certificate Series 2005-AR19 ("WaMu AR19"), was recorded. (*Id.* at ¶ 47.) The ADOT is void because its executor, Brignac, represented she signed it "under the authority of being a Vice President of [JPMorgan]," she but never held that position. (*Id.* at ¶ 50.) Instead, she was a foreclosure specialist and supervisor for CRC. (*Ibid.*) The ADOT is additionally void because it purported to transfer the DOT into WaMu AR19 on or about February 26, 2010, almost five years after the pool had closed. (*Id.* at ¶ 52.)

Thereafter, U.S. Bank, through SPS, substituted ALAW as trustee ("SOT1"). (SAC, ¶¶ 56-57.) There is no recorded document transferring interest to U.S.

Bank. (*Ibid.*) The SOT1 is void because neither U.S. Bank, SPS, nor WaMu AR19 had a beneficial interest in the DOT or Note at that time, and therefore had no interest to assign. (*Ibid.*) Two years later, QLS was substituted as trustee ("SOT2"). (*Id.* at ¶ 58.) The SOT2 is void because neither U.S. Bank, SPS, nor WaMu AR19 had a beneficial interest in the DOT or Note at that time. (*Id.* at ¶ 59.) QLS then recorded three notices of trustee sale on March 24, 2016, June 14, 2016, and November 1, 2016 ("Three NOTS"). (*Id.* at ¶ 60.)

QLS subsequently sold the Subject Property to Orchid Terrace, Inc., Monte Vista Oaks Inc., Monte Visa Oaks DB Plan, and KIP Dream Homes at a foreclosure action. (SAC, ¶ 62.) Their status as bona fide purchasers is "void and voidable at the option of the Plaintiff' because they do not have certificates of qualification as required for foreign business entities and are not registered with the California Secretary of State. (*Id.* at ¶ 63.) After the sale, a trustee's deed upon sale ("TDUS") was recorded, which is also void because "defendants" did not have the lawful authority to foreclose. (*Id.* at ¶¶ 64-65.)

Plaintiff asserts causes of action for: (1) declaratory judgment; (2) "statutory violations;" (4) unlawful foreclosure; (5) slander of title; (6) cancellation of instruments; and (7) unfair business practices.

SPS and U.S. Bank ("Defendants") presently demur to the SAC on the ground of failure to state sufficient facts to constitute a cause of action.

Defendants argue Plaintiff fails to state a claim relative to all causes of action on the basis of standing

and asserts specific arguments applicable to individual causes of action. The Court will first address standing.

As a preliminary matter, the Court previously sustained JPMorgan's demurrers to the complaint and the first amended complaint. Those pleadings asserted five causes of action for "statutory violations," unlawful foreclosure, slander of title, cancellation of instruments, and unfair business practices. Although the prior orders did not permit Plaintiff to amend the pleading to include a new cause of action, he asserts a declaratory relief cause of action for the first time in the SAC.

"Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court's order. The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend." (*Harris v. Wachovia Mortg., FSB* (2010) 185 Cal.App.4th 1018, 1023, internal citations omitted.) A court may, in its discretion, strike new causes of action when they are not drawn in conformity with its prior order. (*See* Code Civ. Proc., § 436, subd. (b); *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528 ["[Section 436] is commonly invoked to challenge pleadings filed in violation of a deadline, court order, or requirement of prior leave of court"].) As Plaintiff did not seek permission to include the declaratory relief cause of action, the first cause of action of the SAC is hereby stricken. It is therefore

unnecessary to discuss the merits of the demurrer relative to the first cause of action.[1]

I. Standing

There appear to be two allegations forming the basis for Plaintiff's standing to initiate this action. First, the ADOT is void based on Brignac's lack of authority to execute it.[2] Second, the ADOT is void because the DOT was not timely assigned into WaMu AR19.[3] Defendants argue Plaintiff does not have standing under either theory.

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[1] Even if the Court were to address them, Defendants' arguments have merit. (*See Mendoza v. JPMorgan Chase Bank NA.* (2016) 6 Cal.App.5th 802, 820-821 ("*Mendoza*") [declaratory relief claim is inadequately stated when merely duplicative of other causes of action and, in a foreclosure case, the property has already been sold].)

[2] Defendants also identify two other potential grounds on which Plaintiff bases his claims, such as the staleness of the notice of default. However, it is not apparent to the Court that all five causes of action are based on those two allegations. While Plaintiff refers to those two bases in the background facts, in the bodies of the causes of action he explicitly pleads they are predicated on the securitization of the loan and Brignac's purported lack of authority. (*See*, *e.g.*, SAC ¶¶ 98-101.) Therefore, the two other bases appear to be surplusage. The Court otherwise finds the two other potential bases for Plaintiff's claims do not support a finding that he has standing to sue.

[3] Plaintiff also suggests that perhaps the DOT was never actually placed in WaMu AR19 because such transfer was not listed on a website. Based on the pleading, it does not appear that this allegation was intended to form a separate and distinct basis for Plaintiff's claims. This interpretation is supported by Plaintiff's opposition, as he does not dispute Defendants' characterization of his claims as only focusing on the timeliness of the transfer.

"Standing is a threshold issue, because without it no justiciable controversy exists. Standing goes to the existence of a cause of action. Pursuant to Code of Civil Procedure section 367, '[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.'" (*Saterbak v. JPMorgan Chase Bank, NA.* (2016) 245 Cal.App.4th 808, 813 ("*Saterbak*"), internal citations and quotation marks omitted.) A plaintiff who initiates a post-foreclosure action has standing to challenge the validity of an assignment if it is void. (*Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 943 ("*Yvanova*").) The difference between void and voidable is crucial for the discussion of standing as "[a] void contract is without legal effect" and may not be ratified by the parties, while a voidable contract is still subject to ratification by the parties. (*Id.* at pp. 929-930.) Thus, while a plaintiff has standing to challenge a void assignment, he or she lacks standing to challenge one that is merely voidable. (*Saterbak, supra*, 245 Cal.App. 4th at p. 815.) To plead an assignment is void, a 'plaintiff may not simply allege as much as a conclusion; rather, he or she must allege a factual basis supporting the conclusion. (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1156.)

First, Plaintiff alleges Brignac's recording of the ADOT was fraudulent because she executed it "under the authority of being a Vice President of Defendant," however, she never held that position. (SAC, ¶ 50.) Plaintiff pleads Brignac was actually a foreclosure specialist and supervisor for the California Reconveyance Company. (*Ibid.*)

This allegation fails to confer standing on Plaintiff; allegations that a written instrument is void because

the signatory was allegedly employed by another entity are insufficient to invalidate the instrument. (*See Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 46; *see also Rahbarian v. JP Morgan Chase* (E.D. Cal., Nov. 10, 2014, No. 2:14-CV-01488 JAM) 2014 WL 5823103, at *8 ["The mere fact that Derborah [sic] Brignac was not an employee of JPMorgan and Colleen Irby was not an employee of CRC does not give rise to a reasonable inference that they did not have the authority to sign documents on behalf of those companies."].) Being an employee of one entity does not necessarily disqualify a signatory from being authorized on behalf of another entity to sign on its behalf. (*Mendoza, supra*, 6 Cal.App.5th at p. 819.) Moreover, contrary to Plaintiff's arguments, the emphasis of his allegations is on Brignac's employment, not her lack of authority to execute the ADOT. (*See* SAC, ¶ 50.) Plaintiff does not actually allege she was not authorized to execute the ADOT.

The allegations are additionally insufficient to confer standing because where a plaintiff alleges that a document is void due to the signatory's lack of authority to execute the document, yet does not contest the validity of the underlying debt, the plaintiff lacks standing to contest the assignment. (*Pratap v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014) 63 F.Supp.3d 1101, 1109.) Further, it is well-established that these allegations render an assignment only voidable, not void. (*Javaheri v. JPMorgan Chase Bank, NA.* (C.D. Cal., Aug. 13, 2012, No. 2:10-CV-08185-DW 012 WL 3426278, at *6.) Because the ADOT would only be voidable, Plaintiff lacks standing to challenge Defend-

ants' authority based on Brignac's execution of the document.[4]

Next, Plaintiff alleges the ADOT is void because the DOT was transferred into WaMu AR19 on or about February 26, 2010, almost five years after the pool had closed. (SAC, ¶ 52.) Defendants also contend Plaintiff lacks standing to challenge the transfer to the pool because a defect in the securitization only renders the assignment voidable and not void. This argument is well-taken. Plaintiff does not address this argument in opposition, tacitly conceding its merit. A defect in the securitization process only renders the assignment voidable, not void.[5] (*See Saterbak, supra,* 245 Cal.App.4th at p. 815.) Because a plaintiff does not have standing to challenge an assignment that is merely voidable, Plaintiff lacks standing here to the extent the action is predicated on the transfer of the DOT into the pool.

Plaintiff does not advance any arguments supporting the conclusion that he has standing to sue. Plaintiff asserts he has standing pursuant to paragraph 22 of the DOT. Paragraph 22 of the DOT

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[4] Plaintiff's argument that the ADOT was a forgery does not support a contrary conclusion. An express allegation that the document was forged does not alter the standing analysis. (*See Saterbak, supra*, 245 Cal.App.4th at p. 814 [lack of standing when plaintiff expressly alleged assignment was forged].)

[5] Plaintiff's only reference to securitization is that the cases cited rely on New York law governing the securitization process. However, the outcome is the same regardless whether the Court applies New York or California law. (*See Gutierrez v. Bank of America, N.A.* (E.D. Cal., Apr. 8, 2014, No. 2:13-CV-01695-TLN-AC) 2014 WL 1379883, at *6, fn. 2 [a plaintiff may not challenge securitization process under California law].)

states Plaintiff shall have the right to bring a court action to assert the non-existence of a default or any other defense to the sale. Plaintiff insists the DOT is essentially a contract and should be governed by contract law and not foreclosure statutes. Paragraph 22 does not purport to grant Plaintiff standing in any context to initiate an action; it states that prior to "acceleration," the lender must provide Plaintiff with written notice of certain information, including that he has "the right to bring a court action to assert the non-existence of a default or any other defense . . . to acceleration and sale." Insuring Plaintiff is informed of his ability to initiate an action does not automatically confer standing on him. (*See Saterbak, supra*, 245 Cal.App.4th at p. 816 [stating similar "provisions do not change [a plaintiff's] standing obligations under California law"]; *see also Yhudai v. Impac Funding Corporation* (2016) 1 Cal.App.5th 1252, 1260.) As such, paragraph 22 of the DOT does not confer standing on Plaintiff.

In sum, Plaintiff lacks standing to assert each cause of action to the extent they are predicated on Brignac's lack of authority (or new claims of forgery), the assignment of the DOT into the pool, and the language of paragraph 22 of the DOT.

II. Arguments Applicable to Individual Causes of Action

A. Second Cause of Action — Statutory Violations

Plaintiff pleads Defendants violated Civil Code sections 2924.17, subdivision (b) ("Section 2924.17(b)") and 2924f, subdivision (b)(1) ("Section 2924f(b)(1)"),

which are provisions of the Homeowner Bill of Rights ("HBOR"), as well as Penal Code sections 115, subdivision (a) ("Section 115(a)") and 115.5, subdivision (a) ("Section 115.5(a)"). The violations of these statutes are predicated on defects in the NOD, ADOT, SOT1, SOT2, Three NOTS, and TDUS.

First, Defendants maintain Plaintiff fails to allege a violation of Section 2924.17, which "place[s] a burden on the foreclosing party to file a declaration with the notice of default, and provide[s] requirements for the lender's diligence prior to filing that declaration." (*Lucioni v. Bank of America, NA.* (2016) 3 Cal.App.5th 150, 163.) Subdivision (b) of that statute requires that, prior to recording or filing any foreclosure-related documents, "a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information." (Civ. Code, § 2924.17, subd. (b).) Specific to this provision, Plaintiff alleges Defendants foreclosed upon the Subject Property without reviewing competent and reliable information. (SAC, ¶ 88.) Defendants insist the allegation is inadequate because it is conclusory and without detail. This argument has merit. Statutory claims must be pleaded with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783.) This requires plaintiffs to "set forth facts in his [or her] complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied" because "[g]eneral allegations are regarded as inadequate." (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5.) Plaintiff fails to meet this standard. Plaintiff only pleads the legal conclusion

that Defendants failed to review the proper material. There are no detailed allegations relating to Defendants' review of material reflecting Plaintiffs loan status and how that review was inadequate.

Next, Section 2924f(b)(1) provides that prior to the sale of property pursuant to the power of sale contained in any deed of trust or mortgage, "notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the county seat of the county where the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks." Defendants aptly argue Plaintiff fails to allege any violation of this statute with particularity. Plaintiffs fail to specify the inaccuracies of any of the Three NOTS. (SAC, ¶ 90.)

In addition, Defendants argue Plaintiff fails to allege any material violations of Section 2924.17. Defendants do not indicate where the materiality requirement is found. Presumably, Defendants rely on Civil Code section 2924.12, which provides that a plaintiff may only bring an action based on certain enumerated Civil Code provisions if the violation is material. However, Section 2924.12 does not specifically identify Section 2924f(b)(1) as a provision whose violation must be material. As such, Defendants' argument lacks merit.

Turning to the alleged violations of the Penal Code, Defendants aptly assert Plaintiff does not state a

claim for a violation of Sections 115(a) and 115.5(a) because he has no standing to enforce criminal statutes. "Generally, criminal statutes do not confer private rights of action, and thus any party asserting such a private right bears the burden of establishing its existence." (*Grajeda v. Bank of America, NA.* (S.D. Cal., June 10, 2013, No. 12-CV-1716-IEG NLS) 2013 WL 2481548, at *2 [dismissing claim under Section 115 (a) in a wrongful foreclosure case because the plaintiff provided no authority supporting contention a private right of action exists].) Courts have otherwise held Section 115 does not provide citizens with a private right of action. (*Patina v. Franklin Credit Management Corporation* (N.D. Cal., Aug. 29, 2016, No. 16-CV-02695-LB) 2016 WL 4549001, at *3.) As such, Plaintiff fails to state a claim for violations of Sections 115(a) and 115.5(a).

As the second cause of action fails to allege facts supporting any statutory violation or that Plaintiff has standing to assert this claim, the demurrer to this cause of action is sustained.

B. Third Cause of Action — Unlawful Foreclosure

Plaintiff alleges Defendants wrongfully foreclosed on the Subject Property because the DOT and Note were improperly moved into WaMu ARl9 and Brignac fraudulently executed the ADOT. (SAC, ¶¶ 99-.101.) As a result, the subsequently executed documents are void. (*Id.* at ¶ 101.)

Defendants contend Plaintiff fails to plead he tendered the sum of indebtedness. This argument has merit. A general rule, a debtor cannot set aside a foreclosure without also alleging he or she paid the

secured debt before the action is commenced. (*Lona v. Citibank N.A.* (2011) 202 Cal.App.4th 89, 112; *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal. App.4th 49, 86-87.) This is often referred to as the "tender rule." (*See Lona v. Citibank, NA., supra*, 202 Cal.App.4th at p. 115.) Here, Plaintiff does not allege he tendered the amount due on his loan or made an offer to do so. Instead, he insists the tender rule is inapplicable because he alleges the documents initiating the foreclosure are void. Tender is not required where "the trustor is not required to rely on equity to attack the deed because the trustee's deed is void on its face." (*Id.* at pp. 112-113.) As discussed above, even assuming he adequately alleges Brignac lacked authority and the securitization was defective, these defects only render the ADOT voidable, not void. Therefore, the exception to the tender rule is inapplicable and Plaintiff is required to plead he tendered the amount due.

Plaintiff's argument in opposition does not support a different conclusion. Plaintiff asserts that, under *Yvanova*, a borrower is not required to plead compliance with the tender rule. *Yvanova*, however, does not stand for that proposition. On the issue of tender, the California Supreme Court noted that tender is excused when the underlying deed of trust is void, and then stated it "[e]xpress[es] no opinion as to whether [the] plaintiff . . . must allege tender to state a cause of action for wrongful foreclosure under the circumstances of this case." (*Yvanova, supra*, 62 Cal.4th at p. 929, fn. 4.) Thus, *Yvanova* reiterated the above-stated law, and then explicitly declined to rule on that point. Consequently, *Yvanova* does not stand for the proposition

that Plaintiff is excused from pleading he tendered the amount due.

Accordingly, the demurrer to the third cause of action is sustained on the bases Plaintiff failed to plead he tendered the amount due and lacks standing.

C. Fourth Cause of Action — Slander of Title

Plaintiff alleges the DOT and Note were "improperly moved" into WaMu ARl9 and Brignac fraudulently executed the ADOT. (SAC, ¶¶ 109, 11.) As a result, all subsequently executed documents, including the NOD, SOT1, SOT2, Three NOTS, and TDUS, are void. (*Id.* at ¶ 111.)

It is clear based on Defendants' arguments and the Court's prior orders relative to the complaint and the first amended complaint that this cause of action has no merit. However, this cause of action is expressly only directed to QLS and JPMorgan; it is not asserted against either U.S. Bank or SPS. As such, Defendants may not properly challenge the adequacy of this cause of action by demurrer. This ruling is not a reflection of the sufficiency of Plaintiff's allegations. To the extent Plaintiff wants to add these parties to this cause of action, it is not allowed without prior court order.

D. Fifth Cause of Action — Cancellation of Instruments

Plaintiff seeks a judicial determination that the DOT was illegally and improperly moved into WaMu AR19 and the transfer was void. (SAC, ¶ 120.) Plaintiff additionally seeks to have the ADOT declared null

and void because it was fraudulently executed. (*Id.* at ¶ 121.) Last, Plaintiff seeks to have the subsequently executed documents, including the NOD, SOT1, SOT2, Three NOTS, and TDUS, declared null and void as they are fruit of the poisonous tree. (*Id.* at ¶¶ 122-123.)

Defendants contend Plaintiff fails to state a claim for cancellation of instruments because he does not allege the element that there is a reasonable apprehension of serious injury due to the written instrument. (*See* Civ. Code, § 3412; *see Saterbak, supra*, 245 Cal. App.4th at p. 819 [elements of cancellation of instruments claim].) According to Defendants, Plaintiff cannot plead he suffered a serious injury because he alleges he defaulted on his mortgage and does not allege he cured that debt. This argument is well-taken. When a purportedly defective assignment does not alter the plaintiffs payment obligations, he or she has not suffered serious injury. (*Saterbak, supra*, 245 Cal.App.4th at p. 819.) Even when the subject assignment is invalid, "it could not '<u>cause</u> serious injury' under the statute because [the] obligations on the Note remained unchanged." (*Ibid.*, quoting Civ. Code, § 3412, original italics.) As Plaintiff does not dispute he defaulted on the loan or that he satisfied his debt, he fails to allege there is a reasonable apprehension of serious injury.

Therefore, the demurrer to the fifth cause of action for cancellation of instruments is sustained on the bases Plaintiff fails to allege a serious injury and lacks standing.

E. Sixth Cause of Action — Unfair Business Practices

Plaintiff alleges Defendants violated Business and Professions Code section 17200, *et seq.* ("UCL") by proceeding with an unlawful nonjudicial foreclosure and causing the invalid property documents to be recorded. (SAC, ¶¶ 131-139.)

"The UCL prohibits, and provides civil remedies for, unfair competition, which it defines as 'any unlawful, unfair or fraudulent business act or practice.' Its purpose 'is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services.'" (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320, citations omitted.) "Because . . . section 17200 is written in the disjunctive, it establishes three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In other words, a practice is prohibited as unfair or deceptive even if not unlawful and vice versa." (*Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 644, citations and quotations marks omitted.) While not clearly articulated, it appears from the pleading that Plaintiff's claim is based on the unlawful and unfair prongs. To the extent Plaintiff's claim is based on the unfairness prong, his theories of unfairness are predicated on the same allegedly improper activities as his previous claims, such as the assignment of the DOT into WaMu AR19 and Brignac's purported forgery.

Defendants contend the predicate claims lack merit, and thus this claim also lacks merit. This argument is well-taken. As Plaintiff fails to allege any unlawful activity, it therefore follows that he cannot state a claim for violation of the UCL based on the

same allegations. (*See Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 610; *see also Avila v. Wells Fargo Bank, National Association* (N.D. Cal., Dec. 23, 2016, No. C 16-05904 WHA) 2016 WL 7425925, *6 [sustaining demurrer as to a UCL claim because the plaintiff's other theories of "defendant's impropriety fail"].)

Accordingly, the demurrer to the sixth cause of action is sustainable as Plaintiff fails to state a claim under the unfair and unlawful prongs and lacks standing.

III. Conclusion

For the foregoing reasons, the demurrer to the first cause of action is MOOT as the Court has stricken that cause of action, and otherwise does not state a cause of action. The demurrer to the fourth cause of action is OVERRULED. The demurrer to the second, third, fifth, and sixth causes of action on the ground of failure to state sufficient facts to constitute a cause of action is SUSTAINED WITHOUT LEAVE TO AMEND. Although Plaintiff seeks leave to amend, he does not provide any facts suggesting how he would be able to amend the many deficiencies in this pleading. (*See Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 [a "[p]laintiff must show in what manner he [or she] can amend his [or her] complaint and how that amendment will change the legal effect of the pleading"].) As noted above, the newly claimed theory of forgery does, cure the standing problems. (*See Saterbak supra*, 245 Cal.App.4th at p. 814 [lack of standing when plaintiff expressly alleged assignment was forged].)

Plaintiff is instructed not to file any other pleadings without permission from the Court related to the motions pending before the Court.

Defendants shall submit a proposed judgment either approved as to form or with proof of compliance with Rules of Court, Rule 3.1312.

/s/ Hon. Mary E. Arand
Judge of the Superior Court

Date: January 30, 2018

ORDER OF THE COURT OF APPEALS OF THE STATE OF CALIFORNIA FOR THE SIXTH APPELLATE DISTRICT DENYING PETITION FOR REHEARING (DECEMBER 30, 2020)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

VINCENT TANG,

Plaintiff and Appellant,

v.

JP MORGAN CHASE BANK ET AL.,

Defendants and Respondents.

H045898, H046697

Santa Clara County Super. Ct. No. CV307324

Before: GREENWOOD, P.J., GROVER, J., and DANNER, J.

BY THE COURT*:

Appellant's petition for rehearing is denied.

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* Before Greenwood, P.J., Grover, J., and Danner, J.

/s/ Mary J. Greenwood
P.J.

Date: 12/30/2020

LETTER TO COMMONWEALTH OF MASSACHUSETTS WITH AFFIDAVIT OF JOHN L. O'BRIEN, JR. ATTESTING ROBO SIGNED SIGNATURE DOCUMENT

COMMONWEALTH OF MASSACHUSETTS
SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100,
SALEM, MASSACHUSETTS 01970

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

NAME
ADDRESS
ADDRESS

Dear,

In an attempt to provide you with more assistance, I have enclosed, an affidavit signed by me, as Register of the Southern Essex District Registry of Deeds, attesting to the presence of a robo-signed signature on your document as listed on McDonnell Property Analytics Approved Robo-signers List. If you are currently being foreclosed upon, this affidavit may be presented to your attorney, the lender, or the court to show that your chain of title has been corrupted. For those of you who are not in foreclosure, the affidavit may be presented to your current lender to show that a robo-signed document has in fact been recorded in your chain of title and be part of a request to investigate how this happened and what the lender is going to do to correct it.

Thank you for contacting us concerning your robo-signed document. Should you have any further questions or need assistance, please contact my Customer Service Department at 978-542-1704.

With Regards,

/s/ John O'Brien
Register of Deeds

AFFIDAVIT OF JOHN L. O'BRIEN, REGISTER OF DEEDS
SOUTHERN ESSEX DISTRICT

1. I, John L. O'Brien, Register of the Southern Essex District Registry of Deeds, do hereby swear or aver as follows:

2. As of June 2011 it has been my policy as follows:

a. IF THERE ARE VARIATIONS OF AN ALLEGED ROBO-SIGNER ON RECORD AT MY REGISTRY — I require that all documents sent for recording that are executed by that alleged robo-signer, be independently verified by an affidavit that the signature is in fact the signature of the named individual, prior to recording. (See Exhibit B attached hereto):

b. IF THERE ARE NO VARIATIONS OF AN ALLEGED ROBO or SURROGATE SIGNER ON RECORD AT MY REGISTRY — I record the documents and forward them to the Massachusetts Attorney General's Office for review and possible violation of a Crime Against Property, specifically MGL Chapter 266, Section 35A (b) (4).

3. I have instituted this policy based on the opinion of our forensic analyst, Marie McDonnell of McDonnell Property Analytics who has provided me with a list of robo and surrogate signers.

> McDonnell defines a "robo-signer" as: *The person on a legal document processing assembly line whose only task is to sign previously prepared documents affecting title to real property in a robotic-like fashion without reading the documents or verifying the*

facts contained therein by reviewing primary source evidence. The robo-signer's mission is to expedite the documents' recordation in the public land records or in court proceedings. Additionally, robo-signers regularly fail to establish or simply do not have the authority to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.

McDonnell defines a "surrogate signer" as: *A person who signs a legal document on behalf of and in the name of another without reading it or understanding the document's contents; surrogate-signers are not authorized to execute these documents on behalf of the legal title-holder or principal on whose behalf they purport to act.*

4. I am aware that ___ is an alleged robo or surrogate signer.

Signed this ___ day of ___ 2012, under the pains and penalties of perjury.

_____
John L. O'Brien
Register

COMMONWEALTH OF MASSACHUSETTS
SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100,
SALEM, MASSACHUSETTS 01970

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

Address

RE: Request for Recording of type of document (the "Recording")

Enclosed please find your Recording. Based upon the fact that it is signed by a number of known robo-signers, I am returning it to you. I will record it upon receipt of a signed affidavit, a copy of which I attach hereto (the "Affidavit"). The Affidavit must be signed under the pains and penalties of perjury that the Recording is accurate and the signatures of both the signatory on the Recording and notary public's signature are authentic. As I am sure you are aware, MGL Chapter 266, Section 35A (b) (4) provides that:

> "Whoever intentionally: files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by

> imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than $10,000 in the case of a natural person or not more than $100,000 in the case of any other person, or by both such fine and imprisonment."

Once the Affidavit is prepared and notarized, please forward it and your Recording to my attention with a recording fee of $75 for each document, so in this case $150 and I will make sure the documents are put on record forthwith.

As the Register of Deeds for the Southern Essex District of Massachusetts and the keeper of the records, I am very concerned with some lenders business practices and how they may affect homeowner's chains of title. I truly believe in the integrity of the land recordation system. Thank you for your attention to this important matter

Sincerely,

John O'Brien
Register of Deeds
Southern Essex District

AFFIDAVIT IN SUPPORT OF FILING

I, _____ ("Declarant"), am a resident of _____, County of _____, State of _____, and do hereby certify, swear or affirm, and declare that I am competent to give the following declaration based on my personal knowledge, and that the following facts and things are true and correct:

1. I am attorney duly licensed to practice law and in good standing in
2. I am representing (the "Client").
3. This Affidavit is in support of the following recording:
4. The purpose of the underlying filing(s) is/are:
5. I have personally communicated on or about [date]_____ with an employee or employees of the Client, whose names are _____, who (A) personally reviewed the documents being submitted for filing, (B) personally reviewed all required supporting documentation of corporate and personal authority ("Supporting Documents"), and (C) confirmed the accuracy of all documents and authenticity of all signatures, including the notary.
6. I have received and reviewed all Supporting Documentation.
7. Based on such communications, review of documents and my own personal inquiry into the Client's past and current standards and practices, I affirm that underlying filing(s) contain no false or questionable statements of fact or law.

8. Should any of the statements made herein be incorrect and the Recording corrupt or cloud the homeowner's chain of title, I will indemnify and hold anyone in the chain thereafter harmless.

   PROPERTY ADDRESS: _____

9. I am fully aware of and understand M.G.L. c. 266 § 35A.

Signed under pains and penalties of perjury.

WITNESS my signature this ___ day of ___ 20__.

/s/_____
Signature of Declarant

STATE or Commonwealth of _____
County _____

On this _____ day of ___, 20, before me, the undersigned notary public, personally appeared, and proved to me through satisfactory evidence of identification, which was _____, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

_____
Notary Public:
My commission expires: ___
(Official signature and seal of notary)

COMMONWEALTH OF MASSACHUSETTS
SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100,
SALEM, MASSACHUSETTS 01970

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

This is to advise you that the documents submitted by your office have been recorded in the Southern Essex District Registry of Deeds in Book 00000, Page 000-000.

Please also be advised, that I have forwarded a copy of these documents to the Massachusetts Attorney General's Office for review as to whether or not there is a possible violation of the Crime Against Property Statute, specifically MGL Chapter 266, Section 35A (b) (4) that provides that:

> "Whoever intentionally: files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than $10,000 in the case of a natural person or not more than $100,000 in the case of any other person, or by both such fine and imprisonment."

As the Register of Deeds and the keeper of the records for the Southern Essex District, it is my responsibility to ensure the integrity of the land recordation system. I am very concerned that some business practices that have been utilized have adversely affected homeowners' property rights.

Please be advised that this Registry intends to work diligently with not only the Massachusetts Attorney General's Office, but also with other regulatory agencies to ensure that the real property documents recorded here are not fraudulent and do not effect the homeowners of Essex County in an adverse way.

Thank you for your attention to this matter.

John O'Brien
Register of Deeds
Southern Essex District

COMMONWEALTH OF MASSACHUSETTS
SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100,
SALEM, MASSACHUSETTS 01970

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

RE:

We are in receipt of the document submitted by your office relating to the above property, which is in replacement of the document we returned to you on _____. This is to advise you that the document submitted by your office has been recorded in the Southern Essex District Registry of Deeds at Book ___, Page __. However, based on the fact that the original document was signed by a number of known robo-signers, I have forwarded a copy of this document to the Massachusetts Attorney General's Office for review as to whether or not there is a possible violation of the Crime Against Property Statute, specifically MGL Chapter 266, Section 35A (b) (4) that provides that:

"Whoever intentionally: files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than $10,000 in the

case of a natural person or not more than $100,000 in the case of any other person, or by both such fine and imprisonment."

As the Register of Deeds and the keeper of the records for the Southern Essex District, it is my responsibility to ensure the integrity of the land recordation system. I am very concerned that some business practices that have been utilized have adversely affected homeowner's property rights.

Please be advised that this Registry intends to work diligently with not only the Massachusetts Attorney General's Office, but also with other regulatory agencies to ensure that the real property documents recorded here are not fraudulent and do not effect the homeowners of Essex County in an adverse way.

Thank you for your attention to this matter.

John O'Brien
Register of Deeds
Southern Essex District

McDonnell Property Analytics
Approved Robo-Signers List Updated: 6/12/2012

Last Name	First Name	Last Name	First Name
Adams	Muriel	Carbiener	Jeffrey
Aguilar Greene	Angela	Carrico	Heather
Alagic	Sanela	Carter	Christina
Alfonso	Luisa	Castro	Vilma
Al-Hammadi	Wendy Albertson	Chapman	Carol
Allen	Christina	Chapman	Doris
Allen	Greg	Chua	James
Allotey	Liquenda	Clark	Natasha
Altman	Robert	Clark	Valerie
Amico	Christopher	Co	David
Anderson	Christine	Coats	Kay
Anderson	Earitha	Cody	John
Anderson	Scott	Coffman	Matthew
Antonelli	Anita	Colston	Noriko
Arias	Leticia	Cook	J.
Bachman	Micall	Cook	Mary
Backus	Deborah	Cook	Whitney
Baggs	Loraine	Cook	Whitney K.

Bagley	Brent	Cornett	Clay
Bailey	Denise	Cottrell	Beth
Bailey	Kirsten	Cottrell	John
Bailey-Slyh	Martha	Cowen	Jeffrey
Balara	Lorriane	Crawczun	Barbara
Baldwin	Christie	Crite	Shawanna
Baldwin	Lis	Croft	Tom
Banaszewski	Matthew	Cureton	Nikki
Barraza	Ashley	Daggs	Nicole
Bartow	Hal	Dalton	Margaret
Bell	Lance	Dawson	Kimberly
Benio	Donna	Dhimitri	Alisa
Benio	Jennifer	Dian	Mike
Berz	Paula	Dietz	Darline
Bese	Teresa	Dixon	Diane
Bischof	Mark	Docx	
Bishop	Mark	Doko	Dhurato
Blackstun	Nate	Duddy	Karen
Blechinger	Tonya	Dunnery	John A.
Bly	Bryan	Eads	Shirley
Bolduc	Lori	Eller	Nancy
Border	Tiffany	Elliot	Kevin J.
Brignac	**Deborah**	Esposito	Theresa

Brooks	Beverly	Flanagan	Melissa
Brown	China	Fomby	Aaron
Brown	Lorraine	Forbes	Michael
Brown	Tracey	Frazier	Brenda L.
Burgess	Jonathan	French	Kim
Burnett	Brian	Friedman	Eric
Burton	Linda	Fuerstenberger	Andrew
Busby	Giner	Gaal	Eva
Buxton	Laura	Gaglione	Rene

McDonnell Property Analytics
Approved Robo-Signers List Updated: 1/14/2015

Last Name	First Name	Last Name	First Name
Adams	Muriel	Carbiener	Jeffrey
Aguilar Greene	Angela	Carrico	Heather
Alagic	Sanela	Carter	Christina
Alfonso	Luisa	Castro	Vilma
Al-Hammadi	Wendy Albertson	Chapman	Carol
Allen	Christina	Chapman	Doris
Allen	Greg	Chua	James
Allotey	Liquenda	Clark	Natasha
Altman	Robert	Clark	Valerie
Amico	Christopher	Co	David
Anderson	Christine	Coats	Kay
Anderson	Earitha	Cody	John
Anderson	Scott	Coffman	Matthew
Antonelli	Anita	Colston	Noriko
Arias	Leticia	Cook	J.
Bachman	Micall	Cook	Mary
Backus	Deborah	Cook	Whitney
Baggs	Loraine	Cook	Whitney K.

Bagley	Brent	Cornett	Clay
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Bailey	Kirsten	Cottrell	John
Bailey-Slyh	Martha	Cowen	Jeffrey
Balara	Lorriane	Crawczun	Barbara
Baldwin	Christie	Crite	Shawanna
Baldwin	Lis	Croft	Tom
Banaszewski	Matthew	Cureton	Nikki
Barraza	Ashley	Daggs	Nicole
Bartow	Hal	Dalton	Margaret
Bell	Lance	Dawson	Kimberly
Benio	Donna	Dhimitri	Alisa
Benio	Jennifer	Dian	Mike
Berz	Paula	Dietz	Darline
Bese	Teresa	Dixon	Diane
Bischof	Mark	Docx	
Bishop	Mark	Doko	Dhurato
Blackstun	Nate	Duddy	Karen
Blechinger	Tonya	Dunnery	John A.
Bly	Bryan	Eads	Shirley
Bolduc	Lori	Eller	Nancy
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Brooks	Beverly	Flanagan	Melissa
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Brown	Lorraine	Forbes	Michael
Brown	Tracey	Frazier	Brenda L.
Burgess	Jonathan	French	Kim
Burnett	Brian	Friedman	Eric
Burton	Linda	Fuerstenberger	Andrew
Busby	Giner	Gaal	Eva
Buxton	Laura	Gaglione	Rene

ASSIGNMENT OF DEED OF TRUST FOR LOAN NO. 0694292772 (MARCH 1, 2010)

REGINA ALCOMENDRAS
SANTA CLARA COUNTY
RECORDER
RECORDED AT THE REQUEST OF
RECORDING SERVICE

RECORDING REQUESTED BY CALIFORNIA
RECONVEYANCE COMPANY AND WHEN
RECORDED MAIL TO CALIFORNIA
RECONVEYANCE COMPANY

Trustee Sale No. 241393CA
Loan No. 0694292772
Title Order No. 379702

IMPORTANT NOTICE

NOTE: After having been recorded, this Assignment should be kept with the Note and the Deed of Trust hereby assigned.

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to Bank of America, National Association as successor by merger to LaSalle Bank NA as trustee for WaMu Mortgage Pass-Through Certificates Series 2005-AR19 Trust all beneficial interest under that certain Deed of Trust dated 06-21-2005, executed by VINCENT TANG AND LIEN TANG, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor; to CALIFORNIA RECONVEYANCE COMPANY as Trustee; and Recorded 07-06-2005,

Book, Page, Instrument 18453514 of official records in the Office of the County Recorder of SANTA CLARA County, California. APN: 660-61-018 Situs: 2739 CLOVER MEADOW COURT, SAN JOSE, CA 95135-1673

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part, the real property described therein.

DATE: February 26, 2010

JPMorgan Chase Bank, National Association, successor in interest to Washington Mutual Bank, FA

/s/ Deborah Brignac
Vice President

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On February 26, 2010 before me, ISAAC PACHECO, "Notary Public", personally appeared Deborah Brignac, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

/s/ Isaac Pacheco
Signature
Commission #1786928
Notary Public – California
Los Angeles County

DEED OF TRUST, EXCERPTS

Paragraph 16—Loan No. 0694292772

16. GOVERNING LAW; SEVERABILITY; RULES OF CONSTRUCTION. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. . .

Paragraph 22—Loan No. 0694292772

22. ACCELERATION; REMEDIES. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale…