CASES HOMEOWNERS LOST ARGUING SECURITIZATION

Rodenhurst v. Bank of Am., 773 F. Supp. 2d 886, 899 (D. Haw. 2011) ("The overwhelming authority does not support a [claim] based upon improper securitization.") "[S]ince the securitization merely creates a separate contract, distinct from plaintiffs' debt obligations under the Note and does not change the relationship of the parties in any way, plaintiffs' claims arising out of securitization fail." **Lamb V. Mers, Inc.**, 2011 WL 5827813, *6 (W.D. Wash. 2011) (citing cases); **Bhatti**, 2011 WL 6300229, *5 (citing cases); **In re Veal**, 450 B.R. at 912 ("[Plaintiffs] should not care who actually owns the Note-and it is thus irrelevant whether the Note has been fractionalized or securitized-so long as they do know who they should pay."); **Horvath v. Bank of NY, N.A.**, 641 F.3d 617, 626 n.4 (4th Cir. 2011) (securitization irrelevant to debt); **Commonwealth Prop. Advocates, LLC v. MERS**, 263 P.3d 397, 401-02 (Utah Ct. App. 2011) (securitization has no effect on debt); **Henkels v. J.P. Morgan Chase**, 2011 WL 2357874, at *7 (D.Ariz. June 14, 2011) (denying the plaintiff's claim for unauthorized securitization of his loan because he "cited no authority for the assertion that securitization has had any impact on [his] obligations under the loan, and district courts in Arizona have rejected similar arguments"); **Johnson v. Homecomings Financial**, 2011 WL 4373975, at *7 (S.D.Cal. Sep.20, 2011) (refusing to recognize the "discredited theory" that a deed of trust " 'split' from the note through securitization, render[s] the note unenforceable"); **Frame v. Cal-W. Reconveyance Corp.**, 2011 WL 3876012, *10 (D. Ariz. 2011) (granting motion to dismiss: "Plaintiff's allegations of promissory note destruction and securitization are speculative and unsupported. Plaintiff has cited no authority for his assertions that securitization has any impact on his obligations under the loan")."The Court also rejects Plaintiffs' contention that securitization in general somehow gives rise to a cause of action - Plaintiffs point to no law or provision in the mortgage preventing this practice, and cite to no law indicating that securitization can be the basis of a cause of action. Indeed, courts have uniformly rejected the argument that securitization of a mortgage loan provides the mortgagor a cause of action." *See* **Joyner V. Bank Of Am. Home Loans**, No. 2:09-CV-2406-RCJ-RJJ, 2010 WL 2953969, at *2 (D. Nev. July 26, 2010) (rejecting breach of contract claim based on securitization of loan); **Haskins V. Moynihan**, No. CV-10-1000-PHX-GMS, 2010 WL 2691562, at *2 (D. Ariz. July 6, 2010) (rejecting claims based on securitization because plaintiffs could point to no law indicating that securitization of a mortgage is unlawful, and "[p]laintiffs fail to set forth facts suggesting that Defendants ever indicated that they

would not bundle or sell the note in conjunction with the sale of mortgage-backed securities"); **Lariviere V. Bank Of N.Y. As Tr**., Civ. No. 9-515-P-S, 2010 WL 2399583, at *4 (D. Me. May 7, 2010) ("Many people in this country are dissatisfied and upset by [the securitization] process, but it does not mean that the [plaintiffs] have stated legally cognizable claims against these defendants in their amended complaint."); **Upperman V. Deutsche Bank Nat'l Trust Co**., No. 01:10-cv-149, 2010 WL 1610414, at *3 (E.D. Va. Apr. 16, 2010) (rejecting claims because they are based on an "erroneous legal theory that the securitization of a mortgage loan renders a note and corresponding security interest unenforceable and unsecured"); **Silvas V. Gmac Mortg., Llc**, No. CV-09-265-PHX-GMS, 2009 WL 4573234, at *5 (D. Ariz. Dec. 1, 2009) (rejecting a claim that a lending institution breached a loan agreement by securitizing and cross-collateralizing a borrower's loan). The overwhelming authority does not support a cause of action based upon improper securitization. Accordingly, the Court concludes that Plaintiffs cannot maintain a claim that "improper restrictions resulting from securitization leaves the note and mortgage unenforceable); **Summers V. Pennymac Corp**. (N.D.Tex. 11-28-2012) (any securitization of Plaintiffs' Note did not affect their obligations under the Note or PennyMac's authority as mortgagee to enforce the Note and foreclose on the property if Plaintiffs defaulted).; **Nguyen V. Jp Morgan Chase Bank** (N.D.Cal. 10-17-2012) ("Numerous courts have recognized that a defendant bank does not lose its ability to enforce the terms of its deed of trust simply because the loan is assigned to a trust pool. In fact, 'securitization merely creates a separate contract, distinct from [p]laintiffs['] debt obligations under the note, and does not change the relationship of the parties in any way. Therefore, such an argument would fail as a matter of law"); **Flores v. Deutsche Bank Nat'l Trust Co.**, 2010 WL 2719848, at *4 (D. Md. July 7, 2010), the borrower argued that his lender "already recovered for [the borrower's] default on her mortgage payments, because various 'credit enhancement policies,'" such as "a credit default swap or default insurance," "compensated the injured parties in full." The court rejected the argument, explaining that the fact that a "mortgage may have been combined with many others into a securitized pool on which a credit default swap, or some other insuring-financial product, was purchased, does not absolve [the borrower] of responsibility for the Note." Id. at *5; see also **Fourness v. Mortg. Elec. Registration Sys.**, 2010 WL 5071049, at *2 (D. Nev. Dec. 6, 2010) (dismissing claim that borrowers' obligations were discharged where "the investors of the mortgage backed securities were paid as a result of . . . credit default swaps and/or federal bailout funds); **Warren**

v. Sierra Pac. Mortg. Servs., 2010 WL 4716760**,** at *3 (D. Ariz. Nov. 15, 2010) ("Plaintiffs' claims regarding the impact of any possible credit default swap on their obligations under the loan . . . do not provide a basis for a claim for relief"). **Welk v. GMAC Mortg., LLC.**, 850 F. Supp. 2d 976 (D. Minn., 2012) ("At the end of the day, then, most of what Butler offers is smoke and mirrors. Butler's fundamental claim that his clients' mortgages are invalid and that the mortgagees cannot foreclose because they do not hold the notes is utterly frivolous.); **Vanderhoof v. Deutsche Bank Nat'l Trust** (E.D. Mich., 2013) (internal citations omitted) ("s]ecuritization" does not impact the foreclosure. This Court has previously rejected an attempt to assert a claim based upon the securitization of a mortgage loan. Further, MERS acts as nominee for both the originating lender and its successors and assigns. Therefore, the mortgage and note are not split when the note is sold."); **Chan Tang v. Bank of America, N.A**. (C.D. Cal., 2012) (internal citations omitted) ("Plaintiffs' contention that the securitization of their mortgage somehow affects Defendants' rights to foreclose is likewise meritless. Plaintiffs have identified no authority supporting their position that securitization voids the power of sale contained in a deed of trust. Other courts have dismissed similar arguments. Thus, the claim that Defendants lack the authority to foreclose because the Tangs' mortgage was pooled into a security instrument is Dismissed With Prejudice.); **Wells v. BAC Home Loans Servicing, L.P.**, 2011 WL 2163987, *2 (W.D. Tex. Apr. 26, 2011) (This claim—colloquially called the "show-me-the-note" theory— began circulating in courts across the country in 2009. Advocates of this theory believe that only the holder of the original wet-ink signature note has the lawful power to initiate a non-judicial foreclosure. The courts, however, have roundly rejected this theory and dismissed the claims, because foreclosure statutes simply do not require possession or production of the original note. The "show me the note" theory fares no better under Texas law.); **Maynard v. Wells Fargo Bank, N.A**. (S.D. Cal., 2013) ("Plaintiffs also allege that they conducted a Securitization Audit of Plaintiffs' chain of title and Wachovia's PSA, and as a result, determined that Plaintiffs' Note and DOT were not properly conveyed into the Wells Fargo Trust on or before July 29, 2004, the closing date listed in the Trust Agreement. (Id. at ¶ 34.)… To the extent Plaintiffs challenge the validity of the securitization of the Loan because Wells Fargo and U.S. Bank failed to comply with the terms of the PSA or the Trust Agreement, Plaintiffs are not investors of the Loan, nor are Plaintiffs parties to the PSA or Trust Agreement. Therefore, as many courts have already held, Plaintiffs lack standing to challenge the validity of the securitization of the Loan…Furthermore, although Plaintiffs

contend they have standing to challenge the validity of the Assignment because they were parties to the DOT with the original lender (Wells Fargo), this argument also fails. (Doc. No. 49 at 11-12.); **Jenkins v. JP Morgan Chase Bank, N.A**., 216 Cal. App. 4th 497, 511-13, 156 Cal. Rptr. 3d 912 (Cal. Ct. App. 2013) ("[E]ven if any subsequent transfers of the promissory note were invalid, [the borrower] is not the victim of such invalid transfers because her obligations under the note remained unchanged."). As stated above, these exact arguments have been dismissed by countless other courts in this circuit. Accordingly, Plaintiffs' contentions that the Assignment is void due to a failure in the securitization process fails."); **Demilio v. Citizens Home Loans, In**c. (M.D. Ga., 2013) ("Frankly, the Court is astonished by Plaintiff's audacity… Plaintiff requires the Court to scour a poorly-copied, 45-page "Certified Forensic Loan Audit" in an attempt to discern the basic facts of his case. This alone would be sufficient for dismissal. However, the Court is equally concerned by Plaintiff's attempt to incorporate such an "audit," which is more than likely the product of "charlatans who prey upon people in economically dire situation,"… As one bankruptcy judge bluntly explained, "[the Court] is quite confident there is no such thing as a 'Certified Forensic Loan Audit' or a 'certified forensic auditor…. The Court will not, in good conscience, consider any facts recited by such a questionable authority."); **Leong v. JPMorgan Chase (D. Nev., 2013) ("**Plaintiff insists that Defendant failed to provide the original note. The only possibly relevant Nevada statute requiring the presentation of the original note or a certified copy is at a Foreclosure Mediation. Nev. Rev. Stat. § 107.086(4). Moreover, the Court treats copies the same as originals: "a duplicate is admissible to the same extent as an original." Nev. Rev. Stat. § 52.245. Defendants correctly point out that Plaintiff fails to cite to any authority that requires Defendants to produce the original Note, and Defendants additionally provide non-binding legal authority to the contrary. As such, this cause of action is dismissed with prejudice.'); **Rivac v. NDEX W. LLC** (N.D. Cal., 2013) **(**This court is persuaded by the "majority position" of courts within this district, which is that Glaski is unpersuasive, and that "plaintiffs lack standing to challenge noncompliance with a PSA in securitization unless they are parties to the PSA or third party beneficiaries of the PSA." Shkolnikov v. JPMorgan Chase Bank, 2012 WL 6553988 at *13 (N.D. Cal. Dec. 14, 2012); see also, e.g., Zapata v. Wells Fargo Bank, N.A., 2013 WL 6491377 at *2 (N.D. Cal. Dec. 10, 2013); Apostol v. CitiMortgage, Inc., 2013 WL 6328256 at *7 (N.D. Cal. Nov. 21, 2013); Dahnken v. Wells Fargo Bank, N.A., 2013 WL 5979356 at *2 (N.D. Cal. Nov. 8, 2013); Almutarreb v. Bank of New York Trust Co., N.A., 2012 WL

4371410 at *2 (N.D. Cal. Sept. 24, 2012); **Rivac v. NDEX W. LLC** (N.D. Cal., 2013) (District courts have consistently found that conclusory allegations of robo-signing are insufficient to state a claim, absent some factual support. See Baldoza v. Bank of America, N.A., 2013 WL 978268 at *13 (N.D. Cal. Mar. 12, 2013); see also Chan Tang v. Bank of America, N.A., 2012 WL 960373 at *10-11 (C.D. Cal. March 19, 2012); Sohal v. Fed. Home Loan Mortg. Corp., 2011 WL 3842195 at *5 (N.D. Cal. Aug. 30, 2011); **Chua v. IB Property Holdings, LLC**, 2011 WL 3322884 at *2 (C.D. Cal. Aug. 1, 2011))…Further, 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. See Elliott v. Mortgage Electronic Registration Systems, Inc., 2013 WL 1820904 at *2 (N.D. Cal. Apr. 30, 2013); **Javaheri v. JPMorgan Chase Bank N.A**., 2012 WL 3426278 at *6 (C.D. Cal. Aug. 13, 2012). (Plaintiffs here do not dispute that they defaulted on the loan payments, and the robo-signing allegations are without effect on the validity of the foreclosure process); **Deutsche Bank Nat'l Trust Co. v. Tibbs**, 2014 WL 280365, at *5 (M.D. Tenn. Jan. 24, 2014) (“[a] Deed of Trust need not be separately assigned so that the holder may enforce the note; as goes the note, so goes the Deed of Trust.'"); **Connelly v. U.S. Bank Nat'l Ass'n** (In re Connelly), 487 B.R. 230 (Bankr.Ariz., 2013) (“Plaintiff solely relies on his expert's assertion... Article 9 applies to the sale of promissory notes.” Garfield Aff. 9:9–12. Even if this opinion testimony by a witness who has not been qualified as an expert could be considered by the Court, it would be rejected because it directly contradicts **Veal**…Plaintiff's argument that only Article 9 applies to the transfer of the Note fails.”); **Murphy v. Aurora Loan Servs., LLC** (D. Minn., 2013) ("…most of Plaintiffs' claims were premised on the 'show me the note' legal theory'….Judge Keyes found that this theory had been rejected by the Minnesota Supreme Court and the Eighth Circuit…Butler continues in "pursuit of these discredited legal theories…he continues to refuse to acknowledge that these "show me the note" claims are based on a 'legal fallacy.'"); **Preston v. Seterus, Inc**., 931 F.Supp.2d 743 (N.D. Tex., 2013) (“Plaintiffs' contention is that Defendants were required to hold, possess, and produce the original Note…and Defendants cannot produce the Note because it was split or separated from the Deed of Trust when Plaintiffs' mortgage was securitized. The court agrees with Defendants…the so-called “show-me-the-note” and “split-the-note” theories that have been rejected by courts in this circuit applying Texas law.”); **Rosas v. Carnegie Mortgage, LLC**, No. CV 11-7692 CAS CWX, 2012 WL 1865480, at *8

(C.D. Cal. May 21, 2012) ("[P]laintiffs' theory that lenders that received funds through loan securitizations or credit default swaps must waive their borrowers' obligations fails as a matter of law."); **Taylor v. CitiMortgage, Inc**., 2:10-CV-505 TS, 2010 WL 4683881, at *3 (D. Utah Nov. 10, 2010) ("[T]he separate contract that is the result of securitization does not free Plaintiffs from the terms agreed upon in the Deeds of Trust."); **Flores v. Deutsche Bank Nat'l Trust, C***o*., CIV. A. DKC 10-0217, 2010 WL 2719849, at *5 (D. Md. July 7, 2010) (dismissing a claim alleging that defendants lacked standing to enforce a note because they had already been compensated by credit enhancement policies). **Preciado v. Wells Fargo Home Mortg**., No. 13-00382 LB, 2013 WL 1899929, at *5 (N.D. Cal. May 7, 2013) ("the weight of persuasive authority in this district is that a plaintiff has 'no standing to challenge foreclosure based on a loan's having been securitized.'") (*quoting* **Niranjan v. Bank of America, N.A**., No. C 12-05706, 2013 WL 1701602, at *2 (N.D. Cal. April 18, 2013)); **McGough v. Wells Fargo Bank, N.A**., No. C12-0050, 2012 WL 2277931, at *4 (N.D. Cal. June 18, 2012) ("Theories that securitization undermines the lender's ability have been rejected by the courts."); **Wadhwa v. Aurora Loan Servs., LLC**, No. S-11-1784, 2011 WL 2681483, at *4 (E.D. Cal. July 8, 2011) (noting that "this position has been rejected by numerous courts"); **Flores v. GMAC Mortg**., *LLC,* No. C 12-794, 2013 WL 2049388, at *2 (N.D. Cal. May 14, 2013) ("[plaintiff contends that] because MIT securitized the note, this allegedly stripped MERS of any ability to assign the deed of trust. Courts have consistently rejected this theory."); **Lane v. Vitek Real Estate Indus. Group**, 713 F.Supp.2d 1092, 1099 (E.D. Cal. 2010) ("The argument that parties lose their interest in a loan when it is assigned to a trust pool has also been rejected by many district courts."); **Lazo v. Summit Management Co**., No. 1:13-cv-02015, 2014 WL 3362289, at *10 (E.D. Cal. July 9, 2014). ("California courts have determined [that] plaintiffs are unable to show prejudice when the borrowers were in default and the allegedly improper assignment does not affect the borrower's ability to pay . . . ."; **Fontenot v. Wells Fargo Bank, N.A**., 129 Cal. Rptr. 3d 467, 481 (Cal. Ct. App. 2011) (finding no prejudice where borrower was in default and did not allege that transfer of note interfered with borrower's ability to pay).