

**DENNIS COLLINS, Plaintiff and Appellant,**  
**v.**  
**NATIONSTAR MORTGAGE, LLC, et al., Defendants and**  
**Respondents.**

[No. C078530.](#)

**Court of Appeals of California, Third District, Sacramento.**

Filed May 31, 2018.

Appeal from the Superior Court No. 34-2012-00137397CUORGDS.

**NOT TO BE PUBLISHED**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

MAURO, J.

In response to efforts to foreclose on his residence, Dennis Collins<sup>[1]</sup> sued defendants Nationstar Mortgage, LLC (Nationstar), HSBC Bank USA, National Association as trustee for the holders of the Ellington Loan Acquisition Trust 2007-2, Mortgage Pass-through Certificates, Series 2007-2 (HSBC), and Mortgage Electronic Registration Systems, Inc. (MERS), seeking to quiet title to the property. The trial court ultimately sustained defendants' demurrer to the third amended complaint without leave to amend, ruling that Dennis could not maintain a cause of action for quiet title without alleging tender of the secured debt, and despite two prior opportunities to amend, he had failed to assert the requisite allegations.

Representing himself, Dennis now contends, among other things, that he need not allege tender of payment because although he signed a deed of trust and rider pertaining to the secured transaction, he did not owe the lender any money. Because we conclude the trial court properly sustained the demurrer without leave to amend, we will affirm the judgment.

**STANDARD OF REVIEW**

"It is the appellant's responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on [his] behalf." ([Keyes v. Bowen \(2010\) 189 Cal.App.4th 647, 656.](#)) Arguments that are not supported by authority and coherent legal analysis are deemed forfeited. ([Okasaki v. City of Elk Grove \(2012\) 203 Cal.App.4th 1043, 1045, fn. 1 \(Okasaki\).](#)) We also do not consider cases and legal authorities presented in the appellate briefs without explanation about how they apply to the present case. ([Tilbury Constructors, Inc. v. State Comp. Ins. Fund \(2006\) 137 Cal.App.4th 466, 482.](#))

A cause of action for quiet title is subject to demurrer. (See, e.g., [Leeper v. Beltrami \(1959\) 53 Cal.2d 195, 214](#); [McElroy v. Chase Manhattan Mortgage Corp. \(2005\) 134 Cal.App.4th 388 \(McElroy\).](#)) A demurrer is properly sustained when the challenged pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) On appeal from a dismissal following the sustaining of a demurrer, "[t]he plaintiff has the burden of showing that the facts pleaded are sufficient to establish every element of the cause of action. . . ." ([Rossberg v. Bank of America, N.A. \(2013\) 219 Cal.App.4th 1481, 1490 \(Rossberg\).](#)) We review the challenged pleading de novo to determine whether it alleges facts stating a cause of action under any legal theory. ([Glaski v. Bank of America \(2013\) 218 Cal.App.4th 1079, 1089 \(Glaski\).](#)) We will affirm the trial court's order if it is correct on any theory, even if the trial court's reasoning is incorrect. ([J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co. \(1997\) 59 Cal.App.4th 6, 15-16.](#))

We assume the truth of all properly pleaded factual allegations, but we do not accept the truth of contentions, deductions or conclusions of fact or law or assertions contradicted by judicially noticeable matters. ([Yvanova v. New Century Mortgage Corp. \(2016\) 62 Cal.4th 919, 924 \(Yvanova\)](#); [Evans v. City of Berkeley \(2006\) 38 Cal.4th 1, 20](#); see, e.g., [Fontenot v. Wells Fargo Bank, N.A. \(2011\) 198 Cal.App.4th 256, 271, fn. 10 \(Fontenot\)](#), disapproved on another ground in [Yvanova, supra, 62 Cal.4th at p. 939, fn. 13.](#)) We may consider matters subject to judicial notice. ([Yvanova, supra, 62 Cal.4th at p. 924.](#)) Thus, we may take judicial notice of a recorded document, such as a deed of trust, and the effect of the recorded document when the authenticity of the document is not challenged, although we do not accept the truth of disputable facts stated therein. ([Yvanova, supra, 62 Cal.4th at p. 924, fn. 1](#); [Poseidon Development, Inc. v. Woodland Lane Estates, LLC \(2007\) 152](#)

[Cal.App.4th 1106, 1116-1118; \*McElroy, supra\*, 134 Cal.App.4th at p. 394.](#))  
We have reviewed the record with these principles in mind.

## **THRESHOLD MATTERS**

In his appellate reply brief, Dennis claimed Jan T. Chilton of Severson & Werson is not listed as an attorney of record for defendants, but Dennis's assertion is incorrect. Dennis also objected that defendants are attempting to add Nationstar Mortgage Holdings, Inc. and HSBC North America Holdings Inc. as new parties. He is mistaken. Defendants disclosed those entities in compliance with California Rules of Court, rule 8.208; they did not add new parties to the action. (Cal. Rules of Court, rule 8.208(a).)

Dennis's original complaint referred to exhibits including a note recorded on November 9, 2006, and a deed of trust. Defendants say a copy of the referenced note, deed of trust and an assignment to HSBC was attached as exhibits to the complaint or first amended complaint, which also referred to exhibits. However, no exhibits are attached to the copy of the complaint and first amended complaint in the clerk's transcript. Dennis asked the trial court to take judicial notice of the note dated November 3, 2006, deed of trust of the same date, quit claim deed from Carol to Dennis, and discharge order in Carol's Chapter 7 bankruptcy action, and it appears the trial court took judicial notice of those documents in ruling on the demurrer to the first amended complaint. In addition, the trial court took judicial notice of the notice of trustee's sale recorded on April 8, 2013. We also take judicial notice of those documents. (Evid. Code, § 459, subd. (a)(1).)

While Dennis appears to argue that the trial court erroneously took judicial notice of hearsay contained in recorded documents, he fails to identify the facts of which he alleges the trial court improperly took judicial notice. The undeveloped claim is deemed forfeited. ([Maral v. City of Live Oak \(2013\) 221 Cal.App.4th 975, 984-985.](#))

Dennis asked the trial court to take judicial notice of the assignments of deed of trust and substitutions of trustee dated August 12, 2011 and August 18, 2011, and a substitution of trustee dated March 15, 2013. Defendants asked the trial court to take judicial notice of the assignment of deed of trust and substitution of trustee dated August 18, 2011, a notice of default recorded on August 19, 2011, and a series of recorded notices of trustee's sales. We cannot determine whether the trial court took judicial notice of those

documents because we could not find an order relating to Dennis's request for judicial notice filed on January 10, 2014, in the clerk's transcript, and the trial court's order on the demurrer to the third amended complaint does not address the parties' requests for judicial notice. We take judicial notice of the recording and effect of the above mentioned recorded documents pursuant to Evidence Code sections 453 and 459, subdivision (a)(2).

## **BACKGROUND**

On November 3, 2006, Dennis's wife Carol signed an adjustable rate note, promising to pay Fremont Investment & Loan \$700,000 plus interest. Dennis did not sign that note. However, the note incorporated an adjustable rate and balloon payment rider which Dennis and Carol signed on the same date.

Also on November 3, 2006, Dennis and Carol signed a deed of trust on the real property at issue in this case (the property). The deed of trust identified Fremont Investment & Loan as the lender, Fremont Credit Corporation as the trustee, and MERS as the nominee for the lender and the lender's successors and assigns and also the beneficiary under the deed of trust. The deed of trust stated that it secured to the lender repayment of the \$700,000 loan signed by the borrower and dated November 3, 3006, which the borrower promised to pay in periodic payments, and the performance of the borrower's covenants under the note and deed of trust. The deed of trust provided, "Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale" the property. "Borrower" was defined as Dennis and Carol, as joint tenants. Further, "Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required for Lender including, but not limited to, releasing and cancelling this Security Instrument." The deed allowed the sale of the note without prior notice to the borrower and for appointment of a successor trustee by the lender. The deed of trust was recorded with the Sacramento County Recorder on November 9, 2006.

On August 12, 2011, MERS substituted Recontrust Company, N.A. (Recontrust) as the trustee under the deed of trust, replacing the original

trustee Fremont General Credit Corporation. On the same date, MERS assigned all beneficial interest in the note and deed of trust to HSBC. The substitution and assignment were recorded with the Sacramento County Recorder on August 16, 2011.

On August 18, 2011, MERS signed another document transferring and assigning all beneficial interest in the deed of trust and note to HSBC and another substitution of trustee naming Recontrust as the trustee, replacing original trustee Fremont General Credit Corporation. The assignment and substitution of trustee were recorded with the Sacramento County Recorder on August 19, 2011.

Recontrust executed a notice of default and election to sell under the deed of trust on August 18, 2011. The notice was recorded with the Sacramento County Recorder on August 19, 2011. The notice stated that as of August 18, 2011, \$77,063.20 was past due.

Recontrust executed a notice of trustee's sale on November 16, 2011. The notice stated that the total due at the time of the initial publication of the notice was \$833,038.17. The notice was recorded with the Sacramento County Recorder on November 22, 2011.

Dennis filed a complaint for cancellation of the note and deed of trust instruments and other relief against Bank of America, N.A., the property, and all persons or entities claiming any interest in the property on December 21, 2012, to forestall the foreclosure sale.

On March 15, 2013, HSBC signed a substitution of trustee, substituting Recontrust as the trustee under the deed of trust. Recontrust executed a notice of trustee's sale on March 22, 2013. The substitution of trustee and notice of trustee's sale were recorded with the Sacramento County Recorder on March 26, 2013. Another notice of trustee's sale by Recontrust was recorded with the Sacramento County Recorder on April 8, 2013. The two notices stated that the total due at the time of the initial publication of the notice was \$904,167.60.

On July 31, 2013, Carol filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code. The bankruptcy court granted Carol a discharge on November 12, 2013.

The trial court sustained Bank of America's demurrer to the complaint with leave to amend on September 10, 2013, on grounds including that Dennis failed to join Carol as a party.

On November 18, 2013, Carol signed a quitclaim deed, releasing her interest in the property to Dennis, as part of a marital dissolution. The quitclaim deed was recorded with the Sacramento County Recorder on November 19, 2013.

Dennis filed a first amended complaint on January 23, 2014, naming Nationstar and Recontrust in place of Doe defendants. The first amended complaint contained causes of action styled judgment of void note, cancellation of voidable note, intentional misrepresentation, violation of the California Fraudulent Transfer Act, equitable offset, reconveyance and quiet title. The trial court sustained Bank of America, N.A.'s demurrer to all causes of action without leave to amend but permitted Dennis to amend his quiet title cause of action to allege tender. Nothing in the record indicates that Dennis challenged the trial court's demurrer order by writ or otherwise. By electing to amend the complaint, Dennis waived any error in the demurrer order. ([\*Aubry v. Tri-City Hospital Dist.\* \(1992\) 2 Cal.4th 962, 966, fn. 2](#); [\*Brittan v. Oakland Bank of Savings\* \(1896\) 112 Cal. 1, 2.](#)) Defendants state in their appellate brief that Nationstar demurred to the first amended complaint, but a copy of the demurrer is not in the clerk's transcript. The trial court's minute order identified the demurring party as Bank of America, N.A.

On June 30, 2014, HSBC executed a substitution of trustee, naming Clear Recon Corp. as the trustee under the deed of trust. The substitution of trustee was recorded with the Sacramento County Recorder on July 14, 2014.

Dennis filed a second amended complaint on July 2, 2014, naming HSBC Bank USA, National Association in place of a Doe defendant and containing a single cause of action which was for quiet title. There was a demurrer to that pleading, but the demurrer and trial court's order thereupon are not in the clerk's transcript. In any event, Dennis filed a third amended complaint on October 2, 2014.

The third amended complaint contains a single cause of action for quiet title. Dennis named the property, Nationstar, MERS, HSBC and Recontrust as defendants. He sought to quiet title to the property in himself and against those defendants as of December 21, 2012. He also sought to have the

documents defendants recorded with the County Recorder cancelled and expunged.

The third amended complaint alleged the following: Dennis obtained a quit claim deed in his favor from Carol. Carol obtained a discharge in bankruptcy. The debt was discharged and was no longer collectible. All debt secured by the property had been paid because Dennis paid \$2,795.22 to the Sacramento County Tax Collector in September 2014 and he presented a letter of credit for \$50,000. Dennis did not owe any money to Nationstar, MERS and HSBC which was secured by the property. Dennis perfected his title to the property by filing a UCC-1 Financing Statement on July 26, 2014. Defendants did not own the property and were not the holders in due course. Recontrust did not have authority to file a notice of default because it had no authority to transfer the note and deed of trust. Recontrust was not the holder of the note or the deed of trust at the time certain documents were filed with the Sacramento County Recorder's Office. There was no lender and trustee of record and no entity to reconvey the property back to Dennis, therefore a quiet title action was necessary. Dennis was entitled to quiet title because he had title to the property and paid the only debt secured by the property that was known to him. He had a cash bond to cover "legitimate provable liens, encumbrances, tax bills, court costs and incidentals as the Court may deem proper and valid after inspection of original deed of trust and note, transfer docs, status of agency and corporate capacities for defects, identify real beneficiary if any. . . ."

Nationstar, HSBC and MERS demurred to the third amended complaint on the ground that Dennis failed to allege tender of the full amount owed under the loan secured by the deed of trust Dennis signed. Defendant opposed the demurrer.

The trial court sustained the demurrer without leave to amend. The trial court concluded Dennis cannot maintain a cause of action for quiet title without paying the secured debt, and Dennis had twice been given leave to amend to allege unconditional tender but failed to do so. The trial court ruled that the discharge in Carol's bankruptcy action did not preclude a creditor from foreclosing on the mortgage and did not extinguish the lien in favor of a creditor, and tender was required even if Carol's debt was no longer enforceable. It determined that the payment of \$2,795.22 to the County Tax Collector was not a tender of the amount of the debt secured by the deed of trust. And the \$50,000 letter of credit fell short of the amount owed on the

note. Further, the letter of credit was not an unambiguous tender of the entire amount due as it was signed by an unknown third party. The trial court also ruled that a letter Dennis proffered was not an admission that Dennis did not owe any money. The trial court did not consider the additional argument in defendants' demurrer that Dennis failed to join Carol as a necessary party.

Dennis appeals from the judgment of dismissal entered in favor of defendants following the order sustaining the demurrer.

## DISCUSSION

Dennis contends that he need not allege tender of payment because although he signed a deed of trust and rider pertaining to the secured transaction, he did not owe the lender any money.

**The purpose of an action to quiet title is to finally settle and determine the parties' conflicting claims to property and obtain a declaration of the interest of each party.** (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 298.) **A quiet title complaint must include (1) a description of the property; (2) the title of the plaintiff as to which a determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which the determination is sought; and (5) a prayer for the determination of the title of the plaintiff against the adverse claims. (Civ. Proc. Code, § 761.020.) In addition, because an action to quiet title lies in equity, the plaintiff must allege tender of any arrearages or an excuse from tender.** (*Shimpones v. Stickney* (1934) 219 Cal. 637, 649; *Brandt v. Thompsen* (1891) 91 Cal. 458, 462; *De Cazara v. Orena* (1889) 80 Cal. 132, 134; *Booth v. Hoskins* (1888) 75 Cal. 271, 276; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1241 (*Nwosu*); *Bradbury v. Thomas* (1933) 135 Cal.App. 435, 445.)

Dennis urges he did not have to tender payment on the promissory note to Fremont Investment & Loan because he did not sign that note. However, Dennis claims title to the property at least in part through a quitclaim deed from Carol. The quitclaim deed transferred whatever present interest Carol had in the property. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 239.) Carol owed a substantial debt which was secured by the property. Dennis does not claim that debt was invalid, and equity will not allow Dennis to obtain a windfall by quieting title to the property in himself

and extinguishing the lender's lien on the property while leaving a valid loan obligation unsatisfied where Dennis executed the deed of trust securing Carol's debt, even if Dennis is not the debtor. (See [Nguyen v. Calhoun \(2003\) 105 Cal.App.4th 428, 442 \(Nguyen\)](#) [**plaintiff who took title to property from persons who were in default on their secured real estate loan must satisfy the loan obligation of the prior owners in order to protect his interest in the property from pending foreclosure**].)

Consistent with this conclusion, **courts have held that in a preemptive action to prevent a foreclosure sale, a trustor (as Dennis is in this case) cannot quiet title without discharging the debt.** ([Rosenfeld v. JPMorgan Chase Bank, N.A.](#) (N.D. Cal. 2010) 732 F.Supp.2d 952, 974-975; [Kelley v. Mortgage Electronic Registration Systems](#) (N.D. Cal. 2009) 642 F.Supp.2d 1048, 1057; [Giannini v. American Home Mortgage Servicing, Inc.](#) (N.D. Cal. Feb. 1, 2012, No. C11-04489TEH) 2012 U.S. Dist. Lexis 12241 [**tender required for quiet title claim even though tender was not required for other causes of action challenging the initiation of foreclosure**]; [Tamburri v. Suntrust Mortgage, Inc.](#) (N.D. Cal. Dec. 15, 2011, No. C-11-2899EMC) 2011 U.S. Dist. Lexis 144442; see [Lueras v. BAC Home Loans Servicing, LP](#) (2013) 221 Cal.App.4th 49, 86-87 [**holding in a post-foreclosure sale case that tender was required to quiet title**].)

Unpublished federal cases may be cited as persuasive, although not binding, authority. ([Gomes v. Countrywide Home Loans, Inc.](#) (2011) 192 Cal.App.4th 1149, 1155, fn. 6 (*Gomes*).)

Dennis maintains that counsel for defendants admitted Dennis owed no money. Regardless of the underlying merit of the assertion, we do not consider it because Dennis failed to support it with a citation to the record. ([Nwosu, supra](#), 122 Cal.App.4th at p. 1246.)

"A tender is an offer of performance made with the intent to extinguish the obligation. [Citation.] [Citation.] **A TENDER MUST BE ONE OF FULL PERFORMANCE [CITATION] AND MUST BE UNCONDITIONAL TO BE VALID.** [Citations.]" ([Arnolds Management Corp. v. Eischen](#) (1984) 158 Cal.App.3d 575, 580; see [Nguyen, supra](#), 105 Cal.App.4th at p. 439 [**tender must be unambiguous; ""the act of tender must be such that it needs only acceptance by the one to whom it is made to complete the transaction""**].) The third amended complaint alleges that Dennis paid a \$2,795.22 tax lien and tendered a \$50,000 letter of credit in his second amended complaint. The third amended complaint does not allege whether the \$50,000 letter of credit still exists, nor does it identify the issuer,

beneficiary or terms of payment under the letter of credit. Rather, the third amended complaint alleges: "Plaintiff has sufficient cash bond in sufficient amount subject only to such legitimate provable liens, encumbrances, tax bills, court costs and incidentals as the Court may deem proper and valid after inspection of original deed of trust and note, transfer docs, status of agency and corporate capacities for defects, identify real beneficiary if any, according to rules of evidence, equity, the effect of discharge, legitimate proof of claim, voiding and avoiding any false liens, unproven assignments, transfers without evidence of valuable consideration, encumbrances upon the Property created by Defendants or by their putative predecessors, successors, heirs, trustees, or by any of them, thereby partitioning and protecting the real property from a false seizure scenario for a simple judgment of other legitimate costs." Dennis failed to allege an unconditional tender of payment of what was owed on the debt secured by the deed of trust.

While Dennis appears to allege that the discharge order in Carol's bankruptcy action extinguished the lender's right to foreclosure on the property, he is incorrect. The recorded deed of trust signed by Dennis and Carol gave rise to a lien on the property that was unaffected by the discharge Carol obtained in her Chapter 7 bankruptcy action. ([\*Johnson v. Home State Bank\* \(1991\) 501 U.S. 78, 82-84 \[115 L.Ed.2d 66, 73-75\]](#) [**DISCHARGE IN CHAPTER 7 LIQUIDATION EXTINGUISHES PERSONAL LIABILITY OF THE DEFAULTING DEBTOR BUT THE CREDITOR RETAINS THE RIGHT TO FORECLOSE ON THE MORTGAGE**]; [\*Cortez v. American Wheel \(In re Cortez\)\* \(9th Cir. 1995\) 191 B.R. 174, 177](#) [**"IT IS WELL SETTLED THAT VALID, PERFECTED LIENS AND OTHER SECURED INTERESTS PASS THROUGH BANKRUPTCY UNAFFECTED"**].)

It has been held in the context of an action to set aside a foreclosure sale that tender is not required to maintain a cause of action for wrongful foreclosure where the defendant lacked authority to foreclose on the property. ([\*Glaski, supra\*, 218 Cal.App.4th at pp. 1082, 1086, 1100-1101](#); [\*Dimock v. Emerald Properties LLC\* \(2000\) 81 Cal.App.4th 868, 877-878 \(\*Dimock\*\)](#).) Even if we were to apply such a rule in this preemptive action to quiet title, Dennis's assertion that defendants had no authority to foreclose on the property is unsupported by the allegations in the third amended complaint and judicially noticeable matters.

Pursuant to the deed of trust they executed on November 3, 2006, Dennis and Carol granted to the trustee (Fremont Credit Corporation), in trust, with power of sale, title to the property. That deed of trust secured to the lender (Fremont Investment & Loan) the repayment of the debt evidenced by a \$700,000 promissory note dated November 3, 2006, signed by Carol. Dennis and Carol agreed that the beneficiary and nominee for the lender and the lender's successors and assigns (MERS) had the right to exercise all the interests of the lender and its successors and assigns, including the right to foreclose and sell the property, and to take any action required of the lender. **We do not accept as true the allegations in the third amended complaint that there was no beneficiary, lender or trustee under the deed of trust, or that Dennis had the only perfected claim of title to the property, because those allegations are conclusions and the recorded deed of trust contradicted those assertions.** (*Yvanova, supra*, 62 Cal.4th at p. 924, fn. 1; *Fontenot, supra*, 198 Cal.App.4th at pp. 265-266.)

Dennis appears to argue that MERS had no right to exercise the power of sale and no authority to assign the deed of trust because it did not hold the note. Dennis's claim ignores the judicially noticeable deed of trust. With regard to the right to exercise the power of sale, **Dennis agreed in the deed of trust that MERS, as the lender's nominee, had the right to foreclose and sell the property. THE DEED OF TRUST DOES NOT REQUIRE MERS TO HOLD THE NOTE IN ORDER TO FORECLOSE ON THE PROPERTY.** (*Gomes, supra*, 192 Cal.App.4th at p. 1157.) **Additionally, as the beneficiary and nominee of the lender, MERS had the authority to instruct the trustee to initiate a nonjudicial foreclosure upon Carol's default.** (*Yvanova, supra*, 62 Cal.4th at p. 929; *Calvo v. HSBC Bank USA, N.A.* (2011) 199 Cal.App.4th 118, 125; *Fontenot, supra*, 198 Cal.App.4th at p. 271, fn. 10.)

**With regard to MERS's authority to assign the deed of trust, Dennis agreed in the deed of trust that MERS had the right to take any action required of the lender. The deed of trust authorized MERS, acting as the lender's nominee, to assign the beneficial interests under the deed of trust.** (*Siliga v. Mortgage Electronic Registration Systems, Inc.* (2013) 219 Cal.App.4th 75, 84 (*Siliga*), disapproved on another ground in *Yvanova, supra*, 62 Cal.4th at p. 939, fn. 13; *Herrera v. Federal National Mortgage Assn.* (2012) 205 Cal.App.4th 1495, 1505, disapproved on another ground in *Yvanova, supra*, 62 Cal.4th at p. 939, fn. 13; *Fontenot, supra*, 198 Cal.App.4th at pp. 269-271.) Dennis failed to allege facts showing that

MERS lacked authority to assign the note and deed of trust on behalf of the lender or the successors or assigns of the lender.

**Further, the deed of trust provided that the lender may appoint a successor trustee. As we have explained, as nominee of the lender, MERS had the right to take any action required of the lender. MERS also had the authority to substitute trustees as the beneficiary. (Civ. Code, § 2934a, subd. (a).) Accordingly, based on the recorded documents, MERS had the authority to execute a substitution of trustee, naming Recontrust as the new trustee. The recorded substitution of trustee is conclusive evidence of Recontrust's authority to act.** (Civ. Code, § 2934a, subd. (d); [Rossberg, supra, 219 Cal.App.4th at p. 1495](#); [Dimock, supra, 81 Cal.App.4th at pp. 871, 874-875](#).) Recontrust subsequently executed and recorded a notice of default and election to sell under the deed of trust. Civil Code section 2924 authorized Recontrust, acting as the trustee or an agent of the beneficiary, to record the notice of default and election to sell under the deed of trust. (Civ. Code, § 2924, subdivision (a); [Rossberg, supra, 219 Cal.App.4th at p. 1496](#).)

It appears Dennis further contends defendants had no authority to act under the deed of trust because Fremont Investment & Loan went out of business in 2008. But the operative pleading does not allege that the original lender went out of business in 2008, before MERS assigned the deed of trust and note and substituted the trustee. Moreover, the deed of trust designated MERS as the nominee for the lender's successors and assigns and the beneficiary. **Dennis has not stated what facts he can allege to show a lapse in MERS's authority to act as the beneficiary or the nominee of the lender and the successors or assigns of the lender.** (See [Siliga, supra, 219 Cal.App.4th at p. 84](#); see also [Ghuman v. Wells Fargo Bank, N.A. \(E.D. Cal. 2013\) 989 F.Supp.2d 994, 1002-1003](#).)

Dennis also argues a July 15, 2014 letter from Pacific Western Bank demonstrates there was no valid successor lender, beneficiary or substitute trustee, and there was "no lawful transfer of required documents from Fremont." But the letter was not attached as an exhibit to the copies of the complaint and amended complaints in the clerk's transcript. Moreover, even if the letter was a proper subject of judicial notice, it does not demonstrate what Dennis asserts. The letter stated that before it merged with Pacific Western Bank, CapitalSource Bank bought select assets and deposit liabilities from Fremont Investment & Loan, but the purchased assets did

not include the property or any residential mortgage loans. The letter did not state which entity owned an interest in the property or the note signed by Carol or which entity was the trustee or beneficiary under the deed of trust.

It also appears that Dennis contends defendants cannot foreclose on the property because they were not the holders in due course on the note. The argument lacks merit. **"California's statutory nonjudicial foreclosure scheme ([Civ. Code,] §§ 2924-2924k) does not require that the foreclosing party have a beneficial interest in or physical possession of the note.** [Citations.] [Civil Code] Section 2924, subdivision (a)(1) specifically permits the `trustee, mortgagee, or beneficiary, or any of their authorized agents' to institute foreclosure by recording a notice of default." ([Shuster v. BAC Home Loans Servicing, LP \(2012\) 211 Cal.App.4th 505, 511-512](#); see [Jensen v. Quality Loan Serv. Corp. \(E.D. Cal. 2010\) 702 F.Supp.2d 1183, 1189.](#)) Recontrust was authorized to initiate a nonjudicial foreclosure as the trustee or agent of the beneficiary. (Civ. Code, § 2924, subd. (a).)

Dennis further asserts that he is the only "holder of a perfected claim," citing section 9-301 of the Uniform Commercial Code. That section provides that in general and under certain circumstances, local law governs the perfection and priority of a security interest in collateral. "'Security interest'" is "an interest in personal property or fixtures which secures payment or performance of an obligation." (U. Com. Code, § 1-201, subd. (b)(35); see Cal. U. Com. Code, § 1201, subd. (b)(35).) Dennis fails to explain how section 9-301 of the Uniform Commercial Code establishes he has an interest in the real property in this case. The claim is deemed forfeited. ([Okasaki, supra, 203 Cal.App.4th at p. 1045, fn. 1.](#))

Dennis also appears to argue that he became a "holder of a perfected claim" to title to the property because he filed a UCC Financing Statement. A copy of that statement is in the record before us, and it appears to have been completed by Dennis. The statement identifies Dennis and Carol as the debtors and Dennis as the secured party. The statement references the promissory note signed by Carol, the quitclaim deed from Carol to Dennis, and the discharge order in Carol's bankruptcy action, and states the note was "discharged" and "released" to Dennis.

However, the UCC Financing Statement does not establish that Dennis holds title to the property. **"[T]he purpose of filing a financing statement . . . is**

**to give an existing or prospective creditor the opportunity to inform himself of whether, and of the extent to which, an existing or prospective debtor has encumbered his assets and to govern himself accordingly in dealing with the debtor."** ([Borg-Warner Acceptance Corp. v. Bank of Marin](#) (1973) 36 Cal.App.3d 286, 288-289; see [Oxford Street Properties, LLC v. Rehabilitation Associates, LLC](#) (2012) 206 Cal.App.4th 296, 308.) **The statement "indicates merely that a person may have a security interest in the collateral indicated. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs."** (2 West's U. Laws Ann. (2002) U. Com. Code, com. to § 9502.)

Further, the third amended complaint does not allege, and on appeal Dennis does not state, any facts showing that the provisions of Division 9 of the Commercial Code (relating to secured transactions) apply here. (Cal. U. Com. Code, § 9109, subd. (d) [Division 9 does not apply to the transfer of an interest in real property, with exceptions Dennis has not shown are applicable here].) Other than the assertion in the UCC Financing Statement completed by Dennis, nothing in the record indicates that Carol's promissory note was "released" to Dennis. Dennis does not claim on appeal that he can allege facts of such a release.

Dennis also makes a confusing argument regarding the following language in the notice of trustee's sale: "NOTICE TO POTENTIAL BIDDERS [¶] If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself." Dennis appears to contend the quoted language shows there was no secured debt in this case. We deem Dennis's contention forfeited because it is not supported by legal analysis and citation to authority. ([Okasaki, supra](#), 203 Cal.App.4th at p. 1045, fn. 1.) In any event, the quoted language is mandated by Civil Code section 2924f, subdivision (b)(8) for a notice of sale given on and after April 1, 2012, if the deed of trust containing a power of sale is secured by real property containing one to four single-family residences. (Civ. Code, § 2924f, subd. (b)(8)(A).) The statutorily-mandated language does not modify or create any substantive rights or obligations for any person. (Civ. Code, § 2924f, subd. (b)(8)(C).)

**"A nonjudicial foreclosure is `presumed to have been conducted regularly, and the burden of proof rests with the party attempting to rebut this presumption.' [Citations.] A trustor-debtor seeking to prevent**

**a nonjudicial foreclosure based on the foreclosing entity's purported lack of authority therefore must `affirmatively' plead facts demonstrating a lack of authority.** [Citations.]" ([Rossberg, supra, 219 Cal.App.4th at p. 1493.](#)) "It is the plaintiff's burden on appeal to show in what manner it would be possible to amend a complaint to change the legal effect of the pleading; we otherwise presume the pleading has stated its allegations as favorably as possible." ([Fuller v. First Franklin Financial Corp. \(2013\) 216 Cal.App.4th 955, 962,](#) fn. omitted; see [Blank v. Kirwan \(1985\) 39 Cal.3d 311, 318.](#)) "To meet this burden, a plaintiff must submit a proposed amended complaint or, on appeal, enumerate the facts and demonstrate how those facts establish a cause of action. [Citations.] Absent such a showing, the appellate court cannot assess whether or not the trial court abused its discretion by denying leave to amend." ([Cantu v. Resolution Trust Corp. \(1992\) 4 Cal.App.4th 857, 890;](#) see [Rakestraw v. California Physicians' Service \(2000\) 81 Cal.App.4th 39, 44](#) ["Allegations must be factual and specific, not vague or conclusionary."].)

The factual allegations of the third amended complaint and judicially noticeable matters do not demonstrate that MERS or Recontrust lacked authority to initiate a nonjudicial foreclosure. Dennis asserted for the first time in his appellate reply brief that the lien "has been extinguished in exchange for \$809,771.84 on the day of X-XX-XXXX, therefore no tender is required to pay for an extinguished debt." Dennis attached to his reply brief a copy of a trustee's deed upon sale granting title to the property to HSBC. That deed of trust was not before the trial court and is not properly part of the record on appeal. In any event, Dennis does not state what facts would show that any alleged payment satisfied his obligation to do equity in order to receive quiet title. Because Dennis fails to show in what manner he can amend the third amended complaint to allege facts showing a lack of authority in defendants to foreclose on the property or that he has tendered payment on the debt in order to state a cause of action for quiet title, we conclude the trial court properly dismissed the third amended complaint.

## **DISPOSITION**

The judgment is affirmed.

RAYE, P. J. and HOCH, J., concurs.

[1] Because Dennis Collins and his former wife Carol Collins share the same last name, we will refer to them by their first names for clarity.