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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DARYOUSH JAVAHERI, an individual,
Plaintiff,
v.
JP MORGAN CHASE BANK N.A., a
corporation,
Defendant.

Case No. 2:11-cv-10072-ODW (FFMx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION TO DISMISS [12]**

Pending before the Court is JP Morgan Chase Bank, N.A.’s (“JP Morgan”) Motion to Dismiss Plaintiff Daryoush Javaheri’s Complaint. (Dkt. No. 12.) Having considered the papers filed in support of and in opposition to the instant Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C. D. Cal. L. R. 7-15. For the following reasons, the Court **GRANTS in Part** and **DENIES in Part** JP Morgan’s Motion.

I. BACKGROUND

On December 6, 2006, Plaintiff Daryoush Javaheri executed a \$975,000.00 promissory note (the “Note”) to refinance his loan on a condominium that is located at 10660 Wilshire Blvd., #1401, Los Angeles, California 90024 (the “Property”). (Compl. ¶ 4; Compl. Ex. 3.) The Note was secured by a deed of trust (“DOT”) that

1 identifies Plaintiff as the trustor, Washington Mutual Bank (“WaMu”) as the lender
2 and beneficiary, and California Reconveyance Company (“CRC”) as the trustee.
3 (Compl. Ex. 4, at 2–3.)

4 Plaintiff alleges that “between December 14 and 31, 2006, WaMu transferred
5 Plaintiff’s Note to Washington Mutual Mortgage Securities Corporation” and that the
6 Note was subsequently “sold to an investment trust and became part of, or was subject
7 to, a Loan Pool, a Pooling and Servicing Agreement, a Collateralized Debt Obligation,
8 a Mortgage-Backed Security, a Mortgage Pass-Through Certificate, a Credit Default
9 Swap, an Investment Trust, and/or a Special Purpose Vehicle.” (Compl. ¶ 13.)
10 Because of this alleged transaction in which Plaintiff’s Note was sold as an investment
11 security, Plaintiff claims that JP Morgan is not the owner, holder, or beneficiary of the
12 Note, and therefore cannot legally foreclose on the Property. Plaintiff also alleges that
13 JP Morgan failed to properly record its claim of ownership in the Property, further
14 evidencing its lack of ownership. (Compl. ¶ 14.) Finally, Plaintiff claims that after
15 December 2006, WaMu was solely a servicer of the Note and ceased to be a lender,
16 beneficiary, and owner. (Compl. ¶ 13.)

17 On September 25, 2008, the Office of Thrift Supervision closed WaMu and
18 appointed the Federal Deposit Insurance Corporation (“FDIC”) as Receiver. (JP
19 Morgan’s Request for Judicial Notice Ex. 2.) On that same date, the FDIC and JP
20 Morgan entered into a purchase and assumption agreement (“P & A Agreement”)
21 whereby JP Morgan acquired the majority of WaMu’s assets. (*Id.*) Article 2.5 of the
22 P & A Agreement expressly provides that JP Morgan did not assume the potential
23 liabilities associated with claims of WaMu’s borrowers.¹ (*Id.*) Instead, borrowers are
24 required to direct such claims to the FDIC. (*See id.*)

25
26 ¹ Article 2.5 of the P & A Agreement provides:

27 Notwithstanding anything to the contrary in this Agreement, any liability associated with
28 borrower claims for payment of or liability to any borrower for monetary relief, or that

1 Thereafter, beginning in October 2008, Plaintiff made monthly payments to JP
2 Morgan. (Compl. ¶ 30.) Plaintiff ceased making payments after six months. (*See id.*)

3 On May 18, 2010, JP Morgan purportedly assigned the beneficial interest under
4 the DOT to Bank of America, N.A. (Compl. Ex. 5, at 2.) On May 20, 2010, CRC
5 filed a Notice of Default against the Property. (Compl. ¶ 15.) The Notice of Default
6 included instructions for Plaintiff to contact JP Morgan. (Compl. ¶ 27.) On
7 November 18, 2011, CRC recorded a Notice of Trustee's Sale, reporting that the
8 Property would be sold at a public auction on December 12, 2011. (Compl. ¶ 16.) JP
9 Morgan is not named on the Notice of Trustee's Sale. (*Id.*)

10 As a result of these events, Plaintiff filed a Complaint against JP Morgan on
11 December 5, 2011, asserting claims for: (1) wrongful foreclosure; (2) quasi contract;
12 (3) quiet title; (4) declaratory and injunctive relief; and (5) no contract/fraud.
13 Specifically, Plaintiff contends that JP Morgan's foreclosure on Plaintiff's Property is
14 wrongful because JP Morgan does not own the Note and therefore lacks standing to
15 foreclose on Plaintiff's Property. (Compl. ¶ 20.) Plaintiff's quasi contract claim
16 asserts that JP Morgan was unjustly enriched if and when it accepted and retained
17 Plaintiff's monthly payments to which JP Morgan was not entitled. (Compl. ¶ 31.)
18 Plaintiff further seeks to quiet title, claiming he alone has an interest in the title to his
19 Property because Plaintiff's loan was fully paid when WaMu assigned the DOT to the
20 investment trust. (Compl. ¶¶ 36–37.) Accordingly, Plaintiff also requests a
21 declaration of his rights in relation to the Property and an injunction that prevents JP
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23 provide for any other form of relief to any borrower, whether or not such liability is
24 reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or
25 unmatured, disputed or undisputed, legal or equitable, judicial or extra-judicial, secured
26 or unsecured, whether asserted affirmatively or defensively, related in any way to any
27 loan or commitment to lend made by the Failed Bank prior to failure, or to any loan made
28 by a third party in connection with a loan which is or was held by the Failed Bank, or
otherwise arising in connection with the Failed Bank's lending or loan purchase activities
are specifically not assumed by the Assuming Bank.

(Dkt. No. 13, Ex. 2 (emphasis added).)

1 Morgan from selling the Property. (Compl. ¶ 42.) Finally, Plaintiff alleges that the
2 contract between Plaintiff and WaMu was invalid because the parties did not share
3 any expectation with respect to the transaction. (Compl. ¶ 53.)

4 JP Morgan moved to dismiss Plaintiff's Complaint entirely on January 1, 2012.
5 (Dkt. No. 12.) In support of JP Morgan's Motion, it filed a Request for Judicial
6 Notice. (Dkt. No. 13.) The Court now considers JP Morgan's Motion to Dismiss
7 under Rule 12(b)(6).

8 II. LEGAL STANDARD

9 "To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6),
10 a complaint generally must satisfy only the minimal pleading requirements of Rule
11 8(a)(2)." *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). Rule 8(a)(2) requires "a
12 short and plain statement of the claim showing that the pleader is entitled to relief."
13 Fed. R. Civ. P. 8(a)(2). For a complaint to sufficiently state a claim, its "[f]actual
14 allegations must be enough to raise a right to relief above the speculative level." *Bell*
15 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Dismissal under a 12(b)(6) motion
16 can be based on "the absence of sufficient facts alleged under a cognizable legal
17 theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To
18 overcome a 12(b)(6) motion, "a complaint must contain sufficient factual matter,
19 accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v.*
20 *Iqbal*, 556 U.S. 662; 129 S. Ct. 1937, 1949 (2009) (internal quotation marks omitted).
21 The plausibility standard "asks for more than a sheer possibility that a defendant has
22 acted unlawfully. Where a complaint pleads facts that are merely consistent with a
23 defendant's liability, it stops short of the line between possibility and plausibility of
24 entitlement of relief." *Id.*

25 When considering a 12(b)(6) motion, a court is generally limited to considering
26 material within the pleadings and must construe "[a]ll factual allegations set forth in
27 the complaint . . . as true and . . . in the light most favorable to [the plaintiff]." *See*
28 *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001) (citing *Epstein v. Wash. Energy*

1 Co., 83 F.3d 1136, 1140 (9th Cir. 1996)). A court is not, however, “required to accept
2 as true allegations that are merely conclusory, unwarranted deductions of fact, or
3 unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th
4 Cir. 2001).

5 As a general rule, leave to amend a complaint that has been dismissed should be
6 freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when
7 “the court determines that the allegation of other facts consistent with the challenged
8 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well
9 Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see Lopez v. Smith*, 203 F.3d
10 1122, 1127 (9th Cir. 2000).

11 III. DISCUSSION

12 The Court proceeds to consider JP Morgan’s Motion to Dismiss with respect to
13 each of Plaintiff’s claims. The Court first will consider JP Morgan’s Request for
14 Judicial Notice. The Court will then consider Plaintiff’s claim for no contract,
15 followed by Plaintiff’s remaining causes of action in the order in which they appear in
16 Plaintiff’s Complaint.

17 A. DEFENDANT’S REQUEST FOR JUDICIAL NOTICE

18 In support of its Motion to Dismiss, JP Morgan requests that the Court take
19 judicial notice of the following documents,² pursuant to Federal Rules of
20 Evidence 201(b), 201(c), and 201(d): (1) the Office of Thrift Supervision Order
21 (“OTS Order”) directing the FDIC to act as Receiver of Washington Mutual, available
22 at <http://files.ots.treas.gov/680024.pdf>; and (2) the P & A Agreement between the
23 FDIC, receiver of WaMu, and JP Morgan, dated September 25, 2008, available at
24 www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf. (Dkt. No. 13.)

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27 ² JP Morgan also requests that the Court take judicial notice of the Notice of Trustee’s Sale. The Court does not consider
28 JP Morgan’s request with respect to that document at this time.

1 Rule 201 states that “[a] judicially noticed fact must be one not subject to
2 reasonable dispute in that it is either (1) generally known within the territorial
3 jurisdiction of the trial court; or (2) capable of accurate and ready determination by
4 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
5 201(b). Because the Court may presume that public records are authentic and
6 trustworthy, *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999), such
7 public records fall within the purview of Federal Rule of Evidence 201. *See Lee v.*
8 *City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2011); *see also Peruta v. County of San*
9 *Diego*, 678 F. Supp. 2d 1046, 1054 n.8 (S.D. Cal. 2010) (stating that courts may
10 properly take judicial notice of documents appearing on governmental websites);
11 *Miller v. Cal. Reconveyance Co.*, No. 10-cv-421-IEG-CAB, 2010 U.S. Dist. LEXIS
12 74290, at *7 n. 1 (S.D. Cal. July 22, 2010) (“The Court will take judicial notice of the
13 P & A Agreement between JPMorgan and the FDIC . . . because this agreement is a
14 matter of public record whose accuracy cannot reasonably be questioned.”). The
15 closure of WaMu and the appointment of FDIC as its Receiver are facts not subject to
16 reasonable dispute and indeed are not in dispute. (*See Compl.* ¶¶ 21, 37.) The OTS
17 Order and the P & A Agreement are the official documents memorializing these facts,
18 and each is published by a governmental organization. Therefore, they cannot
19 reasonably be questioned. Accordingly, the Court **GRANTS** JP Morgan’s request for
20 judicial notice as to both documents.

21 **B. PLAINTIFF’S FIFTH CLAIM FOR NO CONTRACT (FRAUD)**

22 As a threshold matter, the Court notes that Plaintiff’s Complaint in this action is
23 a near carbon copy of Plaintiff’s second amended complaint in a similar case pending
24 before this Court (“*Javaheri I*”). *See Javaheri v. JP Morgan Chase Bank N.A.*
25 (*Javaheri I*), No. 2:10-cv-08185-ODW-FFM, ECF No. 29 (C.D. Cal. Apr. 12, 2011).
26 In *Javaheri I*, this Court entertained and granted motions to dismiss Plaintiff’s original
27 and first amended complaints. *Javaheri I*, ECF Nos. 20, 28. Subsequently, the Court
28 granted in part and denied in part JP Morgan’s motion to dismiss Plaintiff’s second

1 amended complaint. *Javaheri I*, ECF No. 36. In doing so, the Court construed
2 Plaintiff's claim for no contract as a garden-variety fraud claim and dismissed it with
3 prejudice for Plaintiff's repeated failure to plead a viable fraud claim. *Id.* at 4–5.

4 Plaintiff's claim for "No Contract/Fraud" in this action is little more than a
5 verbatim repetition of the "No Contract" claim this Court dismissed with prejudice in
6 *Javaheri I*, save for a sparse sprinkling of facts apparently designed to address the
7 shortcomings the Court noted in dismissing that claim. In so doing, Plaintiff flirts
8 boldly with a violation of Federal Rule of Civil Procedure 11(b), as Plaintiff has filed
9 a claim that is virtually identical to a claim that he knows was previously dismissed
10 with prejudice. However, because Plaintiff's Claim for "No Contract/Fraud" fails on
11 other substantive grounds, the Court does not discuss further Plaintiff's haphazard
12 attempt to cure the claim in the instant action.

13 JP Morgan argues in its Opposition that Plaintiff's claim for "No
14 Contract/Fraud" against JP Morgan fails because JP Morgan did not assume any
15 liabilities arising from claims relating to WaMu's origination of Plaintiff's Note.
16 (Opp. 12.) The Court agrees.

17 JP Morgan expressly disclaimed assumption of liability arising from borrower
18 claims against WaMu. (*See* Dkt. No. 13, Ex. 2 at 9.) Therefore, because Plaintiff's
19 claim for "No Contract/Fraud" alleges a cause of action that predates the P & A
20 Agreement, that action cannot be brought against JP Morgan. *See Ansanelli v. JP*
21 *Morgan Chase Bank, N.A.*, No. C 10-03892-WHA 2011 U.S. Dist. LEXIS 32350, at
22 *6 (N.D. Cal. Mar. 28, 2011); *St. James v. JP Morgan Chase Bank Corp.*, No. 10-CV-
23 1893-IEG-NLS 2010 U.S. Dist. LEXIS 134727, at *6 (S.D. Cal. Dec. 21, 2010).
24 Accordingly, JP Morgan's Motion as to Plaintiff's fifth claim for "No Contract/Fraud"
25 is **GRANTED**, and Plaintiff's claim is hereby **DISMISSED WITH PREJUDICE**.

26 **C. PLAINTIFF'S FIRST CLAIM FOR WRONGFUL FORECLOSURE**

27 Plaintiff's first claim for wrongful foreclosure is based on his allegation that JP
28 Morgan does not own the Note. (Compl. ¶ 20.) JP Morgan argues in its Motion that

1 Plaintiff fails to state a claim because CRC as trustee initiated foreclosure, not JP
2 Morgan. The Court finds that Plaintiff has sufficiently pled a claim for wrongful
3 foreclosure.

4 Non-judicial foreclosure is a process whereby, pursuant to a power of sale
5 contained in a deed of trust, a trustee sells the property securing an obligation on
6 which a trustor has defaulted. *Citicorp Real Estate v. Smith*, 155 F.3d 1097, 1105 (9th
7 Cir. 1998). The power of sale is conferred by the deed of trust, not by statute. *See*
8 *Nguyen v. Calhoun*, 105 Cal. App. 4th 428, 440 (2003). Pursuant to the DOT, only
9 the Lender or owner of the Note can invoke the power of sale. (*See* Compl. Ex. 4, at
10 14; *see also* Compl. Ex. 3, at 1–5 (explaining that Lender *or anyone who takes this*
11 *Note by transfer* and who is entitled to receive payments under this Note is called the
12 “Note Holder,” and that the Note Holder is authorized to accelerate the Note).) Once
13 the Lender decides to invoke the power of sale, the trustee must enter Notice of
14 Default and then conduct a Trustee’s Sale. (Compl. Ex. 4, at 14.)

15 According to Plaintiff’s Complaint, CRC filed the Notice of Default and Notice
16 of Trustee’s Sale. (Compl. ¶¶ 15–16.) CRC is the trustee under the DOT. (*See*
17 Compl. Ex. 4, at 2–3.) Thus, CRC could conduct the foreclosure process *only if* the
18 Lender or owner of the Note had invoked the power of sale. (Compl. Ex. 4, at 14.)
19 Plaintiff alleges in his Complaint that JP Morgan seeks to foreclose Plaintiff’s
20 Property notwithstanding JP Morgan is not the Lender and does not own Plaintiff’s
21 Note. If JP Morgan is in fact foreclosing on Plaintiff’s Property and is not the Lender,
22 then the foreclosure may be wrongful. In support of Plaintiff’s allegation that JP
23 Morgan is not the Lender and does not own Plaintiff’s Note, Plaintiff asserts that
24 WaMu transferred Plaintiff’s Note to an investment trust, which Plaintiff identifies as
25 Washington Mutual Mortgage Pass-Through Certificates Series 2007-HY1 Trust.
26 Plaintiff alleges that WaMu transferred Plaintiff’s Note before JP Morgan acquired all
27 of WaMu’s assets and thus JP Morgan did not acquire Plaintiff’s Note. The Court
28 must accept these allegations as true.

1 Therefore, the Court finds that Plaintiff has sufficiently pled that JP Morgan
 2 does not own Plaintiff's Note and consequently lacks authority to invoke the power of
 3 sale and foreclose on Plaintiff's Property. Accordingly, the Court **DENIES** JP
 4 Morgan's Motion to Dismiss with respect to Plaintiff's first claim for wrongful
 5 foreclosure.

6 **D. PLAINTIFF'S SECOND CLAIM FOR QUASI CONTRACT**

7 Plaintiff seeks restitution by alleging that JP Morgan was unjustly enriched by
 8 "any payments he made to [JP Morgan] that were not paid to the lender or beneficiary,
 9 if any." (Compl. ¶ 32.) JP Morgan correctly contends in its Motion that unjust
 10 enrichment, restitution, and quasi contract are not independent causes of action. *See*
 11 *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (2010). However, as
 12 discussed *supra*, Plaintiff has sufficiently alleged that JP Morgan did not own
 13 Plaintiff's Note. Consequently, if in fact JP Morgan did not own the Note yet
 14 received payments from Plaintiff for JP Morgan's own use, those payments may have
 15 been received unjustly. In such case, Plaintiff may be entitled to restitution.
 16 Accordingly, JP Morgan's Motion is **DENIED** as to Plaintiff's second claim for quasi
 17 contract.

18 **E. PLAINTIFF'S THIRD CLAIM FOR QUIET TITLE**

19 As with Plaintiff's other claims, Plaintiff's third claim to quiet title is based on
 20 Plaintiff's allegation that JP Morgan does not own the Note. An action for quiet title
 21 may be brought "to establish title against adverse claims to real or personal property
 22 or any interest therein." Cal. Civ. Proc. Code § 760.020. To maintain a quiet title
 23 action under California law, Plaintiff must file a verified³ complaint including (1) a
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25 ³ California District Courts are currently split on the issue whether plaintiffs alleging claims for quiet
 26 title must verify their complaints in federal court. *Compare Briosos v. Wells Fargo Bank*, 737 F.
 27 Supp. 2d 1018, 1031–32 (N.D. Cal. 2010) (dismissing without prejudice plaintiff's failure to assert a
 28 quiet title claim in a verified complaint); *Ritchie v. Cmty Lending Corp.*, No. CV 09-02484 DDP
 (JWJx), 2009 WL 2581414, at *7 (C.D. Cal. Aug. 12, 2009) (same) with *Gomez v. Calpacific Mortg.*

1 legal description of the property and its address; (2) the title sought and the basis of
2 that title; (3) the adverse claim to title sought; (4) the date as of which determination is
3 sought; and (5) a prayer for relief. Cal. Civ. Proc. Code § 761.020.

4 Plaintiff has sufficiently pled a claim to quiet title. Plaintiff's Complaint is
5 verified. (Compl. ¶ 17.) Plaintiff adequately describes the Property by alleging it is a
6 condominium and by providing its address. (Compl. ¶ 4.) In his Complaint, Plaintiff
7 seeks to quiet title against JP Morgan and all persons claiming any legal or equitable
8 right, title, estate, lien, or adverse interest in the Property. (Compl. ¶ 35.) As
9 discussed *supra*, Plaintiff has sufficiently alleged JP Morgan's adverse claim by
10 contending that JP Morgan does not own the Note and therefore has no right to
11 foreclose on the Property. Plaintiff alleges in his Complaint the date that JP Morgan
12 apparently caused the Notice of Default to be entered. (Compl. ¶¶ 15–16.) Finally,
13 Plaintiff includes a prayer for relief, asking the Court to declare that the title in the
14 Property is vested solely in Plaintiff and that JP Morgan has no right, title, estate, lien,
15 or interest in the Property. (Compl. ¶ 39.) Thus, Plaintiff has alleged each of the
16 elements to quiet title required by California Civil Procedure Code section 761.020.
17 Accordingly, the Court **DENIES** JP Morgan's Motion to Dismiss with respect to
18 Plaintiff's third claim to quiet title.

19 **F. PLAINTIFF'S FOURTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**

20 Plaintiff's fourth claim for declaratory and injunctive relief seeks a judicial
21 determination of Plaintiff's rights and duties as to the Note and the DOT, and JP
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24 *Consultants, Inc.*, No. 09-CV-2926-IEG (CAB), 2010 WL 2610666, at *5 n.2 (S.D. Cal. June 29,
25 2010) (citing Fed.R.Civ.P. 11(a); *Farzana K. v. Indiana Dept. of Educ.*, 473 F.3d 703, 705 (7th Cir.
26 2007)) (“[A] federal court need not follow a state practice requiring verification.”) and *Fimbres v.*
27 *Chapel Mortg. Corp.*, No. 09-CV-0886-IEG POR, 2009 WL 4163332, at *6 (S.D.Cal. Nov. 20,
28 2009) (same). However, the Court declines to resolve this issue in this litigation, as Plaintiff's
Complaint is in fact verified..

1 Morgan's rights to proceed with a non-judicial foreclosure on the Property. (Compl.
2 ¶ 42.)

3 The Declaratory Judgment Act states that "[i]n a case of actual controversy
4 within its jurisdiction . . . any court of the United States . . . may declare the rights and
5 other legal relations of any interested party seeking such declaration." 28 U.S.C.
6 § 2201(a). "Jurisdiction to award declaratory relief exists only in a case of actual
7 controversy." *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994).
8 Consequently, the Ninth Circuit instructs district courts first to determine whether
9 there is an actual controversy within its jurisdiction. *Principal Life Ins. Co. v.*
10 *Robinson*, 394 F.3d 665, 669 (9th Cir. 2005). If the court finds that an actual
11 controversy exists, next it must decide whether to exercise its jurisdiction by
12 following the guidance provided in *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942).
13 The *Brillhart* factors require the Court to (1) avoid needless determination of state law
14 issues; (2) discourage litigants from filing declaratory actions as a means of forum
15 shopping; and (3) avoid duplicative litigation. *Id.* at 495. Essentially, the court must
16 balance concerns of judicial administration, comity, and fairness. *Kearns*, 15 F.3d at
17 144.

18 Plaintiff contends an actual controversy has arisen in whether (1) JP Morgan is
19 the Lender and is the present holder and beneficiary of the Note; and (2) JP Morgan
20 has standing to foreclose on and sell the Property. As discussed *supra*, the Court finds
21 that Plaintiff sufficiently alleged that JP Morgan is not the Lender, present holder, or
22 beneficiary of the Note and consequently lacks standing to foreclose on Plaintiff's
23 Property. Therefore, the Court also finds that an actual controversy exists. None of
24 the guidelines in *Brillhart* suggest that the Court should refrain from entertaining
25 Plaintiff's claim for declaratory relief. Accordingly, JP Morgan's Motion to Dismiss
26 is **DENIED** with respect to Plaintiff's fourth claim for declaratory and injunctive
27 relief.

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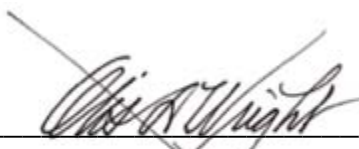
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IV. CONCLUSION

For the reasons discussed above, JP Morgan’s Motion to Dismiss is **GRANTED in Part** and **DENIED in Part**. Plaintiff’s fifth claim for “No Contract/Fraud” is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

March 27, 2012



HON. OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE