

1 Defendants have no lien on Plaintiff's real property and no claim
2 in this bankruptcy, and to quiet title. Plaintiff seeks summary
3 judgment on all of his remaining claims for relief.

4 For the reasons set forth below, Defendants' motion is
5 granted, and Plaintiff's motion is denied.

6 7 I. FACTS

8 A. Loan Origination

9 In January 2006 Plaintiff and his spouse, Sandra K. Smith
10 (collectively, "Borrowers"), were approved by Reunion Mortgage,
11 Inc. ("Reunion") for a mortgage loan ("Loan") in the amount of
12 \$227,000. On January 23, 2006, Borrowers executed a promissory
13 note payable to Reunion ("Note") and secured by a deed of trust
14 ("Deed of Trust") encumbering Plaintiff's real property at 23 Pine
15 Avenue, Mount Hermon, California. See Declaration of Ellen
16 Hatfield, Exhibits B and C; docket no. 169. The Deed of Trust was
17 recorded in Santa Cruz County on January 31, 2006.

18 The loan was funded through a combination of advances from a
19 line of credit Reunion maintained with First Collateral Services,
20 Inc. ("First Collateral"), which is an affiliate of Citi. The
21 proceeds of the loan were used to pay off the Borrowers' loan with
22 Washington Mutual Bank. Hatfield decl., Exhibit D.

23 24 B. Sale of Loan to Citi

25 In February of 2006, Citi purchased a pool of loans from
26 Reunion, which included the Loan. The acquisition of the Loan was
27 funded on February 6, 2006. Hatfield decl., ¶ 7; Exhibit E. As
28 part of the transaction, Ginger Mendoza, Assistant Vice President

1 of Reunion, indorsed the Note in blank and transferred physical
2 possession of the Note to First Collateral. See Declaration of
3 Ellen Cha, Exhibit B, docket no. 170. That indorsement was
4 subsequently converted to a special indorsement to Citi. Id.;
5 Hatfield decl., Exhibit B.

6 Reunion notified Borrowers of the transfer of the loan to Citi
7 by letter dated February 7, 2006. Hatfield decl., Exhibit F. In
8 conjunction with the purchase of the Loan, Citi acquired the
9 servicing rights to the Loan, and Citi notified Borrowers that Citi
10 was the servicer on February 18, 2006. Hatfield decl., Exhibit G.

11
12 **C. Sale of Loan to Freddie Mac**

13 On March 13, 2006, Citi sold the Loan to Freddie Mac for
14 \$226,794.79. Hatfield decl., ¶ 12; Declaration of Dean Meyer, ¶ 5,
15 docket no. 168; Cha decl., Exhibit D (Meyer transcript), page 57.
16 The sale of the Loan is reflected in Citi's records as a sale to
17 "Investor 3404," the internal code Citi uses to identify Freddie
18 Mac.

19 In conjunction with its acquisition of the Loan, Freddie Mac
20 required: (i) Citi to deliver the Note and Deed of Trust to Freddie
21 Mac, or its designee to serve as the document custodian of the
22 Loan; (ii) the Note to be indorsed in blank; and (iii) the
23 designated document custodian to verify certain information
24 contained in the Note and related documents for the Loan, and to
25 certify that it performed the verification and that the original
26 Loan documents, including the Note, were in its possession, a
27 process Freddie Mac refers to as "certification" or "certifying"
28 the Note. Meyer decl., p. 6; Cha decl., Exhibit C (Sims

1 Transcript), pages 28, 66; Cha decl., Exhibit D (Meyer Transcript),
2 pages 174-75. Before the sale to Freddie Mac closed, (i) Citi
3 delivered the original Note, indorsed in blank, and Deed of Trust
4 to Citibank, N.A. ("Citibank"), an affiliate of Citi, as Freddie
5 Mac's designated document custodian; (ii) Citi represented and
6 warranted to Freddie Mac that Citi was the owner of the Loan for
7 purposes of the sale to Freddie Mac; and (3) Citibank, as
8 designated document custodian of the Loan, completed the
9 certification of the Note. Meyer decl., page 8; Cha decl., Exhibit
10 D (Meyer Transcript), pages 72, 155; Cha decl., Exhibit C (Sims
11 Transcript), page 28.

12 In addition, Janet Sims, as a Vice President of Citi, indorsed
13 the Note in blank on behalf of Citi as seller, as required under
14 section 56.7 of the Freddie Mac Single Family/Single-Family
15 Seller/Service Guide (the "Guide"). See Cha decl., Exhibit C
16 (Sims Transcript) and Exhibit F (the Guide), docket no. 170.

17 Citi has serviced the loan continuously since Freddie Mac
18 acquired the Loan. Meyer decl., ¶ 9. Under the provisions of the
19 Guide, Citi may physically possess and enforce the Note, have the
20 Deed of Trust assigned to Citi when necessary, report information
21 to Mortgage Electronic Registration Systems, Inc. ("MERS"),
22 substitute a trustee to enforce the Deed of Trust, declare whether
23 the loan is in default, collect payments due under the Note, and
24 initiate foreclosure action. The Guide requires Citi to transfer
25 the original Note and Deed of Trust to Freddie Mac or its designee,
26 which in this case is Citibank. Cha decl., Exhibit F (Guide
27 excerpts). Citi transferred possession of the Note and Deed of
28 Trust to Citibank as custodian for Freddie Mac prior to the closing

1 of the sale of the Loan. Cha decl., Exhibit D (Meyer Transcript),
2 page 174. The Note and Deed of Trust were sent to Citi's
3 bankruptcy department in Dallas, Texas in September of 2010 to be
4 provided to Citi's counsel. Hatfield decl., Exhibit I.
5 Thereafter, Citi mailed the Note and Deed of Trust to Pite Duncan
6 in San Diego, California. Hatfield decl., Exhibit J.

7
8 **D. Securitization of the Loan**

9 Freddie Mac offers Mortgage Participation Certificates
10 ("PCs"), which are securities that represent interests in and
11 receive payments from pools of one- to four-family residential
12 mortgages. Meyer decl., ¶ 13. Shortly after purchasing the Loan,
13 Freddie Mac issued a Pool Supplement to the original offering
14 circular dated February 1, 2001, which indicated that the Loan was
15 part of PC Pool Number A44088. Meyer decl., ¶ 16; Cha decl.,
16 Exhibit D (Meyer Transcript), page 92. The placement of the Loan
17 into the pool did not change ownership of the Loan itself;
18 according to Mr. Meyer's declaration, Freddie Mac has always owned
19 a 100% interest in the Note since the Loan was purchased from Citi
20 in 2006. Meyer decl., ¶ 19. As a result of Borrowers' default
21 under the Loan, the Loan was removed from PC Pool A44088 on
22 February 15, 2010. Meyer decl., ¶ 21.

23
24 **E. Foreclosure**

25 In October of 2009, following Borrowers' default, Citi
26 retained Cal-Western Reconveyance Corporation ("Cal Western") to
27 initiate foreclosure proceedings against the Property. Cal-Western
28 was the duly appointed substitute trustee under the Deed of Trust.

1 As authorized under the Guide, Freddie Mac authorized Citi to cause
2 the Deed of Trust to be assigned to Citi. Cha decl., Exhibit D
3 (Meyer transcript), page 79; RJN, Exhibit C, docket no. 171. On
4 October 5, 2009, Yvonne Wheeler, who is an employee of Cal-Western,
5 but in her capacity as Assistant Secretary of Mortgage Electronic
6 Registration Systems, Inc. ("MERS") executed an assignment of Deed
7 of Trust to Citi ("Assignment"), which was recorded on January 19,
8 2010. RJN, Exhibit D.¹

9 On November 17, 2009, Cal-Western executed a Notice of
10 Default, which was recorded in Santa Cruz County. RJN, Exhibit E.
11 When Borrowers failed to cure their default, Cal-Western executed a
12 Notice of Trustee's Sale on February 18, 2010, which was recorded
13 on February 19, 2010. RJN, Exhibit F. The foreclosure sale was
14 set for March 11, 2010.

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18 _____
19 ¹MERS acts as mortgagee of record for mortgage loans that are
20 registered in MERS' system. Mortgage lenders subscribe to the MERS
21 system and pay annual fees for the electronic processing and
22 tracking of ownership and transfers of mortgages. Members (lenders
23 and servicers) contractually agree to appoint MERS to act as their
24 common agent on all mortgages the member registers in the MERS
25 system. To facilitate the execution of assignments from MERS, MERS
26 regularly designates "certifying officers," who are typically
27 employees of MERS member firms. MERS authorizes these employees
28 through formal corporate resolutions to execute assignments on its
29 behalf. Kiah v. Aurora Loan Services, LLC, 2011 WL 841282, at *1
30 n.1 (D. Mass. Mar. 4, 2011).

31 Here, Ms. Wheeler was appointed as Assistant Secretary of MERS
32 in accordance with MERS' Corporate Resolution dated July 14, 2000.
33 In her capacity as Assistant Secretary, Ms. Wheeler was authorized
34 to assign the lien of any mortgage loan naming MERS as the
35 mortgagee when Cal-Western is under contract with a MERS Member who
36 is also the current promissory note holder. Cha decl., Exhibit A
37 (Wheeler Transcript), pages 118-19.

1 **F. Bankruptcy Proceedings**

2 On March 10, 2010, before the foreclosure sale could be held,
3 Plaintiff filed the instant bankruptcy proceeding under chapter 13.
4 The case was converted to chapter 11 on February 14, 2011. On
5 April 2, 2010, Citi filed a proof of claim for \$222,926.35, secured
6 by the Property, attaching an itemization of the amounts owed, and
7 a copy of the Note, Deed of Trust, Notice of Loan Transfer letter
8 dated February 7, 2006, and the Assignment. Citi also moved for
9 relief from stay. Plaintiff objected to Citi's standing on the
10 same grounds as raised in this adversary proceeding. The Court
11 ordered supplemental declarations and briefing. On September 16,
12 2010, Citi filed in the main case the declaration of Travis J.
13 Lillie, counsel for Citi. In his declaration, Mr. Lillie testified
14 that he had received the original "blue ink" Note from Citi on
15 September 16, 2010, at which time he made a copy of the note and
16 attached that photocopy to the declaration. Thereafter the Court
17 found that Citi had a colorable claim of standing to prosecute the
18 motion. On June 16, 2011 the Court entered an adequate protection
19 order requiring Plaintiff, among other conditions, to make regular
20 monthly payments of \$1,607.08 plus \$1,888.42 per month toward post-
21 petition arrears until paid in full. The Court subsequently denied
22 Plaintiff's motion for reconsideration of that order.

23 Plaintiff filed the instant adversary proceeding on April 13,
24 2011. On July 7, 2011, the Court granted Defendants' motion to
25 dismiss Plaintiff's third, fourth, and fifth causes of action.²
26 The remaining claims are for (1) a declaration that Defendants have

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²The Court dismissed the claims with leave to amend, but Plaintiff did not amend the Complaint.

1 no interest in the Property; (2) a declaration that Citi has no
2 claim in this bankruptcy; and (3) a judgment quieting title to the
3 Property in Plaintiff.

4
5 **II. SUMMARY JUDGMENT STANDARD**

6 Summary judgment shall be rendered by the Court if the
7 pleadings, depositions, answers to interrogatories, and admissions
8 on file, together with the affidavits, if any, show that there is
9 no genuine issue as to any material fact and that the moving party
10 is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56,
11 incorporated in bankruptcy via Fed. R. Bank. P. Rule 7056;
12 Matsushita Electric Industrial Co., Ltd. v. Zenith Radio
13 Corporation, 475 U.S. 574, 584-85 (1985). All inferences must be
14 drawn against the moving party. Adickes v. S.H. Kress & Co., 398
15 U.S. 144, 158-59 (1970); United States v. Diebold, Inc., 369 U.S.
16 654, 655 (1962). Where a rational trier of fact could not find for
17 the non-moving party based on the record as a whole, there is no
18 "genuine issue for trial." Matsushita Elec. Indus. Co., 475 U.S.
19 at 587.

20
21 **III. ANALYSIS**

22 The parties have filed cross-motions for summary judgment.
23 Although Plaintiff asserts in his response to Defendants' motion
24 that there are factual issues remaining vis-à-vis Defendants'
25 motion, Plaintiff also asserts that the undisputed facts warrant
26 granting summary judgment in Plaintiff's favor on Plaintiff's
27 claims.

1 To resolve these motions, the Court need answer only one
2 question: does Citi have the right to enforce the Note? Plaintiff
3 asserts that Citi is not "a person entitled to enforce an
4 instrument" under Cal. Comm. Code § 3301 (quoted below) because (1)
5 the Note is not governed by Article 3 of the UCC, but by Article 9;
6 (2) the original lender did not give consideration for the Note;
7 (3) the Note is not properly endorsed to Citi; and (4) the
8 securitization of the loan into a pool gave the pool investors
9 rights in the Note or otherwise disrupted the chain of title so as
10 to render the Note unenforceable. Plaintiff further argues that
11 the Assignment of the Deed of Trust to Citi was a false conveyance
12 because at the time the Assignment was executed, Citi did not own
13 the loan and so was not the beneficiary with authority to instruct
14 Cal-Western to execute the Assignment. Based upon the evidence
15 provided, the Court finds that Citi is entitled to enforce the
16 Note.

17
18 **A. Citi is entitled to enforce the Note.**

19 **1. The Note is a negotiable instrument governed by Article 3**
20 **of the Uniform Commercial Code.**

21 Plaintiff argues that the promissory note is governed by
22 Article 9 of the Uniform Commercial Code ("UCC"). Plaintiff's
23 argument is difficult to follow, but appears to pertain
24 specifically to the securitization of the Note; Plaintiff argues
25 that the Note could not be enforced while the Note was held in a
26 securitized trust. Plaintiff offers no authority or evidence to
27 support these contentions; nor does Plaintiff explain why, if
28 Article 9 applies, this makes any difference as to whether Citi is

1 entitled to enforce the Note. As discussed infra, securitization
2 does not change the obligation of the borrower to pay the note or
3 the note holder's right to foreclose. In re Nordeen, 495 B.R. 468,
4 479-80 (9th Cir. BAP 2013). Plaintiff misapprehends the application
5 of Article 3 and Article 9 to promissory notes.

6 Article 3 of the UCC pertains to negotiable instruments. Cal.
7 Comm. Code § 3102. Article 9 governs the sale of most payment
8 rights, including the sale of both negotiable and non-negotiable
9 promissory notes. See Cal. Comm. Code § 9109(a)(3) (scope of
10 Division 9 of the California Commercial Code includes sale of
11 promissory notes); see also Report of the Permanent Editorial Board
12 for the Uniform Commercial Code, Application of the Uniform
13 Commerical Code to Selected Issues Relating to Mortgage Notes
14 (ALI/NCCUSL, Nov. 14, 2011), at 2 and 8 ("Report"). However, the
15 sale of a promissory note under Article 9 does not necessarily
16 change the identity of the person entitled to enforce the note.
17 Report, at 8 (citing UCC § 3-301, identical to Cal. Comm. Code
18 § 3301, which provides that a person may be a person entitled to
19 enforce the instrument even though the person is not the owner of
20 the instrument).

21 Under California law, a negotiable instrument is defined as
22 "an unconditional promise or order to pay a fixed amount of money."
23 Cal. Comm. Code § 3104(a). For an instrument to be negotiable
24 under California law: (1) it must be made payable to bearer or
25 order at the time it is issued or first comes into possession of a
26 holder; (2) it must be payable on demand or at a definite time; and
27 (3) it must not state any other undertaking or instruction by the
28 person promising to do any act in addition to the payment of money,

1 except that the promise or order may contain an undertaking or
2 power to give, maintain, or protect collateral to secure payment.
3 Cal. Comm. Code § 3104(a)(1)-(3). Here, the Note was made payable
4 to the order of Reunion at the time it was issued. The Note is
5 payable at a definite time, February 1, 2036. Finally, the Note
6 does not require Borrowers to undertake any act other than the
7 payment of money (with the exception of maintaining and protecting
8 the Property to secure payment, as permitted under Cal. Comm. Code
9 § 3104(a)(3)). See Note, Exhibit C to Hatfield Declaration filed
10 April 15, 2013, docket no. 169. The Note thus meets the
11 requirements of a negotiable instrument under California law.

12 13 **2. Consideration**

14 Plaintiff argues that Reunion was not the lender or true
15 originator of the Loan because the funds for the loan came from
16 First Collateral. Plaintiff argues that Citi's rights as
17 transferee of the Note are derivative of Reunion's, and because
18 Reunion provided no consideration, the Note is not enforceable.

19 Plaintiff misconstrues the applicable law. It is undisputed
20 that Plaintiff received consideration for the Note and Deed of
21 Trust; as noted, the loan proceeds were used to pay off Plaintiff's
22 loan with Washington Mutual Bank, which executed a full
23 reconveyance. California law defines "good consideration" as

24 [a]ny benefit conferred, or agreed to be conferred, upon
25 the promisor, by any other person, to which the promisor
26 is not lawfully entitled, or any prejudice suffered, or
27 agreed to be suffered, by such person, other than such as
28 he is at the time of consent lawfully bound to suffer, as
an inducement to the promisor"

Cal. Civ. Code § 1605. Plaintiff has cited no authority to support
the notion that the funding of a loan by a third party somehow

1 invalidates a promissory note. Consideration for a contract,
2 including a promissory note, may be provided by a third party.

3 [B]ecause the Debtor executed the Note and received
4 consideration . . . the contract is enforceable
5 regardless of who provided the funding. In other words,
6 the fact that the funds for a borrower's loan are
7 supplied by someone other than the loan originator, does
8 not invalidate the loan or restrict enforcement of the
9 loan contract to the parties who funded the loan.

7 In re Weisband, 427 B.R. 13, 22 (Bankr. D. Ariz. 2010) (citing DCM
8 Ltd. P'ship v. Wang, 555 F. Supp. 2d 808, 817 (E.D. Mich. 2008); 3
9 Williston on Contracts § 7:20 (Richard A. Lord, 4th ed. 2009);
10 Restatement (Second) of Contracts § 71(4) (2009)).

11 **3. Who May Enforce the Note?**

12 Under California law, a "person entitled to enforce" an
13 instrument is defined as
14

15 (a) the holder of the instrument, (b) a nonholder in
16 possession of the instrument who has the rights of a
17 holder, or (c) a person not in possession of the
18 instrument who is entitled to enforce the instrument
19 pursuant to Section 3309 or subdivision (d) of Section
20 3418. A person may be a person entitled to enforce the
21 instrument even though the person is not the owner of the
22 instrument or is in wrongful possession of the
23 instrument.

24 Cal. Comm. Code § 3301.

25 Plaintiff argues that the Note itself defines who is the
26 holder of the Note: "The Lender or anyone who takes this Note by
27 transfer and who is entitled to receive payments under the Note is
28 called the 'Note Holder.'" This language does not materially
differ from the definition of "holder" set forth in Cal. Comm. Code
§ 1201(b)(21)(A): "the person in possession of a negotiable
instrument that is payable either to bearer or to an identified
person that is the person in possession." As noted, Citi provided

1 evidence that it is in physical possession of the Note, which
2 contains an endorsement to Citi as well as a blank endorsement.
3 According to the deposition transcript of Janet Sims, senior vice
4 president in document services for Citi, Citi is holding the Note
5 as custodian for Freddie Mac. See also Meyer transcript (Exhibit D
6 to Cha decl.), pages 165, 167-68. Therefore, Citi is entitled to
7 enforce the Note.

8 Plaintiff argues that the endorsements on the Note do not
9 establish that the Note was transferred to Citi. The Note contains
10 two undated endorsements. One endorsement appears on the back of
11 the last page of the Note, and reads "Pay to the order of:
12 CitiMortgage, Inc. Without Recourse," and is signed by Ginger
13 Mendoza as Assistant Vice President of Reunion Mortgage, Inc. The
14 other endorsement appears on the last page of the Note and reads
15 "Pay to the order of _____ without recourse on as [sic]
16 CitiMortgage, Inc.," and is signed by Janet L. Sims, as Vice
17 President of CitiMortgage, Inc. The blank on the endorsement stamp
18 has not been filled in. Plaintiff argues that the fact that there
19 is no date on either endorsement is inadequate to confer holder
20 status. In the case cited by Plaintiff to support this contention,
21 U.S. Bank Nat'l Ass'n v. Kimball, 190 Vt. 210, 217-18 (2011), the
22 Vermont Supreme Court upheld the trial court's conclusion that
23 there was no evidence to show that U.S. Bank was the holder of the
24 promissory note at issue when its complaint was filed, and
25 therefore lacked standing. The court's conclusion was based on the
26 fact that there was no evidence as to the timing of the
27 endorsement. Here, Defendants have produced evidence that the Note
28 was endorsed and physically transferred to Citibank, an affiliate

1 of Citi, as Freddie Mac's designated document custodian, in
2 February and March 2006, well before foreclosure proceedings were
3 commenced.

4 Plaintiff next argues that the blank endorsement is not truly
5 a blank endorsement because it contains restrictions in the form of
6 language "pay to the order of" and "without recourse." Therefore,
7 according to Plaintiff, Citi cannot be a holder of the Note.

8 Plaintiff cites to no authority that an endorsement that does
9 not identify a payee is not a blank endorsement if the stamp
10 contains "pay to the order of" or "without recourse" language. The
11 Court has found no authority that the presence of extraneous
12 language on an endorsement invalidates an otherwise blank
13 endorsement. Under Cal. Comm. Code § 3205, an endorsement by the
14 holder that identifies a person to whom it makes the instrument
15 payable is a special endorsement; an endorsement made by the holder
16 of an instrument that is not a special endorsement is a blank
17 endorsement; and the holder may convert a blank endorsement into a
18 special endorsement by writing words identifying the person to whom
19 the instrument is made payable. See also In re Lee, 408 B.R. 893,
20 899-900 (Bankr. C.D. Cal. 2009) (if endorsement does not specify a
21 payee, it constitutes a blank endorsement).

22 Plaintiff argues, without authority, that physical possession
23 of the Note is not sufficient to establish Citi's status as a
24 holder. Plaintiff also argues that there is no proof that Citi
25 holds the Note as a servicer for Freddie Mac or that Citi is
26 authorized to enforce the Note on behalf of Freddie Mac. However,
27 as noted, Janet Sims (Senior Vice President of Document Services
28 for Citi) testified in her deposition that Citi is holding the Note

1 as custodian for Freddie Mac. Plaintiff offers no evidence to the
2 contrary. Finally, Plaintiff argues, again without any citation to
3 authority, that the entities entitled to receive payments under the
4 Note are the certificate holders. However, none of these arguments
5 are supported by evidence or authority, nor do they take into
6 account California's nonjudicial foreclosure statutes, which do not
7 require a party initiating a foreclosure to have a beneficial or
8 economic interest in a note.

9 California's nonjudicial foreclosure statute, Cal. Civ. Code
10 § 2924, provides a "comprehensive framework for the regulation of a
11 nonjudicial foreclosure sale pursuant to a power of sale contained
12 in a deed of trust." Lona v. Citibank, N.A., 202 Cal. App. 4th 89,
13 (2011). Under Cal. Civ. Code § 2924, the party initiating
14 foreclosure proceedings is not required to have a beneficial or
15 economic interest in the note in order to foreclose. Lane v. Vitek
16 Real Estate Indus. Grp., 713 F. Supp. 2d 1092, 1099 (E.D. Cal.
17 2010); Castaneda v. Saxon Mortgage Servs., 687 F. Supp. 2d 1191,
18 1201 (E.D. Cal. 2009) (no requirement that entity initiating
19 foreclosure has physical possession of the underlying note).
20 Instead, a "trustee, mortgagee, or beneficiary, or any of their
21 authorized agents" may commence the nonjudicial foreclosure
22 process. Cal. Civ. Code § 2924(a)(1).

23 The evidence submitted by Defendants shows that Citi both
24 holds the Note and also services the loan for Freddie Mac. Nothing
25 more is required to establish Citi's right to enforce the Note.
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1 **4. Effect of Securitization**

2 Plaintiff contends that there is no evidence of an assignment
3 of the Loan either into or out of a pool. Plaintiff argues that if
4 the Loan was placed into a pool and not removed, Plaintiff may
5 still have liability to pool investors, because the investors
6 became the holders of the Note. Contrary to Plaintiff's assertion,
7 Defendants have provided evidence of the transfers both in and out
8 of the pool. According to the Meyer declaration, Plaintiff's loan
9 was placed into PC Pool A44088 on or around March 6, 2006, and
10 removed from the pool on February 15, 2010. Plaintiff offers no
11 contrary evidence.

12 Even if the Loan had not been removed from the pool,
13 securitization does not change the obligation of the borrower to
14 pay the note or the note holder's right to foreclose. Nordeen, 495
15 B.R. at 479-80:

16 [H]ome loan borrowers are not purchasing an investment
17 when they enter into a loan agreement to purchase or
18 refinance a home. When they sign a promissory note and
19 mortgage or trust deed secured by their real property,
20 they are entering into a contract for a loan transaction
21 on fixed terms, and any "upside" or investment incentive
22 to enter into the transaction is based on a prospective
23 increase in the value of the subject real property.
24 Accordingly, the borrower's loan contract (the Note and
25 Trust Deed in this appeal) is distinct and separate from
26 any securities transaction in the "secondary market"
27 encompassing assignment of the contract.

28 The uncontested evidence before the Court is that the Loan was
transferred into the pool and removed from it. The transfer of the
Loan into and out of the pool did not impact Citi's right to
enforce the Note.

1 **B. Assignment of Deed of Trust**

2 Plaintiff argues that the Assignment to Citi recorded on
3 January 19, 2010 is a "wild deed" and a false conveyance because at
4 that time the loan had been sold to Freddie Mac and thus Citi was
5 not a beneficiary of the Deed of Trust. Plaintiff further contends
6 that Cal-Western did not receive a declaration of default from the
7 beneficiary, citing to the deposition of Yvonne Wheeler, the
8 employee of Cal-Western who executed the Assignment (Exhibit F to
9 declaration of David Smith, docket no. 245). Ms. Wheeler testified
10 that a declaration of default and demand for sale was delivered to
11 Cal-Western in the form of an electronically transmitted referral,
12 which states who the servicer and beneficiary are. Ms. Wheeler
13 further testified that Cal-Western employees verify this
14 information with the title company and the MERS website, and in
15 this case Cal-Western had documentation provided by Citi showing
16 that Citi was the note holder - specifically, a copy of the
17 promissory note showing the endorsement to Citi. Plaintiff has not
18 provided any evidence or authority that the electronic referral was
19 insufficient to constitute a declaration of default and demand for
20 sale.

21 Plaintiff argues that Ms. Wheeler was not an officer of MERS
22 when she executed the Assignment. However, Ms. Wheeler was
23 appointed as Assistant Secretary of MERS in accordance with MERS'
24 Corporate Resolution dated July 14, 2000, Cha decl., ¶ 3, Exhibit A
25 (Wheeler transcript), page 20, and in that capacity she was
26 authorized to assign the lien of any mortgage loan naming MERS as
27 the mortgagee when Cal-Western is under contract with a MERS Member
28 who is also the current promissory note holder. Id. at 118-119.

1 In any event, even if there were irregularities in the
2 Assignment, any transfer of the note automatically carries with it
3 a transfer of the deed of trust. Davidson v. Countrywide Home
4 Loans, Inc., 2010 WL 962712, at *5 (S.D. Cal. Mar. 16, 2010); Cal.
5 Civ. Code § 2936 ("The assignment of a debt secured by mortgage
6 carries with it the security.") As the note holder, Citi was
7 authorized to initiate foreclosure.

8
9 **V. CONCLUSION**

10 Because Defendants have established that Citi is entitled to
11 enforce the Note, Defendants are entitled to summary judgment of
12 dismissal of Plaintiff's claims. Defendants' motion is granted,
13 and Plaintiff's motion is denied. Defendants may submit a proposed
14 form of judgment.

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16 ***** END OF MEMORANDUM DECISION *****
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Court Service List

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