Case No : 17-_____

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL W. ROBINSON and
DARLA J. ROBINSON,

Petitioners

v.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and MERSCORP HOLDINGS, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Respondent, Mortgage Electronic Registration Systems, Inc., which is identified in most mortgages and deeds of trust as a "beneficiary" or "nominee" of the lender, possesses an interest in a borrower's property sufficient to establish Article III standing.

LIST OF ALL PARTIES

The Petitioners are Daniel W. Robinson and Darla J. Robinson, both California residents. Respondents are Mortgage Electronic Registration Systems, Inc., and Merscorp Holdings, Inc.

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PETITION FOR WRIT OF CERTIORARI

Daniel Robinson and Darla Robinson (collectively "the Robinsons") respectfully petition this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished, and is included in Appendix (App) at A-1. The opinion of the district court is unreported and is included in the appendix at App-5. The final order from the district court is included at App-25.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on December 16, 2016. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This petition concerns the interpretation of Article III, § 2, of the Constitution, and the Due Process Clauses contained in the Fifth and Fourteenth Amendments thereto. (See App-27).

STATEMENT OF THE CASE

The primary question raised in this case is whether MERS, which is identified as a beneficiary and nominee in the Robinsons' deed of trust, possesses sufficient standing to maintain an action against the Robinsons. An alternative question presented is whether MERS has a sufficient interest in the Robinsons' property, to establish a due process right under the Fifth and Fourteenth Amendments.

A. Procedural Background

This case stems from an action filed against the Robinsons in federal court, seeking to set aside a prior state court judgment obtained by the Robinsons in a quiet title action.

On January 11, 2012, the Robinsons filed a quiet title action in California state court. That action named the lender listed in the Robinsons' loan documents, United Pacific Mortgage ("UPM"), but it did not name either Respondent. A final judgment against UPM was obtained April 17, 2013, thereby

expunging the Robinsons' Deed of Trust ("DOT") on the Property[1].

Five months after the Robinsons recorded their state court judgment, MERS and MERSCORP filed an action in the United States District Court for the Central District of California, seeking to set aside the Robinsons' state court judgment. MERS and MERSCORP alleged, in part, a violation of the Due Process Clause of the U.S. Constitution (See App-12-13). The District Court granted summary judgment against the Robinsons and entered an order vacating the Robinsons' state court judgment. The District Court ruled in favor of MERS and MERSCORP on their due process claim, finding that both entities possessed Article III standing, and that "a ruling that MERS is not entitled to this notice [of the state court action] would inhibit MERS from properly notifying MERS System members of adverse actions and would also affect MERSCORP's interests.[2]" (App-13).

The Robinsons appealed to the Ninth Circuit. There, the Court of Appeals held MERS had standing

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[1] The Robinsons' quiet title action did not seek, nor did the Robinsons' obtain, any ability to alter or cancel the promissory note or eliminate the Robinsons' obligation to pay the loan on their house under the note. A quiet title action only deals with matters of public record effecting real estate. See Cal Civ. Proc. Code §760.010. The Robinsons did not seek to challenge the enforceability of the note nor did they seek to cancel or avoid making their payments.

[2] As described later in this Petition, MERSCORP owns the MERS system. Throughout this Petition, the Respondents are collectively referred to as "MERS".

to bring its action, because "MERS suffered an injury in fact when the Robinsons failed to name it as a defendant in their quiet title action, depriving MERS of the opportunity to assert its adverse claim again the property prior to the expungement of the deed of trust." (App-3, n.3).

B. Factual Background

The Robinsons purchased the Subject Property on February 7, 2005. To finance their purchase, the Robinsons obtained a loan in the amount of $999,950, for which they signed a promissory note ("Note") and a deed of trust ("DOT") in favor of the original lender, UPM. In the Note and DOT, UPM was designated as the lender, beneficiary, and mortgagor. The DOT also identified MERS as a "separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns" and "the beneficiary under [the DOT]" which "holds only legal title to the interests granted by Borrower in this Security Instrument[.]"[3]

As the result of numerous lender errors and inappropriate directives from various servicers and banking institutions regarding their mortgage and payments made thereunder over a period of several years, the Robinsons pursued a quiet title action in California state court. After identifying UPM as the lender, beneficiary, and mortgagor in their loan documents, the Robinsons filed a quiet title action in California state court on January 11, 2012 and a notice of *lis pendens* on May 16, 2012, naming UPM as a defendant. (App-7). The Robinsons did not name

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[3] A full quotation from the DOT concerning the role of MERS is found at App 6-7.

MERS as a party-defendant or otherwise provide MERS with notice of the lawsuit, based on the argument that notice to its principal (i.e., UPM as the lender) was sufficient and MERS had no standing to qualify as an adverse interest under California's quiet title statutes.

It is important to note that the Robinsons' state court judgment was not a default judgment[4], and the Robinsons did not seek to challenge the note in those proceedings or avoid making mortgage payments.

REASONS FOR GRANTING THE PETITION

The Robinsons request this Court grant certiorari relief, and provide much needed clarification on whether MERS, as a beneficiary or nominee of a mortgage lender, has a constitutionally protected interest in a borrower's property.

Federal and state courts across the country have created contradictory and confusing case law on whether MERS possesses standing to litigate foreclosure matters, and many have based their rulings on a misapplication of this Court's holding in *Sprint Commc'ns Co. v. APCC Serv., Inc.*, 554 U.S. 269, 273 (2008).

I. Overview of MERS and its Role in Foreclosure Litigation.

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[4] *See* Cal.Code Civ.Proc. § 764.010, which does not allow default judgments in quiet title matters. The quiet title statutes set forth procedures and materials that judges must review before they are permitted to quiet title.

At the outset, the Petitioners believe that analyzing what MERS actually is, and the role it plays in the mortgage industry, is necessary in order to determine the issues presented in this case. The MERS System has been described as "a national electronic registry system that tracks the changes in servicing rights and beneficial ownership interests in mortgage loans that are registered on the registry." *Butler v. Deutsche Bank Tr. Co. Ams.*, Civil Action No. 12-10337-DPW, 2012 U.S. Dist. LEXIS 114196, *5 (D. Mass. Aug. 14, 2012)

No mortgage rights are transferred on the MERS System. *Mortg. Elec. Registration Sys. v. Ditto*, 488 S.W.3d 265, 269 (Tenn. 2015). The MERS System only tracks the changes in servicing rights and "beneficial ownership interests" *Id.* MERS performs a service for lenders by purporting to function as "the mortgagee of record and nominee for the beneficial owner of the mortgage loan." see *Thompson v. Bank of Am., N.A.*, 773 F.3d 741, 748 (6th Cir. 2014) ("MERS is a company that provides mortgage recording services to lenders and allows lenders to trade the mortgage note and servicing rights on the market, with MERS maintaining electronic recordings of each transaction.")

Traditionally, there was little need for a registration system such as MERS; a mortgage was a two-party transaction in which a prospective homeowner borrowed money from a lender, typically a bank that loaned the monies from its customers' deposits. The lender recorded the transaction in the county's land records in accordance with state real property laws and usually retained the loan until it was repaid. *Ditto* at 269, citing Ellen Harnick, The

Crisis in Housing and Housing Finance: What Caused It? What Didn't? What's Next?, 31 W. New Eng. L. Rev. 625, 626-27 (2009).

In 1993, several major participants in the lending community collaborated to form a national electronic registration system that would track the transfer of ownership interests in residential loans. *MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90, 861 N.E.2d 81, 83, 828 N.Y.S.2d 266 (N.Y. 2006). The MERS System was developed to allow for more efficient transfers of those interests in the primary and secondary mortgage markets. *Jackson v. Mortgage Electronic Registration Systems, Inc.,* 770 N.W.2d 487, 490 (Minn. 2009).

The primary mortgage market consists mainly of home loans that are made to consumers. *Jackson*, 770 N.W.2d at 490. Nowadays, these loans are often "bundled" and sold to institutional investors on the secondary mortgage market. *Id.* In turn, the institutional investors often repackage and resell the loans or securitize them and sell shares of the resulting securities. *Id.* According to MERS, prior to the creation of its registration system, the constant buying and selling of mortgage-backed loans became costly and time-consuming, because each transfer required that an assignment of the mortgage be recorded in the local land evidence records. *Bucci v. Lehman Bros. Bank, FSB*, 68 A.3d 1069, 1072-73 (R.I. 2013). It also became difficult to determine what entity owned the beneficial interests in these loans at any given time, because those interests were bought and sold with such frequency, often leading to recording errors. *Id.*, see also *Mortgage Electronic Registration Systems, Inc. v. Bellistri,* 2010 U.S. Dist.

LEXIS 67753, 2010 WL 2720802 at *7 (E.D. Mo. July 1, 2010). The MERS System was developed to bring efficiency and order to this increasingly complex industry. *Jackson*, 770 N.W.2d at 490.

In order for a lender to benefit from the MERS tracking system, it must become a MERSCORP member. To do so, the lender subscribes to the MERS System by paying a periodic (usually annual) membership fee or a per-transaction fee. *Ditto*, 488 S.W.3d at 270. MERSCORP is also the parent company of defendant MERS. *Bellistri*, 2010 U.S. Dist. LEXIS 67753, 2010 WL 2720802 at *6. In a typical MERS transaction, when a loan is made by a member of MERSCORP, the member will be designated as the lender in the promissory note, and MERS will be named in the mortgage as the mortgagee, acting as nominee for the lender and the lender's successors or assigns. *Jackson*, 770 N.W.2d at 490. Whenever a note is sold, assigned, or otherwise transferred to another MERSCORP member, MERS remains as the mortgagee of record. As a result, there is no need to record an assignment of the mortgage in the land evidence records. *Id.* It is only when a loan is transferred to a nonmember that an assignment of the mortgage must be executed and recorded. *Id.* at 491. Consequently, loans can be transferred more quickly and economically, and each transfer can be tracked on the MERS System. *Id.*

One authority has stated that MERS purports to hold "approximately 60 million mortgage loans and is involved in the origination of approximately 60% of all mortgage loans in the United States." *MERSCORP, Inc. v. Romaine*, 8 N.Y.3d 90, 861

N.E.2d 81, 83, 828 N.Y.S.2d 266 (N.Y. 2006).

A. Courts Have Struggled to Define What MERS Actually Is, and What Acts MERS is Entitled to Perform on Behalf of a Lender.

To many courts, it remains unclear what MERS actually is. At the basic level, MERS is a Delaware corporation that provides mortgage loan related services. But even MERS' own contracts, attorneys, and spokespersons present a muddled account of MERS' identity in relationship to the mortgage loans registered on its database.

Interestingly, the company tends to argue it is an actual mortgagee or assignee when it brings foreclosure actions. However, when sued in cases alleging fraud, deceptive practices, or other statutory consumer protection claims associated with loans registered on its system, MERS argues it is merely an agent without exposure to liability. Compare *Landmark Nat. Bank v. Kesler*, No. 98,489, 2008 WL 4180346, at *1-*2 (Kan. Ct. App., Sept. 12 ,2008) ("What is MERS's interest? MERS claims that it holds the title to the second mortgage . . . . MERS objects to its characterization as an agent...") with *In re Escher*, 369 B.R. 862 (E.D. Pa. 2007) ("MERS' role as nominee leads the Court to conclude that it cannot be liable on any of the Plaintiff's [Truth in Lending or Pennsylvania consumer protection] claims. A nominee is understood to be an agent for another...Therefore MERS will be dismissed from this action and no further reference to MERS will be made."); *Hartman v. Deutsche Bank Nat. Trust Co.*, No. 07-5407, 2008 WL 2996515, *2 (E.D.Pa. Aug. 1, 2008) (accepting MERS' argument that it could not

be liable under the Truth in Lending Act because there was no colorable allegation "that ... [the plaintiff's] mortgage loan was assigned to MERS, or that MERS was ever the owner of that obligation."); *King v. Ocwen*, Civil Action No. 07-11359, 2008 WL 2063553 (E.D.Mich, April 14, 2008) (arguing that MERS could not be liable for Fair Debt Collection Practices Act violations because "HSBC was the mortgagee for the property. Ocwen is the servicer for the property. [And,] MERS acted solely as the nominee for the original mortgagee of the property.")

Federal and state courts across the country have created contradictory and confusing case law regarding MERS' ability to act and litigate foreclosure matters. In 2009, the Minnesota Supreme Court approved of the notion that MERS stood as a "nominee" and "mortgagee" at the same time, holding that "transfers of the [note] do not have to be recorded to foreclose a mortgage" under Minnesota law, if MERS remains at all times the mortgagee as nominee of the lender. *Jackson, supra,* 770 N.W.2d at 489-90.

In *Bank of N.Y. v. Silverberg*, 86 A.D. 3d 274 (N.Y. App. Div. 2011), a New York court held that an assignee of MERS lacked standing to commence a foreclosure action. The court disagreed with MERS's theory that any and all future assignments of the note among MERS's members were "inoculated ... because MERS remains the mortgagee no matter how many times servicing is traded." Id. at 278-79. The court concluded that "... because MERS was never the lawful holder or assignee of the notes described and identified in the consolidation agreement . . . MERS was without authority to

assign the power to foreclose to the plaintiff." *Id.* at 283.

Silverberg did not reach that decision lightly. The *Silverberg* court, "while mindful of the impact ... this decision may have on the mortgage industry" noted the law "must not yield to expediency and the convenience of lending institutions." *Id.* at 283.

California falls on the other end of the spectrum. There, federal and state courts have decided MERS-related cases in a decidedly different fashion than those in New York and Kansas[5].

In Nevada, MERS has fared exceptionally poorly in federal and bankruptcy court. See, e.g., *Mortg. Elec. Registration Sys. v. Medina*, No. 2:09-cv-00670-KJD-GWF, 2009 WL 4823387 (D. Nev. Dec. 4, 2009); *In re Mitchell*, No. BK-S-07-16226-LBR, 2009 WL 1044368 (Bankr. D. Nev.), aff'd on other grounds, 423 B.R. 914 (D. Nev. 2009)(requiring MERS provide evidence of true agency relationship in order to file for relief from automatic stay); and *In*

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5 See, e.g., *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149 (Cal. Ct. App. 2011); *Pantoja v. Countrywide Home Loans, Inc.*, 640 F. Supp. 2d 1177 (N.D. Cal. 2009) (holding that debtor specifically granted MERS the right to foreclose in the contract, and that therefore any argument that MERS could not bring foreclosure proceedings was invalid); *Morgera v. Countrywide Home Loans, Inc.*, No. 2:09-cv-01476-MCE-GGH, 2010 WL 160348, at 8 (E.D. Cal. 2010) (holding that MERS "is the owner and holder of the note as nominee for the lender, and thus [it] can enforce the note on the lender's behalf"); but see *Saxon Mortg. Serv., Inc. v. Hillery,* No. C-08-4357 EMC, 2008 WL 5170180 (N.D. Cal. 2008) (holding that MERS, acting only as lender's nominee under the deed of trust, does not have the authority to assign the promissory note).

re Hawkins, No. BK-S-07-13593-LBR, 2009 WL 901766 (Bankr. D. Nev. 2009).

The Sixth Circuit's opinion in *Thompson* takes a pro-MERS view. In *Thompson*, the mortgagor/borrower, sought to renegotiate her repayment terms with the successor lender, a MERS member. When the successor lender refused to renegotiate, Thompson filed suit against it and against MERS as well, asserting fraud and other claims for relief. *Thompson*, 773 F.3d at 747. The district court dismissed her complaint on its face, and Thompson appealed.

On appeal, *Thompson* argued that the securitization of her loan and MERS's involvement in the transaction made the loan fraudulent. In considering this argument, the Sixth Circuit pointed out a recent "spate of civil actions" involving MERS. *Id.* It viewed many of them as "scattershot affairs, tossing myriad (sometimes contradictory) legal theories at the court to see what sticks." *Id.* It observed that "courts have generally upheld the use of MERS in the transfer of mortgage notes" and have "upheld language, like that found in Thompson's deed of trust, that grants MERS the power to act as agent for any valid note holder, including assigning a deed and enforcing a note." *Id.* at 749-50

The Sixth Circuit ultimately rejected Thompson's assertion that MERS' involvement in the transaction was a basis on which to avoid her obligation to repay the loan, and so it affirmed the district court's dismissal of her lawsuit. *Id.* at 755.

II. The Ninth Circuit Incorrectly Held That MERS Possessed Standing to Bring its Federal Court Action, and it Misapplied this Court's Holding in *Sprint v. APCC Servs.*

In this case, the Robinsons seek certiorari relief based on the Ninth Circuit's finding that MERS had standing to bring its federal court action. In reaching that holding, the Ninth Circuit cited to this Court's ruling in *Sprint Commc'ns Co. v. APCC Serv., Inc.,* 554 U.S. 269, 273 (2008). (See App-3, n.3).

As explained below, courts throughout the country are divided on the scope, if any, of MERS' Article III standing and due process rights, as well as the extent and applicability of this Court's holding in *Sprint.* Certiorari relief in this case would provide an avenue for this Court to readdress *Sprint* and apply that case to the thousands of present cases involving MERS' rights and obligations under a mortgage or deed of trust.

If MERS does not own the underlying debt and does not act as a loan servicer on behalf of the debt owner[6], this raises the question of where it gets the authority to bring lawsuits attempting to foreclose and sell property to satisfy a debt obligation. The concept of standing refers to the capacity of a litigant to show a sufficient connection to the subject matter of a lawsuit to justify the party's participation in the case. In state courts, the requirement of standing is

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[6] See *Robinson v. Am. Home Mortg. Servicing, Inc. (In re Mortg. Elec. Registration Sys.),* 754 F.3d 772 (9th Cir. 2014) ("Ownership of notes for residential loans that are processed through the MERS System is now recorded in the System's electronic database, but that information is not available to the general public.")

based in the police powers of the state's sovereign authority to administer justice. *Hawkeye Bancorporation v. Iowa College Aid Com'n*, 360 N.W.2d 798, 802 (Iowa 1985) (Unlike the federal courts, state courts are not bound by constitutional strictures on standing; with state courts, standing is a self-imposed rule of restraint); In federal courts, the standing doctrine derives from the justiciability requirement of Article III, §2 of the Constitution, which grants the federal judiciary the power to resolve only actual cases and controversies. The Supreme Court has developed an extensive jurisprudence for determining whether the standing requirement of Article III is satisfied. *Allen v. Wright,* 468 U.S. 737, 751 (1984) (where the Court recognized the extensive body of case law on standing).

Federal courts, and states that model federal justiciability requirements, impose a three-part standing test, which requires: (1) an injury in fact, (2) causation, and (3) redressability. *Sprint,* 554 U.S. at 300. Under the injury element, courts must find a "concrete and particularized invasion of a legally protected interest." *Id.* at 273. The causation element requires a fairly traceable connection between the alleged injury in fact and the alleged conduct of the defendant. *Id.* And, for an injury to be redressable, it must be likely that "the plaintiff's injury will be remedied by the relief the plaintiff seeks in bringing the suit." *Id.*

When a homeowner cannot make a monthly mortgage payment, this causes a clear injury in fact to the original lender, or to investors that have purchased securities that draw on revenue from that

loan's monthly payments. That same failure to pay does not, by any stretch, create an injury in fact to MERS, a company that has no expectation of receiving loan payments or the proceeds of a foreclosure sale. As noted earlier, MERS draws its revenues from its subscribers, and makes the same amount of money whether the borrower repays or not. Even if a court is willing to accept MERS' claim that it owns legal title to a mortgage, this purely nominal ownership does not give rise to an actual injury in fact.

This court recently addressed the issue of whether "bare legal title" to a financial obligation is sufficient to create standing under Article III. In *Sprint*, the Court addressed a scenario that in some ways is similar to the one involving MERS' relationship with mortgagees. The *Sprint* case involved customers who placed long-distance telephone calls at pay-phones, using an access code or 1-800 number issued by a long-distance communications carrier. *Id.* at 271. When those types of calls are placed, the long-distance carriers are required to compensate the pay-phone operators, to reimburse them for these "dial around" fees. *Id.* Because payphone operating companies have had difficulty obtaining payment from these long distance carriers, many operators assigned their dial-around claims to billing and collection firms called "aggregators" to sue on their behalf. *Id.* at 271-72.

The plaintiff, an aggregator called APCC Services, was assigned all rights, title and interests in the payphone operators claim for reimbursement. *Id.* at 272. However, these aggregators separately agreed to remit all the proceeds of its lawsuit back to

the payphone operators, and the operators would pay quarterly fees for the aggregator's services based on the number of payphones maintained by each operator. *Id.* at 272. In defending the lawsuit, the long distance carriers argued that the APCC services did not have standing because the aggregators did not themselves suffered any injury in fact, and the assignments for collection "do not suffice to transfer the payphone operators' injuries." *Id.* at 286.

Chief Justice Roberts, writing the *Sprint* minority, focused on the fact that under its compensation arrangement with payphone operators, APCC was not entitled to any of the proceeds of a successful lawsuit. *Id.* at 298. Chief Justice Roberts' dissent took issue with the majority's historical characterizations, emphasizing that "[w]e have never approved federal-court jurisdiction over a claim where the entire relief requested will run to a party not before the court. Never." *Id.* at 287. The dissent also expressed concern that by granting standing to collection agencies that lack some beneficial interest, such as the payphone claim aggregators, the right to sue risks becoming a "marketable commodity" severed from a personal stake in the litigation. *Id.* at 302. The majority believed that the dissent's concerns were overstated, because federal courts routinely entertain suits which will result in relief for parties that are not themselves directly bringing suit, such as where "[t]rustees bring suits to benefit their trusts." *Id.* at 287.

In its role as a foreclosure lawsuit plaintiff, MERS is in many respects comparable to APCC services and other payphone dial around fee claim aggregators. Like the aggregators, MERS does not

own any equitable or beneficial interest in the debts it collects. Similar to APCC, MERS also remits the proceeds of any foreclosure sale to the actual, beneficial loan owners and is compensated out fees for registering loans on the MERS system.

While there are some similarities, the Ninth Circuit erred in its application of this Court's decision in *Sprint*. There are several fundamental differences between the payphone aggregators in *Sprint* and MERS – which necessitates a finding that MERS does not possess Article III standing.

First, the relationship between payphone operators and claim aggregators, such as APCC Services, consisted of a total assignment of the litigation proceeds from the operators. While there was a separate agreement whereby the aggregators agreed to remit those proceeds back – there was undoubtedly an initial full assignment of rights. *Id.* at 272. Here, there is nothing in the DOT or elsewhere to indicate that any property right was assigned by a lender to MERS. While the assignment and separate agreement in Sprint may have produced an illusory result – there was at least a complete assignment of interests from one party to the other.

Secondly, MERS' claim of ownership is based on the position that it holds only legal title to the mortgage, rather than legal title to the debt. But this claim is contradictory to this Court's jurisprudence treating notes and mortgages securing notes as inseparable. *Carpenter v. Longan*, 83 U.S. 271, 274, (1872) (Where negotiable note is secured by mortgage, "the note and mortgage are inseparable..., the assignment of the note carries the mortgage with

it, while an assignment of the latter alone is a nullity.")

Additionally, where mortgages are pooled or securitized, there is another party that already lays claim to legal title - the trustee that acts on behalf of investors that purchase beneficial interests—meaning asset backed securities—drawn from the trust. In securitization deals, mortgage loans are deposited into a trust where the trustee holds legal title to trust assets for the benefit of the investors who, by definition, hold a beneficial interest in trust assets.

In the case of securitization, MERS owns neither the beneficial interest in the debt that is owned by investors; nor does it own legal title to the debt because that is held by the trustee. To grant MERS standing based on legal title held by someone else, is to treat the notion of legal title as some ethereal interest, to be asserted amongst various entities whenever it is most convenient to do so.

Chief Justice Roberts and the other *Sprint* dissenters were concerned that allowing debt collectors with only naked legal title to bring collection lawsuits would lead to the commoditization of standing. That commoditization is already occurring in cases involving MERS, which warrants certiorari relief.

III. MERS and MERSCORP Do Not Have a Property Interest That is Protected by the Due Process Clause.

Whether the issue is analyzed under this Court's Article III standing jurisprudence, or due process principles, the Ninth Circuit erred its

analysis of MERS' right to maintain an action against the Robinsons.

This Court's decision in *Sprint* addressed the question of standing, but did not discuss what constitutes an interest in real property that is entitled to due process protections. Petitioners assert that certiorari relief is appropriate in this case, because MERS does not possess a due process right with respect to the Robinsons' property.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV ("the Due Process Clause"). The Due Process Clause was "intended to secure the individual from the arbitrary exercise of the powers of government." *Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986).

Under the Due Process Clause, a State cannot deprive a person of his or her interest in "life, liberty, or property" unless it first provides "notice reasonably calculated, under all the circumstances, to apprise [the interested party] of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). To effectuate this, "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 315; *Turner v. Turner*, 473 S.W.3d 257, 2015 Tenn. LEXIS 831, 2015 WL 6295545, at *10

(Tenn. Oct. 21, 2015). "As a general rule, an individual should be given a hearing before being deprived of a significant property interest." *Lee v. Ladd*, 834 S.W.2d 323, 325 (Tenn. Ct. App. 1992) (citing *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985)).

In *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983), the Court clarified the manner of notice required for one who has a property interest that is protected under the Due Process Clause. Its holding was premised on the fact that "a mortgagee clearly has a legally protected interest," but the Court did not specifically analyze the nature of the mortgagee's interest. *Id.* at 798. *Mennonite* addressed the type of notice MERS would have been due if its interest in the subject property warrants due process protection, but it does not answer the central issue presented here, namely, whether MERS has a protected property interest.

To determine whether MERS has a property interest that is protected under the Due Process Clause, most courts have first looked to the language in the Deed of Trust, which describes various parties' interests in the property.

In *Ditto*, the Tennessee Supreme Court analyzed a Deed of Trust similar to the one in this case, and held that this language "indicates that MERS is the beneficiary but acts solely as the nominee for the lender and its successors or assigns, holds only legal title to the interests granted by the borrowers in the DOT, but if necessary to comply with law or custom may exercise some rights of the

lender such as foreclosing on the property." *Ditto* at 282. The court "confess[ed] some perplexity at the mishmash of descriptive terms and qualifiers in the DOT regarding MERS." *Id.*

The court in *Ditto* was not alone in its puzzlement over MERS' proper designation. While the provisions concerning MERS in the Robinsons' DOT are standardized and are widely found in other cases, courts across the country have found similar language notable in its lack of clarity. See, e.g., *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 813-14 (Ind. 2012) (description of MERS in deed of trust as both "nominee" and "mortgagee" is ambiguous). Perhaps for this reason, "[t]here has been a wave of litigation in state and federal courts challenging various aspects of the MERS System." *Robinson v. Am. Home Mortg. Servicing, Inc. (In re Mortg. Elec. Registration Sys.),* 754 F.3d 772, 778 (9th Cir. 2014).

Quite simply, those courts that have considered whether MERS has an interest in the subject property under the Due Process Clause have been divided. Many have held that the deed of trust language naming MERS as beneficiary as nominee for the lender does not grant MERS a protected interest in the property.

For instance, the 2009 decision by the Supreme Court of Kansas in *Landmark Nat'l Bank v. Kesler*, 216 P.3d 158 (Kan. 2009) tackled this issue. There, the borrower received a loan from "Millennia" (secured by a second mortgage on his home) and MERS was recorded on the mortgage as mortgagee, "solely as nominee for Lender, ... and Lender's successors and assigns." *Id.* at 161-62, 164.

Subsequently Millennia transferred the note to "Sovereign Bank," and sometime thereafter the borrower defaulted. *Id.* The owner of the first mortgage brought a foreclosure proceeding without notifying Sovereign or MERS since presumably MERS was only the nominee or agent of Millennia, which had been notified. *Id.*

The Kansas Supreme Court upheld the decision that Sovereign Bank and MERS were not necessary parties and therefore lacked standing to challenge the sheriff's sale. In its decision, the court relied on the legal theory of inseparability of the mortgage and promissory note, and pointed with great perplexity to the role of MERS as nominee. *Id.* at 165-66. In describing MERS's role as "nominee," the court referred to the blind men of India who were tasked with describing an elephant and who each gave vastly different descriptions depending on which part of the animal they touched. *Id.*

The court further noted that the relationship of MERS to the lenders is that of an intermediary, as the economic realities of the situation dictate, and the parties themselves agreed that MERS was not entitled to the traditional benefits of a mortgagee or its agent - such as the right to the proceeds from any foreclosure sale. *Id.* at 166. In reaching its decision, the court also referred to MERS's role as that of a "straw man." *Id.*

In *Landmark*, the court also considered the related issue of whether the trial court's refusal to join MERS as a defendant in the judicial foreclosure action violated MERS's constitutional due process rights. It held that MERS's due process rights were not violated. Absent a "protected property or liberty

interest," the *Landmark* court noted, "there can be no due process violation." *Id.* at 169. It explained its conclusion that MERS had no protected property interest:

> The Due Process Clause does not protect entitlements where the identity of the alleged entitlement is vague. A protected property right must have some ascertainable monetary value. Indirect monetary benefits do not establish protection under the Fourteenth Amendment. An entitlement to a procedure does not constitute a protected property interest.

Id. (citing *Castle Rock v. Gonzales*, 545 U.S. 748, 763, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (2005)). The Court commented that MERS had made no attempt to demonstrate "that it possessed any tangible interest in the mortgage beyond a nominal designation as the mortgag[ee]. It lent no money and received no payments from the borrower. It suffered no direct, ascertainable monetary loss as a consequence of the litigation." *Id.* at 169-70. Because MERS had not established that it had a protected property interest, the *Landmark* Court held, there was no violation of the Due Process Clause. *Id.*

Similarly, in *Mortgage Electronic Registration Systems, Inc. v. Southwest Homes of Arkansas, Inc.*, 2009 Ark. 152, 301 S.W.3d 1 (Ark. 2009) ("Southwest Homes"), MERS argued that it was a necessary party to the foreclosure action because "it held legal title to the property and, therefore, it was a necessary party to any action regarding title to the property." *Id.* The Supreme Court of Arkansas rejected that argument.

Looking at the roles of the various parties, the court observed that "the deed of trust provides that all payments are to be made to the lender, that the lender makes decisions on late payments, and that all rights to foreclosure are held by the lender. . . . MERS did not service the loan in any way." *Id.* at 3.

The Court rejected MERS's argument that it could act independently of the lender, stating that "[n]othing in the record shows that MERS had authority to act" on behalf of the first mortgage holder. *Id.* at 4. The Court noted that the trustee, not MERS, held legal title to the property under Arkansas law. *Id.* It found that MERS was not a true beneficiary, despite the designation in the deed of trust: "The deed of trust did not convey title to MERS. Further, MERS is not a beneficiary, even though it is so designated in the deed of trust. [The first mortgage holder], as the lender on the deed of trust, was the beneficiary." *Id.* The Court concluded that MERS was not a necessary party to the foreclosure action because it had "no interest to protect." *Id.* at 5.

Other courts have held that MERS is not the true beneficiary of the deed of trust, even if it was named beneficiary therein; it is solely a nominee and has no property interest. See *Weingartner v. Chase Home Finance, LLC*, 702 F. Supp. 2d 1276, 1280 (D. Nev. Mar. 15, 2010)("Courts often hold that MERS does not have standing as a beneficiary because it is not one, regardless of what a deed of trust says, but that it does have standing as an agent of the beneficiary where it is the nominee of the lender who is the 'true' beneficiary"); *James v. ReconTrust Co.,*

845 F. Supp. 2d 1145, 1165 (D. Or. 2012) (holding that MERS is not the beneficiary of the deed of trust under Oregon law, despite the language in the deed of trust; it is "nothing more than an agent (or nominee) for the real beneficiary, which is the lender or its successor"); *Mortgage Elec. Registration Sys. v. Saunders,* 2010 ME 79, 2 A.3d 289, 294-97 (Me. 2010) (holding that MERS cannot foreclose because it is not a mortgagee under applicable law, and it lacks standing to sue because it does not have an independent interest in the loan; MERS functions solely as a nominee); *Pilgeram v. Greenpoint Mortg. Funding, Inc.*, 2013 MT 354, 373 Mont. 1, 313 P.3d 839, 843 (Mont. 2013) (holding that MERS is not the beneficiary under the Montana Small Tract Financing Act because "the lender, not MERS, is the entity to whom the secured obligation flows"); *Brandrup v. ReconTrust Co., N.A.,* 353 Ore. 668, 303 P.3d 301 (Or. 2013) (holding that MERS was not the beneficiary of a deed of trust under the Oregon Trust Deed Act absent conveyance to MERS of the beneficial right to repayment and that MERS could not hold or transfer legal title to the deed as the lender's nominee); *Bain v. Metropolitan Mortg. Grp., Inc.,* 175 Wn.2d 83, 285 P.3d 34, 51 (Wash. 2012) (holding that MERS was not a beneficiary under the Washington Deed of Trust Act when it did not hold the promissory note secured by the deed of trust and that "characterizing MERS as the beneficiary has the capacity to deceive" and may give rise to an action under the state's Consumer Protection Act).

On the other end, some courts have held that MERS's status as beneficiary as nominee for the lender constitutes a protected property right.

In *Bellistri*, *supra,* 2010 WL 2720802 (E.D. Mo. July 1, 2010), the county failed to give MERS notice of a tax sale; the relevant Missouri notice statute required notice to any person "who holds a publicly recorded deed of trust, mortgage, lease, lien or claim upon that real estate." *Bellistri*, 2010 U.S. Dist. LEXIS 67753, 2010 WL 2720802, at *10. The court held that MERS, "as beneficiary as nominee for the lender and the lender's assigns," held a "publicly recorded" claim in the property within the meaning of the Missouri statute, so it was entitled to notice. 2010 U.S. Dist. LEXIS 67753, [WL] at *12.

The *Bellistri* court added, "MERS'[s] interest as a nominee is itself a sufficient property right to trigger a due process right to notice," because MERS had "bare legal title" in the property. "Such an interest," the court held, "is sufficient to bring an action at law and is therefore a species of property protected by due process." 2010 U.S. Dist. LEXIS 67753, [WL] at *13-14 (citing *Sprint*, supra, 554 U.S. 269, 287-88).

The *Bellistri* court also reasoned that MERS had a protected property interest that arose out of its "legal right to file suit to foreclose the mortgage" under the relevant foreclosure statutes and its "right to enforce the lien on the property via a power of sale in the trustee." 2010 U.S. Dist. LEXIS 67753, [WL] at *14. "The right to file a lawsuit is 'a substantial property right.'" *Id.*

These cases reveal a near schizophrenic interpretation of deeds of trust that are virtually identical. Some courts hold that MERS is not the beneficiary under the deed of trust and, as nominee, is simply an agent or "straw man" for the

lender; others subscribe to the notion that MERS serves as nominee-as-mortgagee, while others place MERS in the same category as the original lender.

The Petitioners submit that the recent cases of *Landmark* and *Ditto* represent the proper interpretation of MERS' Article III standing and due process rights.

While many courts have found that MERS possesses a protectable interest based on the fact that the DOT labels MERS as a "beneficiary" – in reality MERS is nothing of the sort. The DOT often qualifies the denomination "beneficiary" by adding that MERS is a beneficiary "solely as nominee" for the lender and the lender's assigns. What is clear is that MERS never acts as a true "beneficiary", it does not share in mortgage payments, nor does it assert an ownership interest in the promissory notes that pass through its system. See *Thompson*, *supra*, 733 F.3d 748. Instead, MERS merely "tracks the ownership of the lien and is paid for its services through membership fees charged to its members." See *Mortgage Electronic Registration Systems, Inc. v. Nebraska Department of Banking and Finance*, 270 Neb. 529, 704 N.W.2d 784, 787 (Neb. 2005).

In this case, the DOT describes at length the obligations between the Robinsons, as borrowers, and UPM, as lender. The DOT prescribes the manner by which the Robinsons must make payments; it requires the Robinsons to pay any taxes, assessments, charges, or fines related to the property; it requires the Robinsons to obtain property insurance; and it gives protections for the lender's interest in the property, should the Robinsons fail to perform the covenants and agreements in the DOT.

Notably, MERS is not mentioned in any provision requiring notice to the lender in the DOT.

Here, MERS was never given an independent interest in the property. The company is a mortgage registration system that does not itself hold any interest in the subject property, by virtue of the DOT or otherwise. Rather, MERS is "an agent with limited powers, akin to a special power of attorney." *Weingartner*, 702 F. Supp. 2d at 1279. It has no interest in the subject property that is protected under the Due Process Clause, and MERS had no due process right to notice of the quiet title action, nor any standing to sue the Robinsons' in federal court.

While the Ninth Circuit found that MERS suffered an injury in fact when the Robinsons failed to join MERS in their quiet title action, the DOT itself does not require notice to MERS in connection with the obligations between the borrowers and lender under the DOT. Unfortunately, the Ninth Circuit's decision – like several other courts – tacitly approves of MERS' position that it can be all things to all people, to ensure a favorable outcome for MERS[7].

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[7] See *Neb. Dep't of Banking and Fin.*, 704 N.W.2d 784 (MERS argued that it had no interest in mortgaged property under a deed of trust in order to establish that it is not a "mortgage banker" subject to the licensing requirements of the Mortgage Bankers Registration and Licensing Act.); *Hartman, supra*, 2008 WL 2996515 at *2 (E.D.Pa. Aug. 1, 2008) (accepting MERS' argument that it could not be liable under the Truth in Lending Act because there was no colorable allegation "that ... [the plaintiff's] mortgage loan was assigned to MERS, or that MERS was ever the owner of that obligation.")

In *Ditto*, the Supreme Court of Tennessee concluded that MERS had no interest in the subject property as a beneficiary or as a nominee, which the court defined as a "person designated to act in place of another, usu. in a very limited way" or "[a] party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others." *Ditto*, 488 S.W.3d at 274. The court concluded that based on this definition, "MERS is authorized to exercise the rights and obligations granted to the lender by the borrowers, but 'only as an agent for the lender, not for its own interests.'" *Id.*

A similar result should be reached in this case. While MERS may insist that it was entitled to notice by virtue of its business model, in which it interposes itself to give notice of dispositions of the property to its members, it was not the Ninth Circuit's job to "assist MERS in meeting its contractual obligations to its member lenders, but rather to determine whether MERS has a property interest that demands due process protection." *Ditto*, 488 S.W.3d at 292.

Since a nominee can act only as an agent for the lender, and since MERS was acting in its own interests in this case, the Ninth Circuit erred in concluding that MERS had a constitutionally protected interest in the Robinsons' property.

CONCLUSION

The number of federal and state cases involving MERS is astounding. Many of the cases focus on core issues such as standing, and the application of fundamental concepts of commercial paper and real property to the informal recordation system MERS has created. Given the high number of cases, the jurisdictional disparity (both among the

states as well as federal courts), and the resulting state of legal and market uncertainty, it is clear that the current state of affairs is undesirable for all involved. Guidance from this Court would substantially assist courts across the country in ruling on the numerous issues concerning MERS' standing and status as a proper litigant.

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 15, 2017

APPENDIX

TABLE OF APPENDICES

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and MERSCORP HOLDINGS, INC.,	No. 15-55347
	D.C. No. 2:13-cv-07142-PSG-AS
Plaintiffs-Appellees,	
v.	MEMORANDUM*
DANIEL W. ROBINSON and DARLA J. ROBINSON,	
Defendants-Appellants.	

Appeal from the United States District Court
for the Central District of California
USDC No. 3:11-CV-1498

Submitted December 8, 2016**
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided b Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: CALLAHAN, BEA, and IKUTA, Circuit Judges.

Daniel and Darla Robinson appeal the district court's order granting Mortgage Electronic Registration Systems, Inc.'s (MERS)[1] motion for summary judgment. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court properly concluded that it had subject matter jurisdiction under 28 U.S.C. § 1332(a). The Rooker-Feldman doctrine did not deprive the district court of jurisdiction because MERS was not a party to the Robinsons' state court quiet title action. See *Lance v. Dennis*, 546 U.S. 459, 464-66 (2006) (per curiam).

The district court did not err in concluding as a matter of law that the Robinsons obtained the quiet title judgment in violation of MERS's rights under section 762.010 of the California Code of Civil Procedure. The deed of trust on the property, which was signed by the Robinsons and properly recorded with the Los Angeles County Recorder's Office, designates MERS as the nominee of the lender and the lender's successors and as the beneficiary under deed of trust.[2]

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[1] The appellees here (plaintiffs below) are MERS and MERSCORP Holdings, Inc. For convenience, we refer to appellees as "MERS."

[2] The Robinsons argue that the deed of trust should be voided pursuant to California Revenue and Taxation Code section 23304.1, because MERS was not registered to do business in California at the time the deed of trust was executed and therefore did not have the capacity to enter into a contract.

By executing the deed of trust, the Robinsons agreed that MERS had the authority to initiate foreclosure proceedings on the property. See *Calvo v. HSBC Bank USA, N.A,* 199 Cal. App. 4th 118, 125 (2011); *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, 1157-58 (2011). Therefore, MERS had a recorded adverse claim against the property under the deed of trust, and the Robinsons were required to name MERS as a defendant in the quiet title action[3]. See Cal. Civ. Proc. Code §§ 760.010(a), 762.060.

The district court did not abuse its discretion in denying the Robinsons' motion to modify the scheduling order because the Robinsons failed to act diligently and failed to show good cause. Fed. R. Civ. P. 16(b)(4); see *Zivkovic v. S. Cal. Edison Co.,* 302 F.3d 1080, 1087 (9th Cir. 2002). The district court acted within its discretion in denying the Robinsons' motion to compel discovery because the motion was

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However, section 23304.1 is inapplicable here, because MERS did not enter into any contract; MERS was named in the deed of trust, but was not a signatory of it.

[3] The district court properly concluded that MERS had standing to bring this suit for the same reasons that summary judgment was proper. MERS suffered an injury in fact when the Robinsons failed to name it as a defendant in their quiet title action, depriving MERS of the opportunity to assert its adverse claim against the property prior to the expungement of the deed of trust. This injury was fairly traceable to the Robinsons' failure to name MERS as a defendant, and would be redressed by setting aside the quiet title judgment. See *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 273 (2008). Because we conclude that MERS, Inc. has standing, we need not consider whether MERSCORP also has standing. See *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 918 (9th Cir. 2004).

untimely and the Robinsons have not shown that they suffered any prejudice as a result of the denial. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). Finally, the district court did not abuse its discretion in denying the Robinsons' motion for a continuance because the Robinsons failed to identify any facts that would have precluded summary judgment. Fed. R. Civ. P. 56(d); see *Tatum v. City & County of San Francisco,* 441 F.3d 1090, 1100 (9th Cir. 2006).

The Robinsons' pending motion to certify questions to the California Supreme Court is DENIED.

AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 13-7142 PSG(ASx) February 27, 2015

Mortgage Electronic Registration Systems, Inc., *et al.* v. Daniel W. Robinson, *et al.*

Present: The Honorable Philip S. Gutierrez, United States District Judge

Proceedings (In Chambers): Order GRANTING Plaintiffs' motion for summary judgment, DENYING Defendants' motion for summary judgment, and DENYING Defendants' motion to extend the discovery deadline and for attorneys' fees.

Pending before the Court are Plaintiffs' motion for summary judgment and Defendants' cross-motion for summary judgment. Dkts. # 76, 81. Also pending before the Court is Defendants' motion to extend the discovery cut-off date and for attorneys' fees. Dkt. # 84. The Courts finds these matters appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers submitted by the parties, the Court: GRANTS Plaintiffs' motion for summary judgment DENIES Defendant's motion for summary judgment; and DENIES Defendants'

motion to extend the discovery cut-off date and for attorneys' fees.

I. Background

This case involves real property located at 19127 Romar Street, Northridge, California 91324 (the "Property"). *First Amended Complaint* ("FAC") ¶ 12; Dkt. # 30, *Defendants' Answer to FAC* ("Answer") ¶12. Defendants Daniel Robinson and Darla Robinson (collectively, "Defendants" or the "Robinsons") obtained a loan in the amount of $999,950 to fund the purchase of their home. *FAC* ¶45; *Answer* ¶ 45. The loan was secured against the Property by a deed of trust ("Deed of Trust") that was recorded on February 15, 2005 in the Official Records of the Recorder's Office of Los Angeles County. *Plaintiffs' Statement of Uncontroverted Facts and Conclusions of Law* ("Plaintiffs' SUF"), Ex. 1 ("Deed of Trust")

United Pacific Mortgage ("UPM") is named as the Lender in the Deed of Trust. *See Deed of Trust* at 2. The Deed of Trust also identifies Mortgage Electronic Registration Systems, Inc. ("MERS") as a "separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns." *Id.* The Deed of Trust further provides that "MERS is the beneficiary under [the Deed of Trust]" and that:

> 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 of Lender including, but not limited to, releasing and cancelling this Security Instrument.

Id. at 2, 4.

The Robinsons filed a civil action in the Los Angeles County Superior Court on January 11, 2012 to quiet title to the Property and expunge the Deed of Trust. *See Plaintiffs' SUF*, Ex. 2 ("Quiet Title Complaint"); *FAC* ¶ 77; *Answer* ¶ 77. Defendants named United Pacific Mortgage as a defendant in the quiet title action. *Quiet Title Complaint.* However, Defendants did not name MERS as a party nor did they provide MERS with any notice of the lawsuit. *Quiet Title Complaint*; *FAC* ¶ 64; *Answer* ¶ 64. Defendants secured a default judgment, expunging the Deed of Trust on the property. *Plaintiffs' SUF*, Ex. 5 ("Quiet Title Judgment"). *FAC* ¶ 71; *Answer* ¶ 71. On April 25, 2013, Defendants recorded the judgment expunging the Deed of Trust on the Property in the Official Records of the Recorder's Office of Los Angeles County. *FAC* ¶ 71; *Answer* ¶ 71.

On September 26, 2013 Plaintiffs MERS and MERSCORP Holdings, Inc. (MERSCORP) (collectively, "Plaintiffs") filed this lawsuit against Defendants. Plaintiffs filed a FAC on March 3, 2014 raising the following claims for relief: (1) a claim seeking that the quiet title judgment be set aside as void because Defendants violated the notice requirements of California Civil Code Section

762.010; (2) a claim seeking declaratory relief for violations of Plaintiffs' due process rights under the United States and California Constitutions; (3) a claim for cancellation of instruments regarding Defendants' notice of lis pendens and the quiet title judgment; and (4) a claim for slander of title. *FAC.*1 Plaintiffs seek "the same relief for all claims: a declaratory judgment ordering that the Quiet Title Judgment is null and void and ordering that the Robinsons hold the Property subject to the Deed of Trust and an order requiring the removal and cancellation of the Quiet Title Judgment and Notice of Lis Pendens from the land records." *Plaintiffs' Motion for Summary Judgment* ("Plaintiffs' MSJ") 6:17-21.

II. Legal Standard

Federal Rule of Civil Procedure 56(a) provides that a court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue of fact is genuinely disputed and material if it can be reasonably resolved in favor of either party and may affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *In re Barboza*, 545 F.3d 702, 707 (9th Cir. 2008). The party moving for summary judgment bears the initial burden of showing that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

If the non-movant will bear the burden of proof on an issue at trial, the moving party can satisfy its summary judgment burden by "'showing' – that is, pointing out to the district court – that there is an

absence of evidence to support the nonmoving party's case." *Id.* at 325. The non-moving party must then "come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor." *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010); *see In re Brazier Forest Prods., Inc.*, 921 F.2d 221, 223 (9th Cir. 1990). "[M]ere allegation and speculation do not create a factual dispute for purposes of summary judgment." *Nelson v. Pima Comm. College*, 83 F.3d 1075, 1081-82 (9th Cir. 1996) (citation omitted). Similarly, it is not enough for the non-moving party to "show there is some 'metaphysical doubt' as to the material facts at issue." *In re Oracle Corp. Sec. Litig.*, 627 F.3d at 387 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). The non-moving party must set forth specific evidence showing that there is a genuine issue for trial, and "may not rest upon the mere allegations or denials of his pleading." *Anderson*, 477 U.S. at 256.

On summary judgment, the Court may not weigh conflicting evidence or make credibility determinations. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). It must draw all reasonable inferences in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Soremekun*, 509 F.3d at 984.

III. Discussion

Both parties seek summary judgment in their respective motions and because both motions are dealing with the same issues – the Parties reference and incorporate arguments from both motions in their responses – the Court will address both motions simultaneously. *See Plaintiffs' MSJ; Defendants'*

Motion for Summary Judgment ("Defendants' MSJ"); see also e.g., Opp.to Plaintiffs' MSJ 5:3-22 (incorporating "FACTS" section from Defendants' MSJ); 15:18- 22 (referencing and incorporating arguments made in Defendant's MSJ); *Plaintiffs' Reply* 2:4-8 (incorporating arguments in Plaintiffs' Opp. to Defendants' MSJ).

A. Subject Matter Jurisdiction

The Court begins its analysis by addressing a threshold issue posed by Defendants. Defendants argue that they are entitled to summary judgment on all of Plaintiffs' claims because the Court lacks subject matter jurisdiction. *Defendants' MSJ* 19:13-21:6. Plaintiffs' invoke both diversity and federal question jurisdiction. *See FAC.* The Court agrees with Plaintiffs that they have established diversity jurisdiction and, accordingly, finds no need to determine whether federal question jurisdiction exists. *See FAC* ¶¶ 5-6, 95-101.

Generally, subject matter jurisdiction is based on the presence of a federal question, *see* 28 U.S.C. § 1331, or on complete diversity between the parties, *see* 28 U.S.C. § 1332. For a federal court to exercise diversity jurisdiction, there must be "complete" diversity between the parties and the $75,000 amount in controversy requirement must be met. *See Strawbridge v. Curtis*, 7 U.S. (3 Cranch) 267, 267 (1806); 28 U.S.C. § 1332(a).

Here, as in their motion for Judgment on the Pleadings, Defendants' completely ignore that Plaintiffs' have pleaded diversity jurisdiction and do not address whether the Court has diversity jurisdiction, instead focusing on their argument that Plaintiffs have failed to establish that there is federal

question jurisdiction. *See Defendants' MSJ* 19:15-21:6; *Defendants' Reply* 12:12-24; Dkt. # 46, *September 16, 2016 Order Denying Motion for Judgment on the Pleadings* ("MJP Order") at 7. First, the evidence submitted supports that Plaintiffs are citizens of California and that Defendants are not, thus establishing complete diversity between the Parties. *See, e.g., Quiet Title Complaint* at 4 (pleading that the Robinsons are residents of the State of California); *Declaration of John Murrin i/s/o Defendants' MSJ* ("Murrin MSJ Decl."), *Exs.* 51 (MERSCORP Designation of Foreign Corporation), 64 (MERS Designation of Foreign Corporation); *Declaration of Dan Robinson i/s/o Defendants' MSJ* ("Robinson MSJ Decl.") at ¶7 (referring to Plaintiff MERS as "MERS (Delaware)). Defendants have failed to show the Court otherwise. Furthermore, Plaintiffs seek to set aside a quiet title action that expunged the Deed of Trust that arose from a $999,950 loan, thereby meeting the amount in controversy requirement. *See FAC*; *Plaintiffs' SUF*, *Ex.* 5 ("Quiet Title Judgment").

The Court is satisfied that it has diversity jurisdiction over Plaintiffs' claims and Defendants do not explain why the Court would also need to have federal question jurisdiction. Accordingly, having determined that it was diversity jurisdiction, the Court declines to determine whether it also has federal question jurisdiction.

B. Standing

Defendants also argue that neither MERSCORP nor MERS have Article III standing and request that the Court grant them summary judgment on that basis. The Court disagrees.

To have Article III standing, "a plaintiff must adequately establish: (1) an injury in fact (i.e., a 'concrete and particularized' invasion of a 'legally protected interest); (2) causation . . . ; and (3) redressability (i.e., it is 'likely' and not 'merely speculative' that the plaintiff's injury will be remedied by the relief plaintiff seeks in bringing suit." *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 273-74 (2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

Although Defendants concede that, as Plaintiffs claim, Plaintiff MERSCORP is the parent company of subsidiary Plaintiff MERS, they argue that it does not have standing to bring this suit. *See Defendants' Statement of Uncontroverted Facts* ("Defendants' SUF") ¶ 16; *Declaration of Robert Jones i/s/o Defendants' MSJ* ("Jones MSJ Decl.") ¶ 7(e); *Declaration of Elizabeth Powell i/s/o Plaintiffs' MSJ* ("Powell MSJ Decl.") ¶ 2. Defendants' claim is based on two contentions. First, they maintain that Plaintiff MERSCORP does not have standing because it "is not listed on the [Deed of Trust], or promissory note, or other paperwork related to this matter." *Defendants' MSJ* 9:16-17; 10:21-24. Second, they assert that because MERSCORP is a separate entity from MERS, it is unable to assert MERS's interest and, therefore, does not have standing to bring this suit. *Id.* 9:22-10:20; *Defendants' Reply* 10:1-8.

In response, Plaintiffs argue that MERSCORP has standing to bring this suit because "[a] judgment that eliminates the security for a million dollar loan without notice to MERS will inevitably harm [the MESCORP's] business." *Plaintiffs' Opp. to*

Defendants' MSJ 15:14-16. An action that threatens an entity's business model constitutes sufficient injury for purposes of Article III standing. *See MJP Order* at 9; *Mortgage Electronic Registration Systems, Inc. v. Bellistri*, 2010 WL 2720802, at *16 (E.D. Mo. 2010) (finding on summary judgment that tax sale conducted without notice to MERS threatened its fundamental business model and created realistic danger that it would lose its customers). Plaintiffs' argument that MERSCORP has standing, therefore, is not grounded merely on injury to MERS, but injury to itself.

Here, Plaintiffs have provided uncontroverted evidence that MERSCORP is the owner and operator of the MERS System and is MERS' parent company. *See Defendants' SUF* ¶ 16; *Jones MSJ Decl.* ¶ 7(e); *Powell MSJ Decl.* ¶ 2; *Declaration of Brian Blake in Opp. To Defendants' MSJ* ("Blake Opp. Decl."). The MERS System is an electronic registry "used by MERS System members to track changes in beneficial ownership and/or servicing rights of loans registered on the MERS System." *Blake Opp. Decl.*¶ 3. MERS' standard policy when it receives "notice of proceedings that might affect the security of a mortgage or deed of trust held by MERS, as the mortgagee or beneficiary and nominee for the note owner, is to notify the owner or loan services of the secured note that action needs to be taken to defend and protect MERS' security interest." *Powell MSJ Decl.* ¶ 7; *see also Mortgage Elec. Registration Sys., Inc. v. Bellistri*, 2010 WL 2720802 at *8 (E.D. Mo.2010). A ruling that MERS is not entitled to this notice would inhibit MERS from properly notifying MERS System members of adverse actions and would also affect MERSCORP's interests.

Accordingly, the Court finds that MERSCORP does have standing to bring this suit.

C. Count 1: Quiet Title Obtained in Violation of Statutory Rights

As the Court explained in its MJP Order, the purpose of a quiet title action is "to establish title against adverse claims to real or personal property or any interest therein." Cal. Civ. Proc. Code § 760.020; *Walters v. Fid. Mortgage of Cal., Inc.*, 730 F. Supp. 2d 1185, 1197 (E.D. Cal. 2010) ("The purpose of a quiet title action is to determine 'all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to.'") (quoting *Newman v. Cornelius*, 3 Cal. App. 3d 279, 284 (1970)); *see MJP Order* at 4. Therefore, California law requires a quiet title plaintiff to name as defendants those persons "having adverse claims to the title of the plaintiff against which a determination is sought." Cal. Civ. Proc. Code § 762.010. As used in this context, "claim" includes "a legal or equitable right, title, estate, lien, or interest in property or cloud upon title." Cal. Civ. Proc. § 760.010; *see also* Law Revision Commission Comments to § 760.010 (noting that "claim" is intended in its broadest possible sense). A quiet title plaintiff may also include "all persons unknown" with adverse claims to the property. Cal. Civ. Proc. Code § 762.060(a). Nevertheless, the plaintiff *must* name those persons "having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property." Cal. Civ. Proc. Code § 762.060(b). Therefore, a plaintiff in a quiet title action must name as defendant an entity that (1) had an adverse claim against the plaintiff's

adverse title and (2) the adverse claim was recorded, or the plaintiff knew or should have known of the claim.

Plaintiff argues that there are undisputed facts establishing that the quiet title was obtained in violation of MERS' statutory rights. *Plaintiffs' MSJ* 7:17-22. The Court agrees.

There is no genuine issue of fact that MERS has an adverse claim against Plaintiffs' property through the Deed of Trust. The Deed of Trust identifies MERS as the "beneficiary under this Security Instrument." *Deed of Trust.* It also provides that "MERS (as nominee for Lender and Lender's successors and assigns) has the right to . . . exercise any or all . . . interests" granted under the Deed of Trust, "including, but not limited to, the right to foreclose and sell the Property." *Deed of Trust* at 4. As this Court has previously found, such language in the Deed of Trust is sufficient to establish a "claim" against Defendants' title under the California statutes.

In fact, as the Court explained in its MJP Order, Courts applying California law have regularly held that deeds of trusts materially identical to the one at issue here authorize MERS to foreclose and sell the subject property. *MJP Order* at 5; *see, e.g., Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, 1157-58 (2011); *Pantoja v. Countrywide Home Loans, Inc.*, 640 F. Supp. 2d 1177, 1189-90 (N.D. Cal. 2009) (collecting cases and noting that "courts have been clean" that MERS is authorized by these deeds of trust to conduct foreclosure). The Deed of Trust operates as a "lien on the property." *Walters*, 730 F. Supp. 2d at 1199;

Monterey S. P. P'ship v. W. L. Bangham, Inc., 49 Cal. 3d 454, 460 (1989) ("in practical effect . . . a deed of trust is a lien on the property"); *Yulaeva*, 2009 WL 2880393, at *9 (E.D. Cal. 2009) (finding that MERS held adverse claim to title under materially identical deed of trust).

It is also undisputed that the Deed of Trust was recorded and known to Defendants at the time that they filed their quiet title action. *Answer* ¶¶ 45-46. Accordingly, Defendants were required to name MERS as a defendant in the quiet title action. *See* Cal. Civ. Proc. Code §§ 762.010; 762.060(b). Plaintiffs have submitted uncontroverted evidence that MERS was not named as a defendant in the quiet title action. *See Quiet Title Complaint*. Accordingly, the Court finds that the quiet title judgment was obtained in violation of Plaintiffs' statutory rights.

Defendants bring a plethora of additional arguments – all of which are meritless and many which the Court has addressed in its MJP Order – to support their contention that the Court should deny Plaintiffs' motion for summary judgment of this claim and grant its motion. Although Defendants' arguments are unclear and convoluted in many instances, the Court attempts to address each in turn.

Defendants attack MERS's status as beneficiary and agent arguing that they, and not Plaintiffs, are entitled to summary adjudication of this claim because Plaintiffs are unable to conclusively establish either. *Defendants' MSJ* 13:7-16:13. For example, Defendants include a declaration from Daryl Wizelman ("Wizelman"), Corporate Officer of UPM, in which Wizelman declares that

"MERS was never [UPM's] beneficiary or [its] agent." *Declaration of Daryl Wizelman i/s/o Defendants' MSJ* ("Wizelman MSJ Decl.") ¶¶ 1-2. Defendants also argue that Plaintiffs have not submitted facts showing that there is an agency relationship between the current note holder – U.S. Bank – in the Deed of Trust and MERS. *Defendants' MSJ* 14:12-22. The Court disagrees with Defendants. MERS status as a beneficiary and agent – giving it entitlement to notice in the quiet title action – arises from the language of the Deed of Trust, itself. First, MERS is clearly named a nominee in the Deed of Trust. *See Deed of Trust.* In the context of a nominee on a deed of trust, this implies that the nominee is granted authority as an agent to act on behalf of the Lender as to administration of the deed of trust. *See Fontenot v. Wells Fargo Bank, N.A.*, 198 Cal. App. 4th 256, 270 (2011) ("A 'nominee' is a person or entity designated to act for another in a limited role – in effect, an agent." (citing *Born v. Koop*, 200 Cal. App. 2d 519, 528 (1962)). Second, in analyzing deeds of trust materially similar to the one at issue in this litigation, both this Court and California courts have held that MERS status as beneficiary "was not a matter of fact existing apart from the document itself." *See Fontenot v. Wells Fargo Bank, N.A.*, 198 Cal. App. 4th 256, 266 (1st. Dist. 2011) (considering a deed of trust identical in all material respects to the one at issue here and concluding that "MERS was the beneficiary under the deed of trust because, as a legally operative document, the deed of trust designated MERS as the beneficiary. Given this designation, MERS's status was not reasonably subject to dispute.").

Furthermore, in making these arguments, Defendants ignore the Court's MJP Order which explicitly stated that "MERS's right to be named as a defendant in the quiet title action does not turn on whether it was a 'beneficiary' under the Deed of Trust" but rather "it turns on whether MERS had an adverse 'claim'" that was recorded – which the Court has found it possessed by virtue of being named a beneficiary in the Deed of Trust. *MJP Order* at 6. That Defendants' dispute the validity of the interests asserted by MERS in the Deed of Trust does not defeat Plaintiffs' right to summary adjudication of this claim, because the Court does not base its decision on the validity of these interests. The Court reminds Defendants that settling such disputes is exactly the point of a quiet title action. *See Walters*, 730 F. Supp. 2d at 1197 ("The purpose of a quiet title action is to determine all conflicting claims to the property in controversy, and to decree to each such interest of estate therein as he may be entitled to.") (internal quotations omitted); *Fleishman v. Blechman*, 148 Cal. App. 2d 88, 97 (1957) (observing that quiet title action is proper type of action "to determine the validity of any adverse claims based upon asserted trusts").

Defendants also argue that because MERS was not registered to do business in California when the Deed of Trust was executed, the Deed of Trust should be voided because MERS did not have the capacity to contract. *Defendants' MSJ* 11:1-13:3. Plaintiffs do not contest that MERS was not registered to do business in California when the Deed of Trust was executed, but point to evidence that MERS registered to do business in California in July 2010, which was before Defendants initiated the

quiet title action. *MERS Designation of Foreign Corporation.* Plaintiffs also argue that the Deed of Trust is not voidable notwithstanding the fact that MERS was not registered to do business in California when the Deed of Trust was executed because (1) it was exempted from registering by the California Corporations Code; (2) it cured the failure to register; (3) it was not given a reasonable opportunity to cure its failure to register; and (4) it was still entitled to notice of the quiet title action because it had a claim of record against Defendants' property.

According to Plaintiffs, MERS was exempted from registering to conduct business in California under California Corporations Code § 191 because it is a corporation that "creates evidences of debt or mortgages, liens or security interests in real or personal property" and because the "enforcement of any loans by trustee's sale, judicial process or deed in lieu of foreclosure or otherwise" is also exempted activity. Cal. Corp. Code §§ 191(c)(7), (d)(3). The Court does not need to decide whether MERS was exempted, however, because it agrees with Plaintiffs that the Deed of Trust is not voidable under § 23304.1 of the California Revenue and Tax Code because MERS cured its failure to register and that even if the Deed of Trust was voidable, under § 23304.5 of the same Code the Deed of Trust cannot be voided without first giving MERS the opportunity to cure its failure to register. *See Cal. Rev. & Tax Code* §§ 23304.1; 23304.5. Accordingly, the Court disagrees with Defendants that the Deed of Trust should be voided.

Defendants contend that they are entitled to summary adjudication of this claim because MERS is

just a shell corporation that cannot own anything, because it has no loan ownership rights when all of the benefits under the Deed of Trust go to the lender, and because its own membership rules prove that it is entitled to no benefits. *Defendants' MSJ* 13:13-14:11; 14:23- 15:2. As the Court has explained above, however, its finding that Plaintiffs are entitled to notice under the California statutes does not hinge on MERS's ownership of the promissory note or the validity of its status as beneficiary. *MJP Order* at 5. The Court found that MERS had an adverse claim – triggering the notice requirements under the California statutes – "[w]hatever the full scope of MERS' rights and interests under the [Deed of Trust]." *Id.* The Court fails to see how Defendants' contentions compel a different result.

Defendants seek to void the Deed of Trust by arguing that there is evidence that this instrument was the product of fraud and unconscionability. *Defendants' MSJ* 17:19:19:12. To support their argument, Defendants argue that the Deed of Trust is voidable because MERS never disclosed that it was neither a beneficiary nor an agent of the lender and that it was not registered to do business in California. *Id.* The Court has already explained that MERS's failure to register does not render the Deed of Trust voidable. Furthermore, as expounded above, courts examining deeds of trust like the one at issue here have found that MERS is a beneficiary and agent solely from the language of the Deed of Trust – the Court sees no facts supporting an allegation of fraud. Moreover, Defendants' argument does not undermine MERS' rights to notice in the quiet title action. Adjudication of the validity of MERS's status as beneficiary and agent was appropriate during the

quiet title action and here, where MERS' right to notice has been established without the need to determine the full scope of MERS' rights and interests, Defendants' arguments hold no weight.

i. Unclean Hands Defense

Defendants' unclean hands defense is similarly without merit. Under California law, when assessing the applicability of the unclean hands defense, "[]he focus is the equities of the relationship between the parties, and specifically whether the unclean hands affected the transaction at issue." *Biller v. Toyota Motor Corp.*, 668 F. 3d 655, 667 (9th Cir. 2012). Defendants include a lengthy list of alleged examples showing Plaintiffs' unclean hands. For example, they, again, point to MERS not being registered to do business in California when the Deed of Trust was executed, they also argue, *inter alia*, that MERS is not truly a beneficiary, and that MERS is merely a shell corporation. The Court does not agree that Defendants have met their burden that Plaintiffs' had unclean hands related to the transaction at issue in the litigation. First, the Court does not see how MERS' corporate structure shows unclean hands or affects the issues at play here. Second, as Plaintiffs' point out, that Defendants did not understand MERS' role when they executed the Deed of Trust "does not constitute wrongdoing on MERS' part." *Plaintiffs' Opp. to Defendants' MSJ* 22:8-18. The Court concludes that Plaintiffs' have failed to establish that they can benefit from the unclean hands affirmative defense.

ii. Additional Discovery Sought

In opposing Plaintiffs' MSJ, Defendants argue that summary judgment in Plaintiffs' favor is also

not appropriate because Defendants have been unable to obtain necessary information through discovery as a result of Plaintiffs' refusal to produce witnesses and objections to certain written discovery and because they have found new information relevant to the present motions. *Defendants' Opp. to Plaintiffs' MSJ* 20:2-21:12.3

Defendants are, essentially, seeking a continuance pursuant to Federal Rule of Civil Procedure 56(f). Under Rule 56(f), a party seeking a continuance "must identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment." *Tatum v. City of San Francisco*, 441 F. 3d 1090, 1100 (9th Cir. 2006). Defendants fail to do so. The closest that Defendants come to explaining what further discovery would reveal is their statement in their Opposition to Plaintiffs' MSJ that because of the information received from Daryl Wizelman stating that MERS is not UMPs beneficiary or agent and "the fact that it was discovered that MERS was not registered to do business in California, Defendants need to do more discovery." *Defendants' Opp. to Plaintiffs' MSJ* 20:19-24. The Court has already addressed this evidence above and does not see how further discovery would affects its ruling. Accordingly, the Court DENIES Defendants' request for discovery or a continuance.

For the reasons stated above, the Court GRANTS Plaintiffs' motion for summary adjudication of their first claim and DENIES Defendants' motion as to this claim. The Court GRANTS Plaintiffs' request for a declaratory judgment ordering that the Quiet Title is null and

void and ordering that Defendants hold the Property subject to the Deed of Trust and requiring the removal and cancellation of the Quiet Title Judgment and Notice of Lis Pendens from the land records.

D. Counts 2 and 3: Due Process Violations and Cancellation of Instruments

In its motion for summary judgment, Plaintiffs' argue that the Court's finding that Plaintiffs are entitled to summary adjudication of Count I renders adjudication of the additional counts "unnecessary." *Plaintiffs' MSJ* 13:24-14:2. The Court agrees and therefore does not analyze the merits of Plaintiffs' remaining claims.

E. Right to Jury Trial

The Court GRANTS Plaintiffs' motion for summary judgment. Accordingly, Defendants' arguments that they are entitled to a jury trial are RENDERED MOOT.

F. Motion to Extend Discovery Deadline and for Attorneys' Fees

For the reasons that the Court denied Defendants' request for discovery or a continuance under Rule 56(f), the Court also DENIES Defendants' motion to extend the discovery deadline and for attorneys' fees.

IV. Conclusion

For the abovementioned reasons, the Court GRANTS Plaintiff's motion for summary judgment, DENIES Defendant's motion for summary judgment, and DENIES Defendant's motion for an extension of the discovery deadline and attorneys' fees. Accordingly, the Court GRANTS Plaintiffs' request for a declaratory judgment ordering that the Quiet

Title is null and void and ordering that Defendants hold the Property subject to the Deed of Trust and requiring the removal and cancellation of the Quiet Title Judgment and Notice of Lis Pendens from the land records.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and MERSCORP HOLDINGS, INC.	Case No. 2:13-cv-07142 PSG (ASx) Hon. Philip S. Guiterrez Ctrm. 880
Plaintiffs, vs. DANIEL W. ROBINSON and DARLA J. ROBINSON	ORDER SETTING ASIDE QUIET TITLE JUDGMENT AND REINSTATING DEED OF TRUST AND OTHER RELIEF Date: April 27, 2015 Time: 1:30 p.m. Crtrm: 880 Action Filed: September 26, 2013 Trial Date: None Set

Having granted the Plaintiffs' Motion for Summary Judgment and having denied the Defendants' Motion for Summary Judgment, and for all the reasons set forth in its Order dated February 27, 2015, this Court hereby orders that:

A. The Judgment for Quiet Title dated April17, 2013 entered by the Los Angeles County Superior

Court in the case styled, Robinson v. United Pacific Mortgage, case number PC052281, and recorded in the Official Records of the Recorders' Office of Los Angeles County as instrument number 20130621913, is hereby declared null and void and of no force or effect from its inception and shall be deemed expunged from the land records.

B. The Notice of Lis Pendens filed by the Robinsons in the above-described quiet title action is null and void and shall be deemed expunged from the land records.

C. The Deed of Trust dated February 7, 2005 securing a promissory note in the original principal amount of$999,950 and naming MERS as the beneficiary as nominee for United Pacific Mortgage and its successors and assigns, and recorded on February 15,2005 in the Official Records of the Recorder's Office of Los Angeles County as instrument number 05 0342544 ("Deed of Trust"), was not eliminated or impacted by the aforesaid quiet title judgment and said Deed of Trust was at all times since its recording, and remains as of this date, a lien and encumbrance on the real property owned by the Robinsons and described in said Deed of Trust.

This Court directs that this Order may be recorded in the land records of Los Angeles County with respect to the real property owned by the Robinsons and described in the Deed of Trust.

Dated: 3/26/2015

/s/ Philip S. Gutierrez

The Honorable Philip S. Gutierrez

U.S. Const. amend V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.