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6 Attorneys for Defendants Deutsche Bank National Trust Company, as Trustee for Indymac INDX
Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12, Under
7 the Pooling and Servicing Agreement Dated as of June 1, 2005 and OneWest Bank, FSB

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

10
11 In re
12 TRUDY KALUSH,
13 Debtor.

Case No. 8:11-bk-19563-ES

Chapter 11

Adv. No.: 08:12-ap-01206

14 TRUDY KALUSH,
15 Plaintiff,
16 vs.

**OPPOSITION BY DEFENDANTS TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT PURSUANT TO FRBP 7056 AND
FRBP 3007 ON (1) OBJECTION TO PROOF
OF CLAIM 6 OF DEUTSCHE BANK
NATIONAL TRUST COMPANY, AND (2)
FIRST CLAIM FOR RELIEF TO
INVALIDATE LIEN**

17 DEUTSCHE BANK NATIONAL TRUST
18 COMPANY AS TRUSTEE OF THE
INDYMAC INDX DEED OF TRUST LOAN
19 TRUST 2005-AR12, DEED OF TRUST PASS-
THROUGH CERTIFICATES, SERIES 2005-
20 AR12, UNDER THE POOLING AND
SERVICING AGREEMENT DATED JUNE 1,
21 2005; ONEWEST BANK, FSB; and DOES 1-
100, Inclusive,
22 Defendants.

[SEPARATE STATEMENT OF GENUINE ISSUES;
AFFIDAVIT OF REYNALDO REYES; AND
REQUEST FOR JUDICIAL NOTICE FILED
SEPARATELY AND CONCURRENTLY]

Hearing Date: November 5, 2013
Time: 2:00 p.m.
Place: Courtroom 5A
411 W. Fourth Street,
Santa Ana, CA

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TABLE OF CONTENTS

1

2 I. INTRODUCTION 1

3 II. FACTUAL BACKGROUND..... 2

4 III. LEGAL ARGUMENT..... 6

5 A. Summary Judgment Legal Standard..... 6

6 B. Summary Judgment Must Be Denied With Respect To The Claim Objection
7 As The Uncontroverted Evidence Shows That The Allonge Was And Is
8 Properly Affixed To The Note..... 7

9 1. Allonge Affixed To Note..... 7

10 2. The Defendants Have Standing To Assert The Claim..... 9

11 C. Summary Judgment Should Be Denied As To Lien Invalidation As *Glaski* Is
12 Inapplicable And No Other Basis Exists to Justify Such Relief..... 10

13 1. The Plaintiff Lacks Standing To Maintain A Claim For Noncompliance
14 With The PSA..... 11

15 2. The Transfer of the Note Alone Is Sufficient as the “Deed of Trust
16 Follows the Note” 12

17 3. The Uncontroverted Evidence Shows That DBNTC Is Both Owner
18 And Holder Of The Note, That OneWest Is The Servicer, And That
19 Both Defendants Are Entitled To Enforce The Note Irrespective Of Any
20 Alleged Securitization Irregularity 14

21 a. DBNTC Is The Holder And Possesses The Note And Therefore
22 Entitled To Enforce It Under CCC § 3-301 15

23 i. The First Transfer Of The Note From Commercial To IMB
24 Was Valid 16

25 ii. The Second Transfer Of The Note From IMB/IMMBS To
26 DBNTC Was Valid..... 16

27 iii. DBNTC Is In Physical Possession Of The Original Note
28 And Entitled To Enforce It As The Holder 17

29 b. DBNTC Also Owns The Note And Entitled To Enforce It..... 18

30 c. OneWest Is The Servicer On The Note And Entitled To Enforce
31 It On Behalf Of Holder DBNTC 18

32 4. *Glaski* is Inapplicable When No Prejudice Can Be Alleged and No
33 Foreclosure Has Occurred 19

34 IV. CONCLUSION..... 20

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TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Anderson v. Countrywide Home Loans,</i> Civ. No. 10-2685, 2011 WL 1627945 (D. Minn. Apr. 8, 2011).....	11
<i>Anderson v. Liberty Lobby, Inc.,</i> 106 S.Ct. 2505 (1986).....	6, 7
<i>Arabia v. BAC Home Loans Servicing, L.P.,</i> 208 Cal.App.4th 462 (2012)	12
<i>Armeni v. America’s Wholesale Lender,</i> 2012 WL 253967 (C.D. Cal. 2012)	12
<i>Bascos v. Fed. Home Loan Mortg. Corp.,</i> 2011 WL 3157063 (C.D. Cal. July 22, 2011).....	11
<i>Carpenter v. Longan,</i> 83 US 271 (1872).....	13
<i>Celotex Corp. v. Catrett,</i> 106 S.Ct. 2548 (1986).....	6
<i>Creative Ventures, LLC v. Jim Ward & Assocs.,</i> 195 Cal.App.4th 1430, 126 Cal.Rptr.3d 564 (2011)	14
<i>Deerinck v. Heritage Plaza Mortg. Inc.,</i> 2012 WL 1085520 (E.D. Cal. 2012).....	12
<i>Dick v. American Home Mortgage Servicing,</i> 2013 WL 5299180 (E.D. Ca. 2013).....	11, 19, 20
<i>Fontenot v. Wells Fargo Bank, N.A.,</i> 198 Cal. App. 4th 256, 129 Cal.Rptr.3d 467 (1st Dist.2011)	19
<i>Glaski v. Bank of America, N.A.,</i> 218 Cal. App. 4th 1079 (2013)	1, 2, 10, 11, 12, 19, 20
<i>Gomes v. Countrywide Home Loans, Inc.,</i> 192 Cal. App. 4th 1149 (2011), <i>rev. denied</i> (May 18, 2011), <i>cert. denied</i> , 132 S.Ct. 419 (U.S. 2011).....	14
<i>Herrera v. Fed. Nat’l Mortg. Ass’n,</i> 205 Cal.App.4th 1495, 141 Cal.Rptr.3d 326 (4th Dist.2012).....	19
<i>In re Allen,</i> 472 B.R. 559 (B.A.P. 9th Cir. 2012)	9

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1 *In re Aniel*,
2 427 B.R. 811 (Bankr. N.D. Cal. 2010) 15

3 *In re Gallagher*,
4 2012 WL 2900477 (Bankr. C.D. Cal. July 12, 2012) 17

5 *In re Macklin*,
6 2011 WL 2015520 (Bkrcty. E.D. Cal. May 19, 2011) 12

7 *In re Pak*,
8 2011 WL 7145763 (B.A.P. 9th Cir. 2011) 15

9 *In re Tovar*,
10 2012 WL 3205252 8, 16

11 *In re Vargas*,
12 396 B.R. 511 (Bankr. C.D. Cal. 2008) 13, 17

13 *In re Zulueta*,
14 2011 WL 4485621 (BAP 9th Cir. Aug. 23, 2011)..... 7, 8, 15, 16, 17, 19

15 *Kelley v. Price-Macemon, Inc.*,
16 992 F.2d 1408 (5th Cir.1993) 6

17 *Kennedy v. Silas Mason Co.*,
18 334 U.S. 249 7

19 *Lucia v. Wells Fargo Bank, N.A.*,
20 798 F.Supp.2d 1059 (N.D. Cal. 2011) 12

21 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
22 106 S.Ct. 1348 (1986)..... 6

23 *Morris v. Covan Worldwide Moving, Inc.*,
24 144 F.3d 377 (5th Cir.1998) 6

25 *Sami v. Wells Fargo Bank*,
26 2012 WL 967051 (N.D. Cal. 2012) 12, 13

27 *Shkolnikov v. JPMorgan Chase Bank*,
28 2012 WL 6553988 (N.D. Cal. 2012) 11

Silga v. Mortg. Elec. Registration Sys., Inc.,
No. B240531, 2013 WL 4522474 (Cal.Ct.App.2d Dist. Aug. 27, 2013) 19

Veal v. Am. Home Mortg. Serv., Inc. (In re Veal),
450 B.R. 897 (9th Cir. BAP 2011) 9

Ware v. Deutsche Bank Nat’l Trust Co.,
--- So.3d ----, 2011 WL 2420031 (Ala. June 17, 2011)..... 12

1 *Wittenberg v. First Indep. Mortg. Co.*,
2 No. 3:10-CV-58, 2011 WL 1357483 (N.D. W. Va. Apr. 11, 2011).....11, 1

3 **TREATISES**

4 10 Miller & Starr, CALIFORNIA REAL ESTATE, Deeds of Trust (3rd ed. 2010) § 10:38 13

5 **RULES**

6 Fed. R. Bkrcty. P. 3001(f)..... 7

7 Fed. R. Civ. P. 56..... 7

8 Fed. R. Civ. P. 56(a) 6

9 **STATUTES**

10 15 U.S.C. § 1641(g)..... 5

11 28 U.S.C. § 2201 and (2) 5

12 Cal. Civ. Code § 1559..... 12

13 Cal. Civ. Code §§ 2924-2924k 13

14 Cal. Comm. Code § 3-301 passim

15 Cal. Comm. Code § 1201(b)..... 17

16 Cal. Comm. Code §§ 1201(b)(21), (b)(5)..... 15

17 Cal. Comm. Code § 2936 13

18 Uniform Comm. Code § 9-203..... 13

19 Penal Code § 470 5

20

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1 Defendants Deutsche Bank National Trust Company, as Trustee for Indymac INDX
2 Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12, Under
3 the Pooling and Servicing Agreement Dated as of June 1, 2005 and OneWest Bank, FSB in its
4 capacity as servicer (collectively, the “Defendants”) hereby submit this Opposition (the
5 “Opposition”) to Reorganized Debtor’s Motion for Partial Summary Judgment (the “Motion”). The
6 Defendants represent as follows in support this Opposition¹:

7 **I. INTRODUCTION**

8 This case involves a borrower who is content to sit by without paying her mortgage with the
9 hopes that the Court will allow her to inequitably divest the Defendants of their lawful rights and
10 interests. To that end, the reorganized debtor (the “Plaintiff or “Debtor”) seeks to disallow
11 DBNTC’s secured claim and invalidate its lien. As explained below, the Plaintiff cannot satisfy the
12 standard for summary judgment given that the Motion is based on spurious allegations and specious
13 theories. Hence, the Motion should be denied when the Plaintiff has failed to meet the standard for
14 summary adjudication as explained below.

15 *First*, the Plaintiff seeks disallowance of DBNTC’s claim based on conjecture that the
16 allonge is not affixed to the note and, thus, DBNTC lacks standing. This assertion is based on pure
17 speculation and ignores well established legal precedent. The Defendants have established with that
18 the allonge was and is affixed to the note. Moreover, they have standing pursuant to California
19 Commercial Code § 3-301 as DBNTC is the holder, owner, and in possession of the original note,
20 with OneWest acting as servicer. The Plaintiff has failed to present any contradictory evidence and,
21 thus, is not entitled to summary judgment with respect to the claim objection.

22 *Second*, the Plaintiff seeks to invalidate DBNTC’s lien based *solely* on the highly
23 questionable decision of *Glaski v. Bank of America, N.A.*, which is expected to be overturned or
24 limited in its application. Attempting to parrot the facts of *Glaski*, the Plaintiff asserts that the lien
25 is somehow invalid due to an alleged securitization irregularity arising from the post-closing
26 transfer of the deed of trust into the securitization trust. Yet, there is no significance to this when

27 _____
28 ¹ The Defendants filed their own motion seeking summary judgment on *all* claims, which is also
scheduled to be heard concurrently with the Plaintiff’s Motion.

1 even the Plaintiff admits the note was timely transferred into the trust. In fact, *Glaski* errs on
2 fundamental issues of negotiable-instrument and non-judicial foreclosure law and cannot diminish
3 the rights of the holder of the original endorsed note. Moreover, the decision arises in a different
4 context (post-foreclosure) and lends no support for lien *invalidation*.

5 As explained below, *Glaski* is inapplicable for the following reasons: (1) the Plaintiff lacks
6 standing to raise an alleged securitization defect; (2) the loan was validly assigned to the
7 securitization trust because the “deed of trust follows the note”; (3) the Defendants have rights to
8 enforce the loan pursuant to California Commercial Code § 3-301 (as note holder and owner
9 possessing the original endorsed note) regardless of any alleged securitization irregularity; and (4)
10 *Glaski* is inapplicable as there is no showing of prejudice and no foreclosure has occurred.

11 Therefore, *Glaski* is inapposite here and the Plaintiff is not entitled as a matter of law to invalidate
12 DBNTC’s lien.

13 Thus, the Plaintiff’s Motion should be denied as the Plaintiff has not shown the absence of a
14 genuine issue of material fact and that she is entitled to judgment as a matter of law. For these very
15 reasons, the Defendants’ currently filed motion for summary judgment should be granted and this
16 adversary proceeding should be dismissed.

17 **II. FACTUAL BACKGROUND**

18 **A. The Defaulted Loan**

19 On January 20, 2005, the Plaintiff executed a note (“Note”) in the original principal amount
20 of \$1,725,500.00, made payable to Commercial Capital Bank, FSB (“Commercial”). See the
21 Plaintiff’s Separate Statement of Uncontroverted Facts (the “Plaintiff Statement”), at ¶ 1. To secure
22 the obligations due under the Note, on January 20, 2005, the Plaintiff executed a deed of trust
23 (“Deed of Trust”) encumbering the Subject Property. Plaintiff Statement, at ¶ 1.

24 On March 16, 2005, Commercial executed an Endorsement to Promissory Note, assigning
25 all right, title, and interest to the Note and Deed of Trust to IndyMac Bank, F.S.B. (“IMB”). See
26 Affidavit of Ronaldo Reyes (the “Reyes Affidavit”) ¶ 3, Ex. C, filed separately and concurrently
27 herewith. The Endorsement to Promissory Note specifically states that it “is attached to that certain
28 Promissory Note in the face amount of \$1,725,500.00 dated January 20, 2005, made by Trudy A.

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1 Kalush, A Single Woman, payable to the order of Commercial Capital Bank, FSB, a federally
2 chartered savings bank,” references the loan number, is dated, and was physically stapled to the
3 Note. See Declaration of Charles Boyle previously filed in support of the Defendants’ motion for
4 summary judgment (the “Boyle Decl.”), ¶ 7² [Adv. Docket No. 37.]

5 On the same attached Endorsement to Promissory Note, IMB executed an endorsement
6 payable in blank and, on June 1, 2005, entered into a Pooling and Servicing Agreement (“PSA”).
7 Reyes Affidavit, ¶¶ 2 and 5, Ex. A and C. Through the terms of the PSA, IMB sold its ownership
8 rights, but not its servicing rights, to the Subject Loan to IndyMac MBS, Inc., as Depositor
9 (“IMMBS”). *Id.* By the terms of the PSA, IMMBS’ ownership rights to the Subject Loan were
10 expressly conveyed to DBNTC as Trustee of Indymac INDX Mortgage Loan Trust 2005-AR12,
11 Mortgage Pass-Through Certificates, Series 2005-AR12, Under the Pooling and Servicing
12 Agreement Dated as of June 1, 2005 (the “Loan Trust.”) *Id.* The effectiveness of the transfer of
13 rights to the Subject Loan does not depend on the delivery of the deed of trust prior to the closing of
14 the Loan Trust.

15 Pursuant to the PSA, DBNTC received the original Note endorsed in blank and the original
16 Deed of Trust. Reyes Affidavit, ¶¶ 3 and 4. As owner and holder of the Subject Loan, DBNTC
17 currently maintains the original Note and Deed of Trust in its custody file. *Id.*, ¶¶ 6-13.

18 When IMB transferred its ownership interest in the Subject Loan to DBNTC, it retained
19 servicing rights to the Subject Loan as “Master Servicer” of the conveyed loans and continued
20 servicing the Subject Loan on behalf of the Trustee, DBNTC. Reyes Affidavit, Ex. A (PSA),
21 Section 3.01 (“[t]he Master Servicer shall service and administer the Mortgage Loans...”). On
22 July 11, 2008, the Office of Thrift Supervision closed IMB and appointed the Federal Deposit
23 Insurance Corporation (“FDIC”) as receiver. Adv. Compl. ¶ 10. The FDIC transferred the assets
24 of IMB, including its servicing rights to various loans, to IndyMac Federal Bank, F.S.B. (“IMFB”).
25 Adv. Compl. ¶ 12.

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27
28 ² A true and correct copy of the Boyle Decl. is appended as Exhibit 2 to the Request for Judicial
Notice (“RJN”) filed separately and concurrently herewith.

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1 On March 19, 2009, pursuant to the Servicing Business Asset Purchase Agreement By And
2 Between The FDIC As Receiver For IndyMac Federal Bank, FSB And OneWest Bank, FSB (the
3 “SBAPA”), OneWest acquired the servicing rights to several IMFB loans, including the Subject
4 Loan.³ A true and correct copy of the SBAPA is attached as Exhibit 1 to the Request for Judicial
5 Notice (“RJN”) previously filed in support of the Defendants’ motion for summary judgment.
6 Since March 19, 2009, OneWest has been the servicer on the Subject Loan on behalf of the owner
7 of the Subject Loan, DBNTC. Reyes Affid., ¶ 3; *see also* Adv. Compl. ¶ 26.

8 On July 1, 2010, the FDIC as receiver for IndyMac Federal Bank, FSB executed a Limited
9 Power of Attorney (“LPOA”) designating certain individuals as having authority to execute certain
10 documents as necessary pertaining to the transfer of assets pursuant to the Servicing Business Asset
11 Purchase Agreement. The LPOA was recorded on July 29, 2010. Boyle Decl., ¶ 6, Ex. A.

12 By July 1, 2010, the Plaintiff defaulted on the Subject Loan. Boyle Decl., ¶ 8. Plaintiff has
13 not made any payment on the Subject Loan since her default. Kalush Deposition, 8/3/12, [57:11-
14 58:20]; Boyle Decl., ¶ 8. Although it was unnecessary because the transfer of the Note from
15 IMMBS to DBNTC as a matter of law also conveyed the underlying Deed of Trust, on March 29,
16 2011, OneWest as servicer executed the Assignment of DOT from the FDIC to DBNTC and
17 recorded it for recordkeeping purposes. Boyle Decl., ¶ 8. Thereafter, to further prepare for
18 foreclosure, on June 12, 2013, another assignment of the Deed of Trust was executed. Boyle Decl.,
19 ¶ 8. In July, 2013, OneWest, as servicer caused to be recorded a Notice of Default.

20 **B. The Bankruptcy Case**

21 On July 7, 2011, the Plaintiff commenced the instant Chapter 11 case to enjoin the
22 foreclosure sale. On August 2, 2011, DBNTC filed the Claim (Claim No. 6-1) in the amount of
23 \$1,944,856.06.⁴ On November 23, 2011, the Plaintiff filed an objection to the Claim (the “Claim
24 Objection”). [Docket No. 90.]

25 On April 26, 2012, the Plaintiff commenced the instant Adversary Proceeding by filing a
26 complaint seeking: (1) Declaratory Relief under FRBP 7001, 28 U.S.C. § 2201 and (2) Cancellation

27 ³ *See also* Adv. Compl. ¶ 15; Goe Decl., Ex. 1, § A.9.

28 ⁴ OneWest caused the claim to be filed pursuant to its exclusive authority to do so as servicer
without review or approval by DBNTC.

1 of Deed of Trust Instruments (Penal Code 470), and alleging (3) Slander of Title, (4) Quasi
2 Contract, (5) Truth In Lending Act, 15 U.S.C. § 1641(g) violation, (6) Quiet Title, and (7) as Unfair
3 Business Practices violation. The Defendants filed their answer on June 1, 2012. The Claim
4 Objection was consolidated into the Adversary Proceeding.

5 **C. Discovery and Evidence of Standing**

6 The Plaintiff propounded extensive discovery during the case which substantiated DBNTC's
7 secured claim and lien. On June 29, 2012, the Plaintiff propounded discovery, including
8 interrogatories, request for admissions, and production of documents. DBNTC, through OneWest,
9 acting as attorney-in-fact to DBNTC, responded to the requests and produced voluminous
10 documents by August 3, 2012. On August 21, 2012, the Defendants also filed the Declaration of
11 Ronaldo Reyes in Support of Creditor Standing and Note Ownership, which authenticated both the
12 Note and the allonge and evidenced that the allonge was appended to the Note. [Docket No. 272.]

13 Thereafter, the Plaintiff conducted depositions of the Defendants' representatives and the
14 Defendants further supplemented their document production.⁵ On February 27, 2013, the Plaintiff
15 together with one of her consultants conducted a physical inspection of the original loan file relating
16 to the Subject Loan. In doing so, she was able to review the original Note together with the allonge
17 affixed to it. *See* Declaration of J. Alexandra Rhim, at ¶ 3, previously filed in support of the
18 Defendants' motion for summary judgment.

19 **D. Unimpaired Plan Treatment and Stay Relief**

20 On March 29, 2013, this Court held hearings to consider confirmation of the Plaintiff's
21 chapter 11 plan, the Defendants' motion for relief from the automatic stay and other related
22 proceedings. At the hearing, unable to overcome the Defendants' plan objection, the Plaintiff
23 elected to treat the Defendants as "unimpaired" under the plan and, on that basis, was able to
24 confirm the plan. Thus, the Defendants' rights under the loan documents remain intact.

25
26
27 ⁵ On February 14, 2013, the Court held a hearing on Plaintiff's motion to compel discovery, which
28 was denied in part and granted in part. The Defendants have produced additional documents
pursuant to the Court's rulings made in connection with such motion. The Plaintiff did not lodge an
order following the hearing.

1 The Plaintiff was, however, unable to make any payments. Thus, she *consented* to stay
2 relief and on April 12, 2013, this Court entered an order granting relief from the automatic stay in
3 favor of the Defendants. [Docket No. 372.] The Plaintiff has made no payments during the
4 pendency of this Case and the Defendants understand that the Plaintiff lacks the financial ability to
5 make payments. Thus, DBNTC intends to exercise its lawful rights and remedies in the near future
6 with respect to the Subject Loan.

7 **III. LEGAL ARGUMENT**

8 **A. Summary Judgment Legal Standard**

9 A court should not grant summary judgment unless the pleadings and supporting documents,
10 *when viewed in the light most favorable to the non-moving party*, “show that there is no genuine
11 issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”
12 Fed. R. Civ. P. 56(a) (emphasis added). The moving party must “demonstrate the absence of a
13 genuine issue of material fact.” *Celotex Corp. v. Catrett*, 106 S.Ct. 2548, 2553 (1986). Once the
14 movant carries this burden, the burden shifts to the nonmovant to show that summary judgment
15 should not be granted. *See id.* at 2553-54. A party opposing a properly supported motion for
16 summary judgment must set forth specific facts showing the existence of a ‘genuine’ issue
17 concerning every essential component of its case.” *See Morris v. Covan Worldwide Moving, Inc.*,
18 144 F.3d 377, 380 (5th Cir.1998) (citing *Anderson v. Liberty Lobby, Inc.*, 106 S.Ct. 2505, 2514-15
19 (1986)).

20 In considering a motion for summary judgment, the district court must view the evidence
21 through the prism of the substantive evidentiary burden. *See Anderson*, 106 S.Ct. at 2513-14. All
22 justifiable inferences to be drawn from the underlying facts must be viewed in the light most
23 favorable to the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 106 S.Ct.
24 1348, 1356 (1986). “If the record, viewed in this light, could not lead a rational trier of fact to find”
25 for the nonmovant, then summary judgment is proper. *Kelley v. Price-Macemon, Inc.*, 992 F.2d
26 1408, 1413 (5th Cir.1993) (citing *Matsushita*, 106 S.Ct. at 1351). Even if the standards of Rule 56
27 are met, a court has discretion to deny a motion for summary judgment if it believes that “the better
28 course would be to proceed to a full trial.” *Anderson*, 106 S.Ct. at 2513. It is established that

1 although there is no discretion to enter summary judgment when there is a genuine issue as to any
2 material fact, there is discretion to deny summary judgment when it appears that there is no genuine
3 issue as to any material fact. *Kennedy v. Silas Mason Co.*, 334 U.S. 249, 256–257 (1948) (Advisory
4 Committee Notes to 2007 Amendment).

5 **B. Summary Judgment Must Be Denied With Respect To The Claim Objection As**
6 **The Uncontroverted Evidence Shows That The Allonge Was And Is Properly**
7 **Affixed To The Note**

8 The Plaintiff’s request for summary judgment with respect to the Claim Objection should be
9 denied. The uncontroverted evidence shows that the Claim is valid and should be allowed. Thus,
10 the Defendants have squarely met their burden of proof in accordance with Federal Rule of
11 Bankruptcy Procedure Rule 3001(f). Yet, the Plaintiff has failed to rebut the prima facie validity of
12 the Claim.

13 The Plaintiff seeks disallowance of the Claim on two speculative and meritless grounds:
14 (1) that the allonge is not affixed to the Note; and (2) thus, the Defendants lack standing. As
15 explained below, the Defendants have presented admissible evidence to show that the allonge was
16 and is affixed to the Note. Other than mere conjecture, the Plaintiff has presented no evidence to
17 establish otherwise. Also, as discussed below, the Defendants clearly have standing under U.C.C. §
18 3-301. DBNTC has standing because it is the holder, owner and in possession of the Note.
19 OneWest has standing in its capacity as servicer. For these reasons, summary judgment should be
20 denied as to the Plaintiff while the Defendants’ motion for summary judgment should be granted to
21 allow the Claim.

22 **1. Allonge Affixed To Note**

23 It is well recognized that an allonge to a promissory note need only (a) sufficiently identify
24 the note, including referencing the loan number; (b) contain language showing that it “Without
25 Recourse, Pay[s] to the Order of” a payee or in blank; and (c) is affixed or attached to the note. *In*
26 *re Zulueta*, 2011 WL 4485621, *4 (BAP 9th Cir. Aug. 23, 2011). This legal standard is amply met
27 here.
28

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1 On March 16, 2005, two months after the Note was originated, Commercial executed an
2 allonge, titled an “Endorsement to Promissory Note,” assigning its entire interest in the Subject
3 Loan to IMB. Reyes Affidavit, ¶ 4, Ex. C. The allonge, titled the “Endorsement to Promissory
4 Note,” is dated, signed, and specifically identifies the Note, stating that it “is attached to that certain
5 Promissory Note in the face amount of \$1,725,500.00 dated January 20, 2005, made by Trudy A.
6 Kalush, A Single Woman, payable to the order of Commercial Capital Bank, FSB, a federally
7 chartered savings bank.” Reyes Affidavit, ¶ 4, Ex. C. In addition, the Endorsement to Promissory
8 Note also specifically references the loan number in the upper left corner, and contains the language
9 “Pay to the Order of IndyMac Bank, F.S.B. (‘Assignee’) Without Recourse...” *Id.*

10 Yet, the Plaintiff speculates that the Endorsement to Promissory Note is not physically
11 attached to the Note. The Plaintiff has not presented a shred of evidence to support her false
12 assertion. During the course of discovery, the Defendants produced the Note together with the
13 allonge and other relevant loan documents. The “Declaration of Ronaldo Reyes in Support of
14 Creditor Standing and Note Ownership” also attests to and authenticates the Note together with its
15 allonge. [Docket No. 272.] Tellingly, the Plaintiff with her consultant also inspected the original
16 loan file and must necessarily have determined that the original Note and Endorsement to
17 Promissory Note are clearly affixed and stapled together. Indeed, even an examination of the copies
18 already in the Plaintiff’s possession reveal corresponding staple holes in the upper left of the
19 documents, obscuring the word “installment” in the line that begins with “First Installment
20 Adjustment Date...” on the second page of the Note, the word “immediately” in the line that begins
21 with “immediately due and payable...” on the third page of the Note, and the “Loan No. 0910718-
22 6” on the Endorsement to Promissory Note. *See id.*

23 It is, therefore, undisputable that the Endorsement to Promissory Note satisfies every
24 requirement to be a valid allonge and to have properly conveyed a note endorsed in blank. *See In re*
25 *Tovar*, 2012 WL 3205252, at *6; *Zulueta*, 2011 WL 4485621, at *6. The Plaintiff has not offered
26 any legitimate contrary evidence, and, indeed, has engaged in mere speculation and conjecture
27 instead in a blatant attempt to prejudice the Defendants.

28

1 While the allonge was not appended to the original proof of claim due to inadvertence,⁶ the
2 Defendants have convincingly demonstrated that the allonge was and is affixed to the Note. In fact,
3 the Defendants provided a set of operative documents in the Declaration of Ronaldo Reyes and its
4 motion for stay relief.⁷ Both the declaration and motion for stay relief are sufficient to supplement
5 the proof of claim. Yet, at plan confirmation, the Plaintiff intentionally chose to consent to stay
6 relief rather than dispute the documentary evidence filed in support of such motion. Thus, by her
7 actions, the Plaintiff conceded to the validity of the allonge and the Defendants' standing to
8 foreclose.

9 In any event, the Defendants have filed the Boyle Declaration, which again substantiates that
10 the allonge was and is in fact *affixed* to the Note. [See Boyle Decl. at ¶ 7.] Thus, the Plaintiff has
11 failed to demonstrate with uncontrovertible evidence that the allonge is not affixed to the Note.

12 **2. The Defendants Have Standing To Assert The Claim**

13 The Defendants have standing to assert the Claim and conduct foreclosure. The Bankruptcy
14 Appellate Panel for the Ninth Circuit has made clear that a “person entitled to enforce the note,” as
15 defined in U.C.C. § 3-301, has the requisite standing to file a proof of claim in a bankruptcy case.”
16 *In re Allen*, 472 B.R. 559, 565 (B.A.P. 9th Cir. 2012); *Veal v. Am. Home Mortg. Serv., Inc. (In re*
17 *Veal)*, 450 B.R. 897, 918 (9th Cir. BAP 2011) (seminal case re standing). Without any evidence to
18 the contrary, the objection must be denied. *Allen*, 472 B.R. at 569.

19 The Plaintiff cites solely to the deposition testimony of Ronaldo Reyes, a representative of
20 DBNTC, to support her position that DBNTC purportedly lacks standing as a secured creditor.
21 During the deposition, the Plaintiff questioned Mr. Reyes whether “Deutsch hire[d] Mr. Shaw,”
22 who signed the Claim on behalf of DBNTC. [See Motion, at p. 10, Ins. 13-14.] Mr. Reyes
23 accurately responded “No.” Aside from the vagaries of the question, Mr. Reyes’ response was
24 appropriate as OneWest was the servicer of the loan with exclusive authority to file the claim.
25 Therefore, DBNTC would not have received the claim nor have retained any law firm or agent to

26 ⁶ The allonge was and has always been affixed to the Note, as the Plaintiff confirmed upon her
27 physical inspection of the loan file. For clarification purposes, DBNTC has filed an amended proof
of claim.

28 ⁷ The allonge was previously appended as Exhibit C to the Declaration of Ronaldo Reyes and
Exhibit 2 to the stay relief motion.

1 file a proof of claim on its behalf. Hence, the Plaintiff’s reliance on this testimony is of no import.
2 More importantly, as discussed below, the Defendants possess standing pursuant to California
3 Commercial Code § 3-301 (as holder and owner). DBNTC has standing in its capacity as holder
4 and owner and, thus, OneWest has standing as servicer. The Plaintiff has presented no evidence to
5 the contrary.

6 In sum, the Defendants have presented uncontrovertible evidence that the allonge was
7 affixed to the Note and that they have standing to assert the Claim pursuant to California
8 Commercial Code § 3-301. Therefore, this Court should deny summary judgment with respect to
9 the Claim Objection and allow the Claim.

10 **C. Summary Judgment Should Be Denied As To Lien Invalidation As *Glaski* Is**
11 **Inapplicable And No Other Basis Exists to Justify Such Relief**

12 The Plaintiff seeks lien invalidation based on the controversial decision of *Glaski v. Bank of*
13 *America*, N.A., 218 Cal. App. 4th 1079 (2013). *Glaski* is not only inapposite but questionable for a
14 number of reasons as compellingly explained by the District Court for the Eastern District of
15 California in a recent decision (*Dick v. American Home Mtg.*), which is discussed below. *Glaski*
16 reflects a misunderstanding of securitization practices and is in direct conflict with the California
17 Commercial Code and real property law. Therefore, *Glaski* does not support invalidation of
18 DBNTC’s lien.

19 *Glaski* held that the plaintiff could survive demurrer on a claim for wrongful foreclosure
20 (and related claims) based on the transfer of a deed of trust effectuated post-closing under a pooling
21 and servicing agreement that governs a securitization trust. The *Glaski* opinion reflects a fatal
22 misunderstanding as it uses the term “deed of trust” interchangeably with “loan”; it fails to
23 understand that a loan evidenced by a promissory note may be transferred *without* any
24 corresponding assignment of the deed of trust. In contravention of these well-established principles,
25 *Glaski* erroneously concluded that due to the post-closing transfer of the deed of trust, that the
26 interests in the loan were not properly assigned. The *Glaski* court then concluded that because the
27 transfer of the deed of trust was untimely, that such mere technical violation of the transfer, results
28

1 in a potential claim for wrongful foreclosure. This holding is squarely in conflict with the concept
2 that the deed of trust follows the note and non-judicial foreclosure rules in California.

3 To summarize, *Glaski* is inapplicable for the following reasons: (1) based on overwhelming
4 case law, the Plaintiff lacks standing to claim noncompliance regarding a securitization; (2) the
5 transfer of the note alone is sufficient to assign rights in the loan to DBNTC; (3) the Defendants
6 have rights to enforce the Note pursuant to the California Commercial Code and other applicable
7 state law notwithstanding any alleged securitization defect; and (4) *Glaski* is inapplicable when the
8 Plaintiff has suffered no prejudice and foreclosure has not taken place. Any one of these reasons
9 justifies denial of the Motion.

10 **1. The Plaintiff Lacks Standing To Maintain A Claim For Noncompliance**
11 **With The PSA**

12 The Plaintiff's attempt to invalidate the loan based on a purported violation of the PSA is
13 both factually and legally defective. The holding in *Glaski* appears to contravene the *overwhelming*
14 majority of courts and fundamental legal principles that prohibit a borrower, a mere third party,
15 from challenging a securitization.

16 It is well established that a borrower lacks such standing to challenge a securitization. In
17 fact, "[a] majority of district courts in California have held that borrowers do not have standing to
18 challenge the assignment of a loan because borrowers are not party to the assignment agreement."
19 *Dick v. American Home Mortgage Servicing*, 2013 WL 5299180, at *2 (E.D. Ca. 2013) (declining
20 to apply *Glaski*); *see also Bascos v. Fed. Home Loan Mortg. Corp.*, 2011 WL 3157063, at *6 (C.D.
21 Cal. July 22, 2011); *Shkolnikov v. JPMorgan Chase Bank*, 2012 WL 6553988 (N.D. Cal. 2012)
22 (holding that the majority position in California is that plaintiffs lack standing to challenge
23 noncompliance with a PSA in securitization unless they are parties to the PSA or third party
24 beneficiaries of the PSA.); *see Anderson v. Countrywide Home Loans*, Civ. No. 10-2685
25 (MJD/JJG), 2011 WL 1627945, at *4 (D. Minn. Apr. 8, 2011); *Wittenberg v. First Indep. Mortg.*
26 *Co.*, No. 3:10-CV-58, 2011 WL 1357483, at *21-22 (N.D. W. Va. Apr. 11, 2011) (rejecting theory
27 that assignment after closing date was invalid because borrowers, as non-parties, lacked standing to
28 enforce PSA, nor could borrowers be intended third-party beneficiaries); *Ware v. Deutsche Bank*

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1 *Nat'l Trust Co.*, --- So.3d ----, 2011 WL 2420031, at *5-7 (Ala. June 17, 2011) (rejecting theory that
2 assignment after closing date was invalid because borrower would not have standing to challenge
3 PSA compliance); *In re Macklin*, 2011 WL 2015520, *7 (Bkrtcy. E.D. Cal. May 19, 2011)
4 (“[Borrower] also misses the mark in this argument since he is attempting to assert compliance with
5 contractual provisions for which he has no right or interest. He has not asserted that he is a party to
6 the Master Sale and Servicing Agreement or a third-party beneficiary of that Agreement. He does
7 not assert any basis for claiming rights under those agreements to which he is not a party.”). Thus,
8 it is now well established that the Plaintiff cannot challenge the DBNTC’s lien based on any alleged
9 deficiency in the securitization process.⁸ To conclude otherwise would certainly wreak havoc in the
10 securitized mortgage industry and capital markets.

11 California Civil Code § 1559 is in accord and provides: “A contract, made expressly for the
12 benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.”
13 Thus, in California, a third party may only enforce a contract if it was made expressly for the third
14 party’s benefit. The Plaintiff is neither a party nor third-party beneficiary to the PSA. Thus, the
15 Plaintiff cannot enforce it under California state law.

16 For the reasons above, the Plaintiff clearly lacks standing to seek relief based on a purported
17 violation of the PSA. This reason alone militates denial of summary judgment.

18 **2. The Transfer of the Note Alone Is Sufficient as the “Deed of Trust**
19 **Follows the Note”**

20 *Glaski* is based on the faulty premise that a transfer of the deed of trust in addition to the
21 note is necessary to effectuate a transfer of the loan. Yet, it is not uncommon practice to transfer a
22 deed of trust post-closing to a securitization trust. This is permissible because the deed of trust
23 follows the note. And, here the Plaintiff concedes that the Note was timely transferred to the Trust.

24 _____
25 ⁸ Additional cases precluding standing include the following: *Arabia v. BAC Home Loans Servicing,*
26 *L.P.*, 208 Cal.App.4th 462, *6 (2012) (holding that borrower challenging foreclosure has no
27 standing to assert claims based on purported breach of PSA); *Sami v. Wells Fargo Bank*, 2012
28 WL 967051, *6 (N.D. Cal. 2012) (no standing under PSA); *Armeni v. America’s Wholesale Lender*,
2012 WL 253967, *2 (C.D. Cal. 2012) (same); *Deerinck v. Heritage Plaza Mortg. Inc.*, 2012
WL 1085520, *5 (E.D. Cal. 2012) (same); *see also Lucia v. Wells Fargo Bank, N.A.*, 798 F.Supp.2d
1059, 1071 (N.D. Cal. 2011) (no third party standing for borrowers under Servicer Participation
Agreements under HAMP).

1 Thus, the admitted fact that the Note was transferred to the Trust should end the inquiry. The
2 subsequent assignments of the Deed of Trust for recordkeeping and foreclosure purposes are also
3 irrelevant as the beneficiary of a deed of trust can differ from the noteholder for purposes of non-
4 judicial foreclosure.

5 It is black letter law, codified in the UCC, that the deed of trust, or “mortgage,” follows the
6 note. Uniform Commercial Code § 9-203 cmt. 9; CCC § 2936; *Carpenter v. Longan*, 83 US 271,
7 274 (1872) (“The note and mortgage are inseparable; the former as essential, the latter as an
8 incident. An assignment of the note carries the mortgage with it, while an assignment of the latter
9 alone is a nullity.”). Indeed, “this has long been the law throughout the United States: when a note
10 secured by a mortgage is transferred, transfer of the note carries with it the security, without any
11 formal assignment or delivery, or even mention of the latter.” *In re Vargas*, 396 B.R. 511, 516-17
12 (Bankr. C.D. Cal. 2008) (internal quotations and citations omitted).

13 It is also well established that a transfer of a promissory note is perfected against third
14 parties on the execution and delivery of an assignment of the note (not an assignment of the deed of
15 trust) to the transferee. 10 Miller & Starr, CALIFORNIA REAL ESTATE, Deeds of Trust (3rd ed. 2010)
16 § 10:38, p. 128 (citations omitted). “Because the lien of the trust deed is merely an incident of the
17 debt, the assignment by endorsement and delivery of the promissory note accomplishes the transfer
18 of the security without the necessity of a formal assignment of the trust deed itself.” *Id.*

19 Moreover, transfers of a loan or security instrument does not affect the ability to enforce the
20 Deed of Trust by non-judicial foreclosure. *Sami v. Wells Fargo Bank*, 2012 WL 967051, *5 (N.D.
21 Cal. 2012). As such, securitization does not affect a promise to repay the loan or prevent the
22 beneficiary under the deed of trust from foreclosing in the event of a default; rather, securitization
23 only affects the rights and obligations of the parties to the securitization transaction. *Id.* at *6.
24 Furthermore, non-judicial foreclosure pursuant to a deed of trust is comprehensively governed by
25 the statutory framework set forth in Civil Code sections 2924-2924k and due to the exhaustive
26 nature of the scheme, “California appellate courts have refused to read any additional requirements
27 into the non-judicial foreclosure statute.” *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App.
28 4th 1149, 1154 (2011), *rev. denied* (May 18, 2011), *cert. denied*, 132 S.Ct. 419 (U.S. 2011).

1 For the reasons above, it was unnecessary to transfer the Deed of Trust prior to the closing
2 date of the securitization trust because it followed the Note, which was timely transferred.
3 Moreover, the subsequent assignments of the Deed of Trust for recordkeeping and foreclosure
4 purposes are irrelevant. Therefore, there is no basis to invalidate DBNTC's lien and summary
5 judgment should be denied.

6 **3. The Uncontroverted Evidence Shows That DBNTC Is Both Owner And**
7 **Holder Of The Note, That OneWest Is The Servicer, And That Both**
8 **Defendants Are Entitled To Enforce The Note Irrespective Of Any**
9 **Alleged Securitization Irregularity**

10 Further, the Plaintiff's challenge to DBNTC's ownership of the Subject Loan requires
11 disregard of the Defendants' rights under the California Commercial Code ("CCC") which cannot
12 be impaired by any alleged securitization defect. Rather, here the evidence and applicable law
13 conclusively show that: (a) DBNTC is the lawful owner and holder of the Note, and therefore
14 entitled to enforce it; (b) OneWest owns servicing rights to the Note and is entitled to enforce it; and
15 that (c) the Plaintiff is only the mortgagor on the Subject Loan and owes nearly two million dollars
16 on the Note and admittedly remains in default since July 1, 2010. There is no break in the chain of
17 title as the Defendants falsely claim.

18 The Plaintiff asks the Court to ignore the import of Article 3 of CCC at § 3-301 which
19 provides, in pertinent part, that a note may be enforced by:

- 20 (1) **a holder of the instrument** (CCC §§ 3-301, 1201(b)(21)); or
21 (2) **a person who is in possession of the instrument who has the rights of a**
22 **holder by subrogation or transfer** (CCC §§ 3-301, 3-302(a)).

23 CCC § 3-301 goes as far as to provide that: "a person may be a person entitled to enforce the
24 instrument even though the person is not the owner of the instrument or is in wrongful possession of
25 the instrument." As such, the rights of a note holder to enforce the note derives solely from its
26 status as a holder and no evidence of ownership is necessary. *Creative Ventures, LLC v. Jim*
27 *Ward & Assocs.*, 195 Cal.App.4th 1430, 1447, 126 Cal.Rptr.3d 564, 577 (2011); *In re Pak*, 2011
28 WL 7145763, *3 (B.A.P. 9th Cir. 2011); *In re Aniel*, 427 B.R. 811, 816 (Bankr. N.D. Cal. 2010).

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1 *In re Zulueta*, 2011 WL 4485621, *4 (BAP 9th Cir. Aug. 23, 2011) (emphasis added). To
2 qualify as a “holder,” a party “must be in possession of the instrument that is either properly
3 endorsed or payable to the person in possession of it.” *Id.*; CCC § 1201(b)(21), (b)(5). To qualify
4 as a “person who is in possession of the instrument who has the rights of a holder by subrogation or
5 transfer,” a party needs to show that it has the note in its possession on behalf of the “holder.” *In re*
6 *Zulueta*, 2011 WL 4485621, at *5. Both the “holder” of a note and a “person who is in possession
7 of the [note] who has the rights of a holder by subrogation or transfer” are entitled to enforce the
8 note. *Id.*, at *4; CCC § 3-301.

9 In asserting the various inconsistent and incomprehensible claims for relief, the Plaintiff
10 ignores CCC § 3-301. As discussed below, the Defendants are lawfully entitled to enforce the Note
11 and Deed of Trust based on the following: (1) DBNTC is the holder of and in possession of the
12 Note; (2) DBNTC is also the unassailable owner of the Note pursuant to the PSA (and related
13 agreements) which the Plaintiff lacks standing to challenge, as a matter of law; and (3) OneWest is
14 the servicer with respect to the Subject Loan pursuant to the PSA (and related agreements) which
15 the Plaintiff lacks standing to challenge.

16 a. **DBNTC Is The Holder And Possesses The Note And Therefore**
17 **Entitled To Enforce It Under CCC § 3-301**

18 DBNTC became the owner and holder of the Note, that originated with Commercial on
19 January 20, 2005, through two separate transfers. Reyes Affidavit, ¶ 4; Adv. Compl., ¶ 21. The
20 first transfer took place on March 16, 2005, two months after the Note was originated, when
21 Commercial executed an allonge, titled an “Endorsement to Promissory Note,” assigning its entire
22 interest in the Subject Loan to IMB. Reyes Affidavit, ¶ 4, Ex. C. The second transfer took place a
23 few months later on June 1, 2005 through the PSA. Reyes Affidavit, ¶ 2, Ex. A. IMB executed an
24 endorsement payable in blank on the Endorsement to Promissory Note and entered into the PSA to
25 sell its ownership rights to the Subject Loan to IMMBS. *Id.* The PSA also expressly conveyed
26 IMMBS’ ownership rights to the Subject Loan to DBNTC as Trustee of the Loan Trust. *Id.*
27 Accordingly, IMB/IMMBS transferred their ownership interest in the Note to DBNTC by June 1,
28 2005, making DBNTC the owner of the Subject Loan. IMMBS then physically transferred

1 Plaintiff's original Note on April 5, 2005 to DBNTC, also making DBNTC the physical holder of
2 the Subject Loan. *Id.*, ¶ 4. Despite the indisputable validity of both transfers, as discussed in
3 greater detail below, the Plaintiff challenges both transactions on frivolous grounds.

4 **i. The First Transfer Of The Note From Commercial To**
5 **IMB Was Valid**

6 On March 16, 2005, two months after the Note was originated, Commercial executed an
7 allonge, titled an "Endorsement to Promissory Note," assigning its entire interest in the Subject
8 Loan to IMB. Reyes Affidavit, ¶ 4, Ex. C. As explained above, the allonge is valid on its face.
9 And, contrary to the Plaintiff's conjecture, the Endorsement to Promissory Note is physically
10 attached to the Note, as discussed above. It is, therefore, undisputable that the Endorsement to
11 Promissory Note satisfies every requirement to be a valid allonge and to have properly conveyed a
12 note endorsed in blank. *See In re Tovar*, 2012 WL 3205252, at *6; *In re Zulueta*, 2011
13 WL 4485621, at *6. The Plaintiff has not offered any legitimate contrary evidence, and, indeed, has
14 engaged in mere speculation and conjecture instead in an attempt to prejudice the Defendants.

15 **ii. The Second Transfer Of The Note From IMB/IMMBS To**
16 **DBNTC Was Valid**

17 The second transfer of the Note, from IMB/IMMBS to DBNTC, took place on June 1, 2005
18 through the PSA. Reyes Affidavit, ¶ 2, Ex. A. IMB executed an endorsement payable in blank on
19 the Endorsement to Promissory Note and entered into the PSA to sell its ownership rights to the
20 Subject Loan to IMMBS. *Id.* The PSA also expressly conveyed IMMBS' ownership rights to the
21 Subject Loan to DBNTC as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR12. *Id.*
22 Accordingly, IMMBS transferred the original Note on April 5, 2005 to DBNTC. *Id.*, ¶ 4. It does
23 not appear that the Plaintiff disputes this second transfer.

24 Accordingly, the executed Endorsement to Promissory Note, as a separate allonge to the
25 Note, assigned the entire Subject Loan from Commercial to IMB, and the PSA assigned the entire
26 Subject Loan from IMB/IMMBS to DBNTC. While the formal Assignment of Deed of Trust from
27 IMB/IMMBS to DBNTC was not executed until 2011 and again in 2013 and the delivery of the
28 Deed of Trust was not made until 2012, these were merely recordkeeping steps OneWest took that

1 had no legal effect on the Subject Loan. As a matter of law, the Plaintiff's endorsed-in-blank Note
2 was transferred to DBNTC in 2005, and with it the underlying Deed of Trust security also
3 transferred. *Vargas*, 396 B.R. at 516-17.

4 **iii. DBNTC Is In Physical Possession Of The Original Note**
5 **And Entitled To Enforce It As The Holder**

6 In addition to DBNTC's rights described above, DBNTC has in its possession the *original*
7 Deed of Trust and Note, endorsed in blank, making it the holder of both. Reyes Affidavit, ¶ 6-13.
8 Since receiving the original Note in 2005 and the Deed of Trust in 2012, DBNTC has maintained its
9 ownership of the Subject Loan and has not assigned its interest to any other entity. Reyes Affidavit,
10 ¶ 6-13. "A party in physical possession of an endorsed-in-blank note qualifies as a holder of a note
11 under CCC § 1201(b)" and is thereby entitled to enforce it. *In re Zulueta*, 2011 WL 4485621, at *6.
12 Indeed, even if the party is in "*wrongful possession*" of the note, it is *still* entitled to enforce it.
13 CCC § 3-301 (emphasis added); *see also In re Gallagher*, 2012 WL 2900477, *3 (Bankr. C.D. Cal.
14 July 12, 2012). Hence, all of the Plaintiff's complaints that the chain of title is broken, even if true,
15 are irrelevant given DBNTC's possession of the Deed of Trust and Note.

16 The Defendants have made the original loan file available for inspection to enable the
17 Plaintiff to confirm that DBNTC maintains possession and ownership. See Rhim Decl. at ¶. The
18 Plaintiff has conducted such inspection and, thus, her concerns should be entirely alleviated since
19 DBNTC has physical possession of the Note endorsed in blank, is the holder of the Note under the
20 CCC, and is legally entitled to enforce it. *See In re Zulueta*, 2011 WL 4485621, at *6.

21 In sum, the evidence confirms that the chain of transfers from Commercial to IMB/IMMBS
22 to DBNTC are valid beyond a genuine dispute and that DBNTC is the current owner and holder of
23 the Subject Loan. Notably, no other lender has claimed rights to the Subject Loan, nor has Plaintiff
24 provided any evidence to show that another lender has rights to the Subject Loan. Indeed, Plaintiff
25 can point to no evidence contradicting the incontrovertible evidence that shows that DBNTC is the
26 owner and holder of her Subject Loan.

1 **b. DBNTC Also Owns The Note And Entitled To Enforce It**

2 As discussed in detail above, DBNTC is not only the holder and in possession of the Note,
3 but the legal owner of the Note pursuant to the PSA and related agreements. CCC § 3-301 further
4 expressly recognizes that a party who is the holder or in possession of an instrument (having the
5 rights of a holder) can enforce such instrument regardless of whether the party is an owner. Hence,
6 even if DBNTC is not the lawful owner, which it is, it nonetheless has enforcement rights as a note
7 holder and party in possession pursuant to CCC § 3-301. The Court, however, need not reach this
8 issue when the Plaintiff is precluded from challenging DBNTC’s status as owner based on the PSA.

9 **c. OneWest Is The Servicer On The Note And Entitled To Enforce**
10 **It On Behalf Of Holder DBNTC**

11 OneWest’s interest in the Subject Loan as the servicer is likewise undisputable and defeats
12 the Plaintiff’s allegations that OneWest has no interest in or right to enforce the Subject Loan. The
13 Plaintiff does not appear to dispute that OneWest is the servicer.

14 The PSA reflects that when IMB sold its ownership to the Subject Loan, IMB retained
15 servicing rights as “Master Servicer” with the right to “service and administer the Mortgage
16 Loans...” Reyes Affidavit, ¶ 2, Ex. A, Section 3.01. Accordingly, on July 11, 2008, when the
17 Office of Thrift Supervision closed IMB and appointed the FDIC as receiver, IMB held servicing
18 rights to the Subject Loan as an asset. After closing IMB, the FDIC transferred all of IMB’s assets
19 to IMF B. As discussed above, the Plaintiff again lacks the right to challenge the PSA that preserved
20 such servicing rights.

21 On March 19, 2009, pursuant to the SBAPA, OneWest acquired the servicing rights to the
22 Subject Loan from IMF B. Goe Decl., Ex. 1, § A.9; Adv. Compl. ¶ 15. Since March 19, 2009,
23 OneWest has continued to act as servicer on the Subject Loan on behalf of DBNTC, the owner of
24 the Subject Loan. Goe Decl., Ex. 1, § A.9; *see also* Adv. Compl. ¶ 26; Boyle Decl., ¶ 3.

25 The affidavit from DBNTC further confirms beyond dispute OneWest’s role as the current
26 servicer on the Subject Loan. Reyes Affidavit, ¶ 8. In addition, as the Plaintiff is aware, OneWest
27 through its counsel had, at times, physical possession of the original Note and Deed of Trust on
28 behalf of DBNTC, the holder. Reyes Affidavit, ¶ 6-13; Rhim Decl., ¶ 3. OneWest, therefore,

1 qualifies as a “person who is in possession of the instrument who has the rights of a holder by
2 subrogation or transfer,” and is therefore entitled to enforce the Note on behalf of DBNTC. *See In*
3 *re Zulueta*, 2011 WL 4485621, at *5.

4 **4. Glaski is Inapplicable When No Prejudice Can Be Alleged and No**
5 **Foreclosure Has Occurred**

6 In one of the first published opinions involving *Glaski*, the Central District of California has
7 already declined to follow *Glaski* for a number of reasons. *Dick v. American Home Mortgage*
8 *Servicing*, 2013 WL 5299180 (E.D. Ca. 2013). In *Dick*, the Court first discredits *Glaski* by noting
9 that the majority of courts preclude a borrower from challenging a securitization; it then holds that
10 an explicit showing of prejudice must be made before considering *Glaski*. **“The court need not**
11 **reach the issue, as plaintiffs’ wrongful foreclosure claim fails because plaintiffs cannot allege**
12 **that the foreclosure was prejudicial.”** *Dick*, 2013 WL 5299180 (citing *see Fontenot v. Wells*
13 *Fargo Bank, N.A.*, 198 Cal. App. 4th 256, 272, 129 Cal.Rptr.3d 467 (1st Dist.2011) (“[A] plaintiff
14 in a suit for wrongful foreclosure has generally been required to demonstrate the alleged
15 imperfection in the foreclosure process was prejudicial to the plaintiff’s interests.”)).

16 California courts find a lack of prejudice when a borrower is in default and cannot show that
17 the allegedly improper assignment interfered with the borrower’s ability to pay or that the original
18 lender would not have foreclosed under the circumstances. *See Silga v. Mortg. Elec. Registration*
19 *Sys., Inc.*, No. B240531, 2013 WL 4522474, at *5 (Cal.Ct.App.2d Dist. Aug. 27, 2013) (“The
20 assignment of the deed of trust and the note did not change [plaintiffs’] obligations under the note,
21 and there is no reason to believe that ... the original lender would have refrained from foreclosure in
22 these circumstances.”); *Herrera v. Fed. Nat’l Mortg. Ass’n*, 205 Cal.App.4th 1495, 1508, 141
23 Cal.Rptr.3d 326 (4th Dist.2012) (finding no prejudice from assignment of loan where borrowers
24 defaulted on the loan and failed to tender and cure default); *Fontenot*, 198 Cal.App.4th at 272, 129
25 Cal.Rptr.3d 467 (finding no prejudice where borrower was in default and did not allege that transfer
26 of note interfered with borrower’s ability to pay).

27 Here, as in *Dick*, the Plaintiff has not and cannot allege prejudice. The Plaintiff has
28 indisputably defaulted under the Subject Loan and has not made any payments during this

1 bankruptcy case due to her financial condition. In fact, she conceded her inability to make
2 payments as she *withdrew* her attempts to cramdown the Subject Loans. Also, she was unable to
3 cure the arrears and, thus, consented to stay relief in favor of the Defendants. The Plaintiff has not
4 and cannot allege that Commercial (the original lender) would have refrained from foreclosing
5 despite her substantial payment default. And, there is nothing about the securitization that impairs
6 the Plaintiff's ability to perform under the Subject Loan.

7 Hence, the erroneous *Glaski* decision is inapplicable under the circumstances of this case.
8 *Glaski* is not applicable where the plaintiff has suffered no prejudice from an allegedly improper
9 assignment. Additionally, *Glaski* is inapplicable here where no foreclosure has taken place and no
10 prejudice can result by any purported irregularity with respect to the assignment.

11 For the reasons above, summary judgment must be denied with respect to the Claim
12 Objection and the First Claim for Relief for invalidation of lien.

13 **IV. CONCLUSION**

14 Based on the foregoing, the Motion should be denied in its entirety. The Defendants'
15 concurrently filed motion for summary judgment should, however, be granted for the reasons set
16 forth therein and in this Opposition.

18 Dated: October 15, 2013

DYKEMA GOSSETT LLP

20 By: /s/ Alexandra Rhim

21 J. Alexandra Rhim
22 Attorneys for Defendants
23 DEUTSCHE BANK NATIONAL TRUST
24 COMPANY AS TRUSTEE FOR INDYMAC INDX
25 MORTGAGE LOAN TRUST 2005-AR12,
26 MORTGAGE PASS-THROUGH CERTIFICATES,
27 SERIES 2005-AR12, UNDER THE POOLING AND
28 SERVICING AGREEMENT DATED AS OF JUNE 1,
2005, and ONEWEST BANK, FSB

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
333 South Grand Avenue, Suite 2100, Los Angeles, CA 90071

A true and correct copy of the foregoing document entitled (*specify*): **OPPOSITION BY DEFENDANTS TO MOTION FOR PARTIAL SUMMARY JUDGMENT PURSUANT TO FRBP 7056 AND FRBP 3007 ON (1) OBJECTION TO PROOF OF CLAIM 6 OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AND (2) FIRST CLAIM FOR RELIEF TO INVALIDATE LIEN**

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **October 15, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Allan P. Bareng Barenga@bryancave.com, Theresa.macaua@bryancave.com
- Robert P. Goe Kmurphy@goeforlaw.com, rgoe@goeforlaw.com, mforsythe@goeforlaw.com
- J. Alexandra Rhim arhim@dykema.com
- Robert Reganyan Reganyanlawfirm@gmail.com
- Sharon Z. Weiss Sharon.weiss@bryancave.com, raul.morales@bryancave.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **October 15, 2013**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor: Trudy Kalush, P. O. Box 702, Sunset Beach, CA 90724

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **October 15, 2013**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or **email** as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Erithe A. Smith
United States Bankruptcy Court, Central District of California
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 15, 2013

Date

Cathy Perez

Printed Name

/s/ Cathy Perez

Signature