LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	**CV 15-04853-BRO (FFMx)**	Date	September 11, 2015
Title	**MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC ET AL V. TIMOTHY J. JOHNSTON**		

Present: The Honorable	**BEVERLY REID O'CONNELL, United States District Judge**	
Renee A. Fisher	Not Present	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: (IN CHAMBERS)
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [16]

I. INTRODUCTION

Pending before the Court is Defendant Timothy Johnston's motion to dismiss Plaintiffs Mortgage Electronic Registration Systems, Inc.'s ("MERS"), MERSCORP Holdings, Inc.'s, and The Bank of New York Mellon f/k/a The Bank of New York as Trustee for Structured Asset Mortgage Investments II Trust 2006-AR8, Mortgage Pass-Through Certificates, Series 2006-AR8's ("BNYM") (collectively, "Plaintiffs") Complaint. (Dkt. No. 16.) After considering the papers filed in support of and in opposition to the instant motion, the Court deems this matter appropriate for resolution without oral argument of counsel. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15. Because the Court finds, sua sponte, that it lacks subject matter jurisdiction over this matter, the Court **GRANTS** Defendant's motion to dismiss Plaintiffs' complaint with leave to amend.

II. FACTUAL AND PROCEDURAL BACKGROUND

In February 2005, Defendant acquired title to real property (the "Property") located in Santa Maria, California, by means of a quitclaim deed. (Compl. ¶¶ 11–12.) The quitclaim deed was recorded in the Santa Barbara County Recorder's Office on July 31, 2006. (Compl. ¶ 12.) In July 2006, Defendant obtained a residential mortgage loan on the Property for $408,700.00, secured by a deed of trust. (Compl. ¶ 30.) Defendant recorded the deed of trust with the Santa Barbara County Recorder's Office. (*Id.*) The deed of trust identified Southstar Funding, LLC ("Southstar") as the "Lender" on the loan, and MERS as "a separate corporation . . . acting solely as a nominee for Lender and Lender's successors and assigns." (Dkt. No. 11, Ex. A at 1; *see* Compl. ¶ 32.) The deed

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of trust named MERS the beneficiary under the "Security Instrument . . . (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS." (Dkt No. 11, Ex. A at 1–2; Compl. ¶¶ 33–34.) Because the deed of trust "grant[ed] a power of sale over the Property together with all improvements and interests therein," (Compl. ¶ 35), the deed of trust further provided:

> Borrower [i.e., Defendant] 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 canceling this Security Instrument.

(Dkt. No. 11, Ex. A at 2; *see* Compl. ¶ 35.)

In May 2012, Defendant filed an action in Santa Barbara Superior Court to quiet title to the Property. (Compl. ¶ 40; *see* Dkt. No. 11, Ex. B.) Defendant named Southstar as a defendant in the quiet title action, as well as "unknown persons and entities" claiming any right or interest in the Property adverse to Defendant's claim. (Compl. ¶¶ 40, 46.) Defendant did not name Plaintiffs as defendants. (*See* Dkt. No. 11, Ex. B; Compl. ¶ 46.)

When Southstar failed to appear and defend the state court quiet title action, Defendant secured a default judgment for quiet title on April 17, 2013. (Compl. ¶¶ 47, 49.) Defendant recorded the judgment with the Santa Barbara Recorder's Office. (Compl. ¶ 50; *see* Ex. C.)

MERS assigned its rights and interests under the deed of trust to BNYM, as trustee, on April 17, 2013. (Compl. ¶ 48.) On June 26, 2015, MERS, MERS's parent company MERSCORP Holdings, Inc., and BNYM filed the action now before this Court, seeking to set aside Defendant's quiet title judgment. (*See* Dkt. No. 1.) Plaintiffs allege that Defendant intentionally violated California's quiet title statutes which require plaintiffs in quiet title actions to "name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought." Cal. Civ. Proc. Code § 762.020. (*See* Compl. ¶¶ 26, 53, 60.) Plaintiffs' Complaint requests:

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(1) declaratory judgment for violation of California's quiet title statutes (Cal. Civ. Proc. Code §§ 760.010–764.045) and to set aside the void quiet title judgment, (Compl. ¶¶ 59–67); and (2) declaratory judgment for violation of due process and to set aside the void quiet title judgment, (Compl. ¶¶68–76).

Defendant filed the instant Motion to Dismiss on July 31, 2015. (Dkt. No. 16.) Plaintiffs opposed Defendant's motion on August 24, 2015, (Dkt. No. 21), and Defendant timely replied on August 31, 2015, (Dkt. No. 23).

III. REQUEST FOR JUDICIAL NOTICE

When considering a motion to dismiss, a court typically does not look beyond the complaint in order to avoid converting a motion to dismiss into a motion for summary judgment. *See Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991). Notwithstanding this precept, a court may properly take judicial notice of (1) material which is included as part of the complaint or relied upon by the complaint, and (2) matters in the public record. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001).

A court may also take judicial notice pursuant to Federal Rule of Evidence 201(b). Under the rule, a judicially-noticed fact must be one which is "not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A court "must take judicial notice if a party requests it and the court is supplied with the necessary information." *See* Fed. R. Evid. 201(c)(2); *In re Icenhower*, 755 F.3d 1130, 1142 (9th Cir. 2014).

Defendant requests that this Court take judicial notice of eleven documents, including: (1) record searches from Delaware's, California's, Georgia's, and New York's Secretary of State websites, (RJN, Exs. 1–3, 9–11); (2) the May 23, 2012 Notice of Pendency of Action executed on May 15, 2012, and recorded in the official land records of Santa Barbara as Instrument Number 2012-0033831, (RJN, Ex. 4); (3) copies of two orders and one judgment from the state court quiet title action, (RJN, Exs. 5–7); and, (4) a

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Corporate Assignment of Deed of Trust for the Property, dated April 17, 2013, (RJN, Ex. 8).

Plaintiffs do not oppose Defendant's request. (*See generally* Opp'n.) In fact, Plaintiffs incorporated the state court's judgment for quiet title as an exhibit to their own Complaint. (*Compare* Compl., Ex. C, *with* RJN, Ex. 7.) *See Marder*, 450 F.3d at 448 (explaining that a "court may consider evidence on which the complaint 'necessarily relies'" and "may treat such a document as 'part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)'" (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003))).

Because Defendant requests that the Court take judicial notice of documents that are matters of public record and from sources whose accuracy cannot reasonably be questioned—and which Plaintiffs do not question—the Court **GRANTS** Defendant's request for judicial notice in its entirety. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (holding that judicial notice of court filings is proper); *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (granting motion for judicial notice of pleadings filed in a related state court action); *Wise v. Wells Fargo Bank, N.A.*, 850 F. Supp. 2d 1047, 1057 (C.D. Cal. 2012) (granting request for judicial notice of documents recorded in the Official Records of the Los Angeles County Recorder's Office); *L'Garde, Inc. v. Raytheon Space & Airborne Sys.*, 805 F. Supp. 2d 932, 937–38 (C.D. Cal. 2011) (granting judicial notice of records searches from the California Secretary of State website because "the accuracy of the results of records searches from the Secretary of State for the State of California corporate search website [could] be determined by readily accessible resources whose accuracy [could not] reasonably be questioned").

IV. LEGAL STANDARD

A. Motion to Dismiss for Lack of Subject Matter Jurisdiction

A party may contest subject matter jurisdiction pursuant to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). Fed. R. Civ. P. 12(b)(1). Under Rule 12(b)(1), the moving party may either attack the pleadings on their face or present extrinsic evidence for the district court's consideration. *Kohler v. CJP, Ltd.*, 818 F. Supp.

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2d 1169, 1172 (C.D. Cal. 2011) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) (noting that Rule 12(b)(1) jurisdictional attacks "can be either facial or factual")). A district court must determine whether an attack is facial or factual, as this determination governs the scope of the court's review. *See Kohler*, 818 F. Supp. 2d at 1172.

When deciding a Rule 12(b)(1) motion that attacks the complaint on its face, a court "must accept the allegations of the complaint as true." *Id*. (citing *Valdez v. United States*, 837 F. Supp. 1065, 1067 (E.D. Cal. 1993), *aff'd*, 56 F.3d 1177 (9th Cir. 1995)). But in deciding a Rule 12(b)(1) motion that raises a factual attack, courts "may weigh the evidence presented, and determine the facts in order to evaluate whether they have power to hear the case." *Id*. (citing *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987)); *see also White*, 227 F.3d at 1242 (when a motion relies on extrinsic evidence, a court "need not presume the truthfulness of the plaintiffs' allegations").

The more expansive standard for factual attacks is inappropriate "where issues of jurisdiction and substance are intertwined." *Roberts*, 812 F.2d at 1177. Thus, "[a] court may not resolve genuinely disputed facts where 'the question of jurisdiction is dependent on the resolution of factual issues going to the merits.'" *Id*. (quoting *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983)); *see also Rosales v. United States*, 824 F.2d 799, 803 (9th Cir. 1987). In such cases, the court must assume the truth of the complaint's allegations unless they are controverted by undisputed facts. *Kohler*, 818 F. Supp. 2d at 1173; *Roberts*, 812 F.2d at 1177. Additionally, where the question of jurisdiction "is so intertwined with the merits that its resolution depends on the resolution of the merits, 'the trial court should employ the standard applicable to a motion for summary judgment.'" *Careau Grp. v. United Farm Workers of Am., AFL-CIO*, 940 F.2d 1291, 1293 (9th Cir. 1991) (quoting *Augustine*, 704 F.2d at 1077). In such cases, the court must convert the motion into a Rule 12(b)(6) motion to dismiss or a Rule 56 summary judgment motion. *Islands, Inc. v. U.S. Bureau of Reclamation*, 64 F. Supp. 2d 966, 968 (E.D. Cal. 1999), *vacated on other grounds*, 10 Fed. App'x 491 (9th Cir. 2001).

The party asserting subject matter jurisdiction bears the burden of establishing it. If the moving party presents extrinsic evidence to defeat subject matter jurisdiction, the party asserting jurisdiction must present its own evidence to meet its burden. *See Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cty.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003); *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989).

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A federal court must determine its own jurisdiction even when there is no objection to it. *Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 342 (9th Cir. 1996). Jurisdiction must be determined from the face of the complaint. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1331, federal courts possess jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A case "arises under" federal law if a plaintiff's "well-pleaded complaint establishes either that federal law creates the cause of action" or that the plaintiff's "right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 13 (1983).

B. Motion to Dismiss for Failure to State a Claim Under Rule 12(b)(6)

Under Rule 8(a), a complaint must contain a "short and plain statement of the claim showing that the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). If a complaint fails to do this, the defendant may move to dismiss it under Rule 12(b)(6). Fed. R. Civ. P. 12(b)(6). Courts generally "consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, there must be "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility'" that the plaintiff is entitled to relief. *Id.*

C. Whether to Provide Plaintiffs Leave to Amend Complaint

A district court should provide leave to amend when it grants a motion to dismiss under Rule 12(b)(1) or Rule 12(b)(6) unless it is clear that the complaint could not be saved by any amendment. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,

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1031 (9th Cir. 2008) ("Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment."); *Snell v. Cleveland, Inc.*, 316 F.3d 822, 828, 828 n.6 (9th Cir. 2002) (explaining that courts have "the authority to grant leave to amend a complaint in order to cure defective allegations of jurisdiction" and "[d]ismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by amendment") (citing *Lee v. City of L.A.*, 250 F.3d 668, 692 (9th Cir. 2001)). Leave to amend, however, "is properly denied . . . if amendment would be futile." *Carrico v. City & Cty. of S.F.*, 656 F.3d 1002, 1008 (9th Cir. 2011).

V. DISCUSSION

Defendant moves to dismiss Plaintiffs' complaint on the grounds that: the Court lacks subject matter jurisdiction over the case under Federal Rule of Civil Procedure 12(b)(1) because the *Rooker-Feldman* doctrine applies, (Mot. at 4–6); Plaintiffs lack capacity to sue, (Mot. at 6–12); res judicata bars Plaintiffs' claims, (Mot. at 12–13); Plaintiffs fail to join an indispensable party under Federal Rule of Civil Procedure 12(b)(7), (Mot. at 13–14); and Plaintiffs fail to state sufficient facts to make a plausible claim for relief under Federal Rule of Civil Procedure 12(b)(6), (Mot. at 14–19).

Despite the fact that the *Rooker-Feldman* doctrine does not apply for the reasons discussed below, the Court finds, sua sponte, that it lacks subject matter jurisdiction over this action. The Court accordingly **GRANTS** Defendant's motion to dismiss with leave to amend.

A. The *Rooker-Feldman* Doctrine Does Not Apply Where Plaintiffs Were Not Parties in the State Court Action

Defendant argues that the *Rooker-Feldman* doctrine bars Plaintiffs' claims. (Mot. at 5–6.) Because Defendant does not raise factual questions, this is a facial attack on Plaintiffs' pleadings. The Court therefore "accept[s] the allegations of the complaint as true." *Kohler*, 818 F. Supp. 2d at 1172 (citing *Valdez*, 837 F. Supp. at 1067).

Under the *Rooker-Feldman* doctrine, a district court does not have subject matter jurisdiction to hear a direct appeal from a final judgment of a state court. *Noel v. Hall*,

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341 F.3d 1148, 1155 (9th Cir. 2003). The doctrine also forbids "de facto" appeals of state court decisions. *Id.* at 1158. But *Rooker-Feldman* does not apply when "the party against whom the doctrine is invoked was not a party to the underlying state-court proceeding." *Lance v. Dennis*, 546 U.S. 459, 464 (2006) (internal quotations omitted). *Rooker-Feldman* is thus inapplicable here where Defendant did not include Plaintiffs as parties to the quiet title action. (Compl. ¶¶ 40, 46; *see* Dkt. No. 11, Ex. B.)

Defendant's argument that "MERS was in privity with Southstar as the purported nominee of Southstar" is inapposite. (Mot. at 5.) The Supreme Court has explicitly held that the *Rooker-Feldman* doctrine does not bar plaintiffs from proceeding with an action filed in district court on the ground that those plaintiffs were in privity with a party which did not prevail in state court. *Lance*, 546 U.S. at 460. Defendant's argument that *Rooker-Feldman* applies to this case fails.

B. The Court Lacks Subject Matter Jurisdiction Over This Case Because Plaintiffs Fail to Allege State Action Sufficient to Assert a Colorable Constitutional Claim

Although Defendant's *Rooker-Feldman* argument fails, the Court is obligated to consider sua sponte whether it possesses subject matter jurisdiction and to dismiss the action if it lacks jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). Plaintiffs rely on their federal constitutional claims to allege that the Court has subject matter jurisdiction over this action. (Compl. ¶ 1 ("This Court has jurisdiction over this action under 28 U.S.C. § 1331, which confers original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United States Constitution.").) Plaintiffs assert that the quiet title judgment in the state court action violated Plaintiffs' rights under the Fifth and Fourteenth Amendments to the United States Constitution. (Compl. ¶¶ 68–76.)

A constitutional claim is not "colorable" if it "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or . . . is wholly insubstantial or frivolous." *Boettcher v. Sec'y of HHS*, 759 F.2d 719, 722 (9th Cir. 1985) (quoting *Bell v. Hood*, 327 U.S. 678, 682–83 (1946)). "Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is 'so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise

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completely devoid of merit as not to involve a federal controversy.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (quoting *Oneida India Nation of N.Y. v. Cty. of Oneida*, 414 U.S. 661, 666 (1974)).

Plaintiffs have not alleged a cause of action under the Fifth Amendment. *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008) ("[T]he Fifth Amendment's due process clause only applies to the federal government."); *see also Betts v. Brady*, 316 U.S. 455, 462 (1942) ("Due process of law is secured against invasion by the federal Government by the Fifth Amendment and is safe-guarded against state action in identical words by the Fourteenth."), *overruled on other grounds by Gideon v. Wainwright*, 372 U.S. 335 (1963). The state court judgment cannot violate Plaintiffs' Fifth Amendment rights where it is not federal government action.

The Fourteenth Amendment, on the other hand, prohibits state action that deprives a person of life, liberty, or property without due process of law. *Ingraham v. Wright*, 430 U.S. 651, 672 (1977). As discussed below, Plaintiffs allege a "wholly insubstantial" constitutional claim under the Fourteenth Amendment. *See Boettcher*, 759 F.2d at 722.

First, Plaintiffs' constitutional claim under the Fourteenth Amendment fails to allege state action. The Due Process Clause of the Fourteenth Amendment only applies to the conduct of state actors. *Jackson v. Brown*, 513 F.3d 1057, 1079 (9th Cir. 2008); *see Shelly v. Kraemer*, 334 U.S. 1, 13 (1948) ("Th[e Fourteenth] Amendment erects no shield against merely private conduct, however discriminatory or wrongful."). Plaintiffs' sole reference to state action appears when Plaintiffs allege that "Johnston acted in concert with the state court to obtain clear title to the Property in violation of MERS' rights, and thus the Prior Action and Judgment entered therein constitute state acts." (Compl. ¶ 74.)

"[S]tate action may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001) (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974)); *see also Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (discussing the "state-action requirement of the Fourteenth Amendment" and that it "requires *both* an alleged constitutional deprivation 'caused by the exercise of some right

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or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible,' *and* that 'the party charged with the deprivation must be a person who may fairly be said to be a state actor'" (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982))); *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 843 (9th Cir. 1999) ("[T]he plaintiff must establish some other nexus sufficient to make it fair to attribute liability to the private entity as a governmental actor. Typically, the nexus consists of some willful participation in a joint activity by the private entity and the government."); *Fonda v. Gray*, 707 F.2d 435, 437 (9th Cir. 1983) ("A private party may be considered to have acted under color of state law when it engages in a conspiracy or acts in concert with state agents to deprive one's constitutional rights."). Plaintiffs do not provide the Court with a single factual allegation to suggest that Defendant "acted in concert with the state court." (*See* Compl. ¶ 74.) Plaintiffs' assertion is merely conclusory and the Court need not accept it. *See Twombly*, 550 U.S. at 555 ("[A] formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.") (internal citations omitted).

In this case, it will be difficult, if not impossible, for Plaintiffs to allege state action here when "[California] courts have clearly indicated that a judgment obtained under [a suit to quiet title] is not binding as to a person 'known' to plaintiff to have an adverse claim, if that person is not named and served." *Gerhard v. Stephens*, 68 Cal.2d 864, 908 (Cal. 1968). If, as Plaintiffs claim, Defendant knew "that MERS claimed a record interest in the property adverse to [Defendant's] claim of title" and "did not name MERS as a defendant [in the state court action] despite [Defendant's] actual knowledge," (Compl. ¶ 46), then California state courts would presumably not find Defendant's state court judgment binding on Plaintiffs. (*See also* Opp'n at 19–20 (stating that the constitutionality issue "need never be reached" and "will not likely be reached in this case").)

Second, the "mere allegation" of a due process violation "is not sufficient to raise a 'colorable' constitutional claim to provide subject matter jurisdiction." *Hoye v. Sullivan*, 985 F.2d 990, 992 (9th Cir. 1993) ("Every disappointed claimant could raise such a due process claim, thereby undermining a statutory scheme designed to limit judicial review." (quoting *Holloway v. Schweiker*, 724 F.2d 1102, 1105 (4th Cir. 1984), *cert. denied*, 467

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U.S. 1217 (1984))). Plaintiffs allege the following facts[1]: MERS held and claimed various property rights and interests, (Compl. ¶ 70); the state court quiet title action divested MERS of these rights and interests without due process of law, (Compl. ¶ 72); the quiet title process established by the State of California requires "substantial involvement from the state, in particular the state court," and, as discussed above, Defendant allegedly "acted in concert with the state court," (Compl. ¶ 74).

Importantly, "[f]ederal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Plaintiffs' own Opposition suggests that their constitutional claims are "wholly insubstantial." Plaintiffs admit that the "Complaint only requests that the Court invalidate the California statute as alternative relief in the event the statute does not require notice to MERS. Since that notice is required on the face of the statute, this issue need never be reached." (Opp'n at 19; *see also* Opp'n at 20 n.5 (repeating that "the issue [challenging the constitutionality of a state statute] will not likely be reached in this case").)

Although Plaintiffs argue throughout their opposition that *Mortgage Electronic Registration Systems v. Robinson*, 45 F. Supp. 3d 1207, 1213 (C.D. Cal. 2014) (hereinafter, "*Robinson*") is squarely on point, the Court finds that *Robinson* does not save Plaintiffs' Complaint in this case. In *Robinson*, the plaintiffs "asserted both diversity and federal question jurisdiction." *Id.* at 1213. The defendants in that case failed to "explain how the availability of [] state-court remedies preclude[d] [the district court] from exercising diversity jurisdiction, the existence of which Defendants [did] not question." *Id.*

Unlike *Robinson*, Plaintiffs do not allege that the Court has diversity jurisdiction here. Plaintiffs' opposition to Defendant's motion to dismiss states in a conclusory fashion that "Plaintiffs properly invoked this Court's diversity and federal question jurisdiction." (Opp'n at 13.) The Court disagrees. Plaintiffs do not—at any point in their complaint—allege diversity jurisdiction. (Compl. ¶ 1.) In fact, Plaintiffs do not allege Plaintiff BNYM's citizenship for purposes of diversity. (*See* Compl. ¶ 9.) Plaintiffs only indicate that, as "reflected in Exhibit 9 of [Defendant's] Request for Judicial Notice—The Bank of New York Mellon (a plaintiff in this case) is registered

[1] The Court omits Plaintiffs' legal conclusions, couched as factual allegations in their Complaint. (*See* Compl. ¶¶ 69, 71, 73.)

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with the Secretary of State of California." (Opp'n at 17.) And Plaintiffs aver that Defendant resides at the Property in California. (Compl. ¶ 10.) As currently alleged, the Court does not have enough information to determine whether the parties are completely diverse. *See Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). (*See also* RJN, Ex. 9 (indicating that BNYM is registered with the Secretary of State of California).)

Plaintiffs fail to properly allege diversity or federal question jurisdiction. The Court therefore lacks subject matter jurisdiction over this matter.

VI. CONCLUSION

Because the Court lacks subject matter jurisdiction over this case, the Court **GRANTS** Defendant's motion to dismiss, with leave to amend.[2] If Plaintiffs intend to file an amended complaint, they must do so **by September 25, 2015 at 4 p.m.**

The Court VACATES the hearing set for Monday, September 14, 2015.

IT IS SO ORDERED.

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[2] Although it may be "difficult, if not impossible, for Plaintiffs to allege state action here," the Court grants leave to amend because amendment may not be futile with respect to diversity jurisdiction.