

1 Rachel C. Witcher (SBN 286515)  
2 GHIDOTTI | BERGER, LLP  
3 1920 Old Tustin Avenue  
4 Santa Ana, CA 92705  
5 Tel: (949) 427-2010  
6 Fax: (949) 427-2732  
7 Email: rwitcher@ghidottiberger.com

8 Attorneys for *Defendants* **ROBIN P. ARKLEY, CEO; SN SERVICING**  
9 **CORPORATION; ANDY CECERE** (erroneously sued as “ANDY CECERE, CEO,  
10 as Trustee of the Bungalow Series IV Trust”); and **US BANK TRUST NATIONAL**  
11 **ASSOCIATION AS TRUSTEE OF THE BUNGALOW SERIES IV TRUST**  
12 (erroneously sued as “US BANK TRUST NATIONAL ASSOCIATION”)

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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION**

PAUL JOHN HANSEN; and T J HERBST  
TRUST 1, a Non-Statutory Trust,

Plaintiff,

vs.

ROBIN P. ARKLEY, CEO; SN  
SERVICING CORPORATION; ANDY  
CECERE, CEO, as Trustee of the  
Bungalow Series IV Trust; US BANK  
TRUST NATIONAL ASSOCIATION,

Defendants

CASE NO.: 2:20-CV-02436-KJM-CKD

**REPLY IN SUPPORT OF  
DEFENDANTS’ MOTION TO  
DISMISS PLAINTIFFS’  
COMPLAINT**

**[Fed. R. Civ. P. 12(b)(6)]**

Date: June 9, 2021  
Time: 10:00 a.m.  
Ctrm: 3, 15th floor  
Judge: Hon. Kimberly J. Mueller  
Location: Robert T. Matsui Courthouse  
501 I Street  
Sacramento, CA 95814

Complaint Filed: December 9, 2020

1 Defendants ROBIN P. ARKLEY, CEO; SN SERVICING CORPORATION;  
2 ANDY CECERE (erroneously sued as “ANDY CECERE, CEO, as Trustee of the  
3 Bungalow Series IV Trust”); and US BANK TRUST NATIONAL ASSOCIATION  
4 AS TRUSTEE OF THE BUNGALOW SERIES IV TRUST (erroneously sued as  
5 “US BANK TRUST NATIONAL ASSOCIATION”) (together, “Defendants”)  
6 hereby submit the following reply in support of Defendants’ Motion to Dismiss the  
7 Complaint of Plaintiffs PAUL JOHN HANSEN (“Hansen”); and T J HERBST  
8 TRUST 1, a Non-Statutory Trust (the “Herbst Trust”) (together, “Plaintiffs”),  
9 pursuant to Federal Rules of Civil Procedure Rule 12(b)(6).

10 **I. INTRODUCTION**

11 Plaintiffs have filed this action to challenge a mortgage loan secured by deed  
12 of trust and in an effort to avoid foreclosure of the property located at 3635 Bellinger  
13 Court, North Highlands, CA 95660 (the “Subject Property”). However, Plaintiffs are  
14 strangers to the subject loan transaction and have no standing to assert claims against  
15 Defendants. Plaintiffs’ Complaint also fails because it is based on theories which  
16 have been widely rejected in this jurisdiction. Plaintiffs’ opposition fails to  
17 demonstrate that Plaintiffs have the ability to cure said defects through amendment of  
18 the Complaint. For these reasons, Defendants request that the Court grant the Motion  
19 to Dismiss without leave to amend.

20 **II. THE HERBST TRUST CANNOT MAINTAIN LITIGATION IN PRO SE**  
21 **AND HANSEN LACKS STANDING TO ASSERT CLAIMS AGAINST**  
22 **DEFENDANTS**

23 In the opposition, Plaintiffs describe the formation of the Herbst Trust by  
24 Thomas Herbst, but fail to address the authority cited by Defendants which  
25 demonstrates that a trust cannot be self-represented in litigation before this Court.  
26 Despite Plaintiffs’ contention that “Thomas Herbst did-not and has-not paid Paul J.  
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1 Hansen anything”, it remains true that the Herbst Trust must be represented by  
2 counsel to proceed in this litigation. Additionally, neither the Herbst Trust nor  
3 Hansen are borrowers under the subject loan and lack standing to assert claims  
4 pertaining to the loan. Based on these threshold defects, the Complaint should be  
5 dismissed without leave to amend.

6 **III. PLAINTIFFS’ REFERENCE TO THE “FAIR DEBT COLLECTION**  
7 **PRACTICES ACT” SHOULD BE DISREGARDED**

8 While Plaintiffs’ Complaint does not appear to contain an actual cause of  
9 action for violation of the Fair Debt Collection Practices Act (“FDCPA”), Plaintiffs’  
10 opposition continues to reference the statute. However, Plaintiffs fail to address the  
11 fact that they are not “consumers” as defined by the statute and are not objects of  
12 collection activity arising from a consumer debt by Defendants. *See Gomez v. Wells*  
13 *Fargo Home Mortg.*, 2011 WL 5834949, at \*5 (N.D. Cal. Nov. 21, 2011) (internal  
14 citations omitted); 15 U.S.C. § 1692a. Because Plaintiffs fail to meet these elements  
15 required to state a claim, the Court should disregard reference to the statute.

16 While Plaintiffs’ opposition claims that “formal requests to confirm  
17 indebtedness” were made on May 20, 2020 and May 28, 2020, Plaintiffs fail to  
18 establish that they have standing (as strangers to the loan transaction) to assert a  
19 claim under 15 U.S.C. § 1692g. Plaintiffs also fail to plead that Defendants took  
20 actions as “debt collectors” under the FDCPA. This omission alone shows that  
21 Defendants are unable to state a claim under the statute. *See Schlegel v. Wells Fargo,*  
22 *N.A.* (2013) 720 F.3d 1204, 1208-1210. Finally, Plaintiffs opposition argues that  
23 prior to asserting exemption from the FDCPA, Defendants must prove that they are  
24 valid holders of the debt by producing the “wet ink” instrument. Plaintiffs cite no  
25 authority to support this position and, as discussed at length in Defendants’ Motion to  
26 Dismiss, “[p]roduction of the original note is not required to proceed with a non-  
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1 judicial foreclosure.” *Hafiz v. Greenpoint Mortg. Funding, Inc.*, 652 F.Supp.2d 1039,  
2 1043 (N.D. Cal. 2009) (citing *Patalunan v. Reunion Mortgage, Inc.*, 2009 WL  
3 961995, at \*1 (N.D. Cal. 2009). Even assuming Plaintiffs were borrowers under the  
4 subject loan (which they are not), borrowers do not have a right to bring an action to  
5 “determine whether the owner of a Note has authorized its nominee to initiate the  
6 foreclosure process.” *Gomes v. Countrywide Home Loans, Inc.* (2011) 192  
7 Cal.App.4th 1149, 1154-1155. In California, courts do not allow such preemptive  
8 suits because they would result in the impermissible interjection of the courts into a  
9 nonjudicial foreclosure scheme enacted by the California Legislature. *Saterbak v.*  
10 *JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 814. The FDCPA simply  
11 does not provide Plaintiffs with an avenue to bring a preemptive suit to challenge  
12 foreclosure. Based on the foregoing, Plaintiffs cannot state a claim for violation of  
13 the FDCPA.

14 **IV. PLAINTIFFS’ “SHOW ME THE NOTE” THEORY HAS BEEN**  
15 **WIDELY REJECTED AND CANNOT BE THE BASIS FOR AN**  
16 **ALLEGED CIVIL RIGHTS VIOLATION**

17 Plaintiffs’ opposition fails to address, and thereby effectively concedes, that  
18 Plaintiffs’ claim under 42 U.S.C. § 1983 cannot be alleged against Defendants who  
19 are clearly not government actors or otherwise acting under color of state law. *See*  
20 *Caviness v. Horizon Community Learning Center, Inc.* (9th Cir. 2010) 590 F.3d 806,  
21 812. Plaintiffs’ opposition also fails to demonstrate that Plaintiffs are members of a  
22 protected class and the conspiracy (if alleged) was based on a class-based or other  
23 discriminatory motive as required to state a claim under 42 U.S.C. §§ 1985 and 1986.  
24 Instead, Plaintiffs double-down on their theory that Defendants are required to  
25 produce the “wet-ink” signature of the underlying security interest. However, as  
26 discussed above, Plaintiffs not only lack standing to make such a claim, but this  
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1 “show me the note” theory has been widely rejected in this jurisdiction. Plaintiffs  
2 argue “*Marbury v. Madison*” in support of their theory. However, *Marbury v.*  
3 *Madison* (1803) 5 U.S. 137, which established the principle of judicial review, has no  
4 application to the present case and does not provide Plaintiffs with any standing to  
5 pursue the “show me the note” theory. Therefore, Plaintiffs’ “civil rights” claims  
6 should be dismissed without leave to amend.

7 **V. CONCLUSION**

8 In their opposition, Plaintiffs have affirmed the purpose of this litigation –  
9 “[t]he issue at hand is whether Defendants have legal and justiciable standing to  
10 foreclose as proven by possession of Plaintiff’s original “wet-signed” monitory  
11 instrument.” However, Plaintiffs are not parties to the subject loan and the clear  
12 authority presented by Defendants demonstrates that such preemptive suits  
13 challenging foreclosure are not authorized in this state. For all the foregoing reasons,  
14 the Complaint should be dismissed without leave to amend.

15  
16 Date: June 2, 2021

GHIDOTTI | BERGER, LLP

17  
18 /s/ Rachel C. Witcher

Rachel C. Witcher

Attorneys for *Defendants* **ROBIN P.**

**ARKLEY, CEO; SN SERVICING**

**CORPORATION; ANDY CECERE**

(erroneously sued as “ANDY CECERE,

CEO, as Trustee of the Bungalow Series

IV Trust”); and **US BANK TRUST**

**NATIONAL ASSOCIATION AS**

**TRUSTEE OF THE BUNGALOW**

**SERIES IV TRUST** (erroneously sued

as “US BANK TRUST NATIONAL

ASSOCIATION”)

**CERTIFICATE OF SERVICE**

I, Claudia Hanson, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. I am employed with Ghidotti | Berger, LLP whose address is 1920 Old Tustin Avenue, Santa Ana, CA 92705. On June 2, 2021, I served a copy of the following:

- **REPLY IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS PLAINTIFFS’ COMPLAINT**

**BY OVERNIGHT DELIVERY** I am readily familiar with the practice of Ghidotti | Berger LLP for the collection and processing of overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by USPS PRIORITY MAIL EXPRESS for overnight delivery.

Paul John Hansen  
PO Box 314  
Repton, AL 36475  
*Plaintiff in Pro Se*

T J Herbst Trust 1  
PO Box 314  
Repton, AL 36475  
*Plaintiff in Pro Se*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Proof of service was executed on June 2, 2021, at Santa Ana, California.

/s/ Claudia Hanson

Claudia Hanson