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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 Sandra Todd,

10 Plaintiff,

11 v.

12 JPMorgan Chase Bank, NA, et al.,

13 Defendants.

No. CV-12-01643-PHX-NVW

**ORDER**

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16 Before the Court are Defendant JPMorgan Chase Bank's Motion to Dismiss (Doc.  
17 6) and Defendant Cal-Western Reconveyance Corporation's Motion to Dismiss (Doc. 8).  
18 For the reasons stated below, the Court will grant both Motions to Dismiss, and dismiss  
19 this case against all defendants with prejudice.

20 **I. Background**

21 In November 2002, Plaintiff borrowed \$147,175 by executing a Deed of Trust  
22 secured by real property in Chandler, Arizona. On February 9, 2009, Defendant Cal-  
23 Western ("Cal-Western") was appointed the successor trustee under Plaintiff's Deed of  
24 Trust. Plaintiff defaulted on the loan, and Cal-Western recorded a Notice of Trustee's  
25 Sale Under Deed of Trust on February 23, 2009. At the resulting trustee's sale on June  
26 28, 2010, Plaintiff's home was purchased by Chase Manhattan, a predecessor of  
27 Defendant JPMorgan Chase Bank ("JPMorgan"). A Trustee's Deed Upon Sale was  
28 recorded on July 21, 2010. JPMorgan subsequently transferred its interest in the property

1 to Defendant Housing and Urban Development (“HUD”). The Plaintiff filed a lawsuit in  
2 this District on January 20, 2012, (CV12-00129-PHX-FJM), asserting claims for quiet  
3 title and breach of contract. Plaintiff subsequently filed this action in the Superior Court  
4 of Arizona in Maricopa County on June 28, 2012 (Doc. 1-1), alleging fraud and  
5 racketeering activity against all Defendants arising from the same operative facts as her  
6 first lawsuit. JPMorgan removed the case to this Court on August 1, 2012, on the basis of  
7 diversity jurisdiction (Doc. 1). The District Court then dismissed all of the claims in the  
8 Plaintiff’s first lawsuit and entered judgment for the Defendants, (CV12-00129-PHX-  
9 FJM, Docs. 33, 49).

10 **II. Judicial Notice**

11 On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), all  
12 allegations of material fact are assumed to be true and construed in the light most  
13 favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir.  
14 2009). In general, courts may not consider any material beyond the pleadings when  
15 ruling on a Rule 12(b)(6) motion. One exception, however, is that a court may take  
16 judicial notice of matters of public record under Federal Rule of Evidence 201. *Lee v.*  
17 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). Courts do not have to accept  
18 alleged facts as true when they contradict those matters subject to judicial notice. *Sears,*  
19 *Roebuck & Co. v. Metropolitan Engraver, Ltd.*, 245 F.2d 67, 70 (9th Cir. 1956).

20 In this case, the Court will take judicial notice of the Notice of Substitution of  
21 Trustee, appointing Cal-Western as trustee (Doc. 8-2 at 8), the Notice of Trustee’s Sale  
22 Under Deed of Trust (Doc. 8-2 at 10), and the Trustee’s Deed Upon Sale (Doc. 8-2 at  
23 13), all matters of public record.

24 **III. Cal-Western’s Motion to Dismiss**

25 Prior to the foreclosure of the Deed of Trust, Cal-Western was the trustee of  
26 Plaintiff’s trust deed. Under A.R.S. §33-807:

27 The trustee need only be joined as a party in legal actions pertaining to a  
28 breach of the trustee’s obligation under this chapter or under the deed of

1 trust. . . . If the trustee is joined as a party in any other action, the trustee is  
2 entitled to be immediately dismissed and to recover costs and reasonable  
3 attorney fees from the person joining the trustee.

4 Plaintiff has not alleged that Cal-Western breached any obligation under the Deed of  
5 Trust in this case. To the extent that Plaintiff has based her claims on allegations that  
6 Cal-Western did not have authority to sell the property, her claims are barred by A.R.S. §  
7 33-820. That section entitles Cal-Western, as trustee, to “when acting in good faith, have  
8 the absolute right to rely upon any written direction or information furnished to him by  
9 the beneficiary.” A.R.S. § 33-820. As a result, all claims against Cal-Western are  
10 dismissed with prejudice.

#### 11 **IV. Res Judicata**

12 The Plaintiff’s remaining claims are barred by the res judicata effect of the District  
13 Court’s earlier adjudication of Plaintiff’s first lawsuit (CV12-00129-PHX-FJM, Docs. 33,  
14 49). Where this Court’s jurisdiction is based on diversity of citizenship, as here, the res  
15 judicata law of Arizona applies. *See Priest v. American Smelting & Refining Co.*, 409  
16 F.2d 1229, 1231 (9th Cir. 1969). In Arizona, res judicata will preclude a claim when a  
17 former judgment on the merits was rendered by a court of competent jurisdiction and the  
18 matter now in issue between the same parties was, or might have been, determined in the  
19 former action. *Hall v. Lalli*, 194 Ariz. 54, 57, 977 P.2d 776, 779 (Ariz. 1999). Arizona  
20 follows the “same evidence test” in which “the plaintiff is precluded from subsequently  
21 maintaining a second action based upon the same transaction, if the evidence needed to  
22 sustain the second action would have sustained the first action.” *Pettit v. Pettit*, 218 Ariz.  
23 529, 532, 189 P.3d 1102, 1105 (Ariz. Ct. App. 2008) (citation omitted).

24 The Plaintiff’s prior action named the same Defendants and involved the same  
25 foreclosure as this lawsuit. The District Court’s dismissal of all Plaintiff’s claims in  
26 CV12-00129-PHX-FJM was a judgment on the merits with respect to Plaintiff’s  
27 allegations that (1) the Deed of Trust was invalid; (2) that the Trustee’s Sale was  
28 fraudulent and so ineffective; (3) that the Trustee’s Deed Upon Sale was falsely created;

1 (4) that the Defendants lacked any valid interest in the property and so could not  
2 foreclose; (5) that the Defendants participated in fraudulent “robosigning” and (6) that  
3 Defendants’ claims to interest in the property were fraudulent. (CV12-00129-PHX-FJM,  
4 Doc. 6 ¶ 3, 5, 32, 35-37, 40-42, 49-52, 66, 68-70).

5 All of Plaintiff’s claims in this case arise from those allegations, now adjudicated.  
6 Plaintiff again claims that the Trustee’s sale was fraudulent, that the Defendants lacked  
7 authority to foreclose on the property, and that JPMorgan’s purchase of the property was  
8 fraudulent. Plaintiff now contends that those acts give rise to new causes of action for  
9 fraud and racketeering, but those causes of action depend on the same evidence. The  
10 fraud claim can be reduced to the allegation that that the Defendants unlawfully  
11 attempted to deprive Plaintiff of her property. (Doc. 1-1 at 10, ¶ 81-83.) The RICO  
12 claim depends on the allegation that Defendants record fraudulent Trustee’s Deeds and  
13 fraudulently claim interest in properties they do not own. (Id. at 11, ¶ 89-91.)

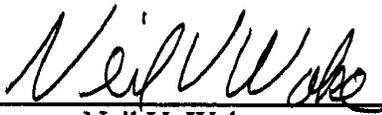
14 The only allegation of wrongdoing in the Complaint that could be attributed to  
15 HUD – that it fraudulently acquired the property – is also precluded. (Id. at 8, ¶ 65-66,  
16 70.) HUD, also named as a defendant in Plaintiff’s first lawsuit, was a transferee of the  
17 property, having acquired the property from JPMorgan following the trustee’s sale.  
18 Plaintiff’s claims with respect to that sale are precluded, and no action against HUD can  
19 be sustained without those claims. In short, Plaintiff has not alleged any claims she did  
20 not or could not have alleged in the earlier complaint, and res judicata precludes her  
21 claims in this lawsuit. This is the third lawsuit Plaintiff has initiated arising from the  
22 same incident; further amendment of the Complaint would be futile, so the Complaint is  
23 dismissed without leave to amend and the case is now terminated.

24 IT IS THEREFORE ORDERED that Defendant JPMorgan Chase Bank’s Motion  
25 to Dismiss (Doc. 6), and Defendant Cal-Western Reconveyance Corporation’s Motion to  
26 Dismiss (Doc. 8) are granted.

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IT IS FURTHER ORDERED that the clerk enter judgment dismissing this action as to all defendants with prejudice. The clerk shall terminate the case.

Dated this 20th day of September, 2012.

  
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Neil V. Wake  
United States District Judge