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**United States District Court  
Central District of California**

MARGARITA J. MORENO,  
Plaintiff,  
  
v.  
FEDERAL NATIONALMORTGAGE  
ASSOCIATION; NORTHWEST  
TRUSTEE SERVICES, INC.; GREEN  
TREE SERVICING, LLC; MERSCORP  
HOLDINGS, INC.; OCWEN  
FINANCIAL CORPORATION f/k/a  
EXECUTIVE TRUSTEE SERVICES,  
LLC dba OFC f/k/a ETS SERVICE;  
GMAC MORTGAGE, LCC; DONNA  
YEOWON OH; SHAHED  
SHAHANDEH; RCO LEGAL; PS; DOES  
1–10, inclusive,  
Defendants.

Case No. 2:15-cv-00199-ODW

**ORDER GRANTING  
DEFENDANTS’ MOTION TO  
DISMISS [9]**

**I. INTRODUCTION**

Plaintiff Margarita J. Moreno (“Moreno”) brought this suit against the various debt collection agencies involved in her mortgage default and the subsequent foreclosure and sale of her property. Defendants Green Tree Servicing LLC (“Green

1 Tree”), Mortgage Electronic Registration Systems, Inc. (erroneously sued as Merscorp  
2 Holdings, Inc.) (“MERS”), Federal National Mortgage Association (“Fannie Mae”),  
3 and, by means of joinder, Northwest Trustee Services, Inc. (“Northwest”) (collectively  
4 “Defendants”) now move to dismiss Moreno’s claims for insufficient factual  
5 pleadings and because an earlier judgment against her in a unlawful detainer action  
6 bars the current action under res judicata. As a result of the res judicata bar to  
7 subsequent claims concerning Moreno’s foreclosure and the statute of limitations bar  
8 to all other claims, the Court **GRANTS** Defendants’ Motion to Dismiss with  
9 prejudice.<sup>1</sup> (ECF No. 9.)

## 10 **II. FACTUAL BACKGROUND**

11 On April 3, 2007, Moreno obtained a home loan in the original principal  
12 amount of \$258,000 from Community Lending Incorporated. (Mot. 2.) A Deed of  
13 Trust secured Moreno’s loan, encumbering real property located at 9321 San Miguel  
14 Avenue, South Gate, California (“Property”). (*Id.*; RJN, Ex. 1.) The listed  
15 beneficiary of the Deed of Trust was MERS and they were irrevocably granted the  
16 power of sale for the Property should the necessary payments fail to be made. (RJN,  
17 Ex. 1.)

18 On May 14, 2009, because Moreno had defaulted on her loan, a Notice of  
19 Default was recorded and a Substitution of Trustee was filed naming ETS Services,  
20 LLC as Trustee. (*Id.*, Exs. 2–3.) On February 22, 2011, the Deed of Trust was  
21 properly assigned to GMAC Mortgage, LLC, and then to Green Tree on June 28,  
22 2013. (*Id.*, Exs. 4–5.) On August 2, 2013, another Notice of Default was recorded  
23 showing Moreno was \$57,051.18 in default. (*Id.*, Ex. 6.) On December 19, 2013, a  
24 Notice of Trustee’s Sale was recorded after Moreno failed to address her default. (*Id.*,  
25 Ex. 7.) On January 15, 2014, the foreclosure auction was held and Fannie Mae  
26 purchased the Deed of Trust. (*Id.*, Ex. 8.) On January 29, 2014, the Trustee’s Deed  
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28 <sup>1</sup> After carefully considering the papers filed in support of and in opposition to the Motion, the Court  
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Upon Sale was recorded. (*Id.*) Following the sale, Moreno remained in default and  
2 refused to vacate the Property. (*Id.*, Ex. 9.) On February 25, 2014, Fannie Mae filed  
3 an unlawful detainer action against Moreno in the Los Angeles Superior Court of  
4 California. (*Id.*) On April 21, 2014, judgment was entered in favor of Fannie Mae,  
5 granting restitution and legal possession of the Property. (*Id.*, Ex. 10.)

6 On January 9, 2015, Moreno filed the current action against Defendants and  
7 several others, alleging that (1) Defendants falsely represented themselves in the  
8 default and foreclosure proceedings; (2) did not have the authority or right to conduct  
9 such proceedings; and (3) that their conduct was unconscionable and had the natural  
10 result of harassing, oppressing, and abusing her in connection with their collection of  
11 the debt.<sup>2</sup> (Compl. ¶¶ 42–72, 78–90.) Moreno asserts that these acts are violations of  
12 15 U.S.C. §§ 1692d–g and, in accordance with § 1692k, federal jurisdiction over her  
13 claims exists. (*Id.*) On March 23, 2015, Defendants, excluding Northwest, filed a  
14 Motion to Dismiss and Request for Judicial Notice. (ECF Nos. 9, 9 Attach. 1–2.)  
15 Soon thereafter, Northwest joined the Motion to Dismiss. (ECF No. 14.) Moreno has  
16 failed to submit any opposition. Defendants’ Motion to Dismiss is now before the  
17 Court for consideration.

### 18 III. LEGAL STANDARD

19 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable  
20 legal theory or insufficient facts pleaded to support an otherwise cognizable legal  
21 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To  
22 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading  
23 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*  
24 *Jones*, 319 F.3d 483, 484 (9th Cir. 2003). The factual “allegations must be enough to  
25 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550  
26 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter,

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28 <sup>2</sup> Moreno’s Complaint contains various other allegations regarding the conduct of Defendants but the Court finds that they essentially boil down to the abovementioned claims.

1 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*  
2 *Iqbal*, 556 U.S. 662, 678 (2009).

3 The determination whether a complaint satisfies the plausibility standard is a  
4 “context-specific task that requires the reviewing court to draw on its judicial  
5 experience and common sense.” *Id.* at 679. A court is generally limited to the  
6 pleadings and must construe all “factual allegations set forth in the complaint . . . as  
7 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d  
8 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory allegations,  
9 unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden*  
10 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

11 As a general rule, a court should freely give leave to amend a complaint that has  
12 been dismissed. Fed. R. Civ. P. 15(a). But a court may deny leave to amend when  
13 “the court determines that the allegation of other facts consistent with the challenged  
14 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*  
15 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see Lopez v. Smith*, 203 F.3d  
16 1122, 1127 (9th Cir. 2000).

#### 17 IV. DISCUSSION

##### 18 A. Statute of Limitations Bars the Majority of the Current Action

19 A claim for violations of the Federal Debt Collections Practice Act (“FDCPA”)  
20 may only be brought “within one year from the date on which the violation occurs.”  
21 15 U.S.C § 1692k(d). Though Defendants do not raise this argument in their Motion,  
22 the Court recognizes that the vast majority of the events that took place through  
23 Moreno’s default and foreclosure process occurred more than one year before the  
24 filing date. (RJN, Exs. 1–9.) Because Moreno filed her Complaint on January 9,  
25 2015, the only events still within the statute of limitations were the foreclosure  
26 auction, January 15, 2014, and recording the Trustee’s Deed Upon Sale, January 29,  
27 2014. Therefore, **all claims other than those against Northwest and Fannie Mae**  
28 **regarding actions that occurred after January 9, 2014, are DISMISSED.** The

1 remaining claims survive because the alleged conduct involves the foreclosure  
2 auction, the sale of the Deed of Trust to Fannie Mae by Northwest, and the conduct  
3 leading up to, and including, Fannie Mae’s unlawful detainer suit. (*Id.*, Exs. 8–10.)

4 **B. Res Judicata Bars the Remaining Claims in the Current Action**

5 While the federal court system is distinct and separate from that of a state, 28  
6 U.S.C. § 1738 requires that federal courts give full faith and credit to state court  
7 judgments. *E.g.*, *San Remo Hotel, L.P. v. City & Cnty. Of San Francisco*, 545 U.S.  
8 323, 336 (2005). As a result, a federal court must give a state court judgment the  
9 same preclusive effect as would be given by the same state’s courts. *Migra v. Warren*  
10 *City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). “This statute has long been  
11 understood to encompass the doctrines of res judicata, or ‘claim preclusion,’ and  
12 collateral estoppel, or ‘issue preclusion.’” *Id.*; *see also Allen v. McCurry*, 449 U.S. 90,  
13 94–96 (1980). These doctrines operate as a complete bar to re-litigating the same case  
14 after a final judgment has been entered; the introduction of different requests for relief  
15 or different legal theories of recovery does not diminish the preclusive effect of the  
16 state court judgment. *Clark v. Yosemite Cmty. Coll. Dist.*, 785 F.2d 781, 786 (9th Cir.  
17 1986).

18 A defendant is entitled to raise the issue of preclusion as an affirmative defense  
19 by way of a motion to dismiss. *E.g.*, *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th  
20 Cir. 1984). The doctrines of res judicata and collateral estoppel ensure justice by  
21 preventing repeated litigation of issues that have previously been resolved by the  
22 courts. *See San Remo Hotel*, 545 U.S. at 336 (“The general rule implemented by the  
23 full faith and credit statute . . . predates the Republic.”). “Under res judicata, a final  
24 judgment on the merits of an action precludes the parties . . . from re-litigating issues  
25 that were or could have been raised in that action.” *Allen*, 449 U.S. at 94.  
26 Accordingly, when a party has had a fair opportunity to litigate an issue and does not  
27 succeed, that party may not disguise the claim as something else or bring essentially  
28 the same claim in a different court in hopes of burdening defendant once more.

1 Because the unlawful detainer action was decided in California state court, this  
2 Court must apply California’s laws of res judicata. *See Parsons Steel, Inc. v. First*  
3 *Alabama Bank*, 474 U.S. 518, 523–25 (1986) (“We hold, therefore, that the Court of  
4 Appeals erred by refusing to consider the possible preclusive effect, under Alabama  
5 law, of the state-court judgment.”); *see also Thomas v. Hous. Auth. Of The Cnty. Of*  
6 *Los Angeles*, No. CV 04-6970MMMRCX, 2005 WL 6136432, at \*4 (C.D. Cal. June  
7 3, 2005) (“Because the judgment at issue here was rendered by a California state  
8 court, California’s laws of res judicata and claim preclusion applies.”). Under  
9 California law, res judicata applies if there is: “(1) an identity of claims, (2) a final  
10 judgment on the merits, and (3) identity or privity between the parties.” *Owens v.*  
11 *Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001).

12 1. *The Claims Herein Are the Same as in the Prior Judgment*

13 The only claims remaining are those alleging that Northwest was not a trustee  
14 and had no authority to sell the Deed of Trust to Fannie Mae, and similarly that after  
15 the purchase Fannie Mae falsely represented that it owned the Property. In order to  
16 succeed in its unlawful detainer action, Fannie Mae “had prove that the property was  
17 sold in accordance with section 2924 of the Civil Code under a power of sale and that  
18 title under the sale has been duly perfected.” *Malkoskie v. Option One Mortgage*  
19 *Corp.*, 188 Cal. App. 4th 968, 794 (2010). Essentially, Fannie Mae had to prove that  
20 it acted properly and with authority to take possession of the Property.

21 The state court issued a judgment in favor of Fannie Mae and granted legal  
22 possession of the Property, an outcome showing that the court “necessarily  
23 adjudicated issues relating to the propriety of the foreclosure.”<sup>3</sup> *See Castle v. Mortg.*  
24 *Elec. Registration Sys., Inc.*, No. EDCV 11-00538 VAP, 2011 WL 3626560, at \*9  
25 (C.D. Cal. Aug. 16, 2011). Additionally, “[u]nder such unlawful detainer statutes[,]  
26 [validity of] title to the extent required by section 1161a [Code of Civil Procedure] not  
27 only may but *must* be tried.” *Bliss v. Security-First Nat. Bank of Los Angeles*, 81 Cal.

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<sup>3</sup> For this reason, collateral estoppel would also be appropriate for the current action.

1 App. 2d 50, 58 (1947); *see Malkoskie*, 188 Cal. App. 4th at 974. Therefore, Moreno’s  
2 claims could have easily been brought into the unlawful detainer action because the  
3 court based its judgment on the analysis of the same facts necessary for both claims.<sup>4</sup>  
4 Because “the Unlawful Detainer Action and the instant action seek to vindicate the  
5 same primary right,” Moreno already had the opportunity to make her claims heard.  
6 *Castle*, 2011 WL 3626560, at \*9.

7 *2. A Final Judgment on the Merits Was Entered*

8 The Los Angeles Superior Court entered judgment against Moreno in Fannie  
9 Mae’s unlawful detainer action on April 21, 2014, declaring Fannie Mae the lawful  
10 possessor of the Property. (RJN, Ex. 10.) Moreno did not appeal this judgment and  
11 the appeal period has since ended, making this the final judgment regarding the  
12 propriety of Fannie Mae’s possession of the Property.

13 *3. The Identity of the Parties in Both Actions Are the Same*

14 Moreno was the defendant in the unlawful detainer action previously brought in  
15 state court by Fannie Mae and res judicata is asserted against her. *See Castle*, 2011  
16 WL 3626560 at \*9 (holding parties were the same for the purpose of res judicata when  
17 defendant had won an unlawful detainer action against plaintiff in state court, even  
18 though some defendants were not a party to the state action); *Malkoskie*, 188 Cal.  
19 App. 4th at 826 (holding that a non-similar defendant, who is being sued on the same  
20 grounds as the plaintiff from the unlawful detainer, “is also entitled to use the  
21 judgment as a shield, despite not having been a party to the unlawful detainer.”).  
22 Similar to the new defendants in *Castle* and *Malkoskie*, Northwest is a new party in  
23 the Complaint and is being sued on the exact same bases as Fannie Mae but is still  
24 entitled to assert res judicata as a defense against Moreno’s claims.

25 Thus, all of the necessary elements of res judicata have been established. The

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27 <sup>4</sup> While 15 U.S.C. § 1692k(d) expressly provides that federal courts will have jurisdiction over these  
28 claims regardless of the amount in controversy, it also states that actions may be brought “in any  
other court of competent jurisdiction.” In this case, the Los Angeles Superior Court of California  
was “of competent jurisdiction.”

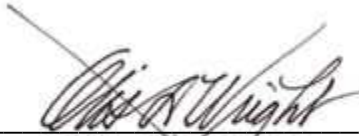
1 judgment issued in the unlawful detainer action bars all claims by Moreno that assert  
2 Fannie Mae and Northwest acted fraudulently and without authority in the process of  
3 foreclosing on the Property.

4 **V. CONCLUSION**

5 For the reasons discussed above, the Court **GRANTS** Defendants' Motion to  
6 Dismiss with prejudice.<sup>5</sup> (ECF No. 9.)

7 **IT IS SO ORDERED.**

8  
9 July 23, 2015

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12 **OTIS D. WRIGHT, II**  
13 **UNITED STATES DISTRICT JUDGE**

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25 <sup>5</sup> Dismissal was also proper on the grounds that the Complaint was completely void of any facts  
26 describing Defendants' conduct. Furthermore, Defendants offer several additional persuasive  
27 arguments as to why their Motion should be granted that the Court acknowledges but, having found  
28 dismissal to be proper on other grounds, does not discuss. (Mot. 4-10.) The Court also  
acknowledges that Moreno failed to file an opposition to Defendants' Motion to Dismiss but, instead  
of granting dismissal automatically in accordance with L.R. 7-12, the Court wished to put the  
underlying issue behind Moreno's suit to rest and prevent its return in the future.