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

DARYOUSH JAVAHERI,
Plaintiff,

v.

DEUTSCHE MELLON NATIONAL
ASSET, LLC; US BANK NA. LSF9
MASTER PARTICIPATION TRUST;
DOES 1–100, inclusive; and ROE
CORPORATIONS, 1–100, inclusive,
Defendants.

Case No. 2:18-cv-6615-ODW(FFM)

**ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS WITH PREJUDICE [10]**

Presently before the Court is Defendant U.S. Bank Trust NA’s Motion to Dismiss Plaintiff Daryoush Javaheri’s Complaint. (ECF No. 10.) For the following reasons, Defendant’s Motion to Dismiss is **GRANTED with PREJUDICE**.¹

I. BACKGROUND

The instant matter represents Plaintiff’s fourth “bite at the apple”—he has twice argued against what he perceives as wrongful foreclosure before the Court, and once before Judge Dolly M. Gee. (Nos. 10-cv-08185-ODW (FFM) (“*Javaheri I*”), 11-cv-

¹ After carefully considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 10072-ODW (FFM), 15-cv-04762-DMG (PLA)) In *Javaheri I*, Plaintiff sued JP
2 Morgan Chase N.A. (“JP Morgan”), alleging: (1) wrongful foreclosure; (2) violation
3 of California Civil Code section 2923.5; (3) unjust enrichment; (4) RESPA and TILA
4 violations; (5) no contract; (6) fraud and concealment; (7) quiet title; (8) declaratory
5 and injunctive relief; (9) slander of title; and (10) intentional infliction of emotional
6 distress. (Complaint at 1, *Javaheri I*, No. 10-cv-08185-ODW (FFM) (C.D. Cal. Oct.
7 29, 2010)).

8 On December 11, 2012, the Court granted JP Morgan’s Motion for Summary
9 Judgment. (Order Granting Defs.’ Mot. Summ. J., *Javaheri I*, No. 10-cv-08185-ODW
10 (FFM), (C.D. Cal. Dec. 11, 2012), ECF No. 127.) Plaintiff appealed one month later,
11 and on February 21, 2014, the United States Court of Appeals for the Ninth Circuit
12 affirmed the Court’s Order Granting Summary Judgment. (Order from Court of
13 Appeals for the Ninth Circuit, *Javaheri I*, No. 10-cv-08185-ODW (FFM), ECF No.
14 134.)

15 Defendant U.S. Bank is the successor beneficiary to JP Morgan, having
16 acquired the subject property through a public auction on May 31, 2016. (Motion to
17 Dismiss (“Mot”) 3; ECF No. 10.)

18 Plaintiff sued Defendants on June 14, 2018, in the Superior Court of California,
19 County of Los Angeles. (Notice of Removal, ECF No. 1.) In his Complaint, Plaintiff
20 alleges: (1) wrongful foreclosure; (2) to set aside trustee’s sale; (3) to void or cancel
21 trustee’s deed upon sale; (4) to void or cancel assignment of deed of trust; (5) quiet
22 title; and (6) relief for eviction and related relief. (*Id.*) Defendants removed the matter
23 to the Court on August 1, 2018, and Defendant U.S. Bank moved to dismiss on
24 August 8, 2018. (*Id.*; Mot.)

25 On March 23, 2019, the Court ordered Plaintiff to Show Cause why Defendant
26 Deutsche Mellon National Asset LLC (“Deutsche”) should not be dismissed for lack
27 of service. On April 2, 2019, after the Plaintiff failed to respond to the Order to Show
28 Cause, the Court dismissed Deutsche from the case. (Order, ECF No. 24.)

II. LEGAL STANDARD

1
2 “To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6),
3 a complaint generally must satisfy only the minimal notice pleading requirements of
4 Rule 8(a)(2).” *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). Rule 8(a)(2)
5 requires “a short and plain statement of the claim showing that the pleader is entitled
6 to relief.” Fed. R. Civ. P. 8(a)(2). For a complaint to sufficiently state a claim, its
7 “[f]actual allegations must be enough to raise a right to relief above the speculative
8 level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Dismissal under a
9 12(b)(6) motion can be based on “the absence of sufficient facts alleged under a
10 cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
11 Cir. 1990). To overcome a 12(b)(6) motion, “a complaint must contain sufficient
12 factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). The
14 plausibility standard “asks for more than a sheer possibility that a defendant has acted
15 unlawfully. Where a complaint pleads facts that are merely consistent with a
16 defendant’s liability, it stops short of the line between possibility and plausibility of
17 entitlement of relief.” *Id.* (internal citations and quotation marks omitted).

18 When considering a 12(b)(6) motion, a court is generally limited to considering
19 material within the pleadings and must construe “[a]ll factual allegations set forth in
20 the complaint . . . as true and . . . in the light most favorable to [the plaintiff].” *Lee v.*
21 *City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (quoting *Epstein v. Wash.*
22 *Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996)). A court is not, however, “required to
23 accept as true allegations that are merely conclusory, unwarranted deductions of fact,
24 or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988
25 (9th Cir. 2001).

III. DISCUSSION

26
27 In addition to its Motion to Dismiss, Defendant has requested that the Court
28 take judicial notice of several documents. (Req. for Judicial Notice (“RJN”), ECF

1 No. 11.) Accordingly, the Court will address whether judicial notice is appropriate
2 before turning to the merits of Defendant’s Motion to Dismiss.

3 **A. REQUEST FOR JUDICIAL NOTICE**

4 Federal Rule of Evidence 201 provides: “The Court may judicially notice a fact
5 that is not subject to reasonable dispute because it: (1) is generally known within the
6 trial court’s territorial jurisdiction; or (2) can be accurately and readily determined
7 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).
8 The Court may presume that public records are authentic and trustworthy. *Gilbrook v.*
9 *City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999). Accordingly, such public
10 records fall within the purview of Federal Rule of Evidence 201. *See Lee*, 250 F.3d at
11 689–90; *see also Peruta v. Cty. of San Diego*, 678 F. Supp. 2d 1046, 1054 n.8 (S.D.
12 Cal. 2010) (stating that courts may properly take judicial notice of documents
13 appearing on governmental websites); *Miller v. Cal. Reconveyance Co.*, No. 10-cv-
14 421-IEG (CAB), 2010 WL 2889103, at *3 n.1 (S.D. Cal. July 22, 2010) (“The [c]ourt
15 will take judicial notice of the P & A Agreement between JPMorgan and the FDIC . . .
16 because this agreement is a matter of public record whose accuracy cannot reasonably
17 be questioned.”).

18 In support of its Motion, Defendant requests that the Court take judicial notice
19 of the following documents, pursuant to Federal Rule of Evidence 201:

- 20 • (1) Deed of Trust recorded in the Los Angeles County Recorder’s Office on
21 November 30, 2007, as instrument number 20072634177;
- 22 • (2) Purchase and Assumption Agreement dated September 25, 2008;
- 23 • (3) Substitution of Trustee, recorded in the Los Angeles County Recorder’s
24 Office on May 3, 2010, as instrument number 20100596312;
- 25 • (4) Notice of Default, recorded in the Los Angeles County Recorder’s Office on
26 November 30, 2007, as instrument number 20100596313;
- 27 • (5) Notice of Default, recorded in the Los Angeles County Recorder’s Office on
28 May 14, 2010, as instrument number 20100661624;

- 1 • (6) Notice of Trustee Sale, recorded in the Los Angeles County Recorder's
- 2 Office on August 16, 2010, as instrument number 20101136133;
- 3 • (7) Assignment of Deed of Trust, recorded in the Los Angeles County
- 4 Recorder's Office on November 20, 2014, as instrument number 20141246759;
- 5 • (8) Substitution of Trustee, recorded in the Los Angeles County Recorder's
- 6 Office on November 20, 2014, as instrument number 20141246760;
- 7 • (9) Substitution of Trustee, recorded in the Los Angeles County Recorder's
- 8 Office on April 21, 2015, as instrument number 20150439895;
- 9 • (10) Notice of Trustee's Sale, recorded in the Los Angeles County Recorder's
- 10 Office on April 27, 2015, as instrument number 20150472535;
- 11 • (11) Assignment of Deed of Trust, recorded in the Los Angeles County
- 12 Recorder's Office on July 22, 2015, as instrument number 20150890684;
- 13 • (12) Notice of Trustee's Sale, recorded in the Los Angeles County Recorder's
- 14 Office on November 16, 2015, as instrument number 20151428266;
- 15 • (13) Trustee's Deed Upon Sale, which was recorded in the Los Angeles County
- 16 Recorder's Office on June 9, 2016, as instrument number 20160666435;
- 17 • (14) Complaint filed in the United States District Court, Central District of
- 18 California, *Javaheri I*, Case No. 2:10-cv-08185-ODW (FFM), on October 29,
- 19 2010;
- 20 • (15) Order issued in *Javaheri I* on December 11, 2012;
- 21 • (16) Judgment issued in *Javaheri I* on December 11, 2012;
- 22 • (17) Memorandum filed in United States Court of Appeals for the Ninth Circuit,
- 23 Case No. 12-56566, on March 10, 2014;
- 24 • (18) Assignment of Deed of Trust, recorded in the Los Angeles County
- 25 Recorder's Office on December 12, 2017, as instrument number 20171437524;
- 26 • (19) Substitution of Trustee, recorded in the Los Angeles County Recorder's
- 27 Office on January 11, 2018, as instrument number 20180034887;
- 28

- 1 • (20) Trustee’s Deed Upon Sale, recorded in the Los Angeles County Recorder’s
- 2 Office on January 16, 2018, as instrument number 20180044919; and
- 3 • (21) Complaint filed in Superior Court of California, County of Los Angeles,
- 4 Case No. SC129593, On July 25, 2018.

5 (RJN 2–3, ECF No. 11.)

6 Exhibits 1 – 13, and 18 – 20 are officially recorded documents, which include
7 the date of recording and contents recorded. Thus, they are not reasonably subject to
8 dispute and capable of immediate and accurate determination by sources of reasonably
9 indisputable accuracy. Exhibits 14–17 and 21 are proceedings in other courts, which
10 are subject to judicial notice. *See U.S. ex rel Robinson Rancheria Citizens Council v.*
11 *Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (“[W]e may take notice of
12 proceedings in other courts, both within and without the federal judicial system, if
13 those proceedings have a direct relation to matters at issue.”) (internal quotation marks
14 omitted) Given that exhibits 14–17 are filings from Plaintiff’s prior lawsuit, judgment,
15 and appeal, they are subject to judicial notice. Exhibit 21 pertains to Defendant’s
16 lawsuit to cancel certain instruments and is therefore a public document also subject to
17 judicial notice because it is “not subject to reasonable dispute [and] capable of
18 accurate and ready determination by resort to sources whose accuracy cannot be
19 reasonably questioned. Fed. R. Evid. 201(b)(2).

20 Accordingly, Defendant’s request for judicial notice as to all documents is

21 **GRANTED.**

22 **B. RES JUDICATA**

23 Defendant maintains that the doctrine of res judicata requires the Court to
24 dismiss Plaintiff’s Complaint. (Mot. 9.) Plaintiff maintains that res judicata is
25 inapplicable because his “claim for wrongful foreclosure was not properly before the
26 [other] court until after foreclosure was complete.” (Opp’n. 5.)

27 Res judicata bars a subsequent action where the following elements are met:
28 “(1) an identity of claims; (2) a final judgment on the merits; and (3) privity between

1 parties.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 322 F.3d
2 1064, 1077 (9th Cir. 2003) (quoting *Stratosphere Litig. L.L.C. v. Grand Casinos, Inc.*,
3 298 F.3d 1137, 1143 n.3 (9th Cir. 2002)). Although res judicata is an affirmative
4 defense, a court may dismiss an action on that ground based on the facts alleged in the
5 pleadings as well as any facts properly subject to judicial notice. *See Scott v.*
6 *Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984).

7 **1. Identity of Claims**

8 As to the first element, identity of claims, courts consider the following:

9 (1) whether rights or interests established in the prior judgment would be
10 destroyed or impaired by prosecution of the second action; (2) whether
11 substantially the same evidence is presented in the two actions; (3) whether the
12 two suits involve infringement of the same right; and (4) whether the two suits
arise out of the same transactional nucleus of facts.

13 *Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (quoting *United States*
14 *v. Liquidators of European Fed. Credit Bank*, 630 F.3d 1139, 1150 (9th Cir. 2011)).
15 These criteria are not applied “mechanistically.” *Garity v. APWU Nat’l Labor Org.*,
16 828 F.3d 848, 855 (9th Cir. 2016). “The fourth criterion is the most important.”
17 *Harris*, 682 F.3d at 1132. The first three elements weigh in favor of applying res
18 judicata, and the transactional nucleus of facts all stem from the foreclosure of
19 Plaintiff’s property. Plaintiff’s argument that res judicata cannot apply because his
20 foreclosure was not properly before the Court is unavailing, because an identity of
21 claims does not mean preclusion is avoided by attaching a different legal label to an
22 issue that has, or could have, been litigated. *Arduini v. Hart*, 774 F.3d 622, 630 (9th
23 Cir. 2014). Thus, the foregoing criteria weigh in favor of applying res judicata.

24 Accordingly, the first element is met.

25 **2. Final Judgment on the Merits**

26 Res judicata also requires a final judgment on the merits. *See Mpoyo v. Litton*
27 *Electro-Optical Sys.*, 430 F.3d 985, 988 (9th Cir. 2005). There was clearly such a final
28 judgment here. “[A] summary judgment dismissal . . . is considered a decision on the

1 merits for res judicata purposes.” *Id.* As indicated, the Court previously granted
2 summary judgment against Plaintiff and the United States Court of Appeals affirmed.
3 Accordingly, the former action was resolved by a final judgment on the merits.

4 Thus, the second element is also met.

5 **3. Privity of the Parties**

6 “Even when the parties are not identical, privity may exist if ‘there is
7 “substantial identity” between parties, that is, when there is sufficient commonality of
8 interest.’” *Tahoe-Sierra Pres. Council*, 322 F.3d at 1081 (quoting *In re Gottheiner*,
9 703 F.2d 1136, 1140 (9th Cir. 1983)). “[P]rivacy is a flexible concept dependent on the
10 particular relationship between the parties in each individual set of cases.” *Id.* at
11 1081–82.

12 Plaintiff was a party to the prior lawsuit. Likewise, JP Morgan, the prior assign
13 to Defendant U.S. Bank, was a claimant in the prior lawsuit. Res judicata applies not
14 only to parties but to those in privity with the parties as well. Here, the Complaint—
15 and judicially noticeable documents—make it clear that Defendant U.S. Bank was in
16 privity as successor beneficiary to JP Morgan. (Compl., ¶ 15; RJN, Ex. K.) Moreover,
17 Plaintiff alleges that Defendant U.S. Bank acted as the agent, employee and co-
18 venturer with prior beneficiaries of the Loan. (Compl. ¶ 4.) Those are precisely the
19 sort of agency relationships in which there is a sufficiently close relationship to find
20 privity.

21 Accordingly, the third element is met.

22 Given that all three required elements are met, the Court need not address
23 Defendant’s additional arguments.

24 **C. LEAVE TO AMEND**

25 In general, a court should liberally allow a party leave to amend its pleading.
26 *See* Fed. R. Civ. P. 15(a); *see also Owens*, 244 F.3d at 712 (“A district court shall
27 grant leave to amend freely when justice so requires,” and “this policy is to be applied
28 with extreme liberality.”) (internal citations and quotation marks omitted). However,

1 the Court may deny leave to amend where amendment would be futile. *Gardner v.*
2 *Martino*, 563 F.3d 981, 990 (9th Cir. 2009). “When a proposed amendment would be
3 futile, there is no need to prolong the litigation by permitting further amendment.”
4 *Chaset v. Fleer/Skybox Int’l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002).

5 Here, granting leave to amend in light of the Defendant’s successful invocation
6 of res judicata, is in itself an exercise in futility. No argument supporting leave to
7 amend exists; thus, leave to amend is not appropriate.

8 **IV. CONCLUSION**

9 Accordingly, Defendant’s Motion is **GRANTED with PREJUDICE**. The
10 Clerk shall close the case.

11
12 **IT IS SO ORDERED.**

13
14 April 8, 2019



15 **OTIS D. WRIGHT, II**
16 **UNITED STATES DISTRICT JUDGE**