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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

STEPHEN H. JOHNSON, PAULA A. JOHNSON,	)	Case No. EDCV 15-02609 DDP (JEMx)
	)	
	)	
Plaintiffs,	)	<b>ORDER GRANTING DEFENDANT'S MOTION TO DISMISS</b>
	)	
v.	)	
	)	
JPMORGAN CHASE BANK NA.,	)	[Dkt. 13]
Defendant.	)	
	)	
_____	)	

Presently before the court is Defendant JPMorgan Chase Bank, N.A.'s Motion to Dismiss. Having considered the submissions of the parties, the court grants the motion and adopts the following Order.

**I. Background**

Plaintiffs Stephen and Paula Johnson ("Plaintiffs") filed an action against Defendant JPMorgan Chase Bank, N.A. ("Defendant") in the San Bernardino County Superior Court in March 2014. (Case No. 5:14-cv-00777-DDP-JEMx, the "First Action"). The case was later removed to this court. In the First Action, Plaintiffs alleged that Defendant did not have standing to initiate foreclosure proceedings against Plaintiffs' property because Defendant did not acquire the

1 right to enforce a deed of trust that was executed as part of  
2 Plaintiffs' refinancing of their home in November 2006. (First  
3 Action Dkt. No. 1.) Plaintiffs alleged five causes of action: "(1)  
4 Quiet Title; (2) Violations of Business and Professions Code  
5 section 17200, et seq.; (3) Quasi-Contract; (4) Negligence; and (5)  
6 Wrongful Foreclosure. (Id.) Defendant filed a motion to dismiss  
7 Plaintiffs' Complaint, which this Court granted. (First Action Dkt.  
8 No. 21.) Plaintiffs filed a motion to set aside the judgment, which  
9 the Court denied. (First Action Dkt. No. 29.)

10 Plaintiffs then filed a second state court action against  
11 Defendant. (Case No. 5:14-cv-01372-DDP-JEMx, the "Second Action").  
12 The case, like its predecessor, was then removed to this Court. In  
13 the Second Action, Plaintiffs alleged the same underlying facts as  
14 the First Action and brought a claim for Quiet Title. (Second  
15 Action Dkt. No. 12.) Defendant filed a motion to dismiss  
16 Plaintiffs' First Amended Complaint on res judicata grounds and the  
17 court granted the motion.

18 Plaintiffs then filed the instant action in this Court (the  
19 "Third Action") against Defendant, alleging causes of action for  
20 violation of the Truth in Lending Act ("TILA"), quiet title, and  
21 "cancellation of instrument." Plaintiffs' First Amended Complaint  
22 ("FAC") alleges the same underlying facts as the First and Second  
23 Actions, and bring a single claim for declaratory relief pursuant  
24 to TILA and based upon a Notice of Rescission allegedly sent to  
25 Defendant in July 2015. Defendant now moves to dismiss the FAC.

## 26 **II. Legal Standard**

27 A complaint will survive a motion to dismiss when it contains  
28 "sufficient factual matter, accepted as true, to state a claim to

1 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
2 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
3 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
4 "accept as true all allegations of material fact and must construe  
5 those facts in the light most favorable to the plaintiff." Resnick  
6 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint  
7 need not include "detailed factual allegations," it must offer  
8 "more than an unadorned, the-defendant-unlawfully-harmed-me  
9 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
10 allegations that are no more than a statement of a legal conclusion  
11 "are not entitled to the assumption of truth." Id. at 679. In  
12 other words, a pleading that merely offers "labels and  
13 conclusions," a "formulaic recitation of the elements," or "naked  
14 assertions" will not be sufficient to state a claim upon which  
15 relief can be granted. Id. at 678 (citations and internal  
16 quotation marks omitted).

17 "When there are well-pleaded factual allegations, a court should  
18 assume their veracity and then determine whether they plausibly  
19 give rise to an entitlement of relief." Id. at 679. Plaintiffs  
20 must allege "plausible grounds to infer" that their claims rise  
21 "above the speculative level." Twombly, 550 U.S. at 555.  
22 "Determining whether a complaint states a plausible claim for  
23 relief" is a "context-specific task that requires the reviewing  
24 court to draw on its judicial experience and common sense." Iqbal,  
25 556 U.S. at 679.

### 26 **III. Discussion**

27 Defendant contends that this action, like the Second Action  
28 before it, is barred by the doctrine of res judicata. Res judicata

1 "bars litigation in a subsequent action of any claims that were  
2 raised or could have been raised in the prior action." Owens v.  
3 Kaiser Foundation Health Plan, Inc. 244 F.3d 708, 713 (9th Cir.  
4 2001); W. Radio Servs. Co. v. Glickman, 123 F.3d 1189, 1192 (9th  
5 Cir. 1997). It applies when there is "1) [an] identity of claims,  
6 2) a final judgment on the merits, and 3) identity or privity  
7 between the parties." W. Radio Servs. Co., 123 F.3d at 1192.

8 A. Identity of Claims

9 The Ninth Circuit relies on four factors to determine if there  
10 is an identity of claims. The factors are

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

15 Harris v. Jacobs, 621 F.2d 341, 343 (9th Cir. 1980); Constantini v.  
16 Trans World Airlines, 681 F.2d 1199, 1201-02 (9th Cir. 1982).

17 The central issue in determining whether there is an identity  
18 of claims is whether the two suits "arise out of the same  
19 transactional nucleus of facts." Costantini, 681 F.2d at 1202; see  
20 also Frank v. United Airlines, Inc., 216 F.3d 845, 851 (9th Cir.  
21 2000). Indeed, satisfaction of the fourth Constantini factor is  
22 often sufficient to find an identity of claims for res judicata  
23 without analysis of the other factors. Quinto v. JPMorgan Chase  
24 Bank, No. 11-CV-02920, 2011 WL 6002599, at \*8 (N.D. Cal. Nov. 30,  
25 2011); see Int'l Union of Operating Eng'rs-Employers Constr. Indus.  
26 Pension, Welfare and Training Trust Funds v. Karr, 994 F.2d 1426,  
27 1430 (9th Cir. 1993).

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1           When analyzing this factor, courts ask "whether [the two  
2 actions] are related to the same set of facts and whether they  
3 could conveniently be tried together." W. Systems, Inc. v. Ulloa,  
4 958 F.2d 864, 871 (9th Cir. 1992). Here, the three actions involve  
5 the same nucleus of facts; all three actions allege that Defendant  
6 cannot proceed with a foreclosure of the property or enforcement of  
7 the underlying debt obligation because Defendant lacks interest in  
8 Plaintiffs' loan as the result of errors in the process of  
9 assigning the deed of trust and promissory note. Claims for quiet  
10 title and declaratory relief could conveniently be tried together  
11 because Plaintiffs' allegations about improper loan assignment  
12 would be central to both causes of action. Even though Plaintiffs  
13 now base their declaratory relief action for a TILA violation upon  
14 a July 2015 Notice of Rescission, the underlying facts are the same  
15 as contained in an earlier, April 2012 Notice of Rescission, which  
16 was allegedly sent to Defendant prior to the filing of the Second  
17 Action. See Owens, 244 F.3d at 714 (upholding dismissal on res  
18 judicata grounds on claims not previously raised where the new  
19 claims were based on the same predicate facts).

20           Although the similarity of the nuclei of facts would alone be  
21 reason to find an identity of claims, the other three factors also  
22 suggest an identity of claims. First, Defendant's rights and  
23 interests as established in the prior litigation could be destroyed  
24 or impaired by the prosecution of this action, as Defendant will  
25 not be allowed to continue foreclosure proceedings or recover on  
26 the debt obligation for the duration of the lawsuit, if ever.

27           Second, the evidence needed to prove Plaintiffs' cause of  
28 action for declaratory relief for a TILA violation centers around

1 the assignment of the original lender's deed of trust to Defendant.  
2 Plaintiffs could use the same evidence to prove that Defendant  
3 lacks the ability to enforce the promissory note or deed of trust  
4 in an action for declaratory relief that would have been needed in  
5 the earlier actions for quiet title based on the same, allegedly  
6 improper assignment.<sup>1</sup>

7 Third, all three actions involve the alleged wrongful  
8 foreclosure. Plaintiffs' claim the right at issue in the instant  
9 action is not the same as that presented by the earlier actions  
10 because the TILA violation alleged here is based on Defendant's  
11 failure to adequately respond to the July 2015 Notice of Rescission  
12 within the 20 days required by statute. Plaintiffs, however,  
13 mailed a similar notice in April 2012, and thus, could have brought  
14 the TILA violation for declaratory relief in the Second Action.  
15 (Third Action Dkt. No. 12 at 8:9-17.) Although Plaintiffs appear  
16 to assert that they sent both notices because they allege that  
17 Defendant has no interest in the promissory note and deed of trust,  
18 which is important for both the quiet title and declaratory relief  
19 claims, Plaintiffs do not explain why both causes of action could  
20 not have been brought at the same time. See United States v.  
21 Liquidators of European Fed. Credit Bank, 630 F.3d 1139, 1151 (9th  
22 Cir. 2011) (finding that if the new claim "arose at the same time  
23 as the harm alleged in the previous action, then there is no reason  
24 why the plaintiff could not have brought the claim in the first

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27 <sup>1</sup> Such evidence might include, for example, documents such as a  
28 Property Securitization Analysis Report that was filed in the  
Second Action. (Second Action Dkt. Nos. 12 at 35-44 and 12-1.)

1 action . . . [t]he plaintiff simply could have added a claim to the  
2 complaint") (citation omitted).

3 Accordingly, the identity of claims factor of the res judicata  
4 test is satisfied.

5 B. Final Judgment on the Merits

6 There was a final judgment on the merits of both the First and  
7 Second Actions. The First Action was dismissed with prejudice  
8 after Plaintiffs failed to oppose Defendant's motion to dismiss.  
9 The Federal Rules of Civil Procedure provide that, unless otherwise  
10 specified, a dismissal for failure to prosecute or to comply with a  
11 court order "operates as an adjudication on the merits." Fed. R.  
12 Civ. P. 41(b); see Stewart v. U.S. Bancorp, 297 F.3d 953, 956 (9th  
13 Cir. 2002); Owens, 244 F.3d at 714; In re Schimmels, 127 F.3d 875,  
14 884 (9th Cir. 1997)("[I]nvoluntary dismissal generally acts as a  
15 judgment on the merits for the purposes of res judicata"); Johnson  
16 v. United States Dep't of Treasury, 939 F.2d 820, 825 (9th Cir.  
17 1991) (noting that dismissal for failure to prosecute is "treated  
18 as an adjudication on the 'merits' for purposes of preclusion")  
19 (citation omitted). Even if the First Action had not been  
20 adjudicated on the merits, the Second Action was dismissed based on  
21 res judicata grounds after Plaintiffs opposed Defendant's Motion to  
22 Dismiss and filed a Motion to Remand, which was denied. (Second  
23 Action Dkt. No. 21.)

24 C. Identity of Parties

25 Lastly, there is no dispute that there is an identity of  
26 parties. Plaintiffs and Defendant were parties to both the First  
27 and Second Actions.

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1 Thus, because there is "1) [an] identity of claims, 2) a final  
2 judgment on the merits, and 3) identity or privity between the  
3 parties" here and in the prior actions, the doctrine of res  
4 judicata applies, and Plaintiffs' FAC must be dismissed. W. Radio  
5 Servs. Co., 123 F.3d at 1192.

6 **IV. Conclusion**

7 For the reasons stated above, Defendant's Motion to Dismiss is  
8 GRANTED. The FAC is DISMISSED, with prejudice.

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11 IT IS SO ORDERED.

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14 Dated: August 1, 2016



15 DEAN D. PREGERSON  
16 United States District Judge  
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