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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RAYMOND USHER,  
  
Plaintiff,  
  
v.  
  
GREENPOINT MORTGAGE FUNDING,  
INC.; RELIABLE TRUST DEED  
SERVICES; and VANDERBILT  
MORTGAGE & FINANCE, INC.,  
  
Defendants.

No. 2:10-cv-00952-GEB-CKD

**ORDER DENYING PLAINTIFF'S MOTION  
TO VACATE JUDGMENT**

On December 29, 2015, almost four years after judgment was entered in this action, Plaintiff filed a motion to vacate the judgment entered on February 2, 2011.<sup>1</sup> (ECF Nos. 31, 37.) Plaintiff makes the conclusory argument in his motion that Federal Rule of Civil Procedure ("Rule") 60(b)(3) authorizes the vacation of the judgment because Defendants GreenPoint Mortgage Funding, Inc., Reliable Trust Deed Services, and Vanderbilt Mortgage & Finance, Inc. (collectively, "Defendants") concealed, or failed to disclose, the identities of proposed new defendants Plaintiff now seeks to add as defendants in this closed lawsuit,

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<sup>1</sup> Plaintiff also seeks judicial notice of numerous documents, (ECF No. 39); Plaintiff, however, has not shown the relevancy of the referenced documents to the motion *sub judice*; therefore, the request for judicial notice is declined. See Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) ("We decline to take judicial notice of the . . . [documents], as they are not relevant to the resolution of this appeal.").

1 contending that they were previously involved with the mortgage  
2 note of his former home that has been sold. (See ECF No. 37 at 4  
3 ¶ 1; ECF No. 40 at 5:10-12.) Specifically, Plaintiff argues that  
4 Defendants should have provided Plaintiff with the identities of  
5 the proposed new defendants before judgment was entered in this  
6 action; therefore, judgment should be vacated, and Plaintiff  
7 should be authorized to add the referenced new defendants in an  
8 amended complaint. (ECF No. 37 at 3:18-28.) Defendants oppose, in  
9 essence arguing that they were not required to provide Plaintiff  
10 the information he references.<sup>2</sup>

11 The provision of Rule 60 applicable to the relief  
12 Plaintiff seeks is Rule 60(b)(3). Concerning Rule 60(b)(3), Rule  
13 60(c)(1) provides in pertinent part: "A motion under Rule 60(b)  
14 must be made within a reasonable time—and . . . no more than a  
15 year after the entry of the judgment or order or the date of the  
16 proceeding." Fed. R. Civ. P. 60(c)(1). Plaintiff's motion is  
17 untimely under Rule 60(c)(1). However, Plaintiff argues judgment  
18 may be set aside after the one-year deadline in Rule 60(c)(1)  
19 since there has been a "fraud on the court." (ECF No. 37 at 2:22-  
20 26.)

21 [Rule] 60(b) preserves the district court's  
22 right to hear an independent action to set  
23 aside a judgment for fraud on the court. An  
24 independent action to set aside a judgment  
25 for fraud on the court is "reserved for those  
cases of injustices which, in certain  
instances, are deemed sufficiently gross to  
demand a departure from rigid adherence to  
the doctrine of res judicata." "[A]n

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26 <sup>2</sup> Lastly, Plaintiff filed motions to strike Defendants' briefs that  
27 respond to Plaintiff's motions. (ECF Nos. 51-52.) Defendant GreenPoint  
28 Mortgage Funding, Inc. opposes Plaintiff's motion to strike. (ECF No. 56.)  
Plaintiff's motions to strike Defendants' response briefs are denied, since  
Plaintiff has not provided sufficient authority supporting those motions.

1 independent action should be available only  
2 to prevent a grave miscarriage of justice."

3 Appling v. State Farm Mut. Auto. Ins. Co., 340 F.3d 769, 780 (9th  
4 Cir. 2003) (second alteration in original) (citations omitted)  
5 (quoting United States v. Beggerly, 524 U.S. 38, 46-47 (1998)).

6 The Ninth Circuit has explained:

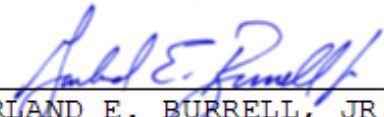
7 "Fraud upon the court" should, we believe,  
8 embrace only that species of fraud which does  
9 or attempts to, defile the court itself, or  
10 is a fraud perpetrated by officers of the  
11 court so that the judicial machinery can not  
perform in the usual manner its impartial  
task of adjudging cases that are presented  
for adjudication.

12 In re Levander, 180 F.3d 1114, 1119 (9th Cir. 1999). "Generally,  
13 non-disclosure [of evidence] by itself does not constitute fraud  
14 on the court." Id.

15 Plaintiff has not shown that Defendants had an  
16 affirmative obligation to disclose the information he references  
17 in his motion, nor that the fraud on the court doctrine applies  
18 to the situation about which he complains.

19 Therefore, Plaintiff's motion to vacate the February 2,  
20 2011, judgment is denied.

21 Dated: March 30, 2016

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GARLAND E. BURRELL, JR.  
25 Senior United States District Judge  
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