

1 remand this action to the California Superior Court for the
2 County of Placer, where this action had originally been brought,
3 (Pl.'s Mot. (Docket No. 7)), and defendants' Motion to dismiss
4 for failure to state a claim upon which relief can be granted
5 pursuant to Federal Rule of Civil Procedure 12(b)(6). (Defs.'
6 Mot. (Docket No. 3).)

7 In 2006, plaintiff obtained a mortgage loan on property
8 in Rocklin, California, which was secured by a Deed of Trust
9 listing GreenPoint Mortgage Funding, Inc. as the lender. (Compl.
10 ¶ 20 (Docket No. 1).) There were several corporate assignments
11 of the Deed of Trust from GMAC Mortgage LLC to Aurora Loan
12 Services LLC to Nationstar Mortgage, LLC, and finally to US BANK.
13 (Compl. ¶ 21.) Plaintiff attempted several times to modify her
14 mortgage loan with Nationstar, US Bank, and Doe Defendants.
15 (Compl. ¶ 25.) On February 23, 2017, plaintiff received a letter
16 from Nationstar advising her that her request for modification
17 was denied. (Compl. ¶ 30.) On March 21, 2017, plaintiff
18 appealed the denial and submitted all requested documents to
19 Nationstar. (Compl. ¶ 31.)

20 On April 11, 2017, in a previous related action
21 plaintiff filed a Complaint against defendants for: (1)
22 declaratory relief; (2) negligence; (3) quasi contract; (4)
23 violation of the Fair Debt Collection Practices Act ("FDCPA");
24 (5) accounting; (6) quiet title; (7) violation of the Unfair
25 Competition Act California Business & Professions Code §§ 17200,
26 et seq.; and (8) violation of 26 U.S.C. § 860G(d)(1).¹ The court

27 ¹ On September 1, 2017, the court found that the initial
28 action, 17-cv-00766, and the action now before the court, 17-v-

1 granted defendants' Motion to dismiss stating that plaintiff did
2 not have standing to bring her claims.²

3 On July 18, 2017, plaintiff filed a Complaint in state
4 court alleging ten separate causes of action for: (1) violation
5 of California Civil Code § 2923.6(A); (2) violation of California
6 Civil Code § 2923.5; (3) violation of California Civil Code §
7 2924.10; (4) violation of California Civil Code § 2924.17; (5)
8 violation of California Civil Code § 2924.18; (6) violation of
9 California Civil Code § 2923.6(c); (7) breach of implied covenant
10 of good faith and fair dealing; (8) violation of the Unfair
11 Competition Act California Business & Professions Code §§ 17200,
12 et seq.; (9) quiet title; and (10) wrongful foreclosure. On
13 August 4, 2017, defendants removed the case under 28 U.S.C. §

14
15 01627, were related within the meaning of Local Rule 123(a),
16 because both cases involve the same parties and are based on
17 similar claims, in that plaintiff in both cases is attempting to
18 block the foreclosure of her home and seeks to quiet title to the
19 same property. (Order Relating Cases at 1, Thrower v. Nationstar
Mortgage, Civ. No. 2:17-00766 WBS KJN (E.D. Cal. June 29, 2017)
(Docket No. 15.)). Having found that the cases were related
under Local Rule 123, the instant case was reassigned. Id.

20 ² In the initial action, plaintiff alleged that the loan
21 was placed in a mortgage-backed securities trust, which was
22 governed by New York law. Thrower, 2017 WL 2813169, at *2. The
23 Trust allegedly had a closing date—the date by which all Notes
24 and Deeds of Trust must be transferred into the trust, and
25 because the Deed of Trust was not allegedly transferred to the
26 Trust by the closing date, plaintiff claimed the assignment was
27 invalid. Id. This court found the plaintiff did not have
28 standing to bring the action. This court explained that because
under New York and California law such an alleged violation “only
renders the assignment voidable and plaintiff was not a party to
the assignment, plaintiff did not have standing to challenge the
assignment of her Note and Deed of Trust into the 2006-4N Trust.”
Id. at *3 (citing Yvanova v. New Century Mortg. Corp., 62 Cal.
4th 919, 942-43 (2016)).

1 1441(b) based on diversity jurisdiction under 28 U.S.C. § 1332.
2 (Defs.' Notice of Removal. (Docket No. 1).) Plaintiff's Motion
3 to remand and defendants' Motion to dismiss are now before the
4 court.

5 I. Motion to Remand

6 The plaintiff argues that removal was improper because
7 removal is permitted only if a federal question appears on the
8 face of the complaint, and because none of plaintiff's causes of
9 action pertain to a federal statute, the defendant cannot remove
10 the case to federal court. (Pl.'s Mot. at 4 (Docket No. 7).)³
11 However, defendants' notice of removal was based on diversity of
12 citizenship jurisdiction. (Defs.' Notice of Removal at 1 (Docket
13 No. 1).)

14 Pursuant to 28 U.S.C. § 1441(a), "any civil action
15 brought in a State court of which the district courts of the
16 United States have original jurisdiction, may be removed by the
17 defendant or the defendants" 28 U.S.C. § 1441(b).
18 However, if "it appears that the district court lacks subject
19 matter jurisdiction, the case shall be remanded." 28 U.S.C. §
20 1447(c). District courts "have original jurisdiction of all
21 civil actions where the matter in controversy exceeds the sum or
22 value of \$75,000, exclusive of interest and costs, and is between
23 citizens of different states" 28 U.S.C. § 1332. The
24 party asserting diversity jurisdiction bears the burden of proof.
25 Resnik v. La Paz Guest Ranch, 289 F.2d 814, 819 (9th Cir. 1961)

26
27 ³ Plaintiff does not respond to defendant's diversity
28 jurisdiction assertion in her papers in support of her Motion to
remand nor in her opposition to the Motion to dismiss.

1 To determine if the amount in controversy requirement
2 is met, the court looks to the amount demanded by the plaintiff
3 in the Complaint. See St. Paul Mercury Indem. Co. v. Red Cab
4 Co., 303 U.S. 283, 291-92 (1938). Here, plaintiff does not
5 specify the amount in controversy.⁴ When the complaint does not
6 specify the amount in controversy, "the removing defendant bears
7 the burden of establishing, by a preponderance of the evidence,
8 that the amount in controversy exceeds [\$75,000]." Sanchez v.
9 Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996).
10 Defendants assert the amount-in-controversy requirement is met
11 because the plaintiff received a first-lien mortgage in the
12 amount of \$360,000 secured by a Deed of Trust on the property and
13 the assessed market value of the property is \$378,000. (Defs.'
14 Notice of Removal at 6.)

15 "In actions seeking declaratory or injunctive relief, .
16 . . the amount in controversy is measured by the value of the
17 object of the litigation." Hunt v. Wash. St. Apple Advert.
18 Comm'n, 432 U.S. 333, 347 (1977) (citations omitted). Here,
19 plaintiff seeks both declaratory and injunctive relief.⁵ (See
20 Compl. Prayer for Relief A-T.) Furthermore, plaintiff's property
21 is the object of litigation. See Reyes v. Wells Fargo Bank,
22

23 ⁴ In addition to declaratory and injunctive relief,
24 plaintiff seeks unspecified actual, compensatory, consequential,
and statutory damages as well. (Compl. Prayer for Relief A-T.)

25 ⁵ Plaintiff seeks declaratory and injunctive relief that
26 includes an order to modify the terms of the Mortgage Loan, to
27 rescind the Notice of Default, to restrain and enjoin defendants
28 from recording a Notice of Sale and foreclosing on the
plaintiff's property, and for a permanent or final injunction
enjoining defendants from continuing to harm plaintiff.

1 N.A., No. C-10-01667JCS, 2010 WL 2629785, at *4 (N.D. Cal. June
2 29, 2010) ("If the primary purpose of a lawsuit is to enjoin a
3 bank from selling or transferring property, then the property is
4 the object of the litigation.") (citations omitted). Here, the
5 first-lien mortgage received by plaintiff was in the amount of
6 \$360,000. (Compl. Ex. B) See Cabriales v. Aurora Loan Servs.,
7 Civ. No. 10-161 MEJ, 2010 WL 761081, at *3 (N.D. Cal. Mar. 2,
8 2010) (finding where plaintiffs seek injunctive relief to prevent
9 foreclosure, the amount-in-controversy requirement was met when
10 plaintiffs "obtained a loan, secured by a FIRST deed of trust, on
11 the subject property . . . in the amount of approximately
12 \$465,000."). Furthermore, the value of the property at issue in
13 this case is \$378,000 (Compl. Ex. H.). See Garfinkle v. Wells
14 Fargo Bank, 483 F.2d 1074, 1076 (9th Cir. 1973)⁶ (finding the
15 amount-in-controversy requirement satisfied by looking at both
16 the outstanding interest secured by the property and the market
17 value of the property); Delgado v. Bank of Am. Corp., Civ. No.
18 1:09-01638 AWI DLB, 2009 WL 4163525, at *6 (E.D. Cal. Nov. 23,
19 2009) (Beck, J.) (appraisal of property establishing property was
20 more than \$75,000 met amount-in-controversy requirement). Thus,
21 defendant has established that the amount in controversy is over
22 \$75,000.

23 Moreover, defendants assert, and plaintiff does not

24
25 ⁶ While Garfinkle looks at the since-modified amount-in-
26 controversy requirement under 28 U.S.C. § 1331, the analysis is
27 still relevant. Courts such as Reyes v. Wells Fargo Bank, N.A.,
28 Civ. No. 10-01667 JCS, 2010 WL 2629785, at *4 (N.D. Cal. June 29,
2010), have used the analysis of Garfinkle to discuss diversity
amount-in-controversy requirements under 28 U.S.C. § 1332.

1 dispute, that Nationstar is a citizen of Delaware and US Bank is
2 a citizen of Ohio, and that plaintiff is a citizen of California.
3 Thus, there is complete diversity.

4 Because the amount in controversy is satisfied and
5 there is diversity of citizenship, defendants properly removed
6 this action to federal court, and the court will deny plaintiff's
7 Motion to remand.⁷

8 II. Motion to Dismiss

9 Defendants argue plaintiff's foreclosure lawsuit
10 against defendants is barred by res judicata.⁸ A defendant may
11 raise res judicata in a motion to dismiss under Federal Rule
12 12(b)(6). See Scott v. Kuhlmann, 746 F.2d 1377, 1378 (9th Cir.
13 1984). Res judicata prohibits lawsuits on "any claims that were
14 raised or could have been raised" in a prior action. Stewart v.
15 U.S. Bancorp, 297 F.3d 953, 956 (9th Cir. 2002) (citations
16 omitted). "Res judicata applies when there is: (1) an identity of
17 claims; (2) a final judgment on the merits; and (3) identity or
18 privity between parties." Id. (internal quotations omitted).

19 Defendants argue that although the claims asserted in
20 each suit are not identical, there is an identity of claims
21 between the two suits because the two suits arise out of the same

22 ⁷ The court does not consider the diversity of "Doe"
23 defendants in examining whether there is diversity. See 28
24 U.S.C. 1441(a) ("For purposes of removal under this chapter, the
25 citizenship of defendants sued under fictitious names shall be
26 disregarded."); Newcombe v. Adolf Coors Co., 157 F.3d 686, 690
(9th Cir. 1998) (explaining district courts should only consider
the domicile of named defendants).

27 ⁸ Plaintiff does not address defendants' argument that
28 res judicata bars this suit.

1 transactional nucleus of facts.⁹ (Defs. Mot. at 4.) Defendants
2 further contend the second Complaint's allegation of additional
3 tortious conduct and other facts not included in the initial
4 action do not sufficiently avoid the bar of res judicata. (Id.)
5 In determining whether there is an identity of claims for the
6 purposes of res judicata, the court considers:

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

14 Costantini v. Trans World Airlines, 681 F.2d 1199, 1201-02 (9th
15 Cir. 1982) (quoting Harris v. Jacobs, 621 F.2d 341, 343 (9th Cir.
16 1980)). The last criteria is the most important. Id. at 1202.

17 "Whether two suits arise out of the same transactional
18 nucleus depends upon whether they are related to the same set of
19 facts and whether they could conveniently be tried together."
20 Turtle Island Restoration Network v. U.S. Dep't of State, 673
21 F.3d 914, 918 (9th Cir. 2012) (quoting ProShipLine Inc. v. Aspen
22 Infrastructures Ltd., 609 F.3d 960, 968 (9th Cir. 2010)). "Where
23 claims arise from the same factual circumstances, a plaintiff
24 must bring all related claims together or forfeit the opportunity
25 to bring any omitted claim in a subsequent proceeding." Id.

26 In both suits, plaintiff brought a wrongful foreclosure
27 complaint against the same defendants based on the same pending
28 non-judicial foreclosure of the same property. In the current

27 ⁹ Both lawsuits involve only two identical claims, quiet
28 title and violation of California Business and Professions Code §
17200.

1 action plaintiff alleges new facts, additional tortious conduct,
2 and emphasizes the failure of the defendant to modify the
3 mortgage foreclosure terms, while in the initial action, she
4 emphasized the failure of defendants to transfer the Deed of
5 Trust to the 2006-4N Trust by the closing date, allegedly making
6 the assignment invalid. (See Compl. ¶ 25; Thrower, 2017 WL
7 2813169, at *2.) However, asserting additional claims and new
8 facts that all arise from the same allegedly wrongful foreclosure
9 of the plaintiff's property by the same defendants is not enough
10 to overcome res judicata, because these additional claims and
11 facts could have been brought in the initial suit. See U.S. ex
12 rel. Barajas v. Northrop Corp., 147 F.3d 905, 909 (9th Cir. 1998)
13 ("It is immaterial whether the claims asserted subsequent to the
14 judgment were actually pursued in the action that led to the
15 judgment; rather, the relevant inquiry is whether they could have
16 been brought.") (citation omitted).

17 Additionally, the facts relevant to this case-the
18 assignments of the Deed of Trust and the request and eventual
19 denial to modify her mortgage loan-were all evident when the
20 initial suit was filed. See Tahoe-Sierra Pres. Council, Inc. v.
21 Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1078-80 (9th Cir.
22 2003) (finding the claims asserted arose from the same
23 transactional nucleus of facts and thus an identity of claims
24 where plaintiff filed a new action seeking relief from the same
25 alleged wrongs as the first suit and the facts relevant to the
26 subsequent action were all evident when the initial litigation
27 was filed and there were no new facts relevant to the new cause
28 of action). Plaintiff does not argue the new claims brought in

1 the subsequent action could not have been brought in the initial
2 action. Nor does plaintiff assert the facts relevant to the new
3 claims at issue were not evident by the time this suit was filed.
4 Moreover, the last alleged fact in the Complaint at issue
5 occurred March 21, 2017. The initial Complaint was filed April
6 11, 2017. Therefore, every fact alleged in the current Complaint
7 could have been alleged in the initial Complaint.

8 Plaintiff cannot avoid the bar of res judicata by
9 alleging additional conduct by the same defendants or by pleading
10 a new legal theory. See Costantini, 681 F.2d at 1201
11 (“[A]ppellant does not avoid the bar of res judicata merely
12 because he now alleges conduct by [the same defendant] not
13 alleged in his prior suit, nor because he has pleaded a new legal
14 theory.”); Tahoe-Sierra Pres. Council, Inc., 322 F.3d at 1078
15 (“Newly articulated claims based on the same nucleus of facts may
16 still be subject to a res judicata finding if the claims could
17 have been brought in the earlier action.”). Thus, there is an
18 identity of claims between the prior lawsuit and the current
19 lawsuit because the claims arise out of the same nucleus of facts
20 and the additional claims and facts could have been raised in the
21 first suit.

22 Further, there is no dispute as to the other res
23 judicata factors. As to whether the first suit was a final
24 judgment on the merits, the court granted defendants Motion to
25 dismiss for failure to state a claim and dismissed plaintiff’s
26 claims with prejudice based on lack of standing. Thrower, 2017
27 WL 2813169, at *2. A dismissal with prejudice is a final
28 judgment on the merits. See Stewart, 297 F.3d 953 at 956. (“The

1 phrase 'final judgment on the merits' is often used
2 interchangeably with 'dismissal with prejudice'" (citations
3 omitted); Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394,
4 399 n.3 (1981) ("The dismissal for failure to state a claim under
5 Federal Rule of Civil Procedure 12(b)(6) is a judgment on the
6 merits.") (internal quotations and citations omitted). Moreover,
7 the parties in the first suit and the second suit are the same.

8 For the above mentioned reasons, res judicata bars
9 plaintiff's claims in the present action, and the court will
10 grant the motion to dismiss.

11 IT IS THEREFORE ORDERED that Plaintiff's Motion to
12 remand this action to the California Superior Court for the
13 County of Placer be, and the same hereby is, DENIED.

14 IT IS FURTHER ORDERED that defendants' Motion to
15 dismiss be, and the same hereby is, GRANTED. Because plaintiff's
16 claims are barred by res judicata, giving leave to amend the
17 Complaint would be futile. Accordingly, plaintiff's Complaint is
18 hereby DISMISSED WITH PREJUDICE.

19 Dated: October 30, 2017



20 **WILLIAM B. SHUBB**
21 **UNITED STATES DISTRICT JUDGE**