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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALICIA G. ATIENZA, *et al.*,
Plaintiffs,
v.
WELLS FARGO, *et al.*,
Defendants.

No. C-11-3153 EMC

**ORDER GRANTING DEFENDANT
WELLS FARGO’S MOTION TO
DISMISS**

(Docket No. 8)

Defendant Wells Fargo filed a motion to dismiss Plaintiffs’ complaint on July 20, 2011. Docket No. 8. Defendant argued that the complaint was unintelligible and failed to state a claim against any defendant, and to the extent the subject matter of the complaint was discernable, it was barred by *res judicata*.

The Court, having considered the parties’ submissions and Defendant’s request for judicial notice, determines that the matters are appropriate for resolution without oral argument, and **VACATES** the hearing set for September 8, 2011. The Court hereby enters the following order:

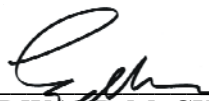
- (1) Defendant Wells Fargo’s request for judicial notice (Docket No. 9) is **GRANTED**. The documents are undisputed matters of public record. *See* Fed. R. Evid. 201; *see also Camacho v. Wachovia Mortgage, FSB*, No. 09-CV-1572 JLS, 2009 U.S. Dist. LEXIS 102243, at *4 (S.D. Cal. Nov. 3, 2009) (taking judicial notice of the same documents as Exhibits A-D here).
- (2) Plaintiffs’ complaint is unintelligible and fails to articulate a cognizable claim against any defendant. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (“[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”)

1 (internal quotations omitted). This complaint falls well short of this benchmark. In addition, the
2 only indication of the subject matter of the complaint are Plaintiffs' exhibits: the deed of trust and
3 notice of trustee's sale for the same subject property that was at issue between the parties in *Atienza*
4 *v. Wells Fargo Bank, N.A.*, No. C 10-03457 RS, 2011 U.S. Dist. Lexis 22592 (N.D. Cal. Mar. 7,
5 2011), which Judge Seeborg dismissed with prejudice. Thus, the current action concerns the "same
6 transactional nucleus of fact" as litigated in the prior matter, and therefore any attempt to amend the
7 pleadings would be futile because the suit is barred by *res judicata*. *Int'l Union v. Karr*, 994 F.2d
8 1426, 1430 (9th Cir. 1993). Accordingly, the Court **GRANTS** Defendant's motion to dismiss
9 without leave to amend, and the complaint is dismissed with prejudice.

10 This disposes of Docket No. 8.

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12 IT IS SO ORDERED.

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14 Dated: September 2, 2011

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17 EDWARD M. CHEN
18 United States District Judge
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