



1 **I. BACKGROUND**

2 **A. The State Court Action**

3 Plaintiffs Pedro and Dominga Brambila are pro se plaintiffs that reside at 2080  
4 Roper Circle, Brentwood, California 94513 (Subject Property). Compl. ¶ 1, Dkt. No. 1.  
5 Defendant Wells Fargo Bank, N.A., is the trustee of the MLMI Trust Series 2005-FF6,  
6 which holds the mortgage to the Subject Property. *Id.* ¶ 2.

7 On January 12, 2010, the Brambilas filed a complaint against Wells Fargo in  
8 Contra Costa County Superior Court (“*Brambila I*”). Def.’s Req. Jud. Not. (“RJN”), Exh.  
9 1 (state court complaint), Dkt. No. 11. There, the Brambilas asserted nine causes of  
10 action against Wells Fargo for: (1) fraudulent misrepresentation; (2) fraudulent  
11 inducement; (3) violation of the Fair Debt Collection Practices Act; (4) predatory lending  
12 practices; (5) breach of contract, trust, and fiduciary duty; (6) RICO violations; (7) quiet  
13 title; (8) declaratory relief; and (9) injunctive relief. *See id.* On March 23, 2010, Wells  
14 Fargo filed a demurrer to the *Brambila I* complaint. Def.’s RJN, Exh. 2. Wells Fargo’s  
15 demurrer was sustained with leave to amend on June 30, 2010. Def.’s RJN, Exh. 3.

16 On July 28, 2010, Wells Fargo moved ex parte for dismissal due to the Brambilas’  
17 failure to file an amended complaint within the time allowed by the state court. Def.’s  
18 RJN, Exh. 4. The state court granted Wells Fargo’s ex parte application and dismissed  
19 the *Brambila I* complaint with prejudice. Def.’s RJN, Exh. 5. On September 23, 2010,  
20 the state court entered final judgment of dismissal in favor of Wells Fargo in *Brambila I*.  
21 Def.’s RJN, Exh. 6.

22 **B. Federal Proceedings**

23 On August 10, 2012, the Brambilas filed the present complaint in federal court.  
24 Compl., Dkt. No. 1. The Brambilas’ complaint asserts ten causes of action for: (1)  
25 fraudulent misrepresentation; (2) fraudulent inducement; (3) filing false recorded  
26 documents; (4) violation of the Fair Debt Collection Practices Act; (5) predatory lending  
27 practices; (6) breach of trust, contract, and fiduciary duty; (7) RICO violations; (8) quiet  
28 title; (9) declaratory relief; and (10) injunctive relief. *See* Compl. With the exception of

1 the Brambilas' claim for filing false recorded documents, these claims mirror those  
2 asserted in the *Brambila I* complaint. *See* Compl.; *see also* Def.'s RJN, Exh. 1 (state  
3 court complaint).

#### 4 **1. Wells Fargo's Motion to Strike**

5 Wells Fargo now moves to strike the complaint filed in the present action. Def.'s  
6 Mot. Strike, Dkt. No. 10. Wells Fargo argues that claims 1, 2, and 4-10 are barred from  
7 re-litigation by the doctrine of res judicata because the state court issued a final judgment  
8 on these claims in *Brambila I*. *Id.* at 3. Wells Fargo argues that claim 3 also should be  
9 dismissed because it arises out of the same injury giving rise to the claims asserted in the  
10 *Brambila I* complaint, and thus is barred by California's final judgment rule. *Id.* Wells  
11 Fargo's motion to strike is unopposed.<sup>1</sup>

#### 12 **2. Wells Fargo's Motion to Dismiss**

13 Wells Fargo filed a separate motion to dismiss the complaint in the present action.  
14 Def.'s Mot. Dismiss, Dkt. No. 7. Wells Fargo argues that all the claims should be  
15 dismissed for failure to state a single claim upon which relief can be granted. *Id.* at 1.  
16 Wells Fargo's motion to dismiss is also unopposed.

#### 17 **C. Jurisdiction**

18 This Court has subject matter jurisdiction over the Brambilas' federal claims under  
19 15 U.S.C. § 1692k(d) and 18 U.S.C. § 1965(a), and supplemental jurisdiction over the  
20 state law claims under 28 U.S.C. § 1367. All parties have consented to the jurisdiction of  
21 a magistrate judge under 28 U.S.C. § 636(c). Dkt. Nos. 4, 15.

### 22 **II. STANDARD OF REVIEW**

#### 23 **A. Motion to Dismiss**

24 To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead her  
25 claim with sufficient specificity to "give the defendant fair notice of what the claim is and  
26 \_\_\_\_\_

27 <sup>1</sup> On October 5, 2012, the Brambilas filed a request for entry of default judgment. Req.  
28 Default, Dkt. No. 16. The clerk of the court declined the Brambilas' request, as Wells Fargo's  
motion to dismiss constitutes a response to the complaint.

1 the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 545, 555 (2007).  
2 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
3 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,  
4 129 S. Ct. 1937, 1949 (2009) (internal quotations and citation omitted). A court is not  
5 required to accept as true conclusory allegations, unreasonable inferences, or unwarranted  
6 deductions of fact. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031  
7 (9th Cir. 2008). “A claim has facial plausibility when the plaintiff pleads factual content  
8 that allows the court to draw the reasonable inference that the defendant is liable for the  
9 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. A pleading that offers “labels and  
10 conclusions” or “a formulaic recitation of the elements of a cause of action will not do.”  
11 *Bell Atl. Corp.*, 550 U.S. 555. If a complaint lacks facial plausibility, a court must grant  
12 leave to amend unless it is clear that the complaint’s deficiencies cannot be cured by  
13 amendment. *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002).

#### 14 **B. Motion to Strike**

15 Rule 12(f) permits the Court to “[strike] from any pleading any insufficient  
16 defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed.R.Civ.P.  
17 12(f). “The function of a 12(f) motion to strike is to avoid the expenditure of time and  
18 money that must arise from litigating spurious issues by dispensing with those issues prior  
19 to trial.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (quotations and  
20 citations omitted). Immaterial matter is matter that “has no essential or important  
21 relationship to the claim for relief or the defenses being pleaded.” *Id.* at 1527.  
22 “[Statements] that do not pertain, and are not necessary, to the issues in question” are  
23 impertinent. *Id.* at 1527. Allegations “that unnecessarily reflect [ ] on the moral character  
24 of an individual or state [ ] anything in repulsive language that detracts from the dignity  
25 of the court” are considered scandalous. *Cobell v. Norton*, 224 F.R.D. 1, 5 (D.D.C.  
26 2005). These “include allegations that cast a cruelly derogatory light on a party or other  
27 person.” *In re 2TheMart.com Secs. Litig.*, 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000).

28 //

1 **III. DISCUSSION**

2 **A. Documents Considered by the Court**

3 Wells Fargo requests that the Court take judicial notice of the following documents  
4 in support of its motion to dismiss: (1) complaint filed in *Pedro Brambila v. Wilshire*  
5 *Credit Corporation, et al.*, Contra Costa Superior Court, Case No. CIVMSC10-00111,  
6 filed on January 12, 2010; (2) copy of the docket in *Brambila v. Wilshire Credit*  
7 *Corporation, et al.*, Contra Costa Superior Court, Case No. CIVMSC10-00111; (3) notice  
8 of ruling regarding Wells Fargo and First Franklin’s demurrer to the complaint, filed in  
9 *Brambila v. Wilshire Credit Corporation, et al.*, Contra Costa Superior Court, Case No.  
10 CIVMSC10-00111, filed on July 6, 2010; (4) ex parte application for dismissal as to  
11 Wells Fargo Bank and First Franklin, filed in *Brambila v. Wilshire Credit Corporation, et*  
12 *al.*, Contra Costa Superior Court, Case No. CIVMSC10-00111, filed on July 28, 2010; (5)  
13 order on ex parte application for dismissal as to Wells Fargo Bank and First Franklin,  
14 filed in *Brambila v. Wilshire Credit Corporation, et al.*, Contra Costa Superior Court,  
15 Case No. CIVMSC10-00111, filed on July 28, 2010; (6) judgment of dismissal as to  
16 Wells Fargo Bank and First Franklin, filed in *Brambila v. Wilshire Credit Corporation, et*  
17 *al.*, Contra Costa Superior Court, Case No. CIVMSC10-00111, filed on September 23,  
18 2010. Def.’s RJN, Exhs. 1-6.

19 Although a district court generally may not consider any material beyond the  
20 pleadings in ruling on a Rule 12(b)(6) motion, the Court may take judicial notice of  
21 documents referenced in the complaint, as well as matters in the public record, without  
22 converting a motion to dismiss into one for summary judgment. *See Lee v. City of L.A.*,  
23 250 F.3d 668, 688-89 (9th Cir. 2001). A matter may be judicially noticed if it is either  
24 “generally known within the territorial jurisdiction of the trial court” or “can  
25 be accurately and readily determined from sources whose accuracy cannot reasonably be  
26 questioned.” Fed. R. Evid. 201(b); *W. Radio Servs. Co. v. Qwest Corp.*, 530 F.3d 1186,  
27 1192 n.4 (9th Cir. 2008). Under Federal Rule of Civil Procedure 10(c), a court may take  
28 judicial notice of “documents whose contents are alleged in a complaint and whose

1 authenticity no party questions, but which are not physically attached to the pleading.”  
2 *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994).

3 Here, the Court takes judicial notice of all exhibits identified above under Federal  
4 Rule of Evidence 201 and Federal Rule of Civil Procedure 10(c). *See* Fed. R. Evid. 201;  
5 *see also* Fed. R. Civ. P. 10(c).

## 6 **B. Wells Fargo’s Motion to Strike Will be Treated as a Motion to Dismiss**

### 7 **1. The Court has Authority to Convert a Motion to Strike into a Motion to** 8 **Dismiss**

9 The appropriate medium for challenging the sufficiency of a complaint is through  
10 Rule 12(b)(6), not Rule 12(f). *Consumer Solutions REO, LLC v. Hillery*, 658 F. Supp. 2d  
11 1002, 1020-21 (N.D. Cal. 2009). “However, where a motion is in substance a Rule  
12 12(b)(6) motion, but is incorrectly denominated as a Rule 12(f) motion, a court may  
13 convert the improperly designated Rule 12(f) motion into a Rule 12(b)(6) motion.” *Id.*

### 14 **2. Res Judicata is Appropriately Raised Through a Motion to Dismiss**

15 First, Wells Fargo argues that nine of the Brambilas’ ten causes of action are  
16 barred by the doctrine of res judicata. Wells Fargo raises the affirmative defense of res  
17 judicata on a Rule 12(f) motion to strike. *See* Def.’s Mot. Strike. A Rule 12(b)(6)  
18 motion, however, is the appropriate vehicle to raise the affirmative defense of res judicata  
19 where there are no disputed issues of fact. *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th  
20 Cir. 1984). Because res judicata is appropriately raised on a motion to dismiss, the Court  
21 converts Wells Fargo’s motion to strike into a motion to dismiss.

22 In considering a motion to dismiss, a court “may take judicial notice of matters of  
23 public record outside the pleadings.” *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504  
24 (9th Cir. 1986). Here, there are no disputed issues of fact. Wells Fargo’s motion to strike  
25 is premised upon the fact that a final judgment has been rendered in the state court action.  
26 *See* Def.’s Mot. Strike. The state court judgment from *Brambila I* attached to Def.’s RJN  
27 as exhibit 6, is a matter of public record, and therefore this court may take judicial notice  
28 of its existence. Because there are no disputed issues of fact, this Court will treat Wells

1 Fargo’s Rule 12(f) motion as though it was brought as a Rule 12(b)(6) motion.

2 **C. The Doctrine of Res Judicata Bars Re-litigation of Previously Dismissed Claims**

3 The Full Faith and Credit Act requires that federal courts give state court  
4 judgments the same full faith and credit in federal court. 28 U.S.C. § 1738. Thus, when a  
5 state court issues a final judgment in a case, § 1738 “requires that federal courts give the  
6 state-court judgment . . . the same preclusive effect it would have had in another court of  
7 the same State.” *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518 (1986).

8 Furthermore, when addressing state court judgments, federal courts must “look to the law  
9 of the rendering State to ascertain the effect of the judgment.” *Matsushita Elec. Indus.*  
10 *Co., Ltd. v. Epstein*, 516 U.S. 367 (1996).

11 In California, to properly assert the doctrine of res judicata, a party must show that:

12 (1) A claim or issue raised in the present action is identical to a claim or  
13 issue litigated in a prior proceeding; (2) the prior proceeding resulted in a  
14 final judgment on the merits; and (3) the party against whom the doctrine is  
being asserted was a party or in privity with a party to the prior proceeding.

15 *People v. Barragan*, 32 Cal. 4th 236, 252-53 (2004). In the present case, nine of  
16 plaintiffs’ claims are identical to those asserted in *Brambila I*. See generally Complaint;  
17 RJN Exh. 1. Additionally, both Pedro and Dominga Brambila were parties to *Brambila I*.  
18 *Id.* Thus, the first and third requirements of res judicata are satisfied.

19 The remaining factor is whether “the prior proceeding resulted in a final judgment  
20 on the merits.” *Barragan*, 32 Cal. 4th at 253. In determining whether a final judgment on  
21 the merits occurred, the California Supreme Court has held that:

22 “[a] judgment given after the sustaining of a general demurrer on a ground  
23 of substance. . . may be deemed a judgment on the merits, and conclusive in  
24 a subsequent suit; and the same is true where the demurrer sets up the  
failure of the facts alleged to establish a cause of action, and the same facts  
are pleaded in the second action.”

25 *Goddard v. Security Title Insur. & Guarantee Co.*, 14 Cal.2d 47, 52 (1937). Furthermore,  
26 “[when] a plaintiff elects not to amend the complaint, it is presumed that the complaint  
27 states as strong a case as is possible; and the judgment of dismissal must be affirmed if  
28 the unamended complaint is objectionable on any ground raised by the demurrer.”

1 *Otworth v. S. Pac. Transp. Co.*, 166 Cal. App. 3d 452, 457 (1985) (internal citations  
2 omitted).

3 In the present case, the Brambilas did not amend their complaint, and thus the  
4 defect on the merits remained. Def.'s RJN, Exh. 2. A final judgment for failure to amend  
5 the defective complaint in *Brambila I* was rendered on September 23, 2010. Def.'s RJN,  
6 Exh. 6. Under *Otworth* and *Goddard*, this dismissal constitutes a judgment on the merits  
7 and is final, satisfying the final element of res judicata.

8 As all three elements of res judicata are established, plaintiffs are estopped from  
9 re-litigating those claims in this Court. Accordingly, Wells Fargo's motion to dismiss the  
10 Brambilas' claims for fraudulent misrepresentation, fraudulent inducement, violation of  
11 the Fair Debt Collection Practices Act, predatory lending practices, breach of  
12 contract/trust/fiduciary duty, RICO violations, quiet title, declaratory relief, and  
13 injunctive relief is GRANTED. As there is no set of facts that could plausibly prove no  
14 final judgment exists in state court, the claims are DISMISSED with prejudice.

#### 15 **D. Court Declines Jurisdiction over Remaining State Law Claim**

16 Second, Wells Fargo moves to dismiss the Brambilas' claim for filing false  
17 recorded documents on the grounds that it is barred by California's final judgment rule.  
18 Def.'s Mot. Strike at 3. Because the Brambilas' federal claims have been dismissed,  
19 however, this Court declines to exercise supplemental jurisdiction over the claim for  
20 filing false recorded documents. "[I]n the usual case in which federal-law claims are  
21 eliminated before trial, the balance of factors . . . will point toward declining to exercise  
22 jurisdiction over the remaining state law claims." *Gini v. Las Vegas Metro. Police Dept.*,  
23 40 F.3d 1041, 1046 (9th Cir. 1994).

24 While the court dismisses the previously litigated claims with prejudice, the issue  
25 remains whether the Brambilas' state law claim for filing false recorded documents is  
26 dismissed with or without prejudice. "When . . . the court dismisses the federal claim  
27 leaving only state claims for resolution, the court should decline jurisdiction over the state  
28 claims and dismiss them without prejudice." *Id.* Accordingly, the dismissal of the

1 Brambilas' claim for filing false recorded documents is without prejudice.

2 In addition to the motion to strike, Wells Fargo filed a separate motion to dismiss  
3 the Brambilas' complaint for failure to state a claim. Dkt. No. 7. Because the Court  
4 dismisses the complaint under the doctrine of res judicata and jurisdictional grounds, the  
5 Court does not address the merits of Wells Fargo's separate motion to dismiss.

6 **IV. CONCLUSION**

7 Because Plaintiffs' claims 1, 2, and 4-10 are barred by the doctrine of res judicata,  
8 Wells Fargo's motion to dismiss is GRANTED as to these claims, which are  
9 DISMISSED with prejudice. Because the Court declines to exercise supplemental  
10 jurisdiction over claim 3, that claim is DISMISSED without prejudice. The case  
11 management conference scheduled for November 14, 2012 is VACATED and the clerk of  
12 court is directed to terminate this case.

13  
14 IT IS SO ORDERED.

15  
16 Date: November 1, 2012

17   
18 NATHANAEL M. COUSINS  
19 United States Magistrate Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28