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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BAMIDELE HAMBOLU, et al.,

Plaintiffs,

v.

FORTRESS INVESTMENT GROUP, et al.,

Defendants.

Case No. [17-cv-01039-JSC](#) (EMC)

ORDER RE PREFILING REVIEW

Plaintiffs Lynn Gavin and Bamidele Hambolu (mother and son, respectively) initially filed the instant putative class action in the Central District of California. *See* Docket No. 1 (complaint).¹ Plaintiffs, proceeding pro se, applied to proceed in forma pauperis (“IFP”). *See* Docket Nos. 2-3 (IFP application). In February 2017, the Central District court transferred the action to this District. *See* Docket No. 9 (Order at 2). In its transfer order, the Central District court took note, *inter alia*, of an order from this Court finding Ms. Gavin to be a vexatious litigant. *See id.* (citing *Gavin v. City & County of San Francisco*, No. 15-CV-05202-EMC, 2016 WL 126937, at *5 (N.D. Cal. Jan. 12, 2016)).

Upon transfer to this District, the assigned judge, Judge Corley, referred the case to the undersigned (acting as General Duty Judge) for a pre-filing review based on Ms. Gavin’s status as a vexatious litigant. Having reviewed the complaint in this action, as well as the record of other cases involving Ms. Gavin and Mr. Hambolu, the Court hereby rules as follows. As to Ms. Gavin, her claims for relief are barred as they fall within the scope of the pre-filing review order.

¹ The name Ibukun Hambolu also shows up in the caption of the complaint as a named plaintiff, but it appears that she is not in fact a plaintiff in this case. Her name was crossed out in the caption (apparently, by Ms. Gavin as reflected by the handwritten “LG” initials), and, unlike Ms. Gavin and Mr. Hambolu, Ms. Hambolu did not sign the complaint.

1 With respect to Mr. Hambolu, who is a co-plaintiff in this case, the Court orders the Clerk
2 of the Court to reassign the entirety of the case, including Mr. Hambolu’s claims, to the
3 undersigned. The Court grants Mr. Hambolu’s IFP application but dismisses his claims with
4 prejudice and further orders Mr. Hambolu to show cause as to why he should not be deemed a
5 vexatious litigant subject to the same pre-filing review requirement as his mother.

6 **I. PRE-FILING REVIEW WITH RESPECT TO MS. GAVIN**

7 Pursuant to the vexatious litigant order, Ms. Gavin “must obtain leave of court before
8 filing any further suits based on her allegations that she was wrongfully evicted from the
9 Parkmerced apartments in 2012.” *See Gavin*, 2016 WL 126937, at *5.

10 Despite the fact that Ms. Gavin now files this case as a putative class action, there is
11 significant overlap in operative facts between this complaint and her previous eleven complaints
12 alleging wrongful eviction from the Parkmerced apartments in 2012. Specifically, in the pending
13 suit, Ms. Gavin complains of conduct by Defendants Parkmerced Investors Properties, LLC,
14 Parkmerced investors, and a third-party billing service company called American Utility Services
15 for their role in Parkmerced’s practice of providing and filing allegedly improper eviction notices
16 due to usurious utility fees against Plaintiffs and other members of the putative class. *See* Docket
17 No. 1 (Compl. ¶¶ 2-6, 14). Ms. Gavin alleges, *inter alia*, that Defendants engaged in practices that
18 violate the Fair Debt Collections Practice Act (“FDCPA”), 15 U.S.C. § 1692(e), and that
19 constitute wrongful eviction.² Since this case arises from Ms. Gavin’s Parkmerced eviction in
20 2012,³ this case falls squarely within this Court’s previous pre-filing review order barring Ms.
21 Gavin from filing any further suits based on her alleged wrongful eviction from Parkmerced
22 apartments. *See Gavin*, 2016 WL 126937, at *5. Thus, Ms. Gavin is barred from filing suit.

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26 ² Plaintiffs also allege violations of the Rosenthal Fair Debt Collection Practices Act, *see* Cal. Civ.
27 Code §§ 1788-1788.32; the Unfair Competition Law, *see* Cal. Bus. & Prof. Code § 17200; fraud;
28 fraudulent concealment; deprivation of civil rights under 42 U.S.C. § 1983 and Title VIII of the
1968 Civil Rights Act; breach of contract; emotional distress; and negligence.

³ The complaint does not allege exactly when Plaintiffs were evicted, but notes that Defendants
sent the FDCPA-violating eviction notices in August through October 2011. *See* Compl. ¶¶ 60-62.

1 which is the basis of the action.”). The gist of Mr. Hambolu’s FDCPA claim is that Defendants
2 issued flawed eviction notices that, *inter alia*, failed to disclose that the named Plaintiffs were
3 subsidized tenants. Generously reading Mr. Hambolu’s litigation history here, the first time Mr.
4 Hambolu had reason to know of the alleged FDCPA violations was at least November 14, 2014,
5 when Mr. Hambolu filed a complaint in which he alleged that he was wrongfully evicted from the
6 Parkmerced apartments due to defective eviction notices that failed to disclose that he and his
7 family were subsidized tenants. *See Gavin v. FCOF PM EQ LLC*, No. 14-4582-RS (Docket No.
8 1) (Compl. ¶¶ 178-80). However, at the time, Mr. Hambolu did not allege a FDCPA violation and
9 the action was dismissed with prejudice for failure to prosecute after Mr. Hambolu and his mother
10 failed to amend their complaint as instructed by the court. *See id.* (Docket No. 14) (order). Since
11 it is long past the one-year statute of limitations, Mr. Hambolu’s FDCPA claim is time barred.

12 As for the § 1983 claim, such a claim exists only against state actors; Mr. Hambolu has
13 sued only private individuals and companies and therefore he has failed to state a claim for relief.
14 While there are certain circumstances where a private actor’s conduct may be deemed state action
15 for purposes of § 1983, *see Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (“recogniz[ing]
16 at least four different criteria, or tests, used to identify state action: ‘(1) public function; (2) joint
17 action; (3) governmental compulsion or coercion; and (4) governmental nexus’”), Mr. Hambolu
18 has made no allegations that would implicate state action here. Moreover, it is implausible that
19 Mr. Hambolu could implicate state action because “detailed regulation of and substantial funding
20 for private actors are not sufficient to transform the party’s conduct into state action.” *Jensen v.*
21 *Lane Cty.*, 222 F.3d 570, 575 (9th Cir. 2000) (citing *Blum v. Yaretsky*, 457 U.S. 991, 1011 (1982)).

22 Finally, as to the FHA claim, Mr. Hambolu alleges that Defendant Parkmerced’s eviction
23 notices disparately impact subsidized tenants and people of color in violation of the FHA. *See*
24 Docket No. 1 (Compl. ¶¶ 161-62). In addition to a potential time-bar defense (*i.e.*, 42 U.S.C.
25 § 3613 provides for a two-year statute of limitations for FHA claims), there are serious
26 deficiencies in Mr. Hambolu’s pleading since subsidized tenants are not a protected class under
27 the FHA and conclusory claims of racial imbalance are insufficient to establish a *prima facie* case
28 of disparate treatment. *See Texas Dep’t of Housing & Community Affairs v. Inclusive*

1 *Communities Project, Inc.*, 135 S. Ct. 2507, 2523 (2015) (“Racial imbalance . . . does not, without
2 more, establish a prima facie case of disparate impact.”) (internal quotes and citations omitted).
3 Mr. Hambolu fails to cite specific facts supporting this claim.

4 Even if Mr. Hambolu had adequately stated a claim for relief for any of his federal claims,
5 each of the federal claims is subject to dismissal for an independent reason. More specifically, the
6 claims are precluded under the doctrine of res judicata. Under this doctrine, “[a] final judgment on
7 the merits of the action precludes the parties or their privies from re-litigating issues that were or
8 could have been raised in that action.” *Knox v. Donahoe*, No. C-11-cv-2596-EMC, 2012 U.S.
9 Dist. LEXIS 37719, at *3 (N.D. Cal. Mar. 20, 2012) (internal quotation marks omitted). Res
10 judicata thus applies when there is: (1) an identity of claims; (2) a final judgment on the merits;
11 and (3) identity or privity between the parties. *See id.* All three factors are met in the instant case,
12 as discussed below.

13 The first factor is satisfied because there is a sufficient identity of claims between this
14 complaint and Mr. Hambolu’s previous seven complaints for purposes of res judicata: all of them
15 arise from the same operative facts, namely, Mr. Hambolu’s eviction from the Parkmerced
16 apartments in 2012. *See* Ex. A (listing cases); *see also Tahoe-Sierra Pres. Council, Inc. v. Tahoe*
17 *Regional Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003) (stating that “[i]dentity of claims
18 exists when two suits arise from the same transactional nucleus of facts”) (internal quotation
19 marks omitted). Although his FDCPA claim was never previously pleaded, “newly articulated
20 claims based on the same nucleus of facts may still be subject to a res judicata finding.” *Id.*

21 The second factor (final adjudication on the merits) and third factor (privity between
22 parties) are also satisfied because Mr. Hambolu has brought suit against all of the named
23 defendants⁴ and these suits were dismissed – with prejudice – for failure to state a claim and
24 failure to prosecute, which are both considered a final judgment on the merits. *See Gavin v.*
25 *FCOF PM EQ, LLC*, No. 14-4582-RS, Docket No. 15 (order) (dismissing with prejudice for

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27 ⁴ Although Laurence Gluck was not listed as a defendant in the case caption of any complaint, he
28 is named as a defendant in the body of one of Mr. Hambolu’s complaints. *See Gavin v. FCOF PM*
EQ, LLC, No. 14-4582-RS, Docket No. 1 (Compl. ¶ 103) (identifying Mr. Gluck as a defendant
and providing his mailing address).

1 failure to prosecute after Plaintiffs failed to file an amended complaint); *Hambolu v. PCOF PM*
2 *EQ, LLC*, No. 15-cv-2780-RS, Docket No. 23 (order) (dismissing with prejudice for failure to
3 state a claim on which relief may be granted and noting futility of providing Plaintiffs leave to
4 amend given repeated missed opportunities to amend deficient pleadings); *see also* Fed. R. Civ. P.
5 41 (providing that, “[i]f the plaintiff fails to prosecute or to comply with these rules or a court
6 order . . . a dismissal under this subdivision . . . operates as an adjudication on the merits”).

7 For the foregoing reasons, the Court dismisses Mr. Hambolu’s federal claims, and with
8 prejudice. While pro se litigants are generally given the opportunity to amend deficient pleadings,
9 leave may be denied where amendment would be futile. Mr. Hambolu has failed to state a claim
10 for relief and it would either be futile or likely futile for Mr. Hambolu to try to cure the above
11 deficiencies.

12 This leaves only Mr. Hambolu’s state law claims for resolution. Here, Mr. Hambolu has
13 made no assertion of diversity jurisdiction. Thus, the only basis for the Court to exercise
14 jurisdiction over the state law claims is supplemental jurisdiction. Under 28 U.S.C. § 1367(c)(3),
15 a federal district court may decline to exercise supplemental jurisdiction over a state claim if the
16 court has dismissed all claims over which it has original jurisdiction. Here, because the Court has
17 dismissed all of Mr. Hambolu’s federal claims, the Court declines to exercise supplemental
18 jurisdiction over Mr. Hambolu’s state claims.

19 In sum, with respect to Mr. Hambolu’s claims for relief, the Court allows him to proceed
20 IFP but dismisses his federal claims with prejudice pursuant to its § 1915(e)(2)(B) review and
21 declines to exercise supplemental jurisdiction over the state law claims.

22 **III. ORDER TO SHOW CAUSE**

23 Finally, the Court takes this opportunity to address whether Mr. Hambolu, like his mother,
24 should be declared a vexatious litigant and subject to the same pre-filing review requirement – *i.e.*,
25 whether he, like Ms. Gavin, “must obtain leave of court before filing any further suits based on
26 [any] allegations that [he or his mother] was wrongfully evicted from the Parkmerced apartments
27 in 2012.” *See Gavin v. City & County of San Francisco*, No. 15-CV-05202-EMC at *5.

28 When a litigant has filed numerous harassing or frivolous lawsuits, courts have the power

1 to declare him a vexatious litigant and enter an order requiring that any future complaints be
2 subject to an initial review before they are filed. *See Molski v. Evergreen Dynasty Corp.*, 500 F.3d
3 1047, 1057 (9th Cir. 2007). District courts have the power to enter pre-filing orders against
4 vexatious litigants under the All Writs Act. *See* 28 U.S.C. § 1651(a); *see Molski*, 500 F.3d at
5 1057. While “such pre-filing orders are an extreme remedy that should rarely be used” because of
6 the danger of “tread[ing] on a litigant’s due process right of access to the courts,” *id.*, they are
7 sometimes appropriate because “[f]lagrant abuse of the judicial process . . . enables one person to
8 preempt the use of judicial time that properly could be used to consider the meritorious claims of
9 other litigants.” *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

10 In *De Long*, the Ninth Circuit set out the requirements for entering pre-filing orders against
11 vexatious litigants. *See id.* at 1147-48. First, the litigant must be given notice and an opportunity
12 to be heard before the order is entered. *See id.* at 1147. Second, the Court must compile an
13 adequate record for review, including a list of all cases and motions leading to the conclusion that
14 the individual is a vexatious litigant. *See id.* Third, the Court must make substantive findings that
15 the litigant’s filings are frivolous or harassing. *See id.* at 1148. Finally, the pre-filing order may
16 not be overly broad, and must be “narrowly tailored to closely fit the specific vice encountered.”
17 *See id.*

18 Since 2014, Mr. Hambolu has filed seven similar lawsuits in this district based on his
19 eviction from Parkmerced apartments in 2012, including this case.⁵ These lawsuits and their
20 outcomes are listed as Exhibit A hereto. As mentioned above, each of the cases has been
21 dismissed, including multiple dismissals for failure to prosecute and a dismissal for failure to state
22 a claim. Pursuant to the first *DeLong* requirement, Mr. Hambolu is hereby ordered to show cause
23 as to why he should not be declared a vexatious litigant and have a pre-filing order entered against
24 him – more specifically, the same pre-filing order to which his mother is currently subject. Mr.
25 Hambolu’s response to this order to show cause shall be filed within two weeks of the date of this

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28 ⁵ Ms. Gavin and Mr. Hambolu also filed an eighth action in California state court that was later removed to the Northern District of California. *See Gavin v. San Francisco Housing Authority*, No. 16-cv-04974-YGR (N.D. Cal. Aug. 30, 2016) (Docket No. 1).

1 order. If the Court does not receive a timely response, then it shall deem Mr. Hambolu a vexatious
2 litigant and he must obtain leave of court before filing any further suits based on any allegations
3 that he or his mother was wrongfully evicted from the Parkmerced apartments in 2012.

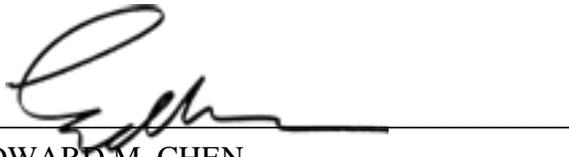
4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court finds Ms. Gavin's claims barred by the pre-filing
6 order. The Court also grants Mr. Hambolu's IFP application but, pursuant to its § 1915(e) review,
7 it dismisses with prejudice his federal claims and declines to exercise supplemental jurisdiction
8 over his state claims. The Clerk of the Court is directed to enter judgment in accordance with the
9 above and close the file in this case.

10 **Furthermore, Mr. Hambolu is ordered to show cause as to why he should not be**
11 **declared a vexatious litigant. His response must be filed within two weeks of the date of this**
12 **order. If no timely response is filed, the Court shall declare him a vexatious litigant subject**
13 **to the same pre-filing requirement as his mother.**

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15 **IT IS SO ORDERED.**

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17 Dated: April 19, 2017

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19 EDWARD M. CHEN
20 United States District Judge