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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHETANN PATEL AND HARSHIKA PATEL,

Plaintiff,

vs.

**U.S. BANK, N.A., AS TRUSTEE FOR
CITIGROUP MORTGAGE LOAN TRUST, INC.,
ASSET-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-HE1; WELLS
FARGO BANK, N.A.; QUALITY LOAN SERVICE
CORP.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., et al.,**

Defendants.

Case No.: 13-CV-1625 YGR

ORDER GRANTING:

(1) MOTION OF DEFENDANTS U.S. BANK, ET AL. TO DISMISS WITH LEAVE TO AMEND; AND

(2) MOTION OF DEFENDANT QUALITY LOAN SERVICE CORP. TO DISMISS WITH LEAVE TO AMEND

Plaintiffs Chetann Patel and Harshika Patel (“Plaintiffs”) bring this action against Defendants U.S. Bank, N.A., As Trustee For Citigroup Mortgage Loan Trust, Inc., Asset-Backed Pass-Through Certificates, Series 2006-He1; Wells Fargo Bank, N.A.; Mortgage Electronic Registration Systems, Inc. (collectively, “Beneficiary Defendants”), and Quality Loan Service Corp. (“QLS”). Plaintiffs allege claims for breach of express and implied agreement; slander of title; wrongful foreclosure; violation of California Civil Code § 2923.5; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605; the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962 and California’s Unfair Competition Law, Business & Professions Code § 17200.

1 The Beneficiary Defendants and QLS have each moved to dismiss Plaintiffs' complaint
2 pursuant to FRCP 12(b)(6). Having carefully considered the papers submitted and the pleadings in
3 this action, and for the reasons set forth below, the Court hereby **GRANTS** the Motions to Dismiss.
4 Leave to amend is granted as set forth herein.¹

5 Plaintiffs previously filed a complaint against all the defendants here based upon the same
6 set of facts and the same basic theories as alleged herein. After sustaining demurrers to Plaintiffs'
7 original and amended complaints in the state court, the state court dismissed the complaint with
8 prejudice, and entered a judgment in favor of Defendants on September 7, 2012. (Beneficiary
9 Defendants' Request for Judicial Notice, Exh. N and O [Dkt. No. 15-14, 15-15].)²

10 All of Plaintiffs' claims herein are barred by the entry of judgment in the prior state court
11 action. *Res judicata*, or claim preclusion operates to bar subsequent litigation "whenever there is
12 (1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between
13 parties." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (internal
14 quotations omitted). "California, as most states, recognizes that the doctrine of *res judicata* will bar
15 not only those claims actually litigated in a prior proceeding, but also claims that *could have been*
16 *litigated.*" *Castle v. Mortgage Elec. Registration Sys., Inc.*, EDCV 11-00538 VAP, 2011 WL
17 3626560 (C.D. Cal. Aug. 16, 2011) citing *Palomar Mobilehome Park Ass'n v. City of San Marcos*,
18 989 F.2d 362, 364 (9th Cir.1993)) (emphasis added); *Pey v. Wachovia Mortg. Corp.*, 11-2922 SC,
19 2011 WL 5573894, * 8 (N.D. Cal. Nov. 15, 2011) (*res judicata* also bars "any subsequent suit on
20 claims that ...could have been raised in a prior action.") (citing *Cell Therapueutics, Inc. v. Lash*
21 *Group, Inc.*, 586 F.3d 1204, 1212 (9th Cir. 2010)) (emphasis added). If the claims arise out of the
22 "same transactional nucleus of fact" as litigated in the prior matter *res judicata* precludes re-

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24 ¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court
25 finds this motion appropriate for decision without oral argument. Accordingly, the Court **VACATES**
26 the hearing set for **June 18, 2013**.

27 ² The Beneficiary Defendants and QLS each submitted Requests for Judicial Notice in
28 connection with their motions. Plaintiffs filed objections to QLS's Request for Judicial Notice.
(Dkt. No. 26.) Those objections are **OVERRULED**. All defendants' Requests for Judicial Notice are
GRANTED. As to all of documents granted judicial notice, the Court considers the fact of the
document itself, but does not take judicial notice of any disputed facts stated therein. *Lee v. City of*
Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001).

1 litigating those claims. *Int'l Union v. Karr*, 994 F.2d 1426, 1430 (9th Cir.1993). Pursuing new
2 legal theories does not create a new cause of action sufficient to avoid *res judicata*. *Boateng v.*
3 *Interamerican Univ., Inc.*, 210 F.3d 56, 62 (1st Cir.2000), cert. den. 531 U.S. 904.

4 Here, all of the claims in the complaint before the Court arise out of the same nucleus of
5 facts as was alleged in the state court. Plaintiffs alleged Defendants had no right to foreclose on the
6 property, the loan was improperly securitized, and assignments of the deed of trust were invalid.
7 (See RJN Exh. L [First Amended Complaint in Superior Court for the State of California, County
8 of Alameda, Case No. RG12623835] at ¶¶ 13, 16, 18, 19, 21, and 22.) Plaintiffs alleged claims
9 based on those same facts against the same defendants here. The state court dismissed all those
10 claims on their merits and entered a final judgment. All of Plaintiffs' claims based on lack of
11 authority to foreclose, securitization, and invalidity of the assignments, whether actually pleaded in
12 the prior action or not, are barred by entry of that judgment.

13 Indeed, Plaintiffs acknowledge in their opposition to the motion that the claims as alleged
14 are barred by *res judicata*, and seek leave to amend to allege claims they contend would not be
15 barred. (Oppo. at 7:3-9, Dkt. No. 25.) Plaintiffs argue that they can allege claims for breach of
16 contract and violation of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, that are not
17 precluded.³

18 First, the breach of contract claim they seek to plead is based on the same arguments as to
19 securitization of the loan, invalidity of the recorded assignments, and lack of authority to proceed
20 with foreclosure, all matters falling under the same nucleus of facts as was the subject of Plaintiffs'
21 state court action. Leave to amend to permit Plaintiffs to allege such a claim would be futile.

22 Second, as to the proposed TILA claim, Plaintiffs argue that they can allege that
23 "Defendants" violated TILA by: (1) failing to provide them with accurate material disclosures,
24 particularly concerning the risks of adjustable rate mortgages and the advantages of other loan
25 products; and (2) assigning the deed of trust without proper notice. Plaintiffs also add arguments

26 _____
27 ³ In their argument regarding their proposed TILA claim, Plaintiffs' cite the case number
28 for a matter filed in the Eastern District of California without further explanation. It is unclear to
the Court whether this is a drafting error or what relationship that case might bear to the instant
action.

1 concerning the securitization process, including violation of the Pooling and Service Agreement for
2 the securitized trust.

3 As to the latter securitization arguments, any claim based on those allegations is barred by
4 the prior action, as set forth above. Plaintiffs are not granted leave to allege such a basis for a TILA
5 claim.

6 As to the other proffered bases for a TILA claim, it remains to be seen whether Plaintiffs
7 can allege a viable claim. As defendants acknowledge on reply, the basis for Plaintiffs' request to
8 file a TILA claim is not entirely clear. In addition, while Plaintiffs' opposition argues that a TILA
9 claim would not be barred by the applicable one-year statute of limitations, they have not explained
10 what facts would support tolling of that statute of limitations. *Garcia v. Wachovia Mortgage*
11 *Corp.*, 676 F. Supp. 2d 895, 906 (C.D. Cal. 2009), citing *Hubbard v. Fidelity Federal Bank*, 91
12 F.3d 75, 79 (9th Cir. 1996) (TILA statute of limitations would not be tolled where plaintiffs did not
13 allege actions by defendant affirmatively preventing plaintiff from discovering a claim or other
14 "extraordinary circumstances" establishing reasonable grounds for failure to discover alleged
15 disclosure violations within the one-year statute of limitations).

16 Any TILA claim concerning disclosures would appear to be barred both by *res judicata* and
17 by the one year statute of limitations, since facts concerning the September 2005 origination of
18 Plaintiffs' loan would have been known to them well before the filing of their state court complaint
19 in 2012. Similarly, assignment of the deed of trust was apparently known to Plaintiffs at least one
20 year prior to the filing of their complaint herein, since they attached that assignment to their state
21 court complaint, filed April 2, 2012. (Beneficiary Defendants' RJN, Exh. E at Exh. C. thereto.)

22 CONCLUSION

23 The motion to dismiss the claims alleged in Plaintiffs' Complaint is **GRANTED**. Plaintiffs
24 concede that the claims therein are barred by *res judicata*. Leave to amend the claims as stated
25 would therefore be futile.

26 While the Court is skeptical of Plaintiff's ability to state a viable TILA claim, leave to
27 amend is liberally granted. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *United States v. Corinthian*
28 *Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). Thus, Plaintiff may **file a motion for leave to amend**

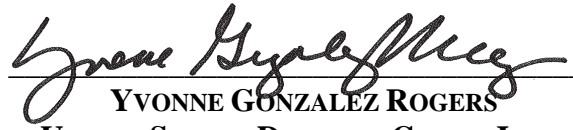
1 to state a TILA claim based upon failure to provide accurate material disclosures and/or assignment
2 of the deed of trust without proper notice, so long as they may state such a claim consistent with
3 FRCP 11. Plaintiffs must file any such motion no later than **July 8, 2013**. A proposed amended
4 complaint, deleting the allegations related to the dismissed claims and adding new allegations to
5 support the new TILA claim, must be attached as an exhibit to the motion. The allegations and the
6 motion *must address* clearly and specifically why the claims are not barred by *res judicata* and the
7 statute of limitations, as stated above.

8 Should Plaintiffs fail to file their motion to amend by **July 8, 2013**, this action will be
9 dismissed with prejudice.

10 This terminates Docket Nos. 14 and 17.

11 **IT IS SO ORDERED.**

12 **Date: June 14, 2013**



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE