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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEUTSCHE BANK NATIONAL TRUST
COMPANY,

No. C 15-03809 JSW

Plaintiff,

v.

CB EQUITIES LLC, et al.,

Defendants.

**ORDER GRANTING MOTION TO
INTERVENE AND DENYING
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT**

Now before the Court is the motion to intervene filed by Kyle and Rachel Halliday (“the Hallidays”) as the current owners of the disputed property and the motion by Plaintiff Deutsche Bank National Trust Company (“Plaintiff”) for default judgment against Defendants, CB Equities, LLC and American Brokers Conduit Corporation (“Defendants”). The Court finds these motions suitable for disposition without oral argument. Accordingly, the hearing set for February 3, 2017 is HEREBY VACATED. *See* N.D. Cal. Civil L. R. 7-6. Having carefully reviewed the parties’ papers and considered their arguments and the relevant legal authority, and good cause appearing, the Court hereby GRANTS the Hallidays’ motion to intervene and DENIES Plaintiff’s motion for default judgment.

BACKGROUND

According to the complaint and undisputed facts in the record, on January 22, 2007, non-party borrower Bill Williams took out a loan for property located at 223 Verde Mesa Drive, Danville, California 94526 (the “Property”). The loan was secured by a deed of trust in favor of

1 American Brokers Conduit (“ABC”) and recorded in Contra Costa County on January 30, 2007
2 (“2007 Deed of Trust”). Mortgage Electronic Registration Systems, Inc. (“MERS”) was the
3 nominee beneficiary in the 2007 Deed of Trust and on July 5, 2012, MERS executed an assignment
4 that the beneficial interest was transferred to Plaintiff, Deutsche Bank. This assignment was also
5 recorded in Contra Costa County on August 13, 2012. After Williams failed to make his payments
6 on the loan and foreclosure was initiated, Power Default Services, Inc. was substituted as trustee and
7 recorded a Notice of Default. On October 17, 2012, Williams executed a Grant Deed purportedly
8 transferring his interest in the Property to Defendant CB Equities, LLC (“CBE”). Although CBE did
9 not assume Williams’ loan, Plaintiff alleges that the transfer of the Grant Deed was part of a
10 fraudulent scheme designed to improperly and fraudulently extinguish the 2007 Deed of Trust.

11 Just five days after CBE obtained the Grant Deed, it filed an action before this Court seeking
12 to cancel the 2007 Deed of Trust. CBE sued American Brokers Conduit Corporation (“ABCC”)
13 which was not affiliated with the original lender on the loan, American Home Mortgage Holdings,
14 Inc. d/b/a American Brokers Conduit (“ABC”). This prior action filed before Magistrate Judge
15 Donna M. Ryu, *CB Equities, LLC v. American Brokers Conduit Corporation*, Case No. 12-cv-5449
16 DMR (“Prior Federal Action”), did not name Plaintiff as a party. On November 15, 2012, Defendant
17 CBE and ABCC entered into a Stipulated Judgment seeking to effectuate cancellation of the 2007
18 Deed of Trust. On November 26, 2012, without any knowledge that the lawsuit in its entirety as
19 well as Stipulated Judgment submitted by the parties were fraudulent, Magistrate Ryu signed the
20 Stipulated Judgment, which was recorded on November 29, 2012.

21 After Williams continued to fail to make payments on the outstanding loan, on November 26,
22 2015, Plaintiff recorded a Rescission of the prior Notice of Default and filed a new Notice of
23 Default.

24 Subsequent to the entry of the Stipulated Judgment, the Property was deeded by CBE to
25 Windeler Development Group, Inc., which then deeded it to the Hallidays. In this matter, Plaintiff
26 alleges that when Defendants executed their stipulation to enter judgment in the Prior Federal
27 Action, they had no right, title, claim or interest in the Property needed to expunge or extinguish the
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1 2007 Deed of Trust. In this action, Plaintiff seeks both to cancel the Stipulated Judgment and for a
2 declaration by this Court that it is void.

3 Plaintiff served Defendants in this matter by personal service but Defendants did not respond
4 to the allegations in the complaint. On September 28, 2015, Plaintiff filed a motion for default
5 judgment. When Defendants did not file a responsive pleadings or otherwise appear, the Clerk
6 entered default against Defendants on September 30, 2015. After this matter was related to the Prior
7 Federal Action before Magistrate Judge Ryu, and after holding a hearing on the pending motion for
8 default judgment, Judge Ryu denied the motion without prejudice. On February 1, 2016, Plaintiff
9 filed its First Amended Complaint alleging two distinct claims for relief: (1) cancellation of a written
10 instrument (the Stipulated Judgment) and (2) a declaration from the Court that the Stipulated
11 Judgment is void and is without legal force and effect. Although Defendants were served, they
12 again failed to respond and the Clerk entered default. Then, on February 25, 2016, Plaintiff moved
13 for default judgment.

14 On February 26, 2016, the Hallidays moved to intervene in this action. On November 14,
15 2014, nine months prior to Plaintiff filing this action in federal court, the Hallidays had filed suit
16 against Plaintiff in state court asserting causes of action for quiet title, slander of title, and
17 declaratory relief. That case is currently pending in Contra Costa County Superior Court, *Halliday*
18 *v. Deutsche Bank National Trust Company*, Case No. C14-1992 (“State Court Action”).

19 On June 8, 2016, Robert Jacobsen, who has been indicted for wire fraud and money
20 laundering for allegedly using Defendants as nominees in conducting a fraudulent scheme, also
21 moved to intervene.

22 On August 26, 2016, Magistrate Judge Ryu issued an order in the Prior Federal Action
23 setting aside the Stipulated Judgment for fraud upon the court. The order specifically set out that it
24 did not determine whether the Stipulated Judgment it set aside was void or voidable.

25 After full briefing before Magistrate Judge Ryu on the issue whether this Court should grant
26 default judgment (as well as the pending motions to intervene), on September 14, 2016, Judge Ryu
27 issued a Report and Recommendation (“Report”) along with a Request for Reassignment. In the
28 Report, Judge Ryu recommended that the first cause of action for cancellation of a written

1 In evaluating these requirements, courts “are guided primarily by practical and equitable
2 considerations.” *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). Courts generally
3 construe conflicts in favor of intervention. *United States ex rel. McGough v. Covington Techs. Co.*,
4 967 F.2d 1391, 1394 (9th Cir. 1992). “By allowing parties with a practical interest in the outcome
5 of a particular case to intervene, we often prevent or simplify future litigation involving related
6 issues; at the same time, we allow an additional interested party to express its views before the
7 court.” *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995)
8 (citation omitted).

9 Proposed intervenors, the Hallidays, are current owners of the disputed property and have
10 demonstrated to the Court’s satisfaction that they meet the four requirements of Rule 24(a). The
11 Hallidays have a significant protectable interest in the resolution of the status of proper title to the
12 property. The Hallidays’ motion to intervene is timely: this litigation is in its early stages before this
13 Court and intervention will not delay the case or prejudice the parties. Finally, because the
14 Hallidays’ interests in the litigation are antagonistic to the current parties before the Court, the
15 existing parties do not represent the Hallidays’ interests. Accordingly, the Court GRANTS the
16 Hallidays’ motion to intervene as a matter of right pursuant to Federal Rule of Civil Procedure
17 24(a)(2). *See e.g., Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). The Court finds the
18 Hallidays have properly appeared before the Court and their opposition to the pending motion for
19 default judgment has been considered in its entirety.

20 **B. Motion for Default Judgment.**

21 Upon careful and considerate attention to the filings made in this matter and the related Prior
22 Federal Action, as well as the timing and scope of the State Court Action, this Court agrees that it
23 should not exercise its discretion to grant the relief sought by Plaintiff as to its second cause of
24 action for declaratory relief.¹ Declaratory judgment is within the Court’s discretion and the Court
25 declines to exercise such discretion here. *See Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522,
26 533 (9th Cir. 2008) (holding that the Declaratory Judgment Act gives authority to the court to

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28 ¹ The Court agrees with the Report and finds that the first cause of action for cancellation of the Stipulated Judgment has already been rendered moot by the Court’s order dated August 26, 2016 setting aside the Stipulated Judgment in the Prior Federal Action.

1 declare the rights and legal relations of interested parties, but not a duty to do so) (citing *Wilton v.*
2 *Seven Falls Co.*, 515 U.S. 277, 288 (1995)); 28 U.S.C. § 2201(a).

3 “In considering whether to hear a claim for declaratory relief, courts consider two criteria:
4 (1) if the judgment ‘will serve a useful purpose in clarifying and settling the legal relations in issue;’
5 and (2) if ‘it will terminate and afford relief from the uncertainty, insecurity, and controversy giving
6 rise to the proceeding.’ When the issues raised by the prayer for declaratory relief will be completely
7 disposed of in other litigation, it may be appropriate to decline to hear the action.” *Celador Int’l*
8 *LTD v. The Walt Disney Co.*, 347 F. Supp. 2d 846, 857 (C.D. Cal 2004) (quoting *McGraw-Edison*
9 *Co v. Performed Line Prod. Co.*, 362 F.2d 339, 342 (9th Cir. 1966)). “Prudential guidance for
10 retention of the district court’s authority is found in *Brillhart v. Excess Ins. Co. of America*, 316 U.S.
11 491 (1942), and its progeny.” *Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1223 (9th Cir. 1998).
12 In *Brillhart*, the court established that a district court may, at its discretion, decline to exercise
13 jurisdiction over a claim for declaratory relief where another suit between the same parties, on the
14 same issues, not governed by federal law, is pending in state court. *Brillhart*, 316 U.S. at 495; *see*
15 *also Wilton*, 515 U.S. at 289-90.

16 Under *Brillhart*, the district court must undertake an analysis to determine whether it should
17 exercise its discretionary jurisdiction by considering the following factors: (1) avoiding needless
18 determination of state law issues; (2) discouraging litigants from filing declaratory actions as a
19 means of forum shopping; and (3) avoiding duplicative litigation. *Government Employees Ins. Co.*
20 *v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998). The Court may consider several additional factors
21 when considering whether to decline to hear a claim for declaratory relief. The factors are non-
22 exclusive and include determining whether declining to hear the claim for declaratory relief will:
23 avoid duplicative litigation; balance concerns of judicial administration, comity, and fairness to the
24 litigants; settle all aspects of the controversy; whether the declaratory action will serve a useful
25 purpose in clarifying the legal relations at issue; whether the declaratory action is being sought
26 merely for the purposes of procedural fencing or to obtain a res judicata advantage; or whether the
27 use of a declaratory action will result in entanglement between the federal and state court systems.
28 *Dizol*, 133 F.3d at 1225 n.5 (citing *Brillhart*, 316 U.S. at 494-95). In addition, the court may

1 consider the convenience of the parties and the availability of other remedies in determining whether
2 to decline to hear a claim for declaratory judgment. *Id.*

3 In this case, several factors weigh in favor of abstention. First, the State Court Action was
4 initiated before this action by the Hallidays against Plaintiff to determine their respective rights to
5 the Property under California law. Although Plaintiff filed suit here nine months later, the bank did
6 not name the Hallidays nor provide them with notice of this action. Second, both the Plaintiff and
7 the Hallidays agree that the legal issue at the root of this property dispute – who owns clear and
8 proper title to the Property – is a matter that must be resolved under California law. Although
9 federal law governs the setting aside of the judgment, this Court has already set it aside as induced
10 by fraud upon the Court. *See* Fed. R. Civ. P. 60(b)(3). The sole issue pending in the State Court
11 Action is the legal effect on title, *i.e.*, whether the Stipulated Judgment is void or voidable. By
12 abstaining from exercising its discretionary declaratory jurisdiction here the Court will avoid making
13 a needless determination of state law.

14 The second factor the Court must consider is the avoidance of forum shopping. Although
15 there is no evidence of forum shopping by either party, Plaintiff’s filing of this federal action after
16 the State Court Action was already pending and without notice to the current property owners,
17 weighs slightly in favor of abstention.

18 The third factor weighing in favor of abstention is the avoidance of duplicative or piecemeal
19 litigation. The order in the related Prior Federal Action explicitly reserved the question of whether
20 the Stipulated Judgment was void or voidable. The same judge who set aside the fraudulently
21 induced Stipulated Judgment has twice found that the legal question of its effect on the chain of title
22 should be resolved by California law and before the Superior Court where the earlier-filed State
23 Court Action is currently pending. Although this Court was hesitant to decline to exercise its
24 jurisdiction to adjudicate the legal effect of the setting aside of the judgment, the undersigned, with
25 the benefit of time and an exhaustive review of the related matters, finds that it should indeed
26 abstain from the dispute over the legal ramifications under state law of the set aside judgment for
27 prudential reasons. This federal court has determined to set aside the judgment in the Prior Federal
28 Action based on the fact that it was procured by fraud on the court and not based on whether it is


1 void, or legally erroneous from its inception. *See* Fed. R. Civ. P. 60(b)(3) and 60(b)(4).
2 Accordingly, and with deference to this determination, the Court declines to exercise its jurisdiction
3 and DENIES Plaintiff's motion for default judgment as to its second cause of action for declaratory
4 relief.

5 **CONCLUSION**

6 For the foregoing reasons, the Court GRANTS the Hallidays' motion to intervene and
7 DENIES the Plaintiff's motion for default judgment.

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9 **IT IS SO ORDERED.**

10 Dated: January 27, 2017



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12 JEFFREY S. WHITE
13 UNITED STATES DISTRICT JUDGE
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