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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

MELINA RAZAVI,  
Plaintiff,

v.

BENDORF DRIVE APARTMENTS, et al.,  
Defendants.

Case No. 17-cv-07304-BLF

**ORDER GRANTING MOTION TO  
DISMISS WITHOUT LEAVE TO  
AMEND; DISMISSING FEDERAL  
CLAIMS WITH PREJUDICE;  
DISMISSING STATE LAW CLAIMS  
WITHOUT PREJUDICE**

[Re: ECF 17]

Presently before the Court is Defendants Santa Clara County Housing Authority and Bendorf Apartments, LP’s motion to dismiss pro se Plaintiff Melina Razavi’s first amended complaint in this action. *See* ECF 17; Memo., ECF 18. Because res judicata bars Plaintiff’s federal claims and the Court declines to exercise supplemental jurisdiction over the remaining state law claims, as discussed below, Defendants’ motion is GRANTED WITHOUT LEAVE TO AMEND; the federal claims are DISMISSED WITH PREJUDICE, and the state law claims are DISMISSED WITHOUT PREJUDICE to Razavi’s bringing them in state court.

**I. BACKGROUND**

On March 19, 2018, pro se Plaintiff Melina Razavi (“Plaintiff” or “Razavi”) filed her First Amended Complaint (“FAC”) in this action, alleging violation of the Americans with Disabilities Act (“ADA”), Federal Fair Housing Amendments (“FFHA”), California Fair Employment and Housing Act, California Unruh Civil Rights Act, and California Civil Code 1942.4, as well as negligence, breach of the implied warranty of habitability, intentional infliction of emotional distress, negligent infliction of emotional distress, and nuisance. *See generally* FAC, ECF 8.

Plaintiff leases an apartment from Defendant Bendorf Drive Apartments, LP (“Bendorf”)

1 at 282 Danze Drive in San Jose, CA. FAC ¶ 6. Plaintiff’s apartment complex is a low-income  
2 housing project operated by Defendant Santa Clara County Housing Authority (“Housing  
3 Authority”). FAC ¶ 6. Plaintiff “is disabled and/or handicapped.” FAC ¶ 7. Among other  
4 allegations, Plaintiff alleges that Bendorf and the Housing Authority (collectively, “Defendants”)  
5 have failed to cure habitability defects, refused to accommodate her disability, and are responsible  
6 for verbal and physical abuse and injuries she suffered from a dog bite. *See* FAC ¶¶ 9–29. With  
7 respect to her ADA and FFHA claims, Razavi alleges that her neighbors are a nuisance and have  
8 harassed and abused her, causing her injury and forcing her to “flee the premises due to the noise  
9 and habitability issues.” FAC ¶ 35 (emphasis omitted). Based on these issues, Razavi “submitted  
10 reasonable accommodation requests to Defendants asking that Defendants transfer [her] to another  
11 facility” so she could have an “equal opportunity to use and enjoy the premises.” FAC ¶ 36  
12 (emphasis omitted); *see also* FAC ¶¶ 20–24. Defendants did not move her. FAC ¶¶ 37–40. Her  
13 FFHA claims are based on the same allegations. FAC ¶¶ 47, 50.

14 In 2016, Razavi sued Defendants for negligence and violation of the ADA in a separate  
15 action, *Razavi v. Bendorf Drive Apartments*, No. 5:16-cv-01388-BLF (“Previous Action”).<sup>1</sup> In  
16 that action, the gravamen of the allegations in the first amended complaint (“Previous FAC”)  
17 centered on injuries Razavi suffered to her toes and left foot when she ran into a sandbag  
18 Defendants had left in the middle of a sidewalk at her apartment complex. *See, e.g.*, Def. Req. for  
19 Judicial Not. (“RJN”), Ex B (“Prev. FAC”) ¶¶ 10–14, ECF 19. However, Razavi also alleged that  
20 “Defendants also refused to accommodate Plaintiff’s disabilities by refusing to offer her an  
21 apartment on the quiet side of the complex” causing her to “suffer[] sleep disruptions and other  
22 illnesses due to their refusal to accommodate.” Prev. FAC ¶ 15. In the same allegation, she notes  
23 that “Defendants’ refusal to accommodate” made sleeping impossible “mainly due to noise  
24 violations, harassments, abuse and other violations.” Prev. FAC ¶ 15. These allegations were  
25 incorporated into her ADA claim. Prev. FAC ¶¶ 32, 37.

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<sup>1</sup> The Court may take judicial notice of the filings in the Previous Action because they are undisputed matters of public record. *See Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131–32 (9th Cir. 2012).

1           The Previous Action settled and was dismissed by this Court with prejudice on August 29,  
2 2017. *See* RJN, Ex C. The settlement agreement states that Razavi agreed to release Defendants  
3 “from all claims, known or unknown, that Plaintiff had arising out of the incident or the subject  
4 action,” and the release “extend[ed] only to the specific facts alleged in the subject action.” Decl.  
5 of Melina Razavi, Ex. A (“Settlement Agreement”) ¶ 2.2, ECF 26.<sup>2</sup> The incident is defined as the  
6 incident in which she injured her foot by running into the sand bag, while the subject action is  
7 defined as *Razavi v. Bendorf Drive Apartments*, No. 5:16-cv-01388-BLF, the Previous Action.  
8 *Id.* ¶ 1.1.

9           **II. LEGAL STANDARD**

10           “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a  
11 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*  
12 *Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d  
13 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts  
14 as true all well-pled factual allegations and construes them in the light most favorable to the  
15 plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). While a  
16 complaint need not contain detailed factual allegations, it “must contain sufficient factual matter,  
17 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556  
18 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is  
19 facially plausible when it “allows the court to draw the reasonable inference that the defendant is  
20 liable for the misconduct alleged.” *Id.*

21           **III. DISCUSSION**

22           In their motion to dismiss, Defendants argue that Plaintiff’s federal law claims should be  
23 dismissed with prejudice because they are barred by res judicata. *See generally* Memo. In  
24 addition, Defendants ask the Court to decline to exercise supplemental jurisdiction over the state  
25 law claims. The Court agrees that Plaintiff’s federal law claims are barred by res judicata and  
26 declines to exercise supplemental jurisdiction over Plaintiff’s state law claims.

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28 <sup>2</sup> Plaintiff asks the Court to consider the terms of the Settlement Agreement in its decision. Opp.  
at 4, ECF 25. Defendants do not oppose this request. Reply at 2, ECF 29.

1           “The doctrine of res judicata provides that ‘a final judgment on the merits bars further  
2 claims by parties or their privies based on the same cause of action.’” *In re Schimmels*, 127 F.3d  
3 875, 881 (9th Cir. 1997) (quoting *Montana v. United States*, 440 U.S. 147, 153–54 (1979)). Under  
4 Federal Rule of Civil Procedure 8(c), res judicata may be raised as an affirmative defense in  
5 response to a pleading. To establish the defense of res judicata, a party must prove three elements:  
6 “(1) an identity of claims, (2) a final judgment on the merits, and (3) [identity or] privity between  
7 parties.” *Tahoe–Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 322 F.3d 1064, 1077  
8 (9th Cir. 2003); *see also Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313 (1971).  
9 Although res judicata is a defense, a party may assert it in a motion to dismiss where “the defense  
10 raises no disputed issues of fact.” *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984).

11           All three requirements for res judicata are met here. First, there is an identity of claims.  
12 “Identity of claims exists when two suits arise from ‘the same transactional nucleus of facts.’”  
13 *Tahoe*, 322 F.3d at 1078 (quoting *Stratosphere Litig. L.L.C. v. Grand Casinos, Inc.*, 298 F.3d  
14 1137, 1143 n.3 (9th Cir. 2002)). Even where the second action may raise new claims, “[n]ewly  
15 articulated claims based on the same nucleus of facts may still be subject to a res judicata finding  
16 if the claims could have been brought in the earlier action.” *Id.* In addition to determining  
17 whether the suits share the same nucleus of facts, courts also look to the following three factors in  
18 determining identity of claims: “(1) whether rights or interests established in the prior judgment  
19 would be destroyed or impaired by prosecution of the second action; (2) whether substantially the  
20 same evidence is presented in the two actions; [and] (3) whether the two suits involve  
21 infringement of the same right.” *Howard v. City of Coos Bay*, 871 F.3d 1032, 1039 (9th Cir.  
22 2017) (quoting *Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012)). However, the  
23 nucleus of facts criterion is “the most important.” *Harris*, 682 F.3d at 1132.

24           Razavi’s claims here arise out of the same transactional nucleus of facts. Though Razavi’s  
25 Previous FAC centered on the injuries she suffered to her toes and foot, she also plainly alleged  
26 that Defendants had failed to accommodate her “by refusing to offer her an apartment on the quiet  
27 side of the complex” and failing to remedy the “noise violations, harassments, abuse and other  
28 violations.” Prev. FAC ¶ 15. These allegations were incorporated into her ADA claim. These

1 same allegations form the sole basis for her ADA and FFHA claims in this case. Namely, she  
2 alleges that Defendants failed to accommodate her by declining to move her away from her noisy,  
3 abusive, harassing neighbors. FAC ¶¶ 35 –36. Though she did not bring a FFHA claim in her  
4 first action, such claims could have been brought in the earlier action based on these same  
5 allegations. Plaintiff’s argument to the contrary is unavailing. Opp. at 5. Because the claim is  
6 underpinned by the same nucleus of facts, she should have brought her FFHA claim in the  
7 Previous Action. Thus, given the similarity between the allegations, the Court finds an identity of  
8 claims.

9 As to the second criteria for res judicata, the Previous Action was dismissed with  
10 prejudice, which constitutes a final judgment on the merits. Plaintiff argues that res judicata does  
11 not apply because the Settlement Agreement in the Previous Action released her claims only as to  
12 the incident during which she injured her toes and foot. *See* Opp. at 4. This is incorrect. The  
13 Settlement Agreement by its plain terms released Razavi’s claims as to both the “incident”  
14 (leading to her toe and foot injuries) *and* the “subject action” (*i.e.*, the Previous Action).  
15 Settlement Agreement ¶ 2.2. Likewise, the Court’s dismissal of the Previous Action with  
16 prejudice serves as a prior judgment on the claims in that actions and any claims based on the  
17 same nucleus of facts that she could have brought in that action. For these reasons, there was a  
18 final judgment on the merits in the Previous Action as to these claims.

19 Third, and finally, the parties in the actions are identical. Plaintiff does not dispute this  
20 fact.

21 Accordingly, Plaintiff’s federal claims are barred by res judicata. Because amendment  
22 would be futile, these claims are dismissed with prejudice. Having dismissed each of Plaintiff’s  
23 federal claims with prejudice, the Court declines to exercise supplemental jurisdiction over  
24 Plaintiff’s remaining claims under state law. *See* 28 U.S.C. § 1367 (“The district courts may  
25 decline to exercise supplemental jurisdiction over a claim [brought under supplemental  
26 jurisdiction] if . . . the district court has dismissed all claims over which it has original  
27 jurisdiction.”)

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**IV. CONCLUSION**

For the foregoing reasons, the motion to dismiss is GRANTED, the federal claims are DISMISSED WITH PREJUDICE, and the state law claims are DISMISSED WITHOUT PREJUDICE to Razavi's bringing them in state court.

**IT IS SO ORDERED.**

Dated: January 15, 2019



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BETH LABSON FREEMAN  
United States District Judge