

1 that Thomas’s claims are barred by res judicata, an argument that needn’t even reach the
2 substantive merits of Thomas’s claims. For whatever reason, however, the case comes with
3 a staggering amount of briefing and exhibits. Almost everything that has been filed is either
4 too long or too heavily exhibited. Thomas’s complaint is almost 80 pages, and his
5 oppositions to the motions are each over two hundred pages. For BOA’s part, its motion to
6 declare Thomas a vexatious litigant comes with over a thousand pages of exhibits. The
7 Court has done its best to review everything.

8 **I. Res Judicata**

9 This isn’t the first case in which Thomas has challenged BOA’s right to buy his home
10 and remove him from it.

11 In 2010, after it bought Thomas’s home at a trustee’s sale, BOA filed an unlawful
12 detainer action against Thomas in San Diego Superior Court. BOA prevailed. The court
13 entered summary judgment in its favor, ordering that “Plaintiff LASALLE BANK, N.A. as
14 Trustee have and recover from Defendant(s) RUDIE THOMAS possession of the improved
15 real property located at 5048 CRESCENT BAY DR, SAN DIEGO, CA 92154.” (Mot. to
16 Dismiss, Ex. I.) Thomas lost on appeal, and his petition for rehearing was denied. (Mot. to
17 Dismiss, Exs. R, S.)

18 After the unlawful detainer action was filed but before it was resolved on appeal,
19 Thomas filed a motion to set aside the trustee’s sale and to quiet title—also in San Diego
20 Superior Court. (Mot. to Dismiss, Ex. J.) Again, BOA prevailed. The court granted its
21 motion to dismiss, and on May 13, 2013 the Court of Appeal affirmed. (Mot. to Dismiss, Exs.
22 K, V.) His petition for rehearing was denied, as was his petition for review with the California
23 Supreme Court. (Mot. to Dismiss, Exs. W, Z.)

24 Thomas also pressed his case in federal court. On December 27, 2011, just a few
25 months after he filed his second amended complaint in San Diego Superior Court, he filed
26 a motion to set aside the trustee’s sale and to quiet title in this Court. *See Thomas v. Bank*
27 *of America*, Case No. 11-CV-3009, Doc. No. 1. (Mot. to Dismiss, Ex. M.) This case was
28 assigned to Judge Bencivengo, and she dismissed it for lack of jurisdiction on September 7,

1 2012. (Mot. to Dismiss, Ex. O.) She explained to Thomas that even if he alleged
2 jurisdictional facts, “the matters that you have pending in the state court are similar to the
3 matters here and because they involve the disposition of property in your quiet title claim,
4 the law requires that we abstain from hearing the matter when the state court already had
5 jurisdiction and heard it first.” Case No. 11-CV-3009, Doc. No. 44 at 3.

6 Undeterred, Thomas turned around and filed a second case in this Court on
7 October 12, 2012. It asserted claims under RESPA, FDCPA, TILA, RICO, and § 1983,
8 among others, and also accused Bank of America of criminal violations under state and
9 federal law. See *Thomas v. Bank of America*, Case No. 12-CV-2475, Doc. No. 1. (Mot. to
10 Dismiss, Ex. P.) This case was assigned to Judge Curiel, who ordered that the parties file
11 supplemental briefing on the question whether principles of res judicata barred the claims.
12 Case No. 12-CV-2475, Doc. No. 30. Judge Curiel subsequently issued a thorough, 13-page
13 order *sua sponte* dismissing the case based on principles of res judicata. Case No.
14 12-CV-2475, Doc. No. 46. (Mot. to Dismiss, Ex. X.) Judge Curiel recognized that
15 “res judicata will bar not only those claims actually litigated in a prior proceeding, but also
16 claims that could have been litigated,” and that “[i]n California, ‘a [1] valid, final judgment on
17 the merits is a bar to a subsequent action by [2] parties or their privies [3] on the same cause
18 of action.’” Case No. 12-CV-2475, Doc. No. 46 at 7 (quoting *Sargon Enters., Inc. v. Univ. of*
19 *S. Cal.*, 215 Cal. App. 4th 1495, 1508 (Cal. Ct. App. 2013)). (Mot. to Dismiss, Ex. X.)

20 The Court has reviewed Judge’s Curiel’s dismissal order and finds it equally pertinent
21 to this case. This is the crux of it:

22 The primary right is Plaintiff’s right to the subject property. The
23 harm for which Plaintiff sought relief in state court is the same
24 harm for which he now seeks to hold defendants liable which is
25 the foreclosure of his property. The alleged wrong by
26 Defendants is that Defendants wrongfully foreclosed on his
27 property. The actions in state court and this court concern the
28 same property, same deed of trust and same foreclosure sale.
The fact that Plaintiff raises new theories for relief is not relevant
for purposes of claim preclusion. Through different court
proceedings, Plaintiff has been seeking relief for the alleged
wrongful foreclosure of the property. Case No. 12-CV-2475,
Doc. No. 46 at 11. (Mot to Dismiss, Ex. X.)

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1 The Court agrees fundamentally with that analysis. Moreover, Thomas has no rebuttal to
2 it as it applies to this case. In his opposition brief, he merely repeats several times the same
3 lines with respect to the res judicata issue, and they are meaningless:

4 Plaintiff denies this argument and it should be noted that Mr.
5 Stolzman statement is deceptive in that the Ryan Firm
6 purchased bogus promissory notes in which Bank of America,
7 N.A. deemed as uncollectible. The Trustee's Deed Upon Sale
8 was recorded on May 5, 2008. Bank of America, N.A. just
9 recently provided the plaintiff with documentation that reflects
10 that Bank of America, N.A. did not own or service the loan nor
11 does the Ryan Firm represent Bank of America, N.A. as counsel.
12 The documentation will also show that it was The Ryan Firm that
13 created the bogus account for the plaintiff in which was ordered
14 to be removed as part of the Independent Foreclosure Review.
15 (Opp'n Br. at 5–7.)

16 He also says, at least twice, that this case “claims violation, by the defendant, of the liberty
17 clauses of the 5th and 14th Amendments of the Constitution as they apply to the plaintiff,”
18 which it obviously can't do insofar as Bank of America is a completely private actor. See
19 *Collins v. Wells Fargo Bank*, 2013 WL 3808097 at *12 (D. Ariz. July 23, 2013). (Opp'n Br.
20 at 6–7.) When Thomas does seem to have a substantive argument with respect to
21 res judicata, all he does is cite a case for the conclusory proposition that, as he puts it,
22 “res judicata [should] not be applied so as to defeat the ends of Justice.” (Opp'n Br. at 6–7.)

23 The Court has familiarized itself with the record of this case, as well as the records
24 of Thomas's past cases, and it concludes that the doctrine of res judicata bars this action
25 in its entirety. Bank of America's motion to dismiss is therefore **GRANTED**, and Thomas's
26 claims are **DISMISSED WITH PREJUDICE**.

27 **II. Vexatious Litigant**

28 BOA has also moved to have Thomas declared a vexatious litigant. The fact is that
he lost an unlawful detainer action in state court, and lost on appeal, and has subsequently
filed a state case, two losing federal cases, and now this case. Also, somewhat tangential
to the vexatious litigant analysis, BOA explains that Thomas vandalized his home after he
was evicted and forced BOA to obtain temporary restraining orders against him.

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1 Under 28 U.S.C. § 1651(a), the Court has the authority to issue any writ “necessary
2 or appropriate in aid of [its] jurisdiction and agreeable to the usages and principles of law.”
3 This includes restricting a litigant’s right to access the courts when he or she abuses that
4 right, provided the following conditions have been met: (1) the litigant has been given notice
5 and the opportunity to respond before being declared vexatious; (2) there is an adequate
6 record for review that includes the litigant’s activities; (3) the litigant’s activities can be
7 deemed frivolous or harassing; and (4) the restriction is narrowly tailored to deter the specific
8 vice encountered. *DeLong v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990).

9 Here, the action is really on (3), and the Court questions whether Thomas is simply
10 ignorant and doesn’t understand the law, or whether he can truly be said to have filed
11 frivolous *and* harassing actions. The Court concludes the latter. When Judge Bencivengo
12 dismissed his first federal action, she explained that even though it was being dismissed on
13 jurisdictional grounds there was a larger res judicata problem:

14 Even if I gave you leave to amend to try to establish diversity
15 jurisdiction or raise a federal question, in essence, the matters
16 that you have pending in the state court are similar to the
17 matters here and because they involve the disposition of
18 property in your quiet title claim, the law requires that we abstain
19 from hearing the matter when the state court already had
20 jurisdiction and heard it first. And they’ve made their
21 determination. It is on appeal.

22 Your proper avenue for relief is to follow those appeals. If the
23 appeal is affirmed by the state court, then it’s over and you can’t
24 bring it back here. If it’s revised, then there may be an avenue
25 there for you to reapply here possibly. But at this time, this
26 Court cannot hear your claim

27 So we’ll dismiss your claim here without prejudice so that if there
28 is an opportunity or a reason for it to be heard here in the future
after the state proceedings are resolved, then you could
potentially come back here. But if there’s a ruling in the state
court that says the judgment there is affirmed and it’s over, this
court will be—will accept that judgment, it’s called res judicata,
and it’s finished. All right? (Case No. 11-CV-3009, Doc. No. 44
at 3.)

26 To all of this, Thomas responded, “I understand, your Honor.” (Case No. 11-CV-3009, Doc.
27 No. 44 at 4.) So, it cannot be that Thomas simply doesn’t understand the law and *this*
28 explains his frequent filings. Indeed, Judge Curiel’s very comprehensive order in Thomas’s

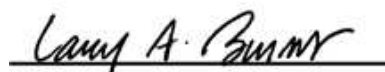
1 second federal action ought to have made it very clear to him that there is simply no relief
2 available to him, in the federal courts, for the foreclosure on his home. In finding that
3 Thomas's actions are frivolous and harassing, the Court has also taken into account, at least
4 in this case, the volume (very high) and quality (very low and in places incoherent) of his
5 pleadings, as well as the fact that he attempted to obtain a default judgment by falsely
6 representing that he had served Bank of America.

7 Thomas's rebuttal to BOA's motion is feeble. In many places, it appears to have been
8 lifted verbatim from his opposition to BOA's motion to dismiss. When he does specifically
9 address specifically being declared a vexatious litigant, he cites California law for the rule
10 a vexatious litigant is one who "[i]n the immediately preceding seven-year period has
11 commenced, prosecuted, or maintained in propria persona at least five litigations" Cal.
12 Code Civ. P. § 391(b)(1). Of course, California law doesn't apply for the Court's purposes
13 here, and in any event, § 391 lists a number of *other* reasons that one might be declared a
14 vexatious litigant.

15 For the above reasons, the Court **GRANTS** BOA's motion to declare Thomas a
16 vexatious litigant. It finds that the *DeLong* factors are satisfied and that the designation is
17 an appropriate one. Accordingly, Thomas is enjoined from filing any future civil action
18 against BOA that pertains to the foreclosure on his home without first seeking the approval
19 of the Court. Second, should Thomas file any future civil actions against BOA, he must post
20 a security/bond to secure payment of costs, sanctions, or other sums that may be awarded
21 against him should BOA prevail. This is obviously far short of a total ban on Thomas
22 litigating in this Court, but it should adequately deter him from pursuing BOA for foreclosure-
23 related relief here.

24 **IT IS SO ORDERED.**

25 DATED: April 10, 2014

26 

27 **HONORABLE LARRY ALAN BURNS**
28 United States District Judge