U.S. 322, 326, n.5 (1979)). "Broadly speaking, '[a] privy is one [who is] so identified in interest with a party to the former litigation that he or she represents precisely the same legal right in respect to the subject matter of the case,'" *Herrion v. Children's Hosp. Nat. Med. Ctr.*, 786 F. Supp. 2d 359, 371 (D.D.C. 2011) (quoting *Smith v. Jenkins*, 562 A.2d 610, 615 (D.C. 1989)), and the same cause of action turns on whether the cases "share the same 'nucleus of facts,'" *Drake*, 291 F.3d at 66. *Res judicata* bars the relitigation "of issues that were or *could have been raised* in [the prior] action." *Id.* (emphasis in original) (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980)). Consequently, "a party cannot escape application of the doctrine by raising a different legal theory or seeking a different remedy in the new action that was available to her in the prior action." *Duma v. JPMorgan Chase*, 828 F. Supp. 2d 83, 86-87 (D.D.C. 2011) (citing *Apotex, Inc. v. Food & Drug Admin.*, 393 F.3d 210, 217 (D.C. Cir. 2004)).

Although *res judicata* is an affirmative defense that typically must be pled, courts "may raise the *res judicata* preclusion defense *sua sponte*," *Rosendahl v. Nixon*, 360 Fed.App'x. 167, 168 (D.C. Cir. 2010) (citing *Arizona v. California*, 530 U.S. 392, 412-13 (2000); *Brown v. D.C.*, 514 F.3d 1279, 1285-86 (D.C. Cir. 2008)), and a "district court may apply *res judicata* upon taking judicial notice of [a] [party's] previous case," *Tinsley v. Equifax Credit Info. Serv's, Inc.*, No. 99-7031, 1999 WL 506720 (D.C. Cir. June 2, 1999) (per curiam) (citing *Gullo v. Veterans Cooperative Housing Ass'n*, 269 F.2d 517 (D.C. Cir. 1959) (per curiam)).

In the previous action, the court addressed both the federal claim plaintiff reasserts here under Title IX of the Education Amendment Act of 1972 and the previously asserted common law claim of intentional infliction of emotional distress. *See Holloway*, 2016 WL 3945089, at *4 (Title IX); *id.* at *6 (IIED); *cf.* Compl. at 1-2. The court first noted that "plaintiff has filed five responses to the University's motion, and has yet to articulate a viable legal claim." *Holloway*,

2016 WL 3945089, at *3 (record citation omitted). In reaching its conclusion, the court implicitly, if not explicitly, found that plaintiff had not fulfilled the requirements for a doctoral degree. Citing to the complaint, the court noted that plaintiff had "supplied a copy of her unofficial transcript, and it reflects that she was last enrolled in the spring of 2010, when she received the grade of incomplete and earned no credit in two courses entitled 'PhD Dissertation.'" *Holloway*, 2016 WL 3945089, at *1. The court also observed that "plaintiff does not supply any context for [a] plagiarism allegation, but she does not deny it," and "[a]lthough [plaintiff] published work since her departure from the University, . . . she does not indicate that she ever completed her dissertation." *Id.* at *2. Plaintiff cannot litigate those facts anew. A separate order of dismissal accompanies this Memorandum Opinion.

United States District Judge

Date: January 3rd, 2017