

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ADRIENNE A. BURCH,)
4)
5 Plaintiff,)
6 vs.)
7 BELLAGIO HOTEL AND CASINO, et al.,)
8 Defendants.)
9)

Case No.: 2:15-cv-00928-GMN-CWH

ORDER

10 Pending before the Court is the Motion to Dismiss (ECF No. 10) filed by Defendants
11 Robert Ferris, Jennifer Murphy, Juan Bautista, and Nazario Perales. Also pending before the
12 Court is the Motion to Dismiss (ECF No. 18) filed by Defendants Bellagio, LLC (“Bellagio”),
13 Sean Griffin, Karina Rizo, Burt Coats, and Pedro Ochoa.¹ Both motions have been fully
14 briefed.

15 **I. BACKGROUND**

16 This case arises out of Plaintiff’s employment with Bellagio that began in 2004. (Compl.
17 7:5–8, ECF No. 1). Plaintiff alleges, *inter alia*, that Defendants created a hostile and highly
18 offensive work environment. (*Id.* 8:4–5). Previously, Plaintiff had filed another action in this
19 district (“Prior Action”) regarding her employment with Bellagio, which was subsequently
20 dismissed with prejudice. *See Burch v. Bellagio Hotel and Casino*, No. 2:14-cv-01141-JAD-
21 PAL (D. Nev. Dec. 8, 2014). In that action, Plaintiff filed suit on July 11, 2014, against
22 Bellagio, LLC for: (1) violation of Equal Pay Act of 1963 and (2) violations of Title VII of the
23 Civil Rights Act of 1964. *Id.* Plaintiff subsequently amended her Complaint. *Id.* Plaintiff’s

24 ¹ Plaintiff Adrienne A. Burch (“Plaintiff”) erroneously sued Defendants Bellagio, LLC and Burt Coates as
25 Bellagio Hotel and Casino and Burt Coates, respectively.

1 Amended Complaint was dismissed with prejudice on December 8, 2014, for failure to state
2 claim for which relief can be granted. *Id.*

3 Now, more than five months after the previous action was dismissed, Plaintiff alleges
4 the following causes of action against Bellagio, LLC and its various employees: (1) negligent
5 failure to warn; (2) negligent retention; (3) negligent supervision; (4) negligent hiring; (5)
6 intentional infliction of emotional harm; (6) negligence per se; and (7) violations of Title VII of
7 the Civil Rights Act of 1964. (Compl. 23:24–93:4). Defendants filed the instant motions to
8 dismiss, asserting that Plaintiff’s Complaint is barred by claim preclusion. (Mot. Dismiss 6:26–
9 8:24, ECF No. 10; Mot. Dismiss 8:21–11:6, ECF No. 18).

10 **II. LEGAL STANDARD**

11 Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon
12 which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
13 555 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on
14 which it rests, and although a court must take all factual allegations as true, legal conclusions
15 couched as a factual allegation are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, Rule
16 12(b)(6) requires “more than labels and conclusions, and a formulaic recitation of the elements
17 of a cause of action will not do.” *Id.*

18 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
19 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
20 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). “A claim has facial plausibility
21 when the plaintiff pleads factual content that allows the court to draw the reasonable inference
22 that the defendant is liable for the misconduct alleged.” *Id.* This standard “asks for more than a
23 sheer possibility that a defendant has acted unlawfully.” *Id.*

24 “Generally, a district court may not consider any material beyond the pleadings in ruling
25 on a Rule 12(b)(6) motion.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,
1555 n.19 (9th Cir. 1990). “However, material which is properly submitted as part of the

1 complaint may be considered.” *Id.* Similarly, “documents whose contents are alleged in a
2 complaint and whose authenticity no party questions, but which are not physically attached to
3 the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without
4 converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14
5 F.3d 449, 454 (9th Cir. 1994). On a motion to dismiss, a court may also take judicial notice of
6 “matters of public record.” *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).
7 Otherwise, if a court considers materials outside of the pleadings, the motion to dismiss is
8 converted into a motion for summary judgment. Fed. R. Civ. P. 12(d).

9 If the court grants a motion to dismiss for failure to state a claim, leave to amend should
10 be granted unless it is clear that the deficiencies of the complaint cannot be cured by
11 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant
12 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in
13 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the
14 movant, repeated failure to cure deficiencies by amendments previously allowed, undue
15 prejudice to the opposing party by virtue of allowance of the amendment, futility of the
16 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

17 **III. DISCUSSION**

18 For the reasons stated in Defendants’ motions to dismiss, and for the reasons discussed
19 below, the Court finds that each of Plaintiff’s causes of action are barred by res judicata, and
20 must therefore be dismissed. Because Plaintiff has filed suit before on these and similar causes
21 of action, and because any amendment would be futile, the Court finds no basis on which to
22 grant leave to amend.

23 Claim preclusion under the doctrine of res judicata applies when “a final judgment on
24 the merits bars further claims by the same parties or their privies based on the same cause of
25 action.” *Montana v. United States*, 440 U.S. 147, 153 (1979); accord *Tahoe–Sierra Pres.*

1 *Council v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003). It prohibits the
2 re-litigation of any claims that were raised or could have been raised in a prior action. *Western*
3 *Radio Servs. Co., Inc. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). The purpose of the
4 doctrine is to “relieve parties of the cost and vexation of multiple law suits, conserve judicial
5 resources and, by preventing inconsistent decisions, encourage reliance on adjudication.” *Mar*
6 *in v. HEW, Health Care Fin. Agency*, 769 F.2d 590, 594 (9th Cir. 1985) (quoting *Allen v.*
7 *McCurry*, 449 U.S. 90, 94 (1980)).

8 Here, Plaintiff does not contest that her current action is against the same party or its
9 privies as the Prior Action. Moreover, Plaintiff does not contest that the prior action resulted in
10 a final judgment on the merits. Furthermore, Plaintiff’s current claims appear to have accrued
11 at the time of Plaintiff’s Prior Action, and therefore could have been raised in that Prior Action.
12 Additionally, the factual allegations, while more detailed in Plaintiff’s Complaint in the current
13 action, are nearly identical to those alleged in the Prior Action. Accordingly, Plaintiff is barred
14 from relitigating these claims.

15 **IV. CONCLUSION**

16 **IT IS HEREBY ORDERED** that both the Motion Dismiss (ECF No. 10) and the
17 Motion to Dismiss (ECF No. 18) are **GRANTED**. Accordingly, Plaintiff’s Complaint is
18 dismissed with prejudice.

19 The Clerk of the Court shall enter judgment accordingly and thereafter close this case.

20 **DATED** this 28 day of October, 2015.

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25 Gloria M. Navarro, Chief Judge
United States District Judge