

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 GERALDINE A. TRICE,)
4)
5 Plaintiff,)
6 vs.)
7 NATIONAL DEFAULT SERVICING CORP.,)
8 MICHAEL A. BOSCO, CARMEN)
9 NAVEJAS,)
10 Defendants.)

Case No.: 2:16-cv-2101-GMN-GWF

ORDER

11 Pending before the Court is the Motion to Dismiss filed by Defendants National Default
12 Servicing Corporation ("NDSC"), Michael A Bosco ("Bosco), and Carmen Navejas
13 ("Navejas") (collectively "Defendants"). (ECF No. 24). Plaintiff Geraldine Trice ("Plaintiff")¹
14 filed a response, (ECF No. 35), and Defendants did not file a reply. Also pending before the
15 Court is Plaintiff's Motion to Supplement the Complaint, (ECF No. 12). For the reasons
16 discussed herein, Defendants' Motion to Dismiss is GRANTED, and Plaintiff's Motion to
17 Supplement the Complaint is DENIED.

18 I. BACKGROUND

19 This case concerns a dispute over a loan agreement and the resulting non-judicial
20 foreclosure sale of the property located at 5873 Pear Court, Las Vegas, NV 89110. (Compl.,
21 ECF No. 1). As best the Court can discern, Plaintiff challenges the chain-of-title of the
22 mortgage instruments attached to the property and subsequent authority of Defendants to
23 initiate foreclosure proceedings. (Id. ¶¶ 13-29). According to Plaintiff, she has been subjected

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25 ¹ In light of Plaintiff's status as a pro se litigant, the Court has liberally construed his filings, holding them to
standards less stringent than formal pleadings drafted by attorneys. See Erickson v. Pardus, 551 U.S. 89, 94
(2007).

1 “to a foreclosure mortgage servicer and foreclosure scheme that has resulted in the sale of [her]
2 home.” (Id. ¶ 22). Specifically, Plaintiff alleges that “National Default Servicing Corporation
3 does not have trustee status over the Plaintiff’s Note to cause a foreclosure sale” (Id. ¶ 29).
4 Plaintiff further alleges that Defendants filed multiple documents with the Clark County
5 Recorder’s Office that were “forged, groundless, contain[ed] material misstatements and false
6 claims.” (Id. ¶ 26).

7 Based on these allegations, inter alia, Plaintiff filed a Complaint on September 6, 2016,
8 raising multiple claims against Defendants. Specifically, Plaintiff alleges claims for: (1) False
9 Representation Concerning Title and Fraudulent Foreclosure under NRS 205.395; (2) Quiet
10 Title; (3) Intentional Infliction of Emotional Distress; (4) Injunctive Relief; and (5) Slander of
11 Title. (Id. ¶¶ 30–60). On December 19, 2016, Defendants filed the instant Motion, which seeks
12 dismissal on Plaintiff’s claims with prejudice. (ECF No. 24).²

13 **II. LEGAL STANDARD**

14 Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a
15 cause of action that fails to state a claim upon which relief can be granted. See *North Star Int’l*
16 *v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to
17 dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the
18 complaint does not give the defendant fair notice of a legally cognizable claim and the grounds
19 on which it rests. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering
20 whether the complaint is sufficient to state a claim, the Court will take all material allegations
21 as true and construe them in the light most favorable to the plaintiff. See *NL Indus., Inc. v.*
22 *Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

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24 ² Plaintiff raised her claim for injunctive relief only as to Defendant “James Huynh.” (Compl. ¶¶ 52–56). On
25 September 26, 2016, Plaintiff filed a one-page “amendment” to the Complaint, which removed the “fictitious”
Defendant James Huynh from the action. (See Am. Compl., ECF No. 6). As this claim was not brought against
any other Defendants, the Court finds that Plaintiff has abandoned this claim.

1 The Court, however, is not required to accept as true allegations that are merely
2 conclusory, unwarranted deductions of fact, or unreasonable inferences. See *Sprewell v. Golden*
3 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
4 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a
5 violation is plausible, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
6 *Twombly*, 550 U.S. at 555) (emphasis added). In order to survive a motion to dismiss, a
7 complaint must allege “sufficient factual matter, accepted as true, to state a claim to relief that
8 is plausible on its face.” *Id.* “A claim has facial plausibility when the plaintiff pleads factual
9 content that allows the court to draw the reasonable inference that the defendant is liable for the
10 misconduct alleged.” *Id.*

11 “Generally, a district court may not consider any material beyond the pleadings in ruling
12 on a Rule 12(b)(6) motion However, material which is properly submitted as part of the
13 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard*
14 *Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly,
15 “documents whose contents are alleged in a complaint and whose authenticity no party
16 questions, but which are not physically attached to the pleading, may be considered in ruling on
17 a Rule 12(b)(6) motion to dismiss” without converting the motion to dismiss into a motion for
18 summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule
19 of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*
20 *Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers
21 materials outside of the pleadings, the motion to dismiss is converted into a motion for
22 summary judgment. See Fed. R. Civ. P. 12(d); *Arpin v. Santa Clara Valley Transp. Agency*, 261
23 F.3d 912, 925 (9th Cir. 2001).

24 If the court grants a motion to dismiss, it must then decide whether to grant leave to
25 amend. Pursuant to Rule 15(a), the court should “freely” give leave to amend “when justice so

1 requires,” and in the absence of a reason such as “undue delay, bad faith or dilatory motive on
2 the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,
3 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the
4 amendment, etc.” Foman v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to amend is
5 only denied when it is clear that the deficiencies of the complaint cannot be cured by
6 amendment. See DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

7 **III. DISCUSSION**

8 This is Plaintiff’s third lawsuit filed in this Court involving claims arising from the
9 foreclosure of the same property. See Trice v. Damion, No. 2:16-cv-01348-MMD-NJK, 2017
10 WL 187149 (D. Nev. Jan. 17, 2017); Trice v. JP Morgan Chase Bank, No. 2:15-cv-01614-
11 APG-NJK, 2015 WL 10743195 (D. Nev. Nov. 18, 2015). The prior lawsuits have both been
12 dismissed with prejudice. Id. Plaintiff has also filed two separate unsuccessful state court
13 lawsuits relating to the same loan and property. Id. The Court takes judicial notice of the
14 matters docketed in these cases and addresses the pending motions in turn. See Mack, 798 F.2d
15 at 1282 (stating that courts may take judicial notice of matters of public record).

16 **1. Defendants’ Motion to Dismiss**

17 As a preliminary matter, the Court notes that Plaintiff’s Response fails to adequately
18 address or provide counter authority to the arguments raised in Defendants’ Motion to Dismiss.
19 See LR 7-2(d) (“The failure of an opposing party to file points and authorities in response to
20 any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees,
21 constitutes the consent to the granting of the motion.”). In the Response, Plaintiff merely
22 superficially challenges Defendants’ rendition of the facts and discusses her general right to
23 bring a lawsuit. (See Pl.’s Resp., ECF No. 35). Even to the extent the Court does find
24 Plaintiff’s Response sufficient, however, the Complaint nonetheless fails to raise actionable
25 claims. Accordingly, the Court finds that dismissal of the Complaint with prejudice is proper.

1 a. False Representation Concerning Title, Fraudulent Foreclosure, Quiet Title
2 Plaintiff alleges that Defendants violated NRS 205.395 by “creating a lien and claim of
3 interest in Plaintiff’s property” while knowing that the substitution instrument naming NDSC
4 as Trustee was groundless and invalid. (See Compl. ¶ 31). At the core of this argument is
5 Plaintiff’s assertion that “Chase Bank was not the beneficiary of the subject note” and therefore
6 could not substitute NDSC as trustee. (Id.). Plaintiff raises her Quiet Title claim under this
7 same premise. (Id. ¶ 43).

8 Defendants argue that these claims are barred by issue preclusion and the doctrine of res
9 judicata because they “arise from the same failed argument that [Chase Bank] did not have
10 authority to foreclose.” (Mot. to Dismiss 10:23–11:11, ECF No. 24). Defendants are correct.
11 Issue preclusion “bars successive litigation of an issue of fact or law actually litigated and
12 resolved in a valid court determination essential to the prior judgment, even if the issue recurs
13 in the context of a different claim.” *White v. City of Pasadena*, 671 F.3d 918, 926 (9th Cir.
14 2012). Issue preclusion may apply “even though the causes of action are substantially
15 different, if the same fact issue is presented.” *LaForge v. State, Univ. and Comm. Coll. Syst. of*
16 *Nev.*, 997 P.2d 130, 134 (Nev. 2000). Furthermore, under the doctrine of res judicata, a final
17 judgment on the merits bars further claims by parties or their privies that are based on the same
18 cause of action. See *Blonder-Tongue Laboratories v. Univ. of Ill. Found.*, 402 U.S. 313, 323–
19 324 (1971).

20 Here, while Plaintiff purportedly brings a new claim under NRS 205.395,³ Plaintiff
21 effectively is attempting to reargue Chase Bank and Defendants’ underlying authority to
22 foreclose on the property. (See Court Order, Ex. F to Mot. to Dismiss). As this issue has
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25 ³ The Court further notes that Plaintiff fails to adequately plead a cause of action under this statute, which requires a plaintiff to: (1) hold a beneficial interest in real property; and (2) send a written request to correct the false representation to the party at issue. See NRS 205.395(5).

1 already been litigated and ruled upon by other courts, the Court finds that Plaintiff is barred
2 from raising the issue in the instant action and dismisses these claims with prejudice.

3 b. Intentional Infliction of Emotional Distress

4 Plaintiff next asserts a claim for intentional infliction of emotional distress, alleging that
5 she has suffered “extreme and outrageous emotional distress, including lack of sleep, anxiety,
6 and depression.” (Compl. ¶ 48). Specifically, Plaintiff alleges that “Defendants engaged in
7 intentional and reckless disregard which have [affected] the Plaintiff and foreclosed on a
8 property in which they have no right, title, or interest” (Id. ¶ 49).

9 As an initial issue, the Court notes that Plaintiff’s allegations are overly conclusory and
10 fail to meet the pleading standard. See *Sprewell*, 266 F.3d at 988. Even if they were properly
11 plead, however, Plaintiff’s claims are once again impermissibly premised on Defendant’s lack
12 of authority to foreclose on the property. Plaintiff has not and cannot effectively plead that
13 Defendants’ foreclosure of the property—which has already been upheld in other courts—
14 constitutes extreme and outrageous conduct. Accordingly, the Court dismisses this claim with
15 prejudice.

16 c. Slander of Title

17 Plaintiff lastly asserts a claim for slander of title, alleging that Defendants “published
18 matters that [were] untrue and disparaging to Plaintiff’s right to title in the subject mortgage
19 instruments by their acts and omissions.” (Compl. ¶ 58). To establish a claim for slander of
20 title, a Plaintiff must show “false and malicious communications, disparaging to [her] title in
21 land, and causing special damage.” *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 963 P.2d 465, 478
22 (Nev. 1998).

23 Here, as with Plaintiff’s other claims, Plaintiff relies merely on conclusory assertions
24 and falls short of the pleading standard. Moreover, Plaintiff cannot show that Defendants’
25 communications were disparaging to her title, as the chain of title and foreclosure issues have

1 already been resolved against Plaintiff. In raising this claim, Plaintiff is merely attempting to
2 re-litigate already adjudicated issues. Accordingly, the Court dismisses this claim with
3 prejudice.

4 **2. Plaintiff's Motion to Supplement the Complaint**

5 Plaintiff brings a Motion to Supplement the Complaint pursuant to Fed. R. Civ. P. 15(d),
6 which raises multiple additional claims against JPMorgan Chase Bank, N.A. and Federal
7 Deposit Insurance Corporation ("FDIC"). (ECF No. 12). Specifically, Plaintiff seeks to add
8 claims of (1) Fraudulent Concealment; (2) Slander of Credit; (3) FDIC Malfeasance; and (4)
9 Intentional Interference with a Contract. (Mot. to Suppl., ECF No. 12). As best the Court can
10 discern, Plaintiff argues that this supplement is warranted because FDIC denied Plaintiff's
11 administrative claim brought under the Financial Institutions Reform, Recovery and
12 Enforcement Act ("FIRREA"), and the denial occurred after Plaintiff initiated the instant
13 action. (Id.).

14 Rule 15(d) provides that "[o]n motion and reasonable notice, the court may, on just
15 terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence,
16 or event that happened after the date of the pleading to be supplemented." Rule 15(d) is
17 intended to give district courts broad discretion in allowing supplemental pleadings. *Keith v.*
18 *Volpe*, 858 F.2d 467, 473 (9th Cir. 1988). When considering whether to allow a supplemental
19 complaint, courts may consider factors such as whether allowing supplementation would serve
20 the interests of judicial economy; whether there is evidence of delay, bad faith or dilatory
21 motive on the part of the movant; whether amendment would impose undue prejudice upon the
22 opposing party; and whether amendment would be futile. See *Saintal v. Foster*, No. 2:11-cv-
23 00445-MMD, 2012 WL 5180738, at *6 (D. Nev. Oct. 17, 2012).

24 Here, the Court finds that allowing Plaintiff's supplement would be futile and against the
25 interests of judicial economy. Notably, the claims brought against JPMorgan Chase Bank are

1 barred by issue preclusion. Even if the claims were permissible, the allegations in the
2 supplemental complaint occurred prior to the date of pleading and therefore are not properly
3 raised in a supplemental complaint. Furthermore, pursuant to 12 U.S.C. § 1821(d)(6)(A)(ii),
4 the Court does not have jurisdiction over challenges to FDIC’s administrative decisions. See
5 MTB Enterprises, Inc. v. ADC Ventures 2011-12, LLC, 780 F.3d 1256, 1258 (9th Cir. 2015)
6 (affirming that under FIRREA, a claimant must sue in the district court “within which the
7 [failed bank’s] principal place of business is located or the United States District Court for the
8 District of Columbia . . .”). The Court therefore denies Plaintiff’s Motion to Supplement the
9 Complaint.⁴

10 **IV. CONCLUSION**

11 **IT IS HEREBY ORDERED** that Defendants’ Motion to Dismiss, (ECF No. 24), is
12 **GRANTED**. Plaintiff’s claims are dismissed with prejudice.

13 **IT IS FURTHER ORDERED** that Plaintiff’s Motion to Supplement, (ECF No. 12), is
14 **DENIED**.

15 **IT IS FURTHER ORDERED** that Plaintiff’s Motions for Entry of Clerk’s Default,
16 (ECF Nos. 22, 29, 30, 31, 34), are **DENIED**.

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24 ⁴ Plaintiff additionally filed five separate motions for entry of clerk’s default. (ECF Nos. 22, 29, 30, 31, 34).
25 Four of these motions pertain to parties named in Plaintiff’s Motion to Supplement. As these parties are not
defendants in the operative complaint, Plaintiff is not entitled to default against them. The remaining motion
pertains to the named Defendants in this case, who have properly appeared. The Court therefore denies
Plaintiff’s motions.

1 **IT IS FURTHER ORDERED** that any remaining motions in this action are **DENIED**

2 **as moot.**

3 The Clerk of Court is instructed to close the case.

4 **DATED** this 6 day of September, 2017.

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8 Gloria M. Navarro, Chief Judge
9 United States District Court
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