

1 **II. RELEVANT BACKGROUND**

2 **A. Relevant Facts**

3 The following facts are taken from the Complaint and the documents attached to
4 Defendants' Motion for Summary Judgment. Plaintiff is the owner of real property located
5 at 7866 Morgan Point Circle in Reno, Nevada ("the Property"). (ECF No. 9 at 2.) In
6 December 2005, he obtained a loan ("Loan") from MILA, Inc. ("MILA") secured by a Deed
7 of Trust ("DOT") on the Property. (ECF No. 9 at 5; ECF No. 38-1.) The DOT identifies
8 MERS as the nominee for MILA. (ECF No. 38-2.)

9 The Loan was allegedly sold and transferred several times since origination
10 between 2005 to 2012. (ECF No. 9 at 2, 5.) In particular, on April 22, 2010, an assignment
11 of the DOT was recorded by MERS as nominee for MILA in favor of Aurora Loan Services,
12 LLC ("Aurora"). (ECF No. 38-3.) This assignment ("Assignment") was recorded on May 4,
13 2010. (*Id.*) On October 11, 2012, Aurora assigned the DOT to Nationstar Mortgage
14 ("Nationstar"). (ECF No. 38-6.)

15 Plaintiff alleges the Assignment is fraudulent. (ECF No. 9 at 5.) According to
16 Plaintiff, Theodore Schultz signed the affidavit on the Assignment as "VP Mortgage
17 Electronic Registration Systems" when he was an employee of Aurora and therefore
18 lacked authority to execute the Assignment. (*Id.* at 6, 8.) Based primarily on his allegations
19 that the Assignment is fraudulent, Plaintiff asserts four state law claims for statutory
20 concealment of a material fact, fraudulent concealment, aiding and abetting another's
21 breach of fiduciary duty, and constructive fraud. (*Id.* at 9-19.)

22 **B. Related State Court Case**

23 Plaintiff asserts that "[t]his case arises from the 'Judicial Foreclosure' in the state
24 court cv12-02785." (ECF No. 9 at 3.) The state court case involved Nationstar's judicial
25 foreclosure action against Plaintiff in the Second Judicial District Court of Nevada
26 ("Foreclosure Case") filed in November 2012.¹ On December 28, 2012, Plaintiff filed an

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28 ¹On May 7, 2013, Plaintiff filed a complaint in this court which was assigned case
no. 3:13-cv-234-MMD-WGC ("Federal Case"). (Federal Case, ECF No. 1.) He asserted

1 Amended Answer and Counterclaims. (Federal Case, ECF No. 9-1.) He challenged the
2 assignments of the DOT to Nationstar as fraudulent, among other claims. (ECF No. 63-2
3 at 4.)

4 On February 21, 2017, the state court granted summary judgment in favor of
5 Nationstar². (ECF No. 63-2.) In doing so, the court found that the assignments of the DOT
6 gave National the right to foreclose on the Property. (*Id* at 9.) In addressing Plaintiff's
7 claim that the assignments are fraudulent, the court found that Plaintiff lacked standing to
8 challenge the assignments and fraud in connection with the assignments is not a valid
9 defense to a judicial foreclosure claim." (*Id.*)

10 **III. PLAINTIFF'S MOTIONS**

11 Two of Plaintiff's motions raise threshold issues that the Court will address first.
12 Plaintiff moved to strike Defendants' Motion for Summary Judgment, asking that the Court
13 strike documents or Defendants' entire Motion because some of the documents
14 purportedly placed MERS' existence into question and Defendants' Motion was based on
15 documents "signed by the tortfeasor in this case, Nationstar Mortgage." (ECF No. 45 at
16 2.) Plaintiff's motion is without merits. Even accepting Plaintiff's claim that the documents
17 purportedly placed in question the assignments of the DOT to Nationstar, such contention
18 is not sufficient to deprive Defendants of the ability to seek summary judgment. Plaintiff's
19 motion to strike (ECF No. 45) is denied.

20 Plaintiff asked the Court to stay the Foreclosure Case. (ECF No. 65.) Plaintiff's
21 motion is rendered moot by the entry of summary judgment in the Foreclosure Case.
22 Moreover, the Court agrees with Defendants that Plaintiff has presented no legal grounds
23 for this Court to enjoin a state court action initiated several years before this case was

24 claims against the Bank, MERS, Nationstar, Aurora, and other defendants. (*Id.*) The Court
25 dismissed the Federal Case for lack of subject matter jurisdiction. (*Id.*, ECF No. 51.)
26 Plaintiff ultimately exhausted his appellate rights. (*Id.*, ECF Nos. 67, 68, 69.)

27 ²Based on the docket in the Foreclosure Case, there appears to have been
28 extensive filings after the entry of summary on February 21, 2017. See
https://www.washoecourts.com/index.cfm?page=casedesc&case_id=CV12-02785. The
parties' status reports recite the proceedings after the entry of summary judgment in
response to the Court's order. (ECF Nos. 70, 71, 73.)

1 filed. (ECF No. 68.) Accordingly, Plaintiff's motion to stay the Foreclose Case (ECF No.
2 65) is denied.

3 Plaintiff's Motion for Summary Judgment is denied as moot because the Court
4 grants summary judgment in favor of Defendants, as discussed below³. Plaintiff's motion
5 to file supplemental brief (ECF No. 61), where he essentially argued why the summary
6 judgment entered by the state court in the Foreclosure Case is incorrect, is denied. To
7 the extent Plaintiff disagrees with the state court, his recourse is to pursue available
8 remedies in the state court.

9 **IV. DEFENDANTS' MOTIONS**

10 **A. Legal Standard**

11 "The purpose of summary judgment is to avoid unnecessary trials when there is
12 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,
13 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
14 pleadings, the discovery and disclosure materials on file, and any affidavits "show there
15 is no genuine issue as to any material fact and that the movant is entitled to judgment as
16 a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is "genuine"
17 if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for the
18 nonmoving party and a dispute is "material" if it could affect the outcome of the suit under
19 the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). Where
20 reasonable minds could differ on the material facts at issue, however, summary judgment
21 is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995). "The
22 amount of evidence necessary to raise a genuine issue of material fact is enough 'to
23 require a jury or judge to resolve the parties' differing versions of the truth at trial.'" *Aydin*
24 *Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities*
25 *Service Co.*, 391 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a
26 court views all facts and draws all inferences in the light most favorable to the nonmoving

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28 ³The Court also denies Defendants' Motion to Strike (ECF No. 43) as moot.

1 party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir.
2 1986).

3 The moving party bears the burden of showing that there are no genuine issues of
4 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In order
5 to carry its burden of production, the moving party must either produce evidence negating
6 an essential element of the nonmoving party’s claim or defense or show that the
7 nonmoving party does not have enough evidence of an essential element to carry its
8 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
9 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s requirements,
10 the burden shifts to the party resisting the motion to “set forth specific facts showing that
11 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may
12 not rely on denials in the pleadings but must produce specific evidence, through affidavits
13 or admissible discovery material, to show that the dispute exists,” *Bhan v. NME Hosps.,*
14 *Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show that there
15 is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am.*, 285 F.3d 764,
16 783 (9th Cir. 2002) (internal citations omitted). “The mere existence of a scintilla of
17 evidence in support of the plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at
18 252.

19 **B. Discussion**

20 The Court grants Defendants’ Motion to Supplement (ECF No. 63) in light of the
21 state court’s granting of summary judgment in the Foreclosure Case because the issues
22 raised in that case are so intertwined with the claims asserted in this case. The Court will
23 therefore address whether Plaintiff is collaterally estopped from asserting the claims in
24 this case. Because the Court finds that issue preclusion applies to bar Plaintiff’s claims,
25 the Court declines to address the other grounds asserted in Defendants’ Motion for
26 Summary Judgment.

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1 A federal district court sitting in diversity should follow the forum state's law regarding
2 issue preclusion⁴. See *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508
3 (2001). Under Nevada law, issue preclusion requires that (1) the issue decided in the
4 prior litigation is identical to the issue presented in the current action, (2) the initial ruling
5 must have been on the merits and final, (3) the party against whom the judgment is
6 asserted must have been a party or in privity with a party to the prior litigation, and (4) the
7 issue was actually and necessarily litigated. *Five Star Capital Corp. v. Ruby*, 194 P.3d
8 709, 713 (Nev. 2008). If all four factors are satisfied, issue preclusion applies to prevent
9 a party from bringing the same issue in a subsequent case. See *id.*; see also *Clark v.*
10 *Clark*, 389 P.2d 69, 71-72 (Nev. 1964).

11 All four factors for finding issue preclusion are satisfied here. In the Foreclosure
12 Case, the state court found that Plaintiff lacked standing to challenge the assignments as
13 being fraudulent. This is the same issue that is the premise of Plaintiff's claims—that the
14 Assignment is fraudulent. The state court granted summary judgment and subsequently
15 entered judgment so the ruling is on the merits and is final. See discussion *supra* at Sect.
16 II(B). Judgment in that case was entered against Plaintiff so the third factor is also
17 satisfied. Finally, the fourth factor is met because the issue of whether the assignments
18 are fraudulent was actually and necessarily litigated. In the Foreclosure Case, Plaintiff
19 asserted that the assignments to Nationstar are fraudulent. (ECF No. 63-2 at 9.) The state
20 court resolved this issue in favor of Nationstar and against Plaintiff by finding that Plaintiff
21 lacked standing to assert that the assignments are fraudulent and Nationstar has the right
22 to foreclose the Property. (*Id.*)

23 Because Plaintiff is precluded from relitigating the issue of whether the Assignment
24 is fraudulent, Plaintiff cannot advance claims based on this same factual and legal
25 premise against Defendants. Accordingly, the Court will grant summary judgment in favor

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27 ⁴Plaintiff asserts federal question jurisdiction and diversity jurisdiction. (ECF No. 9
28 at 4.) However, because the Complaint does not assert any claims to support federal
question jurisdiction, the Court finds that this case is before the Court on diversity
jurisdiction.

1 of Defendants based on issue preclusion.

2 **VI. CONCLUSION**

3 The Court notes that the parties made several arguments and cited to several
4 cases not discussed above. The Court has reviewed these arguments and cases and
5 determines that they do not warrant discussion as they do not affect the outcome of the
6 pending motions.

7 It is therefore ordered that Defendants' motion for leave to file supplemental brief
8 (ECF No. 63) is granted.

9 It is further ordered that Defendant's motion for summary judgment (ECF No. 38)
10 is granted.

11 It is further ordered that the remaining motions (ECF Nos. 41, 43, 45, 61, 65) are
12 denied as moot.

13 The Clerk is directed to enter judgment in favor of Defendants and close this case.

14 DATED THIS 31st day of August 2017.



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16 MIRANDA M. DU
17 UNITED STATES DISTRICT JUDGE
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