IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

THOMAS BAUER,   Civ. No. 3:16-cv-00266-PK

               Plaintiff,   **ORDER**

     v.

BANK OF AMERICA, NA;
JPMORGAN CHASE BANK,
NA,

               Defendants.

PAPAK, Magistrate Judge.

This matter comes before the Court on Defendants' Motion to Dismiss. ECF Dkt. #5. The parties appeared for oral argument on April 5, 2016, at 10:00 a.m. and reached the following stipulations:
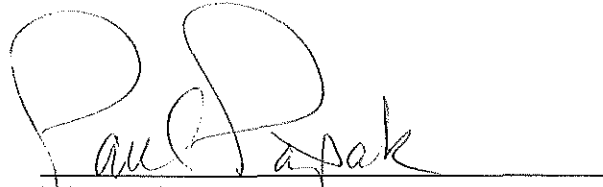
First, the parties stipulate that Plaintiff's Third Claim for Relief, for negligent misrepresentation, should be dismissed with prejudice.

Second, the parties agree that Plaintiff's remaining claims are more properly litigated in the earlier-filed Multnomah County Circuit Court case *Bank of America National Association v. Thomas L. Bauer et al.*, Case No. 121216501. In June 2013, Plaintiff filed an Answer and

Counterclaim in that case, Robinson Decl. Ex. 1, and that counterclaim remains pending before the state court. The parties agree that there are no compulsory counterclaims under Oregon law, but that Plaintiff's counterclaim in the ongoing state court case exercises a potentially preclusive effect on Plaintiff's claims in this case. *See State ex rel. English ex rel. Sellers v. Multnomah Cty.*, 348 Or. 417, 433 n.11 (2010) ("[I]f the defendant actually raises a counterclaim in the first action, the rule of bar applies as though the defendant was a plaintiff in the first action."). The parties stipulate to the dismissal of Plaintiff's remaining claims without prejudice, so that Plaintiff can seek leave to amend the counterclaim in *Bank of America National Association v. Thomas L. Bauer et al.*, Case No. 121216501.

Therefore, based on the stipulation of the parties, Defendant's Motion to Dismiss, ECF Dkt. #5, is GRANTED in part. Plaintiff's Third Claim for Relief, for negligent misrepresentation, is DISMISSED with prejudice. All of Plaintiff's other claims are DISMISSED without prejudice.

IT IS SO ORDERED and DATED this 5th day of April 2016.

PAUL PAPAK
United States Magistrate Judge