



1 **I. PROCEDURAL HISTORY**

2 On February 24, 2012, Plaintiffs Andrew and Stephanie Wolf (“Wolfs”) filed a  
3 complaint in the Pierce County Superior Court in and for the State of Washington. Dkt.  
4 1-2. On March 22, 2012, BOA and MERS removed the case to this Court. Dkt. 1.

5 On March 26, 2012, BOA and MERS filed a motion to dismiss. Dkt. 7. On  
6 March 30, 2012, NWTS filed a notice of joinder in the motion. Dkt. 16. On April 10,  
7 2012, the Wolfs responded. Dkt. 17. On April 20, 2012, BOA and MERS replied. Dkt.  
8 18.

9 **II. FACTUAL BACKGROUND**

10 On or about November 1, 2004, the Wolfs signed a deed of trust securing a  
11 \$202,400 loan (the “Deed of Trust”). Dkt. 9, Declaration of Benjamin J. Roesch  
12 (“Roesch Decl.”), Ex. 1. On May 11, 2009, MERS assigned to Bank of America the  
13 beneficial interest in the Deed of Trust. Roesch Decl., Ex. 2. On June 1, 2009, Bank of  
14 America, through its attorney-in-fact Wells Fargo Bank, N.A., appointed NWTS as the  
15 successor trustee on the Deed of Trust. Roesch Decl., Ex. 3. On March 9, 2011, NWTS  
16 recorded a Notice of Trustee’s Sale pursuant to the Deed of Trust. Roesch Decl., Ex. 4.

17 On or about July 25, 2011, the Wolfs brought their first lawsuit in this case in the  
18 U.S. District Court for the Western District of Washington at Tacoma, suing Wells Fargo  
19 Bank, N.A., MERS, and NWTS (hereinafter, “Wolf I”). (Case 3:11-cv-05474-RBL, Doc.  
20 4.) The Wolfs chose not to sue Bank of America at that time. Wells Fargo, MERS, and  
21 NWTS all brought motions to dismiss. *Id.*, Dkts. 9 & 13. The Wolfs did not respond  
22 timely, but instead submitted a document that is substantially similar to their complaint in



1 In this case, the only issue with regard to applying this doctrine is whether there is  
2 a complete identity or privity of parties. The claims are the same, and Judge Leighton  
3 issued a final decision on the merits. The Wolfs, however, brought this action against  
4 BOA instead of Wells Fargo. The Court finds that BOA is in privity with Wells Fargo  
5 because Wells Fargo was BOA's attorney in fact. With regard to NWTS and MERS,  
6 they were a defendant in the previous action and are an identical party. Therefore, the  
7 Court grants BOA and MERS's motion to dismiss the Wolfs' complaint and NWTS's  
8 joinder because the claims are barred by the doctrine of res judicata.

9 **IV. ORDER**

10 Therefore, it is hereby **ORDERED** that BOA and MERS's motion to dismiss  
11 (Dkt. 7) is **GRANTED** and NWTS's joinder (Dkt. 16) is **GRANTED**.

12 Dated this 17<sup>th</sup> day of May, 2012.

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BENJAMIN H. SETTLE  
United States District Judge