

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 30 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ARTHUR LOPEZ,

No. 18-55748

Plaintiff-Appellant,

D.C. No. 8:17-cv-01466-JLS-KES

v.

MEMORANDUM*

MUFG UNION BANK, N.A.; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted May 21, 2019**

Before: THOMAS, Chief Judge, and FRIEDLAND and BENNETT, Circuit Judges.

Arthur Lopez appeals pro se from the district court's judgment dismissing his civil rights and antitrust action arising from a business loan transaction. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of res judicata. *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002).

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Appendix A

We affirm.

The district court properly dismissed Lopez's federal claims as barred by the doctrine of res judicata because Lopez litigated these claims in a prior action that resulted in a final judgment on the merits. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003) (setting forth requirements of res judicata).

We lack jurisdiction to review the orders denying Lopez's requests for reconsideration because Lopez failed to file an amended notice of appeal from those decisions. *See Fed. R. App. P. 4(a)(4)(B)(ii); Whitaker v. Garcetti*, 486 F.3d 572, 585 (9th Cir. 2007) (a notice of appeal is mandatory and jurisdictional).

We reject as meritless Lopez's contention that the district court violated his constitutional rights.

Lopez's "request to enter audio CD" (Docket Entry No. 15) and requests for judicial notice, set forth in the opening brief, are denied as unnecessary.

AFFIRMED.

Appendix A

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 17-1466-JLS (KES)

Date: June 07, 2018

Title: Arthur Lopez v. MUFG Union Bank, N.A. et al.

Present: Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE

Terry Guerrero

N/A

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS (Doc. 32)**

Before the Court is Defendants MUFG Union Bank, N.A. f/k/a Union Bank, N.A., MUFG Americas Holding Corporation, and Unionbancal Corporation's Motion to Dismiss. (Doc. 32.) Plaintiff Arthur Lopez opposed, and Defendants replied. (Opp., Doc. 41; Reply, Doc. 44.) The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing on the Motion, set for June 8, 2018, at 2:30 p.m., is VACATED. For the reasons stated below, the Court GRANTS Defendants' Motion.

I. BACKGROUND

On August 24, 2017, Lopez filed a Complaint against Defendants MUFG Union Bank, N.A. f/k/a Union Bank, N.A., MUFG Americas Holding Corporation, and Unionbancal Corporation. (Compl., Doc. 1.) On December 15, 2017, he amended his complaint. (FAC, Doc. 11.) The FAC is substantially similar to a prior lawsuit Lopez filed against Defendants in this Court.¹ The facts alleged in the two lawsuits are as follows.

¹ Defendants request judicial notice of this prior related action, 8:15-cv-01354-JLS-KES, and of a prior state court action, *Lopez v. Union Bank, N.A. et al.*, Orange County Superior Court Case No. 30-2012-00565803. (See RJD, Doc. 33.) The Court grants the request for the purpose of establishing the existence of those cases and to determine any preclusive effect they

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In April 2007, Lopez met with Ross Chung, an employee and agent of MUFG Union Bank, to discuss developing an auto finance company. (FAC at 19.) During this meeting, Chung informed Lopez that Lopez's home equity would be a good source for financing his company. (*Id.*) Lopez was instructed to prepare a business plan, which he later submitted to Chung and other Union Bank representatives. (*Id.*) James L. Lisle, another Union Bank employee, liked the plan. (*Id.*) Lisle instructed Lopez to return after the company had been operational for two to three years, at which point Union Bank would entertain issuing a business line of credit to Lopez. (*Id.*) In 2008, Liberty commenced doing business and committed to a 39-month commercial office lease. (*Id.*)

Throughout 2008 and 2009, Chung and other Union Bank representatives informed Lopez that if he withdrew the remainder of his home equity line of credit, which amounted to approximately \$568,700, Union Bank would issue additional credit so Lopez could fund his auto finance company. (*Id.*) Chung informed Lopez that if Lopez withdrew this amount, Union Bank would extend credit for Liberty up to 80% of the "loan to value" of Lopez's home. (*Id.*)

In late 2008, Lopez withdrew the remainder of his home equity line of credit to finance Liberty. (*Id.*) Throughout 2009 and 2010, Chung and other Union Bank representatives encouraged Lopez to continue applying for additional credit, and they confirmed they would provide this funding to Lopez. (*Id.*) In 2010, Chung and Toshihiro Tsuruno, a senior representative of Union Bank, visited Liberty. (*Id.*) They observed Liberty's computer servers, financing and program sheets, phone systems, wiring and cable systems, and overall layout. (*Id.*) Chung and Tsuruno were complimentary of Liberty's business model. (*Id.*) After this 2010 meeting, Lopez requested the promised credit from Union Bank to fund Liberty. (*Id.*) However, despite Lopez's repeated requests, Chung and other Union Bank agents declined to provide the promised funding. (*Id.*)

Lopez alleges that Union Bank employees and agents made sarcastic and condescending comments against Lopez and his family. (*Id.* at 20.) Chung also refused to allow Lopez's parents, who are Mexican, to apply as co-borrowers to receive the

have on this lawsuit. The Court shall refer to the prior federal action as the "Related Action" and the prior state action as the "State Court Action."

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promised credit. (*Id.*) Union Bank allegedly colluded with other banking institutions and investment bankers to negatively label Lopez and Liberty's good credit standing. (*Id.*) Lopez then complained about Defendants' conduct to the U.S. Department of Justice's Consumer Advocate office as well as the Federal Deposit Insurance Corporation. (*Id.*) In 2011, in retaliation for these complaints, Defendants froze Lopez's home equity account and prevented him from withdrawing any further funds. (*Id.*) Defendants commenced foreclosure proceedings on Lopez's home in 2011, and their misconduct continued against Lopez until they obtained a judgment for possession and removed Lopez from his home in 2012. (*Id.*) Lopez alleges that Defendants' misconduct caused him to lose his business, home, wealth, employment, credit worthiness, reputation, marriage, and quality of life. (*Id.*) The FAC asserts the following nine claims against Defendants: (1) violation of the Civil Rights Act; (2) violation of the Sherman Antitrust Act; (3) violation of the Clayton Antitrust Act; (4) violation of the Equal Credit Opportunity Act; (5) violation of the Consumer Credit Protection Act; (6) securities and commodities fraud, (7) theft of trade secrets, (8) violation of the Thirteenth Amendment; and (9) intentional infliction of emotional distress. (*Id.* at 21.)

The Related Action was filed on August 25, 2015. On February 9, 2016, this Court granted Defendants' Motion to Dismiss the Complaint. (Related Action Doc. 31.) The Court dismissed Lopez's claims without prejudice and instructed that any motion for leave to file an amended complaint must be filed within twenty-one days of the order. (*Id.* at 2.) On March 1, 2016, Lopez filed a Motion for Leave to File an Amended Complaint. (Related Action Doc. 32.) The Court denied Lopez's Motion, holding that amendment would be futile as eight of Lopez's claims were barred by the doctrine of res judicata and the final claim for theft of trade secrets failed as a matter of law because it was brought pursuant to a criminal statute without a private right of action. (Denial of Motion for Leave to Amend, Related Action Doc. 38 at 6-10.) After disposing of Lopez's federal causes of action, the Court declined to exercise supplemental jurisdiction over the single state law claim for intentional infliction of emotional distress. (*Id.* at 10.)

Lopez appealed the Court's grant of Defendants' Motion to Dismiss in the prior action. (Related Action Doc. 40.) On August 17, 2017, the Ninth Circuit affirmed the dismissal. (Related Action Doc. 46.) No further appeals were taken.

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II. LEGAL STANDARD

When evaluating a Rule 12(b)(6) motion, the Court must accept as true all allegations of material facts that are in the complaint and must construe all inferences in the light most favorable to the non-moving party. *Moyo v. Gomez*, 32 F.3d 1382, 1384 (9th Cir. 1994). If a complaint fails to state a claim as a matter of law, that is, if “it appears certain that [the plaintiff] can prove no set of facts in support of his claim which would entitle him to relief,” the complaint is dismissed. *Id.*

In ruling on a 12(b)(6) motion, a court may “consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.” *Gerritsen v. Warner Bros. Entm’t, Inc.*, 112 F. Supp. 3d 1011 (C.D. Cal. 2015) (quoting *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003) (internal quotation marks omitted)).

III. DISCUSSION

Defendants argue that Lopez’s FAC is barred by the doctrine of res judicata, due to the Court’s decision in the Related Action. (Mem. at 12, Doc. 32-1.) The Court agrees.

“Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action.” *Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). “In order for res judicata apply there must be: 1) an identity of claims; 2) a final judgment on the merits; and 3) identity or privity between parties.” *Id.* “The central criterion in determining whether there is an identity of claims between the first and second adjudication is ‘whether the two suits arise out of the same transactional nucleus of facts.’” *Frank v. United Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2000) (quoting *Constantini v. Trans World Airlines*, 681 F.2d 1199, 1201-02 (9th Cir. 1982)).

First, this lawsuit plainly arises out of the same transactional nucleus of facts as the Related Action. Both actions involve the same transactions and sequence of events,

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the same alleged injury, and the same alleged wrong. The same facts were alleged to support the same causes of action. (*Compare* FAC with Related Action Proposed FAC, Related Action Doc. 32.) Accordingly, the first element of res judicata is satisfied.

Second, the decision in the Related Action is final and on the merits. In the prior action, the Court denied Lopez's Motion for Leave to Amend because it determined that his federal claims were barred by res judicata, thus amendment would be futile. (Related Action Doc. 38 at 6-10.) A denial of leave to amend on this basis suffices as a judgment on the merits. *See, e.g., Adolph Coors Co. v. Sickler*, 608 F. Supp. 1417, 1431 (C.D. Cal. 1985). Thus, the decision in the Related Action is final and “on the merits” for purposes of res judicata.

Finally, the parties in the present proceeding were parties to the Related Action proceeding. Thus, the Court concludes that the third requirement for res judicata is met.

Res judicata bars “not only every issue that was raised, but also every issue that might have been raised in the first action.” *Flynn v. State Bd. of Chiropractic Examiners*, 418 F.2d 668, 668 (9th Cir. 1969) (citing *Olwell v. Hopkins*, 28 Cal. 2d 147, 152 (1946)). Lopez cannot “fragment a single cause of action and . . . litigate piecemeal the issues which could have been resolved in one action.” *Id.* For that reason, the preclusive effect of the Court’s Order in the Related Action applies with equal force to each cause of action asserted in this action, even if based on a new legal theory.

Moreover, the Court concludes that granting Lopez leave to amend would be futile. *See Huggins v. Hynes*, 117 Fed. App’x 517, 518 (9th Cir. 2004) (finding that “[t]he district court properly denied . . . leave to amend because [the] proposed amendment was futile due to res judicata.” (citing *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)). Accordingly, this action is dismissed with prejudice.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' Motion with prejudice. All pending dates are VACATED.

Initials of Preparer: tg

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from this filing is
available in the
Clerk's Office.**