NOT FOR PUBLICATION

FILED

MAR 23 2022

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELLA W. HORN, Plaintiff-Appellant, v. EXPERIS US INC., a Manpower Brand Company, Defendant-Appellee.	No. 20-17067 D.C. No. 2:20-cv-00212-JAM-CKD MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted March 16, 2022**

Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

Ella W. Horn appeals pro se from the district court's judgment dismissing her employment action alleging violations of Title VII and California law. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(c). *Lyon v. Chase Bank USA, N.A.*, 656 F.3d

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* 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).

877, 883 (9th Cir. 2011). We affirm.

The district court properly dismissed Horn's action because Horn's claims were raised or could have been raised in a previous action between the parties that resulted in a final adjudication on the merits. *See Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713-14 (9th Cir. 2001) (setting forth elements of claim preclusion under federal law and explaining that an identity of claims exists between the first and second adjudications when the two suits arise out of the same transactional nucleus of facts).

The district court properly denied Horn's motion for remand to state court because defendant timely removed the action and the district court had subject matter jurisdiction under 28 U.S.C. § 1332. *See* 28 U.S.C. § 1332(a) (setting forth requirements for diversity jurisdiction); 28 U.S.C. § 1446(b)(1) (explaining that notice of removal must be filed within 30 days of defendant's receipt, through service or otherwise, of a copy of the initial pleading); Cal. Civ. Proc. Code § 415.30 (setting forth procedure and requirements for service of process by mail); *see also Yocupicio v. PAE Grp., LLC*, 795 F.3d 1057, 1059 (9th Cir. 2015) (setting forth standard of review).

The district court did not abuse its discretion by denying Horn's motion for production of court transcripts at government expense because Horn failed to establish that the appeal presents a substantial question. *See* 28 U.S.C. § 753(f);

McKinney v. Anderson, 924 F.2d 1500, 1511-12 (9th Cir. 1991), *vacated on other grounds sub nom. Helling v. McKinney*, 502 U.S. 903 (1991) (setting forth standard of review and noting that relief under § 753 is permissive).

We reject as without merit Horn's contentions that (1) the district court's denial of her motions to proceed in forma pauperis on appeal were not mooted by this court's grant of her motion to proceed in forma pauperis, and (2) the district court was biased against her.

To the extent Horn seeks relief related to the public filing of her personal or financial information on the district court docket, the request is denied without prejudice to filing a motion for appropriate relief in the district court.

We do not consider Horn's contentions regarding her prior appeal, No. 19-17396.

AFFIRMED.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

ELLA W. HORN,

CASE NO: **2:20-CV-00212-JAM-CKD**

v.

EXPERIS US INC.,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 10/7/2020

Keith Holland
Clerk of Court

ENTERED: **October 7, 2020**

by: /s/ A. Coll
Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ELLA W. HORN,

Plaintiff,

v.

EXPERIS US, INC., A MANPOWER BRAND COMPANY,

Defendant.

No. 2:20-cv-00212-JAM-CKD

ORDER

On August 21, 2020, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff timely filed objections. The magistrate judge reviewed the objections and determined that they were without merit.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis. Good cause appearing, the court concludes that it is appropriate to adopt the proposed findings and recommendations in full.

Accordingly, IT IS ORDERED that:

1. The Findings and Recommendations (ECF No. 27) are adopted in full;
2. Defendant's motion for judgment on the pleadings (ECF No. 19) is granted;
3. Judgment is entered in favor of defendant; and

4. The Clerk of Court is directed to close this case.

DATED: October 6, 2020

/s/ John A. Mendez
THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ELLA W. HORN, Plaintiff, v. EXPERIS US, INC., A MANPOWER BRAND COMPANY, Defendant.	No. 2:20-cv-00212-JAM-CKD (PS) FINDINGS AND RECOMMENDATIONS

Before the court is defendant's motion for judgment on the pleadings and request for judicial notice. ECF No. 19. Plaintiff filed an opposition. ECF No. 23. Defendant filed a reply. ECF No. 24. Upon considering the motion and relevant documents, the court finds as follows:

I. BACKGROUND

Defendant Experis US, Inc. is a staffing company that allegedly placed plaintiff in a Project Manager position with its client CRC Health Group in June 2015. In early July 2015, plaintiff was terminated from her assignment with CRC Health. Defendant alleges plaintiff was terminated because she was found to have lacked the skills required to perform the Project Manager job successfully. Plaintiff alleges she was terminated as a result of discrimination. The CRC Health position was the last assignment plaintiff had with defendant.

On or about April 17, 2017, plaintiff filed a lawsuit against defendant in the Eastern District of California, styled Ella W. Horn v. Experis US Inc., a Manpower Brand Company,

Cause No. 2:17-cv-00814 ("Horn I"). In the complaint in Horn I, plaintiff alleged multiple claims, including race discrimination in violation of Title VII of the Civil Rights Act of 1964, race discrimination in violation of the California Fair Employment and Housing Act, wrongful termination, and negligent infliction of emotional distress.

On or about October 7, 2019, the court granted defendant's motion for summary judgment, finally adjudicating plaintiff's claims in Horn I on the merits. Plaintiff appealed the district court's ruling in Horn I, but her appeal was dismissed as being untimely. Her attempts to remedy the defect in her appeal were also dismissed.

On or about December 11, 2019, plaintiff filed the instant suit against defendant in the Superior Court of the State of California, Sacramento County, asserting many of the same claims asserted in Horn I, as well as several new claims, such as breach of contract, unfair business practices, and other state-law claims (Horn II). ECF No. 1. Defendant timely removed the action to this court.

Defendant then filed a motion for judgment on the pleadings, asking this court to dismiss plaintiff's claims in their entirety, because they are barred by the doctrine of res judicata and the applicable statutes of limitations.

II. LEGAL STANDARD

A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) "challenges the legal sufficiency of the opposing party's pleadings and operates in much the same manner as a motion to dismiss under Rule 12(b)(6)." Morgan v. County of Yolo, 436 F.Supp.2d 1152, 1154-55 (E.D. Cal. 2006). Analysis under Rule 12(c) is "substantially identical" to analysis under Rule 12(b)(6) because under both rules a court determines whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy. Chavez v. U.S., 683 F.3d 1102, 1108 (9th Cir. 2012). Similar to a Rule 12(b)(6) motion to dismiss, when addressing a motion for judgment on the pleadings, a court must assess whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Also similar to a Rule 12(b)(6) motion, the court may take into account materials to

which it can take judicial notice in addition to considering the allegations of the complaint. Heliotrope Gen., Inc. v. Ford Motor Co., 189 F.3d 971, 981, n.18 (9th Cir. 1999). In short, a motion for judgment on the pleadings may be granted if, after assessing the complaint and matters for which judicial notice is proper, it appears "beyond doubt that the [non-moving party] cannot prove any facts that would support his claim for relief." Morgan v. County of Yolo, 436 F.Supp.2d 1152, 1155 (E.D. Cal. 2006), aff'd, 277 Fed. Appx. 734 (9th Cir. 2008).

III. DISCUSSION

Defendant asks this court to enter judgment on the pleadings on the grounds that plaintiff's claims are barred by res judicata, or alternatively, the applicable statutes of limitations. To support its res judicata argument, defendant asks the court to take judicial notice of court filings from a prior suit between the parties. The court will address the request for judicial notice and then discuss the merits of parties' arguments.

A. Request for Judicial Notice

Defendant asks the court to take judicial notice of the complaint, the dismissal order, and the final judgment from the matter Horn v. Experis US Inc., No. 2:17-CV-0814-JAM-DB. ECF No. 19-1. A district court may take judicial notice of a fact that is "not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). A court may therefore take judicial notice of court filings and other matters of public record. Reyn's Pasta Bella LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006); see also Papai v. Harbor Tug & Barge Co., 67 F.3d 203, 207, n. 5 (9th Cir. 1995), rev'd on other grounds, 520 U.S. 548 (1997) ("Judicial notice is properly taken of orders and decisions made by other courts and administrative agencies.")

Generally, a court may not consider material beyond the complaint in ruling on a motion for judgment on the pleadings pursuant to Rule 12(c). Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001). "However, '[a] court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment,' as long as the facts noticed are not 'subject to reasonable dispute.'" Intri-Plex Technologies, Inc. v. Crest Grp., Inc., 499 F.3d 1048, 1052 (9th Cir. 2007) (quoting Lee, 250 F.3d at 689 (citation omitted).

Defendant asks the court to take judicial notice of three court filings, which are matters of public record. Accordingly, the court grants defendant's request for judicial notice.

B. Res Judicata

Defendant contents that judgment on the pleadings is appropriate because plaintiff's claims are barred under the doctrine of res judicata. The doctrine of res judicata protects "litigants from the burden of relitigating an identical issue" and promotes "judicial economy by preventing needless litigation." Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979). It "bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001). Stated differently, the doctrine "bars any subsequent suit on claims that were raised or could have been raised in a prior action." Cell Therapeutics, Inc. v. Lash Group, Inc., 586 F.3d 1204, 1212 (9th Cir. 2009); see also Tahoe Sierra Preservation Council, Inc. v. Tahoe Reg. Planning Agency, 322 F.3d 1064, 1078 (9th Cir. 2003) ("Newly articulated claims based on the same nucleus of facts may still be subject to a res judicata finding if the claims could have been brought in the earlier action."). Res judicata applies when there is (1) identity or privity between parties, (2) an identity of claims, and (3) a final judgment on the merits. Tahoe-Sierra Preservation, 322 F.3d at 1077. The court finds that all three elements are met here.

i. Privity between the parties

Privity between the parties exists if "there is substantial identity between the parties, that is, when there is sufficient commonality of interest." See Tahoe-Sierra Preservation, 322 F.3d at 1082. Here, the parties in Horn I and Horn II—plaintiff Ella Horn and defendant Experis US Inc.—are identical. Thus, identity between the parties exists.

ii. Identity of claims

The "central criterion" in determining whether there is an identity of claims between the first and second lawsuit 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). Two events are part of the same transaction or series of transactions where the claims share a factual foundation such that they could have been tried together. W. Systems, Inc. v. Ulloa, 958 F.2d 864, 871 (9th

Cir.1992). "Different theories supporting the same claim for relief must be brought in the initial action." Id. "[T]he inquiry into the 'same transactional nucleus of facts' is essentially the same as whether the claim could have been brought in the first action." United States v. Liquidators of European Fed. Credit Bank, 630 F.3d 1139, 1151 (9th Cir.2011). "A plaintiff need not bring every possible claim. But where claims arise from the same factual circumstances, a plaintiff must bring all related claims together or forfeit the opportunity to bring any omitted claim in a subsequent proceeding." Turtle Island Restoration Network v. U.S. Dep't of State, 673 F.3d 914, 918 (9th Cir. 2012).

Plaintiff's claims in Horn II arise out of the same transactional nucleus of facts as her claims in Horn I. In both lawsuits, all of plaintiff's claims arise from her alleged employment relationship with defendant during the summer of 2015. In Horn II, plaintiff raises many of the same claims that she raised in Horn I, such as discrimination based on race and sex, wrongful termination, retaliation, and negligent infliction of emotional distress. Although plaintiff raises several new claims in Horn II, such as breach of contract and unfair business practices, each new claim in Horn II could have been raised in Horn I. The facts that give rise to plaintiff's new claims in Horn II are the same as those that gave rise to her claims in Horn I. Plaintiff could have asserted in Horn I her breach of contract claim, unfair business practices claim, or any other claim now asserted in Horn II. The operative facts are the same today as they were when plaintiff filed her complaint in Horn I. Accordingly, an identify of claims exists between Horn I and Horn II.

iii. Final judgment on the merits

On October 7, 2019, United States District Judge for the Eastern District of California John A. Mendez signed an order adopting the magistrate judge's findings and recommendations, and granting defendant's motion for summary judgment as to all of plaintiff's claims in Horn I. ECF No. 19-5. On October 8, 2019, judgment was entered in favor of defendant and against plaintiff. ECF No. 19-6. Each of plaintiff's claims in Horn I were adjudicated on the merits, and the court entered final judgment on them.[1] The requirement that the prior action result in a final

[1] During oral argument, plaintiff argued that there were still unresolved matters in Horn I that prevented res judicata from applying in this case. But a review of the records in Horn I shows

judgment on the merits is therefore satisfied.

The pleadings, in conjunction with documents properly subject to judicial notice, establish that each of the elements of res judicata are met. Defendant is therefore entitled judgment on the pleadings in accordance with Rule 12(c). Because the court finds that defendant's motion should be granted on res judicata grounds, it does not reach defendant's argument regarding the statutes of limitations.

IV. CONCLUSION

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Defendant's motion for judgment on the pleadings (ECF No. 19) be granted;
2. Judgment be entered in favor of defendant; and
3. The clerk of court be directed to close this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served on all parties and filed with the court within fourteen (14) days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: August 21, 2020

Carolyn K. Delaney

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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that all of plaintiff's claims were finally adjudicated by the district court, and that the case was marked as closed on October 8, 2019. To the extent plaintiff believes there were unresolved motions or requests pending in Horn I at the time the district court entered judgment for defendant, those motions or requests did not preclude the district court from disposing of plaintiff's claims. Thus, plaintiff's argument is unavailing.