UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Brinich-Barnes v. Ocwen Loan Servicing, LLC

No. 1:24-cv-01414-KES-SKO (E.D. Cal. May 5, 2025) · No. 1:24-cv-01414-KES-SKO · Decided May 5, 2025

SUMMARY

This document is a United States District Court for the Eastern District of California findings and recommendation concerning Defendant PHH Mortgage Corporation's Rule 12(b)(6) motion to dismiss. The magistrate judge recommends dismissal without leave to amend, concluding that the plaintiff's claims arising from the foreclosure and mortgage-servicing conduct are barred by res judicata and, alternatively, applicable statutes of limitations. The recommendation also addresses requests for judicial notice and the alleged lack of a private right of action under the Consumer Financial Protection Act.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sheila K. Oberto
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 5, 2025
DOCKET	1:24-cv-01414-KES-SKO
DISPOSITION	other
PROCEDURAL POSTURE	A pro se plaintiff brought claims arising from the servicing and foreclosure of a mortgage loan. Defendant moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), asserting claim preclusion, statutes of limitations, and lack of a private right of action under the Consumer Financial Protection Act. The magistrate judge issued findings and a recommendation that the motion be granted without leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws reasonable inferences in the nonmoving party's favor, and determines whether the complaint states a plausible claim for relief. Dismissal is proper when the complaint lacks a cognizable legal theory or sufficient facts under a cognizable theory. The court may consider documents attached to or incorporated into the complaint and matters subject to judicial notice without converting the

	motion into one for summary judgment. A limitations defense may be resolved on a motion to dismiss when the running of the limitations period is apparent on the face of the complaint.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

res judicata · motions to dismiss · statute of limitations · foreclosure · civil procedure

PRACTICE AREAS

civil procedure · real estate · foreclosure · consumer protection · remedies

QUESTIONS PRESENTED

1. Whether the present claims were barred by res judicata or claim preclusion based on the prior California state-court action involving the same foreclosure and related loan-servicing conduct.
2. Whether the claims were barred by applicable statutes of limitations apparent from the face of the amended complaint.
3. Whether Plaintiff could maintain a private claim under the Consumer Financial Protection Act.
4. Whether amendment would be futile and therefore should be denied.

HOLDINGS

1. The court may take judicial notice of public court records and may resolve res judicata on a Rule 12(b)(6) motion when the noticed record presents no disputed issue of fact.
2. Res judicata barred the present claims because the prior state-court action involved the same primary right and injury, resulted in a final judgment on the merits, and involved the same party or a party in privity with the present defendant.
3. The claims were independently time-barred because they arose from conduct occurring between 2015 and 2018, while the applicable limitations periods ranged from one to four years and the federal action was not filed until November 19, 2024.
4. The Consumer Financial Protection Act does not create a private right of action, so Plaintiff's CFPA claim was subject to dismissal.
5. Leave to amend should be denied because amendment would be futile: claim preclusion and the limitations defects could not be cured by additional allegations.

KEY QUOTATIONS

> *"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face."* (Section III)

> *"The elements of res judicata are "(1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and*

> *(3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding."”* (Section IV.B.1)

> *“What is critical to the analysis ‘is the harm suffered; that the same facts are involved in both suits is not conclusive.’”* (Section IV.B.2.b)

> *“A claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by the applicable statute of limitations only when ‘the running of the statute is apparent on the face of the complaint.’”* (Section IV.C)

FACTUAL BACKGROUND

Garland Barnes obtained a mortgage loan secured by property in Merced, California, and died in 2015 after allegedly seeking loss-mitigation assistance from Ocwen. Plaintiff, the administrator of Barnes's estate, alleged that Ocwen mishandled payments, appraisals, short-sale efforts, loss-mitigation communications, and foreclosure procedures. The property was sold at foreclosure in August 2018. Plaintiff previously litigated claims concerning the same foreclosure in state court, where summary judgment was entered for the defendants, and then filed this federal action asserting statutory and related claims based on the same underlying conduct.

PROCEDURAL HISTORY

Plaintiff previously sued Ocwen in California state court in March 2019 over the same foreclosure and related loan-servicing conduct. Summary judgment was granted in that action on March 13, 2024, judgment was entered on April 9, 2024, and no appeal was taken within the applicable period. Plaintiff filed the present federal action on November 19, 2024, amended the complaint on January 23, 2025, and Defendant moved to dismiss. The magistrate judge recommended dismissal without leave to amend, subject to review by the assigned district judge after objections.

DISPOSITION

other

CASES CITED

- Conservation Force v. Salazar, 646 F.3d 1240, 1241-42 (9th Cir. 2011)
- Daniels-Hall v. National Education Association, 629 F.3d 992, 998 (9th Cir. 2010)
- Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007)
- Huynh v. Chase Manhattan Bank, 465 F.3d 992, 996-97, 1003-04 (9th Cir. 2006)
- Schneider v. California Department of Corrections, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998)
- Litmon v. Harris, 768 F.3d 1237, 1241 (9th Cir. 2014)
- Caviness v. Horizon Community Learning Center, Inc., 590 F.3d 806, 812 (9th Cir. 2010)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 562 (2007)
- Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009)
- Morales v. City of Los Angeles, 214 F.3d 1151, 1153 (9th Cir. 2000)

- Starr v. Baca, 652 F.3d 1202, 1216-17 (9th Cir. 2011)
- Cook, Perkiss and Liehe, Inc. v. Northern California Collection Service, Inc., 911 F.2d 242, 247 (9th Cir. 1990)
- Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994)
- United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003)
- United States v. Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004)
- United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980)
- Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001)
- Thompson v. Well Fargo Bank, N.A., 2018 WL 1453212, at *2 (E.D. Cal. Mar. 23, 2018)
- Silva v. Yosemite Community College District, 2019 WL 6878237, at *5 (E.D. Cal. Dec. 17, 2019)
- Scott v. Kuhlmann, 746 F.2d 1377, 1378 (9th Cir. 1984)
- Stokes v. City of Visalia, 2018 WL 2979765, at *5 (E.D. Cal. June 8, 2018)
- Migra v. Warren City School District Board of Education, 465 U.S. 75, 81 (1984)
- White v. City of Pasadena, 671 F.3d 918, 926 (9th Cir. 2012)
- Holcombe v. Hosmer, 477 F.3d 1094, 1097 (9th Cir. 2007)
- Brinton v. Bankers Pension Services, Inc., 76 Cal. App. 4th 550, 556 (1999)
- Rippon v. Bowen, 160 Cal. App. 4th 1308, 1318 (2008)
- Vandenberg v. Superior Court, 21 Cal. 4th 815, 829 (1999)
- Bernhard v. Bank of America National Trust & Savings Association, 19 Cal. 2d 807, 811 (1942)
- Qwest Corp. v. City of Portland, 385 F.3d 1236, 1243 n.8 (9th Cir. 2004)
- Le Parc Community Association v. Workers' Compensation Appeals Board, 110 Cal. App. 4th 1161, 1170 (2003)
- Agarwal v. Johnson, 25 Cal. 3d 932 (1979)
- San Diego Police Officers' Association v. San Diego City Employees' Retirement System, 568 F.3d 725, 734 (9th Cir. 2009)
- Palomar Mobilehome Park Association v. City of San Marcos, 989 F.2d 362, 364 (9th Cir. 1993)
- Frank v. United Airlines, Inc., 216 F.3d 845, 851 (9th Cir. 2000)
- Lomeli v. JPMorgan Chase Bank, N.A., 2015 WL 12746210, at *5 (C.D. Cal. Oct. 5, 2015)
- Le v. Bank of America, N.A., 585 F. App'x 362 (9th Cir. 2014)
- Zinni v. Jackson White, PC, 565 F. App'x 613, 616-17 (9th Cir. 2014)
- Kay v. City of Ranch Palos Verdes, 504 F.3d 803, 808 (9th Cir. 2007)
- Franklin & Franklin v. 7-Eleven Owners for Fair Franchising, 85 Cal. App. 4th 1168, 1174 (2000)
- Tramell v. Golden 1 Credit Union, 2010 WL 3341623, at *4 (E.D. Cal. Aug. 24, 2010)
- Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 969 (9th Cir. 2010)
- Toye v. Newrez LLC, 2020 WL 4569128, at *10 n.5 (S.D. Cal. Aug. 7, 2020)
- Flores v. Federal Home Loan Mortgage Corporation, 2018 WL 6184778, at *3 (C.D. Cal. Sept. 10, 2018)
- Platt Electric Supply v. EOFF Electric, Inc., 522 F.3d 1049, 1060 (9th Cir. 2008)

- Guerrero v. Gates, 442 F.3d 697, 706-07 (9th Cir. 2006)
- Tseng v. PeopleConnect, Inc., 665 F. Supp. 3d 1136, 1149 (N.D. Cal. 2023)
- McCloskey v. Carlton Builders, 165 Cal. App. 3d 689, 693 (1985)
- Lariscey v. Smith, 66 F.3d 323 (5th Cir. 1995)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)
- Goziker v. Wells Fargo Bank, N.A., 2023 WL 8872294, at *7 (C.D. Cal. Oct. 17, 2023)
- Carmichael v. Sacramento Regional Transit, 2018 WL 338977, at *3 (E.D. Cal. Jan. 8, 2018)