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MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Gary S. Lee
Norman S. Rosenbaum
Paul Galante

Counsel for the Debtors and
Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Jointly Administered
ALFREDIA PRUITT,	Adv. Case No. 13-01350 (MG)
Plaintiff,	
v.	
RESIDENTIAL CAPITAL, LLC, *et al.*,	
Defendants.	

DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS PLAINTIFF'S ADVERSARY COMPLAINT

Residential Capital, LLC ("ResCap") and GMAC Mortgage, LLC ("GMAC Mortgage"), (collectively the "Defendants"), hereby submit this reply memorandum of law in further support of their Motion to Dismiss Plaintiff's Adversary Complaint.

I. PRELIMINARY STATEMENT

Plaintiff's Answer in opposition to Defendant's Motion to Dismiss ("Opposition") wholly fails to address the arguments raised by the Defendants. Plaintiff makes no effort to explain how this adversary proceeding differs from her numerous other state court actions and doesn't even attempt to refute that the elements of res judicata have been satisfied. Instead, Plaintiff asserts that the Court is not bound by the prior decisions rendered by the Georgia state court because decisions of state courts do not have any binding effect on federal courts. Plaintiff's argument fails. It is black letter law that federal courts give preclusive effect to state court judgments.

As detailed in the Defendants' Motion to Dismiss, Plaintiff has litigated and lost the exact claims at issue here, in at least four earlier actions in the Superior Court of Gwinnett County, State of Georgia (the "State Court"). All of Plaintiffs' State Court actions were adjudicated and dismissed on the merits. Plaintiff's repeated abuse of the legal system led the State Court to issue a Bill of Peace that forbids her from filing or serving any pleadings or suit ***in any court*** related to the property at issue here, without prior order of the State Court. Despite this, Plaintiff's adversary complaint asserts the same claims repeatedly dismissed in the State Court.

II. ARGUMENT

A. Plaintiff's Adversary Suit is Barred by the Doctrine of *Res Judicata*

1. Plaintiff contests the applicability of *res judicata* by suggesting that state court decisions are not binding on federal courts. See Plaintiffs' Opposition to Defendants' Motion to Dismiss (the "Opposition"), [Docket No. 28], ¶¶ 1-5. This is wrong. It is incontrovertible that federal courts must give preclusive effect to state court judgments. Allen v. McCurry, 449 U.S. 90, 96 (1980); 28 U.S.C. § 1738; Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 375 (1996). Thus, the fact that Plaintiff filed this action in federal court will not allow her to escape the preclusive effects of the State Court's judgments. Id.

2. Plaintiff also asserts that the court may re-consider her previously dismissed claims because federal law—not Georgia law—controls. Opposition, ¶ 1-5. Putting aside that Georgia law controls because the Complaint only asserts claims premised on state law,[1] the fact that Plaintiff now seeks to assert her claims in federal court has no bearing on the *re judicata* analysis. Georgia's law of *res judicata* controls because federal courts must look to state law to determine the preclusive effect of a state court judgment. See Marrese v. Am. Acad. Of Orthopaedic Surgeons, 470 U.S. 373, 381 (1985). And as discussed in the Motion to Dismiss,[2] each element of *res judicata* has been met here. See Defendants' Motion to Dismiss, ¶¶ 21-32. Plaintiff's Opposition makes no effort to refute this.

3. Under Georgia law, claims are precluded by *res judicata* when three prerequisites are satisfied: (1) identity of the parties or their privies; (2) previous adjudication on the merits by a court of competent jurisdiction; (3) identify of the cause of action. Brown & Williamson Tobacco Corp. v. Gault, 280 Ga. 420 (Sup. Ct. 2006).[3] Each element is easily satisfied.

4. The identity of the parties or their privies requirement is satisfied because Plaintiff's adversary proceeding involves the same parties as her earlier lawsuit—GMAC Mortgage was named as a defendant in each of the State Court actions. See McGrue v. Saxon Mortg. Servs., No. 1:10-cv-1678-WSD, 2010 WL 2838403, at *2 (N.D. Ga. July 19, 2010). The identity of the cause of action requirement is satisfied because plaintiff asserts the same claims, premised on the exact same allegations, as her previous complaints. See Motion to Dismiss, ¶¶

[1] Plaintiff's adversary complaint asserts causes of action premised on unlawful foreclosure, bad faith, and violation of the doctrine of privity. Compl. At 5, 8, and 10.
[2] Defendants' Motion to Dismiss contains a detailed comparison of the claims asserted in this adversary proceeding and the claims that Plaintiff brought in the State Court. See Defendants' Motion to Dismiss ¶¶ 9-13, 23-26, 28-31.
[3] Georgia's law of *res judicata* controls because federal courts must look to state law to determine the preclusive effect of a state court judgment. See Marrese v. Am. Acad. Of Orthopedic Surgeons, 470 U.S. 373, 381

28-31; see also McGrue v. Saxon Mortg. Servs., 2010 WL 2838403, at *1-2. Finally, the requirement that Plaintiff's earlier suits were adjudicated on the merits is also met—her State Court actions were dismissed for "failure to state a claim," which constitutes an adjudication on the merits under Georgia law. See Motion to Dismiss, ¶¶ 23-26; see also Henry A. v. Aurora Loan Servs. LLC, No. 1:11-cv-0949, 2011 WL 1674834, at *1 (N.D. Ga. May 2, 2011).

5. Plaintiff appears to concede that the identity of the parties and the identity of the cause of action requirements are met. In response to the prior adjudication on the merits element, Plaintiff suggests that her State Court claims were not decided on the merits, but dismissed as a result of her failure to pay "$5,500.00 into the Court registry[.]" Opposition, ¶ 1-5. But, as discussed in the Motion to Dismiss, although the State Court observed that Plaintiff failed to tender past due amounts, it nevertheless decided her claims on the merits. Motion to Dismiss ¶ 25. The State Court expressly stated that it "read and considered the entire record, including all submissions with respect to Plaintiff's appeal . . . , her motion for a preliminary injunction and temporary restraining order, and her Complaint[.] Id., Exhibit 1-G at 1-2. Furthermore, the State Court held that "Plaintiff has failed to proffer any evidence or authority" to support her claims. Id. Thus, the dismissal of the State Court actions constitute adjudications on the merits.

6. Because Plaintiff rehashes the same claims she litigated in four prior State Court action, this adversary proceeding must be dismissed on *res judicata* grounds.[4]

[4] Plaintiff also asserts that as a *pro se* plaintiff, the Court must construe her claims liberally. Opposition ¶ 3. But, the fact that plaintiff is appearing *pro se* does not create an exception to *res judicata*, nor does it water down the doctrine's impact.

B. Plaintiff Fails to Plausibly Allege that the Foreclosure On Her Property Violated the Automatic Stay

7. Plaintiff's Opposition argues that the September 7, 2010 foreclosure of her property violated the automatic stay because it took place several hours after she filed for bankruptcy. Opposition ¶¶ 11-12. And she accuses Defendants of "[t]rifling with the Court" by "saying they don't have to honor the Automatic Stay[.]" Id. But, the automatic stay never went into effect because Plaintiff's September 7, 2010 bankruptcy filing was her third that year. See Motion to Dismiss ¶ 7, Exhibit 1-D. The Georgia Bankruptcy Court confirmed this. Id. at 2. If Plaintiff disagreed with the Georgia Bankruptcy Court on this point, she should have appealed its decision. She chose not to, and cannot raise this argument here. See Motion to Dismiss ¶ 33-36.

CONCLUSION

For the reasons set forth herein, the Defendants respectfully request that the Court dismiss this adversary proceeding with prejudice and grant such other and further relief as it deems just and proper.

Dated: November 18, 2013
New York, New York

/s/ Norman S. Rosenbaum
Gary S. Lee
Norman S. Rosenbaum
Paul Galante
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

Counsel for the Debtors and Debtors in Possession