UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

VERONICA WILLIAMS, Plaintiff, v. **LITTON LOAN SERVICING**, et al., Defendants	Civil Action Number: 2:16-cv-05301-ES-JAD

DEFENDANT STERN & EISENBERG, P.C.'S
MOTION TO DISMISS COMPLAINT

Defendant Stern & Eisenberg, P.C. ("Defendant") moves this Court to dismiss Plaintiff's Complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure. Defendant incorporates by reference their contemporaneously filed Memorandum of Law filed in support of this Motion.

STERN & EISENBERG, PC

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

VERONICA WILLIAMS, Plaintiff, v. **LITTON LOAN SERVICING**, et al., Defendants	Civil Action Number: 2:16-cv-05301-ES-JAD

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT STERN & EISENBERG, P.C.'S MOTION TO DISMISS COMPLAINT

Defendant Stern & Eisenberg, P.C., through its undersigned counsel, moves this Court to dismiss Plaintiff's Complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure.

I. FACTS

In the interest of clarity and judicial economy, Defendant Stern & Eisenberg, P.C. ("***S&E***"), adopts and incorporates by reference the Introduction and Procedural History set forth in Defendants Litton Loan Servicing, HSBC Bank, N.A., as trustee for Freemont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C ("***HSBC***"), Goldman Sachs Mortgage Companay, Ocwen Loan Servicing LLC, and Ocwen Financial Corporation (collectively, "***Litton Defendants***"); and the Certification of [Stuart I. Seiden] in Support of Defendants' Motion to Dismiss Complaint ("***Seiden Cert.***"). (Pacer Docs. ## 15-1, 15-2).

By way of further background, S&E is a law firm with an office located in New Jersey. A portion of S&E's practice consists of representing mortgage loan servicers in foreclosure actions. Particular to this case, S&E represented HSBC in the underlying, state court foreclosure action against Williams. *See* Seiden Cert., ¶ 18.

II. ARGUMENT

A. STANDARD

A motion to dismiss should be only when, accepting all the allegations in the complaint to be true, and viewing them in the light most favorable to the plaintiff, the plaintiff is unable to show that he is entitled to the relief being sought. *In re Burlington Coat Factory Sec. Liting*., 114 F.3d 1410, 1420 (3d Cir. 1997). To survive a Rule 12(b)(6) Motion to Dismiss, "factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true even if doubtful in fact." *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-1965 (2007).

Although a court need not credit a complaint's "bald assertions" or "legal conclusions," it is required to accept as true all of the allegations in the complaint, as well as all reasonable inferences that can be drawn therefrom and view them in the light most favorable to the plaintiff. *Morse v. Lower Merion Sch. Dist*., 132 F.3d 902, 906 (3d Cir. 1997), *citing Rocks v. City of Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989). In evaluating a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the Court may consider only the Complaint, exhibits attached to the Complaint, matters of public record, and undisputedly authentic documents if the Plaintiff's claims are based on those documents. *Pension Guaranty Corp. v. White Consol. Indus*., 998 F.2d 1192, 1196 (3d Cir. 1992).

B. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED

The Rooker Feldman Doctrine

All Counts of Plaintiff's Complaint are subject to immediate dismissal as they have already been litigated in State Court and should therefore be dismissed under the *Rooker Feldman* Doctrine. Count I, asserting a violation of the Fair Debt Collection Practices Act ("***FDCPA***"); Count II, asserting a violation of the New Jersey Consumer Fraud Act ("***CFA***"); Count III, alleging Breach of Contract; Count IV, alleging Intentional Infliction of Emotional Distress ("***IIED***"); Count V, alleging Deliberate Indifference; and Count VI, alleging Defamation of Character were already litigated in State Court and are all similarly steeped in the misguided theory that the underlying foreclosure judgment, and Plaintiff's loss in the State Court Complaint[1] action were wrong.

Within the statutory structure of the federal judiciary, district courts are "empowered to exercise original, not appellate, jurisdiction." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 283, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005); *Phillips ex rel. Green v. City of New York*, 453 F.Supp.2d 690 at 713 (S.D.N.Y. Sept. 25, 2006). The Supreme Court of the United States has the exclusive authority to review state court judgments. *See Exxon Mobil*, 544 U.S. at 292, 125 S.Ct. 1517; *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md*., 535 U.S. 635, 644 n. 3, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002).

The doctrine embodying these principles, the *Rooker Feldman* doctrine, is named for the two Supreme Court decisions in which these principles were originally applied, *Rooker v. Fidelity Tr. Co*., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and *Dist. of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). In *Exxon Mobil*, the Supreme Court clarified the scope of the doctrine, stating that it "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers

[1] The references used by the Litton Defendants in their Motion to Dismiss, such as the "State Court Complaint", are maintained in this filing for constancy purposes.

complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." 544 U.S. at 284, 125 S.Ct. 1517.

"The *Rooker-Feldman* doctrine strips federal courts of jurisdiction over controversies 'that are essentially appeals from state-court judgments.'" *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 315 (3d Cir. 2014)(quoting G*reat W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 165 (3d Cir. 2010)). Stated differently, "*Rooker-Feldman* … is a narrow doctrine, confined to cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id*. (quoting *Lance v. Dennis*, 546 U.S. 459, 464 (2006)). "The *Rooker-Feldman* doctrine precludes lower federal courts from exercising appellate jurisdiction over final state-court judgments because such appellate jurisdiction rests solely with the United States Supreme Court." *In re Madera*, 586 F.3d 228, 232 (3d. Cir. 2009) Thus, "a claim is barred by *Rooker-Feldman*…if the federal claim is inextricably intertwined with the state adjudication, meaning that federal relief can only be predicated upon a conviction that the state court was wrong." *Id*. at 232 (quotation marks omitted). Following *Exxon Mobil*, the Second Circuit Court of Appeals articulated the following four requirements for the application of the *Rooker Feldman* doctrine: (1) "the federal-court plaintiff must have lost in state court"; (2) "the plaintiff must complain of injuries caused by a state court judgment"; (3) "the plaintiff must invite district court review and rejection of that judgment"; and (4) "the state-court judgment must have been rendered before the district court proceedings commenced." *See Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77 at 85 (2d Cir. 2005) (alterations omitted); *see also McKithen v. Brown*, 481 F.3d

89, 96-97 (2d Cir. 2007); *Phillips*, 453 F.Supp.2d at 713. If all of these conditions are met, the district court lacks subject matter jurisdiction over the claim. *See Melnitzky v. HSBC Bank USA*, No. 06-cv-13526 (JGK), 2007 WL 1159639, at *7 (S.D.N.Y. Apr. 18, 2007).

In this case, each of the requirements are satisfied to invoke the *Rooker Feldman* doctrine: (1) Plaintiff lost the Case in state court as Defendants' Motion for Summary Judgment was granted and her Complaint was dismissed; (2) Plaintiff complains of injuries caused by the State Court judgment; (3) Plaintiff is now inviting the district court to review and reject the State Court judgment; and (4) the State Court judgment was rendered before the district court proceedings commenced.

Even if Plaintiff may not have expressed all of her claims in the state court proceeding that are identified by her in this case, such her claims of Deliberate Indifference and Defamation of Character, it is clear that the claims and allegations of the Complaint are "inextricably intertwined" with the state court's determination regarding Williams' loan modification applications. *See Graham*, 156 F.Supp.504, *citing Hoblock*, 422 F.3d at 87.

By way of example, as illustrated in the following chart, in this Complaint Williams is merely re-litigating her State Court Complaint action:

Allegations	State Complaint	Federal Complaint

Litton offers Williams Loan Workout Plan in July 2009, which Williams signs.	¶ 16	¶ 17-20
Williams fails to make timely third trial payment under Workout Plan by Sept. 1, 2009.	¶¶ 17-19	¶ 21
Litton offered second Loan Workout Plan in October/November 2009 with lower monthly payments.	¶ 22	¶ 28
Litton sent Williams a third offer for a Loan Workout Plan in March 2010.		¶ 37
Williams claims that Litton prevented her from obtaining a loan modification, although it offered her three different modification options and despite that Williams did not make the required monthly trial payments under any of the third modification offers.	¶¶ 24-27	¶ 38
Williams claims that Litton's loan modification application process prevented her from obtaining a job with the Federal Management Agency.	¶ 38	¶ 39
Williams claims that Litton "breached" the Loan Workout Plan, even though she never accepted the offer.	¶ 27	¶ 42

While she has added the claims of Deliberate Indifference and Defamation to this action, they arise out of and are inextricably intertwined with the State Court Complaint action already pled – and decided against her.

As detailed above, all Counts of the Complaint are premised upon the claimed invalidity of the State Court judgment, and the district court is now being asked to review that judgment and overturn it, which it does not have the authority to do. Plaintiff's claims are subject to dismissal because they seek to invalidate the State Court judgment in violation of the *Rooker-Feldman* doctrine and preclusion principles. Therefore, the Plaintiff's Complaint should be dismissed with prejudice.

Res Judicata

Claims that survive strict scrutiny under *Rooker-Feldman* may nevertheless be barred by doctrine of *res judicata*. *See Ayres-Fountain v. E. Sav. Bank*, 153 Fed.Appx. 91, 93 (3d Cir. 2005).

Whether *res judicata* applies, namely whether a state court judgment should have a preclusive effect in a subsequent federal action, depends on the law of the state that adjudicated the original action. *See Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 357 (3d Cir. 1999) ("To determine the preclusive effect of [the plaintiff's] prior state action we must look to the law of the adjudicating state."). *See also Allen v. McCurry*, 449 U.S. 90, 96, 101 S. Ct. 411, 415 (1980) ("Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so."). "Both New Jersey and federal law apply res judicata or claim preclusion when three circumstances are present: '(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.' " *Id.* (quoting *Lubrizol Corp. v. Exxon Corp.*, 929 F.2d 960, 963 (3d Cir. 1991)). The doctrine "bars not only claims that were brought in a previous action, but also claims that could have been brought." *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008) (citing *Post v. Hartford Ins. Co.*, 501 F.3d 154, 169 (3d Cir. 2007)). It "protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy and ... promot[es] judicial economy by preventing needless litigation." *Id.* (citations omitted).

Williams' allegations in the State Court Complaint action and at least four of her current allegations as previously discussed are identical in nature with the last two being intertwined with the same set of facts. The parties in both actions are also identical. The final judgment in the State Court action came in the form of a granted motion for summary judgment in favor of

the Defendants. After the above analysis and showing of circumstances Williams' claims must be dismissed as they are barred by the doctrine of res judicata.

Collateral Estoppel

Williams' claims are also barred under the doctrine of collateral estoppel or issue preclusion. The Second Restatement of Judgments articulates the general rule of issue preclusion as follows: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Restatement (Second) of Judgments § 27 (1982). The federal full faith and credit statute provides, in relevant part, that the "judicial proceedings of any court of any ... State ... shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State ... from which they are taken." 28 U.S.C. § 1738. Under the full faith and credit statute, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ*., 465 U.S. 75, 81, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984).

Collateral Estoppel applies if the following "four requirements are met: (1) the issue sought to be precluded is the same as that involved in the prior action; (2) that issue was actually litigated; (3) it was determined by a final and valid judgment; and (4) the determination was essential to the prior judgment." *Great W. Min. & Mineral Co. v. ADR Options, Inc*., 882 F. Supp. 2d 749, 760 (D.N.J. 2012), *aff'd*, 533 F. App'x 132 (3d Cir. 2013). Similar to *res judicata*, "the purpose of the collateral estoppel doctrine is to promote judicial consistency, encourage reliance on court decisions, and protect defendants from being forced

to repeatedly re-litigate the same issues in multiple lawsuits." *Id*. at 760. In the matter at hand, the doctrine of collateral estoppel bars all of Plaintiff's claims.

The four requirements have been met in this matter. First, the main issue that Williams based her state court claims on is her allegation that Litton did not modify her mortgage loan. This is the exact same issue that she raises in this action. Second, the issue was fully litigated in state court and the Defendant S&E was awarded summary judgment and the claims were dismissed after both sides submitted their arguments. Third, "the Third Circuit has held that 'for the purposes of issue preclusion…'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive [effect]." *Feng Li v. Peng*, 516 B.R. 26 at 46 (D.N.J. Aug. 22, 2014), *quoting In re Docteroff*, 133 F.3d 210 at 215-16 (3d Cir. 1997). The state court order granting Defendants' motion for summary judgment was a final judgment as it dismissed Plaintiff's claims against S&E. Lastly, the state court's review of the loan modification allegations were essential to the entry of summary judgment in the state court action. The state court found that there was no evidence supporting any of Ms. Williams' claims and thus granted the motion for summary judgment and subsequently dismissed the complaint.

Accordingly, Williams' claims are barred by collateral estoppel and therefore Defendant's Motion to Dismiss should be granted and the Complaint dismissed with prejudice.

III. CONCLUSION

For the foregoing reasons, this Court lacks subject matter jurisdiction over Plaintiff's Complaint, and Therefore Defendants' Motion to Dismiss is granted and Plaintiff's Complaint is dismissed with prejudice.

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

VERONICA A. WILLIAMS, Plaintiff, v. **LITTON LOAN SERVICING, et al.** Defendants	Civil Action Number: 2:18-cv-05301-ES-JAD

ORDER

AND NOW, this _____ day of _____, 2017, upon consideration of Defendant Stern & Eisenberg, P.C. Motion to Dismiss Complaint, and any response thereto, it is hereby **ORDERED** and **DECREED** that the Motion is **GRANTED**.

Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

_____
ESTHER SALAS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

VERONICA A. WILLIAMS, Plaintiff, v. **LITTON LOAN SERVICING, et al.,** Defendants.	Civil Action Number: 2:16-cv-05301-ES-JAD

CERTIFICATION OF SERVICE

I, Evan Barenbaum, Esquire, on this 23rd day of January, 2017, being duly sworn according to law, depose and say that a true and correct copy of the Motion to Dismiss Complaint was served upon all parties via ECF.

STERN & EISENBERG, PC

BY: /s/Evan Barenbaum
Evan Barenbaum, Esquire
Attorney for Defendant