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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Todd P. Grecian,

10 Plaintiff,

11 v.

12 Nationstar Mortgage LLC, et al.,

13 Defendants.

No. CV-13-08089-PCT-DGC

**ORDER**

14 Defendant Nationstar Mortgage, LLC has filed a motion to dismiss the Second  
15 Amended Complaint. Doc. 48. The motion has been fully briefed. For the reasons  
16 stated below, the motion will be granted and the complaint dismissed with prejudice.<sup>1</sup>

17 **I. Background.**

18 On June 13, 2004, Plaintiff obtained a loan secured by a deed of trust on property  
19 at 3033 Palo Verde Boulevard South, Lake Havasu City, Arizona, in the amount of  
20 approximately \$188,000. Doc. 35, ¶ 8. Defendant was the beneficiary of the deed. *Id.*,  
21 ¶ 9. Plaintiff fell behind on his loan payments in June 2011 and desired to cure the  
22 arrears with a loan modification. *Id.* ¶ 13. Plaintiff submitted a complete application for  
23 a loan modification to Aurora Loans, Defendant's predecessor in interest. *Id.*, ¶ 14.  
24 Nothing came of Plaintiff's application for a loan modification. Defendant recorded a  
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27 <sup>1</sup> Defendant's request for oral argument is denied because the issues have been  
28 fully briefed and oral argument will not aid the Court's decision. *See* Fed. R. Civ. P.  
78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 Notice of Trustee's Sale under Deed of Trust on June 13, 2012, and scheduled a trustee's  
2 sale of the property for September 18, 2012. *Id.*, ¶ 10. Plaintiff alleges, however, that he  
3 had entered into negotiations with Defendant for a loan modification and was given  
4 assurances that the property would not be sold. *Id.*, ¶ 16.

5 Plaintiff alleges that his efforts bore fruit, and that, in a letter dated December 19,  
6 2012, he was granted a loan modification agreement that reduced his monthly payments  
7 to \$1,155.09 for a year. *Id.*, ¶ 17. Plaintiff complains that the December 19 letter  
8 required payment of \$3,400.00 and the return of certain signed documents by  
9 November 30, 2012, which had already passed by the time the letter was sent. *Id.*, ¶ 18.  
10 Plaintiff claims he attempted to contact Defendant's representative about the date  
11 discrepancy to no avail. *Id.*, ¶ 19. Plaintiff then claims both that complying with the  
12 letter's orders to make payment and return the documents "had been rendered impossible  
13 by the very text of the NSM letter" (*id.*, ¶ 19) and that he "relied to his detriment" on the  
14 letter "in believing that the Loan Modification . . . had been granted under the terms  
15 stated in the letter" (*id.*, ¶ 20).

16 Plaintiff filed his initial complaint on April 16, 2013, alleging various claims  
17 including fraud, unjust enrichment, wrongful foreclosure, and violations of federal law.  
18 Doc. 1. Defendant moved to dismiss the initial complaint, and the Court granted the  
19 motion with leave to amend a limited number of claims. Doc. 20. Plaintiff filed an  
20 amended complaint on September 13, 2013, asserting only a claim for fraud,  
21 misrepresentation, or concealment. Doc. 22. Defendant again moved to dismiss the  
22 amended complaint and the Court again granted the motion. Doc. 34. Because Plaintiff  
23 was proceeding pro se, the Court gave Plaintiff leave to amend one last time to cure the  
24 deficiencies of the complaint. *Id.* In its order granting Plaintiff a final opportunity to  
25 amend, the Court directed that the complaint address the deficiencies from both orders  
26 dismissing the complaints and that it specify the precise nature of Plaintiff's fraud claim.  
27 *Id.* at 4. The Court warned that failure to satisfy the pleading standards articulated in its  
28 two orders would result in dismissal without leave to amend. *Id.*

1     **II.     Legal Standard.**

2             When analyzing a complaint for failure to state a claim to relief under  
3 Rule 12(b)(6), the well-pled factual allegations are taken as true and construed in the light  
4 most favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th  
5 Cir. 2009). Legal conclusions couched as factual allegations are not entitled to the  
6 assumption of truth, *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009), and therefore are  
7 insufficient to defeat a motion to dismiss for failure to state a claim, *In re Cutera Sec.*  
8 *Litig.*, 610 F.3d 1103, 1108 (9th Cir. 2010). To avoid a Rule 12(b)(6) dismissal, the  
9 complaint must plead enough facts to state a claim to relief that is plausible on its face.  
10 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This plausibility standard “is not  
11 akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a  
12 defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at  
13 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere  
14 possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the  
15 pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Where a  
16 complaint alleges fraud, Rule 9(b) requires that a party “state with particularity the  
17 circumstances constituting fraud or mistake.”

18     **III.     Analysis.**

19             In its previous order, the Court noted that Plaintiff’s first amended complaint  
20 failed adequately to plead the who, what, when, and where of the alleged fraud, and that  
21 Plaintiff omitted key facts necessary to make the claim plausible. Doc. 34 at 3.  
22 Plaintiff’s second amended complaint (“SAC”) does not correct this deficiency.

23             The SAC asserts a claim for common law fraud. Doc. 35. Such a claim requires:  
24 (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker’s knowledge of its  
25 falsity or ignorance of its truth, (5) his intent that it should be acted upon by the person  
26 and in the manner reasonably contemplated, (6) the hearer’s ignorance of its falsity,  
27 (7) his reliance on its truth, (8) his right to rely thereon, and (9) his consequent and  
28 proximate injury. *Nielson v. Flashberg*, 419 P.2d 514, 517-18 (Ariz. 1966).

1           The gravamen of the SAC is that Defendant made false and misleading statements  
2 in the December 19, 2012 letter. Docs. 35; 54 at 4. Although the SAC alleges in some  
3 places that false statements were made by Defendant’s employee Mike Kanzler, the only  
4 false statements identified in the SAC are those in the letter, a copy of which is attached  
5 as Exhibit D to the SAC. See Doc. 35, ¶¶ 15, 16, 17, 18, 19, 20, 26, 27, 28, 29, 30, 31,  
6 32, 34, 35, 36, 37.

7           The letter informed Plaintiff that his loan modification had been approved and  
8 would be finalized when he submitted a payment of \$3,400 and certain documents by  
9 November 30, 2012 – a date that had already passed. Doc. 35-1 at 22. Plaintiff noticed  
10 the date discrepancy and attempted to resolve it with Defendant’s representative, but  
11 received no response. Doc. 35, ¶¶ 30-35. Having received no clarification on the date,  
12 and having made no payment or executed the required documents, Plaintiff nonetheless  
13 claims that he “detrimentally relied upon the written representations” of the letter to  
14 conclude that the loan had been modified. *Id.*

15           As noted in the Court’s earlier order, the letter clearly indicated that further steps  
16 were required to finalize the modification. Doc. 35-1 at 22. The letter stated that the  
17 modification agreement must be signed and returned within 30 days of receipt and that  
18 the initial payment of \$3,400 must be made. *Id.* The fact that the letter postdated the due  
19 date should, if anything, have prompted Plaintiff to complete the required steps even  
20 more promptly to finalize the loan modification, but Plaintiff does not allege that he took  
21 any steps to comply with the terms of the letter.

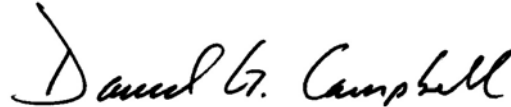
22           Plaintiff’s complaint still does not sufficiently allege certain elements of fraud.  
23 Plaintiff has not alleged any facts indicating that Defendant somehow intended Plaintiff  
24 to be misled by the clearly incorrect November due date. Nor does the complaint clearly  
25 allege that Plaintiff was ignorant of the alleged false statement – it alleges, rather, that he  
26 noticed the incorrect date and attempted to contact Defendant about it. Doc. 35, ¶¶ 19,  
27 20. The complaint also fails to allege facts that would support Plaintiff’s allegation that  
28 he reasonably relied on a letter – or had the right to rely on a letter – that clearly said

1 additional steps were required to complete the loan modification.

2 In addition to these deficiencies in the elements of common law fraud, the claim  
3 alleged in the complaint simply is not plausible. *Iqbal*, 556 U.S. at 678. The letter upon  
4 which Defendant bases his entire case stated that certain steps were required “to complete  
5 your loan modification,” and that he should “[c]omplete the following steps to finalize  
6 your loan modification.” Doc. 35-1 at 22. Plaintiff admits that he did not complete the  
7 steps. Given these facts, Plaintiff’s claim that he was misled by the letter into believing  
8 that an enforceable modification had been completed is not plausible.

9 **IT IS ORDERED** that Defendant’s motion to dismiss (Doc. 48) is **granted**.  
10 Because Plaintiff has had three opportunities to state a claim and has failed to do so,  
11 further leave to amend will not be granted. The Clerk is directed to **terminate** this  
12 action.

13 Dated this 15th day of May, 2014.

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18 David G. Campbell  
19 United States District Judge  
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