

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Darrell B Ellis,

10 Plaintiff,

11 v.

12 PennyMac Loan Services LLC,

13 Defendant.

No. CV-24-00162-TUC-RCC

ORDER

14
15 Pending before the Court is Defendant PennyMac Loan Services LLC's Motion to
16 Dismiss Pursuant to Rule 12(b)(1) and 12(b)(6). (Doc. 10.) This matter has been fully
17 briefed. (Docs. 10, 12–14.)¹ For the following reasons, the Court will grant the motion.

18 **I. Procedural Background**

19 On March 27, 2024, Plaintiff, proceeding pro se, filed a Complaint and
20 Application to Proceed In Forma Pauperis ("IFP Application"). (Docs. 1–2.) Before the
21 Court could consider his IFP Application, Plaintiff paid the filing fee. (Doc. 6.) The Court
22 then denied as moot Plaintiff's IFP Application and ordered the Clerk of Court to issue a
23 summons without screening this matter under 28 U.S.C. § 1915. (Doc. 7.) The Clerk of
24 Court issued the summons and Plaintiff served Defendant with process. (Docs. 8–9.) On

25
26 ¹ Plaintiff filed a Response to Defendant's Motion to Dismiss (Doc. 12) and separately
27 filed his Notice of Memorandum of Law Points and Authorities in Support of
28 International Bill of Exchange (Doc. 13). The Court will consider both filings as
Plaintiff's Response. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (instructing
courts to "construe *pro se* filings liberally"). The Notice of Memorandum does not
contain any argument, just provisions of various laws that Plaintiff believes are relevant.
(Doc. 13.)

1 May 20, 2024, Defendant filed the pending Motion to Dismiss. (Doc. 10.)

2 **II. Plaintiff's Complaint**

3 Plaintiff brought suit against Defendant after Defendant refused to accept a "Bill
4 of Exchange" as a valid form of payment for Plaintiff's mortgage. (Doc. 1 at 6.) Plaintiff
5 asserts the Court has subject matter jurisdiction because his claim raises a federal
6 question under the "Federal Reserve Act 1913, Joint Resolution June 5th 1933, [and]
7 Banking Act June 16, 1933." (*Id.* at 3.) He argues that the Bill of Exchange is legal tender
8 and Defendant was not within its rights to refuse to discharge his loan obligation. (*Id.* at
9 6.) Plaintiff seeks the following relief:

- 10 • An order compelling PennyMac Loan Services,
11 LLC to accept and recognize the tendered Bill of
12 Exchange No#32028021 (Legal Tender) as valid
13 payment for the mortgage debt, as well as an order
14 requiring PennyMac to fulfill the requisite
15 settlement of the account, as mandated by Arizona
16 UCC Title Section 47-3603.
- 17 • An order requiring PennyMac Loan Services, LLC
18 to provide the plaintiff with a copy of the initial
19 Loan Estate document, as required by law, to
20 corroborate the claim that only a credit extension
21 was received and the loan was never funded with
22 cash.
- 23 • An order declaring that the mortgage contract's
24 requirement for a specific specie contravenes
25 public policy and contract law, and thus, should not
26 be enforced.
- 27 • An order directing PennyMac Loan Services, LLC
28 to return the original, unaltered Promissory Note
with the plaintiff's wet signature, as the Promissory
Note has been fully satisfied and is no longer
necessary for securing the loan associated with the
Property. This return is essential for ensuring
clarity of ownership and preventing any potential
disputes or claims related to the Property.

///
///
///

- Any further relief deemed just and proper by the court.

Id. at 7.

III. Defendant's Motion to Dismiss

Defendant argues that the Court should dismiss Plaintiff's Complaint with prejudice. (Doc. 10 at 2.) Defendant first argues that there is no subject matter jurisdiction because the "Federal Reserve Act 1913, Joint Resolution June 5th 1933, [and] Banking Act June 16, 1933" do not provide cognizable causes of action. (*Id.* at 4–5 (collecting cases).) Defendant further argues that Plaintiff has failed to state a plausible claim and amendment would be futile because his bill of exchange theory is frivolous. (*Id.* at 5–7.)

Plaintiff's Response primarily reiterates the factual allegations contained in his Complaint. (*See* Doc. 12 at 1.) He also argues that this Court has subject matter jurisdiction because an international bill of exchange is "grounded in federal law[.]" (*Id.* at 2.)

IV. Motion to Dismiss Standard

"[A] federal court may not entertain an action over which it has no jurisdiction." *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000) (internal citation and quotation marks omitted); *see also* Fed. R. Civ. P. 12(b)(1). The burden of proof on a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction rests with the party asserting jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). The Court has subject matter jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

Moreover, the Court must dismiss a case if Plaintiff has failed to state a claim upon which relief may be granted because either the complaint lacks a cognizable legal theory or lacks the factual allegations to support such a theory. Fed. R. Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its

1 face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
2 550 U.S. 544, 570 (2007)). A claim is only plausible "when the plaintiff pleads factual
3 content that allows the court to draw the reasonable inference that the defendant is liable
4 for the misconduct alleged." *Id.* The law requires the complaint to contain more than "a
5 statement of facts that merely creates a suspicion [of] a legally cognizable right of
6 action." *Twombly*, 550 U.S. at 555. This means that "[t]hreadbare recitals of the elements
7 of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

8 **V. Analysis**

9 The Court will grant the Motion to Dismiss because Plaintiff's cited federal
10 statutes do not provide a cause of action sufficient to give this Court subject matter
11 jurisdiction and because Plaintiff has failed to state a cognizable legal theory.

12 Plaintiff asserts that the "Federal Reserve Act 1913, Joint Resolution June 5th
13 1933, [and] Banking Act June 16, 1933" establish a Bill of Exchange as legal tender and
14 appropriate payment for his home loan. (Doc. 1 at 3.) He does not specify sections of
15 these statutes in his Complaint (*Id.*), but he includes numerous disorganized provisions in
16 the "Notice of Memorandum of Law" that he included with his Response (Doc. 13).

17 None of these quoted provisions establish a legal cause of action. Indeed, district
18 courts across the country, including the District of Arizona, have rejected similar claims
19 as incognizable. *See, e.g., Sanders v. MTC Fin. Inc.*, 4:22-cv-00066-SHR, 2022 WL
20 2665952, at *4 (D. Ariz. July 11, 2022) (dismissing with prejudice plaintiff's claim that
21 an International Bill of Exchange offset responsibility on his home loan); *Hennis v.*
22 *Trustmark Bank*, No. 2:10CV20-KS-MTP, 2010 WL 1904860 *5 (S.D. Miss. May 10,
23 2010) ("From coast to coast, claims that debts have been paid under the redemption
24 theory by the plaintiffs' issuance of 'bills of exchange' have been dismissed as
25 frivolous."); *Anderson v. Navy Fed. Credit Union*, No. 3:23-cv-05506-DGE, 2023 WL
26 6481518, at *3 (W.D. Wash. Oct. 5, 2023) (dismissing with prejudice complaint that
27 alleged claims under 12 U.S.C. § 1431, governing powers and duties of home loan banks,
28 and 12 U.S.C. § 360, governing powers and duties of federal reserve banks to receive

1 checks at par, in part because neither of these statutes were applicable and, therefore, did
2 not form the basis for federal question jurisdiction); *Thomas v. All in Credit Union*, No.
3 23-00215-TFM-B, Doc. 23 (S.D. Ala. Dec. 7, 2023) (rejecting private cause of action
4 under Federal Reserve Act and House Joint Resolution 192 of 1933), *report and*
5 *recommendation adopted*, *Thomas v. All in Credit Union*, No. 23-00215-TFM-B, Doc. 28
6 (S.D. Ala. Jan. 25, 2024); *Payne v. Spectrum*, 2023 WL 8681199, at *2 (W.D. Tex. Dec.
7 15, 2023) (report and recommendation) ("There is no federal subject matter jurisdiction
8 over this case. Plaintiff is not able to pursue civil remedies under the Bill of Exchange
9 Act or Federal Reserve Act, and the undersigned finds these claims to be legally
10 frivolous.").

11 This Court similarly finds that Plaintiff has failed to state a cognizable legal theory
12 based on his assertion that a Bill of Exchange is legal tender and, therefore, that
13 Defendant was not within its rights to decline to accept his Bill of Exchange towards his
14 home loan. Plaintiff did not include the Bill of Exchange in either his Complaint or
15 Response. However, based upon Plaintiff's factual allegations, Plaintiff's Bill of
16 Exchange is likely "nothing more than a document containing verbose legal language
17 which, when read in its entirety, is clearly not legal tender nor a means to discharge
18 Plaintiff from his responsibility to pay his home loan." *Sanders*, 2022 WL 2665952, at
19 *4; *see also McElroy v. Chase Manhattan Mortg. Corp.*, 134 Cal. App. 4th 388, 393
20 (2005) (describing bill of exchange as "a worthless piece of paper, consisting of nothing
21 more than a string of words that sound as though they belong in a legal document, but
22 which, in reality, are incomprehensible, signifying nothing").

23 **VI. Leave to Amend**

24 If the district court determines that a pleading might be cured by the allegation of
25 other facts, a pro se litigant is entitled to an opportunity to amend a complaint before
26 dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127–29 (9th Cir. 2000) (en
27 banc). The Court evaluates whether to permit amendment by weighing "(1) bad faith; (2)
28 undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5)

1 whether plaintiff has previously amended his complaint." *W. Shoshone Nat'l Council v.*
2 *Molini*, 951 F.2d 200, 204 (9th Cir. 1991). "Leave to amend need not be given if a
3 complaint, as amended, is subject to dismissal." *Moore v. Kayport Package Express, Inc.*,
4 885 F.2d 531, 538 (9th Cir. 1989).

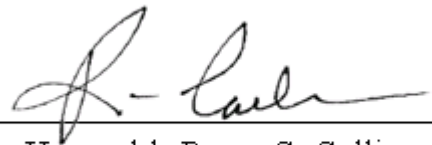
5 The Court finds that amendment would be futile even with the addition of other
6 facts. As outlined above, there is no cognizable legal claim that Plaintiff is entitled to pay,
7 or otherwise offset, his home loan with a Bill of Exchange. Accordingly, the Court will
8 not grant leave to amend.

9 **VII. Conclusion**

10 For the foregoing reasons,

11 **IT IS ORDERED** that Defendant's Motion to Dismiss is **GRANTED**. (Doc. 10.)
12 This matter is **DISMISSED WITH PREJUDICE**. The Clerk of Court shall docket
13 accordingly and close this case.

14 Dated this 25th day of July, 2024.

15
16
17 

18 _____
19 Honorable Raner C. Collins
20 Senior United States District Judge
21
22
23
24
25
26
27
28