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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 ALEJANDRO O. RODRIGUEZ,

12 Plaintiff,

13 v.

14 BANK OF AMERICA, et al.,

15 Defendants.
16

Case No. 1:15-cv-00749-LJO-SAB

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND FOR FAILURE TO
STATE A CLAIM

(ECF No. 1)

THIRTY-DAY DEADLINE

17 Plaintiff Alejandro O. Rodriguez, proceeding pro se, filed the complaint in this action on
18 May 15, 2015. For the reasons stated below, the Court finds that Plaintiff's complaint fails to
19 state a claim.

20 **I.**

21 **SCREENING REQUIREMENT**

22 Pursuant to 28 U.S.C. § 1915(e)(2), the Court must dismiss a case if at any time the Court
23 determines that the complaint fails to state a claim upon which relief may be granted. In
24 determining whether a complaint fails to state a claim, the Court uses the same pleading standard
25 used under Federal Rule of Civil Procedure 8(a). A complaint must contain "a short and plain
26 statement of the claim showing that the pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2).
27 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause
28 of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S.

662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

“[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s liability . . . ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual allegations contained in a complaint, a court need not accept a plaintiff’s legal conclusions as true. Iqbal, 556 U.S. at 678. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

II.

COMPLAINT ALLEGATIONS

On September 10, 2004, Plaintiff purchased property located in Visalia, California which was financed by Bank of America. (Compl. ¶¶ 15, 16, ECF No. 1.) Plaintiff executed a promissory note for \$124,000.00 on September 30, 2004 with Defendant Bank of America. (Id. at ¶ 16.) The loan was an adjustable rate loan with a five year adjustable rate rider allowing the interest rate to increase by 2.250% each year. (Id. at ¶ 17.) Plaintiff built a home on the property that was completed on March 30, 2006. (Id. at ¶ 18.)

Subsequently, on September 18, 2009, Bank of America recorded a notice of default stating that \$4,406.26 was due to reinstate the mortgage loan. (Id. at ¶ 21.) On February 19, 2010, Bank of America and Cal Western Reconveyance Corporation filed a notice of default and election to sell the property. (Id. at ¶ 22.) The property was eventually sold for \$223,000.00 on September 4, 2012. (Id. at ¶ 38.) Plaintiff alleges that the defendants failed to comply with the California Civil Code in foreclosing on and auctioning the property. Plaintiff brings this action against Defendants Bank of America and Reconstruct Company to quiet title to the property; and against Defendants Bank of America, Reconstruct Company, Cal-Western Reconveyance Corporation; and Northwest Trustee Services for wrongful foreclosure seeking monetary damages, and declaratory and injunctive relief. (Id. at ¶¶ 41-49.)

1 **III.**

2 **DISCUSSION**

3 Federal courts are courts of limited jurisdiction and their power to adjudicate is limited to
4 that granted by Congress. U.S v. Sumner, 226 F.3d 1005, 1009 (9th Cir. 2000). Pursuant to 28
5 U.S. C. § 1331, federal courts have original over “all civil actions arising under the Constitution,
6 laws, or treaties of the United States. “A case ‘arises under’ federal law either where federal law
7 creates the cause of action or where the vindication of a right under state law necessarily turns on
8 some construction of federal law.” Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088
9 (9th Cir. 2002) (internal punctuation omitted) (quoting Franchise Tax Bd. v. Construction
10 Laborers Vacation Trust, 463 U.S. 1, 8–9 (1983) (citations omitted)). “[T]he presence or
11 absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which
12 provides that federal jurisdiction exists only when a federal question is presented on the face of
13 the plaintiff’s properly pleaded complaint.” Republican Party of Guam, 277 F.3d at 1089
14 (citations omitted).

15 Plaintiff’s complaint states that this action in brought for violation of the Fourth, Seventh,
16 and Fourteenth Amendments and Racketeer Influenced and Corrupt Organizations Act
17 (“RICO”), 18 U.S.C. § 1962, however, Plaintiff’s stated causes of action do not include any of
18 these claims. Furthermore, the Court finds that the complaint is devoid of any factual allegations
19 that would plead a statutory or constitutional violation. To state a claim, Plaintiff must include
20 sufficient factual allegations for the Court to reasonably infer that his federal rights were
21 violated.

22 **A. The Constitution of the United States**

23 Plaintiff’s complaint references the Fourth, Seventh, and Fourteenth Amendments to the
24 United States Constitution. Section 1983 provides a cause of action for the violation of a
25 plaintiff’s constitutional or other federal rights by persons acting under color of state law. Nurre
26 v. Whitehead, 580 F.3d 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d
27 1178, 1185 (9th Cir. 2006); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s
28 complaint does not allege that any of the defendants in this action were state actors. The

1 complaint contains no factual allegations that any of Plaintiff's constitutional rights were
2 violated.

3 **B. 18 U.S.C. § 1961 et seq.**

4 Plaintiff's complaint states that he brings this action for violation of RICO. RICO, which
5 was passed in 1970 as Title XI of the Organized Crime Control Act, provides for both criminal
6 and civil liability for certain prohibited activities. Odom v. Microsoft Corp., 486 F.3d 541, 545
7 (9th Cir. 2007). Pursuant to section 1962:

8 (a) It shall be unlawful for any person who has received any income derived,
9 directly or indirectly, from a pattern of racketeering activity or through collection
10 of an unlawful debt in which such person has participated as a principal within the
11 meaning of section 2, title 18, United States Code, to use or invest, directly or
12 indirectly, any part of such income, or the proceeds of such income, in acquisition
13 of any interest in, or the establishment or operation of, any enterprise which is
14 engaged in, or the activities of which affect, interstate or foreign commerce. A
15 purchase of securities on the open market for purposes of investment, and without
16 the intention of controlling or participating in the control of the issuer, or of
17 assisting another to do so, shall not be unlawful under this subsection if the
18 securities of the issuer held by the purchaser, the members of his immediate
19 family, and his or their accomplices in any pattern or racketeering activity or the
20 collection of an unlawful debt after such purchase do not amount in the aggregate
21 to one percent of the outstanding securities of any one class, and do not confer,
22 either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or
through collection of an unlawful debt to acquire or maintain, directly or
indirectly, any interest in or control of any enterprise which is engaged in, or the
activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any
enterprise engaged in, or the activities of which affect, interstate or foreign
commerce, to conduct or participate, directly or indirectly, in the conduct of such
enterprise's affairs through a pattern of racketeering activity or collection of
unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions
of subsection (a), (b), or (c) of this section.

23 Plaintiff does not allege which prohibited activities he is contending were violated by the acts
24 alleges in the complaint. Nor does the complaint allege a pattern of racketeering activity by any
25 defendant. Plaintiff's complaint fails to state a plausible claim for a violation of RICO.

26 **C. State Law Violations**

27 Plaintiff's complaint alleges only state law causes of action. Pursuant to 28 U.S.C. §
28 1367(a), in any civil action in which the district court has original jurisdiction, the district court

1 “shall have supplemental jurisdiction over all other claims in the action within such original
2 jurisdiction that they form part of the same case or controversy under Article III. . . .” “The
3 district court may decline to exercise supplemental jurisdiction over a claim under subsection (a)
4 if . . . the district court has dismissed all claims over which it has original jurisdiction.” 28
5 U.S.C. § 1367(c)(3). The Supreme Court has cautioned that “if the federal claims are dismissed
6 before trial, . . . the state claims should be dismissed as well.” United Mine Workers of America
7 v. Gibbs, 383 U.S. 715, 726 (1966).

8 The Court declines to reach the viability of Plaintiff’s state law tort claim at this time as
9 the Court will not exercise supplemental jurisdiction over state law claims unless Plaintiff is able
10 to state a cognizable federal claim. 28 U.S.C. § 1367(a); Herman Family Revocable Trust v.
11 Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001).

12 **D. Leave to Amend**

13 “Generally, Rule 15 advises the court that ‘leave [to amend the complaint] shall be freely
14 given when justice so requires.’ This policy is ‘to be applied with extreme liberality.’”
15 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v.
16 Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). The factors the Court
17 should consider in deciding whether to grant leave to amend include undue delay, bad faith or
18 dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments
19 previously allowed, undue prejudice to the opposing party by virtue of allowance of the
20 amendment, and futility of the amendment. Id. at 1052. In accordance with the “extreme
21 liberality” with which leave to amend should be granted, the Court will grant Plaintiff an
22 opportunity to amend the complaint to cure the deficiencies identified herein.

23 Plaintiff is advised that under Twombly and Iqbal “a complaint must contain sufficient
24 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Iqbal, 556
25 U.S. at 678. This requires factual content for the court to draw the reasonable inference that the
26 defendant is liable for the alleged misconduct. Id. A complaint stops short of the line between
27 probability and the possibility of relief where the facts pled are merely consistent with a
28 defendant’s liability. Id. Further, while the court is to accept all “well pleaded factual

1 allegations” in the complaint as true, id. at 679, it is not bound to accept as true labels,
2 conclusions, formulaic recitations of the elements of a cause of action or legal conclusions
3 couched as factual allegations, Twombly, 550 U.S. at 555.

4 Further, Plaintiff includes a declaration in which he alleges that Defendant Bank of
5 America continued a pattern of recording fraudulent documents. (Decl. of Plaintiff Alejandro O.
6 Rodriguez in Support of Compl. 5, ECF No. 1-2.) However, when alleging a claim for fraud,
7 Plaintiff’s complaint must meet the heightened pleading requirements of Rule 9 of the Federal
8 Rules of Civil Procedure. Rule 9 provides that “[i]n alleging fraud or mistake, a party must state
9 with particularity the circumstances constituting fraud or mistake. Fed. R. Civ. P. 9(b).
10 Plaintiff’s complaint fails to comply with Rule 9.

11 **IV.**

12 **CONCLUSION AND ORDER**

13 Based upon the foregoing, the Court finds that Plaintiff’s complaint fails to state any
14 cognizable federal claims.

15 Accordingly, it is HEREBY ORDERED that Plaintiff’s complaint is dismissed, with
16 leave to amend. Plaintiff shall file his amended complaint, if any, within thirty (30) days from
17 the date of service of this order. Plaintiff is forewarned that failure to file a timely amended
18 complaint will result in a recommendation that this action be closed.

19 IT IS SO ORDERED.

20 Dated: **June 15, 2015**

21 
22 UNITED STATES MAGISTRATE JUDGE