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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MARK S. LAND,	)	1:16-cv-01494-LJO-BAM
	)	
Plaintiff,	)	
	)	ORDER GRANTING APPLICATION TO
v.	)	PROCEED IN FORMA PAUPERIS
	)	
BANK OF AMERICA,	)	ORDER DISMISSING COMPLAINT WITH
	)	LEAVE TO AMEND
Defendants	)	
	)	THIRTY-DAY DEADLINE
	)	
	)	

Plaintiff Mark S. Land (“Plaintiff”), proceeding pro se, initiated this action on October 5, 2016. Plaintiff alleges a violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.*, by Defendant Bank of America. (Doc. 1). In conjunction with his complaint, Plaintiff filed an application to proceed in forma pauperis. (Doc. 2).

**Request to Proceed without Payment of Fees**

Plaintiff is proceeding pro se and has requested leave to proceed in forma pauperis pursuant to Title 28 of the United States Code section 1915(a). Plaintiff has made the showing required by section 1915(a), and accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

**Screening**

The Court is required to screen complaints brought by persons proceeding in pro per. 28 U.S.C. § 1915(e)(2). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is

1 frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks  
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. §  
3 1915(e)(2)(B)(ii).

4 A complaint must contain “a short and plain statement of the claim showing that the  
5 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
6 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
7 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,  
8 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65  
9 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge  
10 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)  
11 (internal quotation marks and citation omitted).

12 Pro se litigants are entitled to have their pleadings liberally construed and to have any  
13 doubt resolved in their favor, *Wilhelm v. Rotman*, 680 F.3d 1113, 1121-1123 (9th Cir. 2012),  
14 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010), but to survive screening, Plaintiff’s claims  
15 must be facially plausible, which requires sufficient factual detail to allow the Court to  
16 reasonably infer that each named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S.  
17 at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss v. United States Secret Service*, 572  
18 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not  
19 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.  
20 *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949; *Moss*, 572 F.3d at 969.

21 **Plaintiff’s Allegations**

22 Plaintiff alleges that the “Defendant did not finalize loan modification as promised,  
23 wrongful foreclosure [sic], racketeering, [intentional] avoidance.” (Doc. 1 at p. 5). Plaintiff  
24 alleges that on January 1, 2014, the “house was sold, trustee sale, being har[ass]ed.” (*Id.* at p. 6).  
25 Plaintiff seeks an injunction to stop a possible trust deed sale and reversal of the foreclosure.

26 **Discussion**

27 Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to  
28 state a cognizable claim. As Plaintiff is proceeding pro se, he will be given an opportunity to

1 amend his complaint. To assist Plaintiff, the Court provides the following pleading and legal  
2 standards that appear applicable to his claims.

3 **1. Federal Rule of Civil Procedure 8**

4 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and  
5 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).  
6 As noted above, detailed factual allegations are not required, but “[t]hreadbare recitals of the  
7 elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,  
8 556 U.S. at 678 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as  
9 true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting  
10 *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are  
11 not. *Id.*; *see also Twombly*, 550 U.S. at 556–557; *Moss*, 572 F.3d at 969.

12 Plaintiff’s complaint lacks basic factual information, including what happened, when,  
13 where and who was involved. If Plaintiff elects to file an amended complaint, he must provide  
14 sufficient factual information to state a claim for relief that is plausible on its face.

15 **2. RICO**

16 Plaintiff appears to assert a violation of the federal RICO statute, which makes it  
17 “unlawful for any person employed by or associated with any enterprise engaged in, or the  
18 activities of which affect, interstate or foreign commerce, to conduct or participate, directly or  
19 indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity  
20 [.]” 18 U.S.C. § 1962(c). To state a claim under § 1962(c), a plaintiff must allege: “(1) conduct  
21 (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Sedima, SPRL v. Imrex*  
22 *Co., Inc.*, 473 U.S. 479, 496 (1985). Here, Plaintiff has not alleged any of the necessary  
23 elements to state a RICO claim.

24 **3. Wrongful Foreclosure**

25 Plaintiff also appears to allege a claim for wrongful foreclosure. To state a claim for  
26 wrongful foreclosure, a plaintiff must allege that (1) the trustee or mortgagee caused an illegal,  
27 fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage  
28 or deed of trust; (2) he was prejudiced or harmed; and (3) he tendered the amount of the secured

1 indebtedness or was excused from tendering. *Lona v. Citibank, N.A.*, 202 Cal.App.4th 89, 104,  
2 134 Cal.Rptr.3d 622 (2011); *Morgensen v. Downey Sav. and Loan Assoc.*, No. 5:15-cv-02000-  
3 HRL, 2016 WL 234430, at \*6 (N.D. Cal. Jan. 20, 2016) (same). Here, Plaintiff does not allege  
4 any facts to state a plausible claim for wrongful foreclosure.

5 **CONCLUSION AND ORDER**

6 Plaintiff's complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to  
7 state a cognizable claim. As Plaintiff is proceeding pro se, the Court will provide him an  
8 opportunity to amend his complaint. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).  
9 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended  
10 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

11 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
12 the named defendant did that led to the deprivation of Plaintiff's rights, *Iqbal*, 556 U.S. at 678-  
13 79, 129 S.Ct. at 1948-49. Although accepted as true, the "[f]actual allegations must be  
14 [sufficient] to raise a right to relief above the speculative level. . . ." *Twombly*, 550 U.S. at 555  
15 (citations omitted).

16 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.  
17 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012) (en banc). Therefore, Plaintiff's  
18 amended complaint must be "complete in itself without reference to the prior or superseded  
19 pleading." Local Rule 220.

20 Based on the foregoing, it is HEREBY ORDERED that:

- 21 1. Plaintiff's complaint is dismissed for failure to comply with Federal Rule of Civil  
22 Procedure 8 and failure to state a cognizable claim;
- 23 2. Within thirty (30) days from the date of service of this order, Plaintiff shall file a  
24 first amended complaint; and

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