

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CESAR A. BETANCOURT,

Case No. 1:16-cv-01855-AWI-SKO

Plaintiff,

**ORDER DISMISSING PLAINTIFF'S
SECOND AMENDED COMPLAINT
WITH LEAVE TO AMEND WITHIN
THIRTY DAYS**

v.

NEW CENTURY MORTGAGE
CORPORATION, et al.,

(Doc. 10)

Defendants.

I. INTRODUCTION

Before the Court is Plaintiff's second amended complaint (the "Second Amended Complaint"), filed on July 13, 2017, by Plaintiff Cesar Betancourt ("Plaintiff") against Defendant New Century Mortgage Corporation, Defendant Wells Fargo Bank, Defendant Quality Loan Services Corporation, and Defendant First American Title (collectively "Defendants"). (Doc. 10.) The Court has screened the Second Amended Complaint and finds that, despite the Court's explicit recitation of the deficiencies in the original complaint and in the first amended complaint, it fails to state a claim on which relief may be granted. The Court therefore DISMISSES the Second Amended Complaint with leave to amend within thirty days.

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. BACKGROUND

On December 9, 2016, Plaintiff, proceeding *pro se* and *in forma pauperis*, filed a complaint against Defendants. (Doc. 1.) On April 6, 2017, the undersigned granted Plaintiff's application to proceed *in forma pauperis*. (Doc. 5.) However, on April 12, 2017, the undersigned dismissed Plaintiff's complaint, finding various deficiencies with it. (Doc. 6.) The Court granted Plaintiff thirty (30) days leave to file an amended complaint, and gave the following pertinent guidance for curing the deficiencies identified in the order: "Should Plaintiff file an amended complaint, . . . he must (1) name all defendants in the caption and (2) include factual allegations against each defendant in the body of the complaint." (*Id.* at 3.)

On April 26, 2017, Plaintiff filed a one-page amended complaint.¹ (Doc. 7.) The amended complaint alleged facts related to Plaintiff's home mortgage, including that Wells Fargo denied Plaintiff's request for a loan modification, that Wells Fargo commenced a lawsuit against Plaintiff in state court, and that someone falsified a \$20,000 lien against Plaintiff's home. (Doc. 7 at 1.)

On June 16, 2017, the undersigned found that Plaintiff's amended complaint, like his original complaint, failed to identify "which of the[] parties [mentioned in the amended complaint] are the defendants in this matter." (Doc. 8 at 5.) The undersigned also found that "the Amended Complaint fails to identify Plaintiff's causes of action." The undersigned granted Plaintiff a second opportunity to amend his complaint within thirty (30) days, curing the pleading deficiencies identified in the order. (*Id.* at 5-6.) The undersigned reiterated the following guidance given in the order dismissing Plaintiff's original complaint: (1) "name all defendants in the caption;" (2) "include factual allegations against each defendant in the body of the complaint;" and (3) "identify the federal statute under which Plaintiff's claim proceeds." (*Id.* at 4-5) (internal quotation and citation omitted.) The undersigned further encouraged Plaintiff to "use a template for the amended complaint . . . to clearly identify the defendants in this case." (*Id.* at 5.)

On July 13, 2017, Plaintiff filed his Second Amended Complaint. (Doc. 10.) The Second Amended Complaint appears to be comprised of three handwritten pages, and it includes

¹ Although the amended complaint itself was only a single page, it included 33 pages of supporting documents purportedly related to Plaintiff's mortgage. (*See* Doc. 7.)

1 approximately 240 pages of supporting documents. (*See id.* at 1, 16, 25). In the Second Amended
2 Complaint, Plaintiff identifies the following parties as “Proof of Contacts/Points of Contacts”: (1)
3 two individuals with Wells Fargo (Karen Lee, Vice President and William Pinkerton, Senior Vice
4 President); (2) two individuals with America’s Servicing Company (Randy Bockenstedt, Senior
5 Vice President and Justin Forbes, Customer Care and Recovery Group); (3) the Real Estate Law
6 Center and two lawyers (Ruben Moreno and Randy Risner) who “were hired on [Plaintiff’s]
7 behalf to assist [him]” with obtaining a home loan; (4) the Office of the Controller of the Currency
8 Consumer Financial Protection Bureau; and (5) “[a]gents assigned to contact Modification Dept.”
9 (*Id.* at 1, 10, 25.) Plaintiff alleges “negligence by the bank/servicing company because multiple
10 parties I shared information with were unable to follow-up my paperwork.” Plaintiff further
11 alleges that such acts were done “on purpose to benefit [the] lender,” and “only caused more fees
12 [to be] added to my mortgage.”

13 After screening the Second Amended Complaint, the Court finds that despite the explicit
14 recitation of the deficiencies of Plaintiff’s original complaint and first amended complaint,
15 Plaintiff has failed to state any cognizable federal claims for the reasons set forth below.

16 III. LEGAL STANDARD

17 In cases where a plaintiff is proceeding *in forma pauperis*, the Court is required to screen
18 each case, and shall dismiss the case at any time if the Court determines that the allegation of
19 poverty is untrue, or the action or appeal is frivolous or malicious, fails to state a claim upon
20 which relief may be granted, or seeks monetary relief against a defendant who is immune from
21 such relief. 28 U.S.C. § 1915(e)(2). If the Court determines that the plaintiff fails to state a claim,
22 leave to amend may be granted to the extent that the deficiencies of the complaint can be cured by
23 amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

24 The Court’s screening of the Second Amended Complaint under 28 U.S.C. § 1915(e)(2) is
25 governed by the following standards. A complaint may be dismissed as a matter of law for failure
26 to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts
27 under a cognizable legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
28 Cir. 1990). Plaintiff must allege a minimum factual and legal basis for each claim that is sufficient

1 to give each defendant fair notice of Plaintiff’s claims and the grounds upon which they rest. *See,*
2 *e.g., Brazil v. U.S. Dep’t of the Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *McKeever v. Block*, 932
3 F.2d 795, 798 (9th Cir. 1991).

4 In determining whether a complaint states a claim on which relief may be granted,
5 allegations of material fact are taken as true and construed in the light most favorable to the
6 plaintiff. *See Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). Moreover, since
7 Plaintiff is appearing *pro se*, the Court must construe the allegations of the Second Amended
8 Complaint liberally and must afford Plaintiff the benefit of any doubt. *See Karim–Panahi v. Los*
9 *Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). However, “the liberal pleading standard
10 . . . applies only to a plaintiff’s factual allegations.” *Neitzke v. Williams*, 490 U.S. 319, 330 n.9
11 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements of
12 the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257
13 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

14 Further, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
15 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of
16 action will not do Factual allegations must be enough to raise a right to relief above the
17 speculative level.” *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal
18 citations omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (To avoid dismissal for
19 failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to
20 ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the
21 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
22 defendant is liable for the misconduct alleged.”) (internal citations omitted).

23 IV. DISCUSSION

24 Turning to the instant case, Plaintiff’s Second Amended Complaint suffers from the same
25 defects found by the Court in his original complaint and first amended complaint: (1) Plaintiff fails
26 to specifically state what role the parties named in the Second Amended Complaint played in the
27 acts alleged; (2) Plaintiff fails to state *how* the acts alleged violate any federal or state law(s); and
28 (3) Plaintiff fails to allege facts establishing this Court’s subject matter jurisdiction over the

1 matter.

2 **A. Plaintiff Fails to State Which Parties Committed the Alleged Wrongful Acts and How**
3 **the Alleged Wrongful Acts Violate the Law.**

4 Plaintiff's Second Amended complaint does not contain a "short and plain statement of the
5 claim showing that he is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pursuant to Rule 8(a) of the
6 Federal Rules of Civil Procedure, a complaint must contain a "short and plain statement of the
7 claim showing that the pleader is entitled to relief." Although the Federal Rules adopt a flexible
8 pleading policy, a complaint must "give fair notice and state the elements of the claim plainly and
9 succinctly." *Jones v. Community Redev. Agency of the City of Los Angeles*, 733 F.2d 646, 649
10 (9th Cir. 1984) (citation omitted). While detailed allegations are not required, a plaintiff must set
11 forth "the grounds of his entitlement to relief[.]" which "requires more than labels and
12 conclusions, and a formulaic recitation of the elements of a cause of action...." *Twombly*, 550 U.S.
13 at 555 (internal quotations and citations omitted).

14 Plaintiff's Second Amended Complaint is neither short nor plain. It contains three
15 handwritten pages, but attached to it are approximately 240 pages of supporting documents. (*See*
16 *generally* Doc. 10.) The Second Amended Complaint is unclear and it lacks important factual
17 details regarding what happened and who was involved. For instance, Plaintiff identifies several
18 parties, but he does not specifically identify what each party allegedly did that was improper and
19 caused him harm. Rather, Plaintiff vaguely indicates that "the bank/servicing company" was
20 negligent in failing "to follow-up [on Plaintiff's] paperwork" concerning a requested loan
21 modification, and that such acts were done "on purpose to benefit [the] lender" and "only caused
22 more fees [to be] added to [Plaintiff's] mortgage." (*Id.*) Nor is it sufficient for Plaintiff to use the
23 phrase "Proof of Contacts/Points of Contacts," and thereafter list the parties mentioned above
24 without any further identifying information. When multiple defendants are named, a plaintiff
25 must allege the basis of his claims as to each defendant—it is improper to simply lump defendants
26 together. *See Sebastian Brown Prods., LLC v. Muzooka, Inc.*, 143 F. Supp. 3d 1026, 1040 (N.D.
27 Cal. 2015); *Flores v. EMC Mortg. Co.*, 997 F. Supp. 2d 1088, 1103 (E.D. Cal. 2014). In other
28 words, Plaintiff must identify the specific wrongful acts that each defendant performed and how
each defendant either caused Plaintiff harm or is responsible for Plaintiff's harm. *See id.* With

1 respect to Plaintiff's supporting documents, while permissible if incorporated by reference, Fed. R.
2 Civ. P. 10(c), they are not necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a).
3 The function of the complaint is not to list every single fact or attach every document relating to
4 Plaintiff's claims. *See* Fed. R. Civ. P. 8(d)(1) ("Each allegation must be simple, concise, and
5 direct.").

6 Plaintiff's Second Amended Complaint does not comply with Rule 8(a) of the Federal
7 Rules of Civil Procedure. If Plaintiff elects to amend his Second Amended Complaint, he must
8 meet the requirements of Rule 8 by clearly and succinctly setting forth the facts that Plaintiff
9 believes give rise to each claim, including the identity of the defendant(s) involved.

10 **B. Plaintiff Fails to Allege Facts Establishing Subject Matter Jurisdiction.**

11 Plaintiff's Second Amended Complaint fails to identify any federal or state law claim over
12 which the Court may assert jurisdiction, despite the Court's prior instruction in the Order
13 Dismissing the First Amended Complaint that Plaintiff should "identify the federal statute under
14 which Plaintiff's claim proceeds." (Doc. 8 at 5.)

15 Federal Courts have no power to consider claims for which they lack subject matter
16 jurisdiction. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986); *see also Vacek v.*
17 *U.S. Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006) (citing *Kokkonen v. Guardian Life Ins. Co.*
18 *of Am.*, 511 U.S. 375, 377 (1994)). Federal district courts are vested with subject matter
19 jurisdiction over cases that pose a federal question, 28 U.S.C. § 1331, and cases in which there
20 exists diversity of citizenship between the parties, 28 U.S.C. § 1332. *See also Montana–Dakota*
21 *Util. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 249 (1951) ("The Judicial Code, in vesting
22 jurisdiction in the District Courts, does not create causes of action, but only confers jurisdiction to
23 adjudicate those arising from other sources which satisfy its limiting provisions."); *White v.*
24 *Paulsen*, 997 F. Supp. 1380, 1382–83 (E.D. Wash. 1998) (citing *In re Estate of Ferdinand*
25 *Marcos, Human Rights Litig.*, 25 F.3d 1467, 1474–75 (9th Cir. 1994)). The Court has an
26 independent duty to consider its own subject matter jurisdiction, whether or not the issue is raised
27 by the parties, and it must dismiss an action over which it lacks jurisdiction. Fed. R. Civ. P.
28 12(h)(3); *see also Cal. Diversified Promotions, Inc. v. Musick*, 505 F.2d 278, 280 (9th Cir.

1 1974) (“It has long been held that a judge can dismiss *sua sponte* for lack of jurisdiction.”). The
2 burden is on the federal plaintiff to allege facts establishing that jurisdiction exists to hear his
3 claims.

4 **1. Federal Question Jurisdiction**

5 Plaintiff’s Second Amended Complaint alleges that “the bank/servicing company” was
6 negligent in failing “to follow-up [on Plaintiff’s] paperwork” concerning a requested mortgage
7 modification, and that such acts were done “on purpose to benefit [the] lender” and “only caused
8 more fees [to be] added to [Plaintiff’s] mortgage.” (Doc. 10 at 25.) Although Plaintiff does not
9 identify any law—federal or state—which he believes was violated by these acts, liberally
10 construed it appears that Plaintiff’s allegations attempt to raise consumer protection law claims.
11 *See Karim–Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). To the extent that
12 Plaintiff is seeking to raise *federal* consumer protection law claims—and thereby establish that
13 subject matter jurisdiction exists on the basis of federal question—Plaintiff should clearly identify
14 the particular federal consumer protection law(s) under which he seeks relief, and he should
15 “provide succinct and coherent factual allegations supporting” his entitlement to relief under such
16 law(s). *Futrell v. Superior Court of Sacramento Cnty.*, No. 2:10-cv-2425 JAM KJN, 2011 WL
17 666494, at *2 (E.D. Cal. Feb. 14, 2011).

18 **2. Diversity of Citizenship Jurisdiction**

19 To the extent, however, that Plaintiff is seeking to raise *state* consumer protection or fraud
20 claims, Plaintiff should clearly identify the particular state law(s) under which he seeks relief, and,
21 as stated above, he should “provide succinct and coherent factual allegations supporting” his
22 entitlement to relief under such law(s). *Futrell*, 2011 WL 666494, at *2. If Plaintiff is raising
23 only state law claims, and not federal claims, he must additionally allege facts establishing that
24 diversity of citizenship between the parties exists—and thereby establish that subject matter
25 jurisdiction exists on the basis of diversity.

26 Pursuant to 28 U.S.C. § 1332, federal district courts have subject matter jurisdiction on the
27 basis of diversity of citizenship where the matter in controversy exceeds \$75,000 and is between
28 “citizens of a State and citizens or subjects of a foreign state.” In other words, the plaintiff and the

1 defendant in such a case must be citizens of different states to satisfy the complete diversity
2 requirement. *Strawbridge v. Curtiss*, 3 Cranch 267, 7 U.S. 267, 2 L. Ed. 435 (1806) (no plaintiff
3 can be a citizen of the same state as any of the defendants). Here, the Second Amended Complaint
4 indicates that Plaintiff is a citizen of California. (Doc. 10 at 25.) However, it is silent as to the
5 citizenship of any of the defendants.²

6 Accordingly, if Plaintiff is seeking to raise only state law claims, Plaintiff should
7 specifically identify the amount of money in controversy in this matter and the place of citizenship
8 of each defendant.

9 **C. Plaintiff May File a Third Amended Complaint.**

10 As often noted by the Ninth Circuit, “[a] pro se litigant must be given leave to amend his
11 or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the
12 deficiencies of the complaint could not be cured by amendment.” *Cato v. United States*, 70 F.3d
13 1103, 1106 (9th Cir. 1995) (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)). Here,
14 Plaintiff may be able to remedy the deficiencies in the Second Amended Complaint through
15 amendment. The Court therefore finds that it is appropriate to provide an opportunity for Plaintiff
16 to file a third amended complaint.

17 **If Plaintiff elects to file a third amended complaint, the Court encourages Plaintiff to**
18 **specifically identify (1) the federal law(s) and/or state law(s) which he believes was violated**
19 **by the acts alleged, (2) Plaintiff’s state of citizenship and the state of citizenship for each**
20 **party named in the Second Amended Complaint, (3) the amount of money in controversy in**
21 **this case, (4) the role each party named in the Second Amended Complaint played in the acts**
22 **alleged, and (5) how the acts alleged violate the law(s) identified.**

25 ² The Court notes that the civil cover sheet that Plaintiff submitted with his original complaint indicated that “Quality
26 Loan Service Corp”—the only defendant named in the civil cover sheet—is located in San Diego, California. (Doc.
27 2.) The original complaint, however, is no longer the operative complaint as Plaintiff has twice subsequently filed an
28 amended complaint, and therefore the allegations in the attached civil cover sheet are no longer operative. *See Lacey*
v. Maricopa Cnty., 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc) (stating that amended complaint supersedes the
original complaint and any prior amended complaints); *see also* Rule 220 of the Local Rules of the United States
District Court, Eastern District of California (requiring any amended complaint to be “complete in itself without
reference to the prior or superseded pleading”).

1 The Court again encourages Plaintiff to use a template for the third amended complaint—if
2 Plaintiff elects to file a third amended complaint—as Plaintiff used for his original complaint.
3 Plaintiff is reminded that supporting documents are not necessary in the federal system of notice
4 pleading, but they are permissible if incorporated by reference. See Fed. R. Civ. P. 8(a), 10(c).
5 Plaintiff should remain mindful of both the legal standard for stating a claim, as provided herein,
6 and the Court’s previous statements regarding a properly filed complaint in its Order Dismissing
7 Complaint with Leave to Amend, (see Doc. 6), and its Order Dismissing Amended Complaint
8 with Leave to Amend, (see Doc. 8).

9 The Court cautions Plaintiff that “[a]n amended complaint must be legible, must identify
10 what causes of action are being pursued, identify the improper actions or basis for liability of each
11 defendant, and the factual allegations must demonstrate plausible claims.” *Borders v. City of*
12 *Tulare*, CASE NO. 1:16-cv-1818-DAD-SKO, 2017 WL 1106039, at *4 (E.D. Cal. Mar. 23, 2017).
13 Additionally, “Plaintiff may not change the nature of this suit by adding new, unrelated claims in
14 his amended complaint.” *Id.* (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)).

15 Finally, Plaintiff is advised that each amended complaint supersedes the original complaint
16 and any prior amended complaints. See *Lacey*, 693 F.3d at 907 n.1. Any third amended
17 complaint must be “complete in itself without reference to the prior or superseded pleading.” Rule
18 220 of the Local Rules of the United States District Court, Eastern District of California. Once
19 Plaintiff files a third amended complaint, if Plaintiff should so elect, neither the original complaint
20 nor the first and second amended complaints serves any function in the case. Therefore, in a third
21 amended complaint, each claim and the involvement of each defendant must be sufficiently
22 alleged.

23 V. ORDER

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff’s second amended complaint (Doc. 10) is DISMISSED WITHOUT
26 PREJUDICE and WITH LEAVE TO AMEND;
- 27 2. Within **thirty (30) days** from the date of service of this Order, Plaintiff shall file a third
28 amended complaint; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. If Plaintiff fails to file a timely third amended complaint in compliance with this Order, the Court will recommend that the presiding district court judge dismiss the second amended complaint *with prejudice* and, as such, terminate this case.

IT IS SO ORDERED.

Dated: December 27, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE