1		
2		
3		
4		
5		
6		
7		
8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
10		
11	FRANK MALIFRANDO,	No. 2:16-cv-0223 TLN GGH PS
12	Plaintiff,	
13	v.	ORDER AND FINDINGS AND RECOMMENDATIONS
14	REAL TIME RESOLUTIONS, INC., et al.,	RECOMMENDATIONS
15	Defendants.	
16		
17	<u>INTRODUCTION</u>	
18	Plaintiff, proceeding in this action pro se and has paid the filing fee. This proceeding was	
19	referred to this court by Local Rule 302(21), pursuant to 28 U.S.C. § 636(b)(1).	
20	Presently before the court is defendant Real Time Resolutions, Inc.'s ("Real Time")	
21	amended motion to dismiss, filed March 7, 3016. <sup>1</sup> (ECF No. 9.) Plaintiff has filed an opposition,	
22	to which Real Time has filed a reply. <sup><math>^{2}</math></sup> Also before the court is plaintiff's motion to amend the	
23	complaint, filed May 19, 2016, and re-noticed on July 11, 2016. (ECF Nos. 13, 16.) Real Time	
24	has not filed a response. Having reviewed these filings, the court now issues the following order	
25	and findings and recommendations.	
26	$\frac{1}{1}$ The original motion was filed on March 3,	2016, and improperly noticed on the district judge's
27	calendar. (ECF Nos. 5, 7.) <sup>2</sup> The hearing on the motion was vacated on April 22, 2016, and the matter was taken under submission on the papers. (ECF No. 12.)	
28		

## FACTUAL AND PROCEDURAL BACKGROUND

2 According to the complaint, filed February 4, 2016, plaintiff on October 11, 2004, 3 obtained a mortgage loan in the amount of \$67,000 from Long Beach Mortgage Company<sup>3</sup> ("Long Beach"), which was secured by real property located at 842 Georgia Street, Vallejo, 4 California.<sup>4</sup> (ECF No. 1 at 5, ¶¶ 3, 17.) The complaint alleges that defendant Long Beach made 5 6 false statements on plaintiff's loan application, including fraudulently overstating plaintiff's 7 income on the loan application, falsely listing his employer as MEGALYNX, a company he never 8 worked for, falsely stating plaintiff had an account with Bank of America, and falsely stating that 9 plaintiff owned other real estate worth \$834,000. According to the complaint, Long Beach also 10 forged plaintiff's signature on the loan application. The complaint further alleges that Long 11 Beach inflated the value of the subject property without conducting a proper audit. (ECF No. 1 at 12 4-5.) Defendant Real Time serviced the loan subsequent to servicer GMAC, and plaintiff 13 eventually could not pay the loan and fell into default, and then was forced to file for bankruptcy 14 protection. (Id. at 5-6.) Plaintiff alleges that around April 14, 2015 he sent a Qualified Written 15 Request ("OWR") to Real Time but that Real Time failed to respond in a satisfactory manner. 16 (Id. at 6-7.)

Claims against Real Time are for violations of the Real Estate Settlement Procedures Act 17 ("RESPA") and Fair Trade Commission ("FTC") Act. The complaint contains additional claims 18 against Long Beach for fraud, misrepresentation, and violation of the FTC Act.<sup>5</sup> The complaint 19 20 appears to allege diversity jurisdiction, and seeks injunctive relief to prevent foreclosure on the 21 subject property, an order modifying the terms of the loan to an affordable amount that reflects 22 plaintiff's true income, damages for emotional distress, punitive damages, and attorneys' fees and 23 costs.

It appears that Long Beach has been served with process but has not appeared in the action. 25 (ECF No. 4.)

Real Time believes the subject property is at 515 Alabama Street, and that this loan was a home 26 equity line of credit secured by a second deed of trust on the Georgia Street property. (Mot. to Dismiss, ECF No. 9-1 at 1, n. 1.) 27

Plaintiff has filed a motion to amend the complaint, and seeks to add fraud and 28 misrepresentation claims against Real Time, among other modifications.

### DISCUSSION

I.

2 3

## REAL TIME'S MOTION TO DISMISS

#### A. <u>Rule 12(b)(6) - Failure to State a Claim</u>

4 A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6)5 challenges the sufficiency of the pleadings set forth in the complaint. Vega v. JPMorgan Chase 6 Bank, N.A., 654 F. Supp. 2d 1104, 1109 (E.D. Cal. 2009). Under the "notice pleading" standard 7 of the Federal Rules of Civil Procedure, a plaintiff's complaint must provide, in part, a "short and 8 plain statement" of plaintiff's claims showing entitlement to relief. Fed. R. Civ. P. 8(a)(2); see 9 also Paulsen v. CNF, Inc., 559 F.3d 1061, 1071 (9th Cir. 2009). "To survive a motion to dismiss, 10 a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that 11 is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. 12 Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads 13 factual content that allows the court to draw the reasonable inference that the defendant is liable 14 for the misconduct alleged." Id.

15 In considering a motion to dismiss for failure to state a claim, the court accepts all of the 16 facts alleged in the complaint as true and construes them in the light most favorable to the 17 plaintiff. Corrie v. Caterpillar, Inc., 503 F.3d 974, 977 (9th Cir. 2007). The court is "not, 18 however, required to accept as true conclusory allegations that are contradicted by documents 19 referred to in the complaint, and [the court does] not necessarily assume the truth of legal 20 conclusions merely because they are cast in the form of factual allegations." Paulsen, 559 F.3d at 21 1071. The court must construe a pro se pleading liberally to determine if it states a claim and, 22 prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an opportunity 23 to cure them if it appears at all possible that the plaintiff can correct the defect. See Lopez v. 24 Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc); accord Balistreri v. Pacifica Police 25 Dep't, 901 F.2d 696, 699 (9th Cir. 1990) (stating that "pro se pleadings are liberally construed, 26 particularly where civil rights claims are involved"); see also Hebbe v. Pliler, 627 F.3d 338, 342 27 & n.7 (9th Cir. 2010) (stating that courts continue to construe pro se filings liberally even when 28 evaluating them under the standard announced in Iqbal).

1	In ruling on a motion to dismiss filed pursuant to Rule 12(b)(6), the court "may generally	
2	consider only allegations contained in the pleadings, exhibits attached to the complaint, and	
3	matters properly subject to judicial notice." Outdoor Media Group, Inc. v. City of Beaumont, 506	
4	F.3d 895, 899 (9th Cir. 2007) (citation and quotation marks omitted). Although the court may not	
5	consider a memorandum in opposition to a defendant's motion to dismiss to determine the	
6	propriety of a Rule 12(b)(6) motion, see Schneider v. Cal. Dep't of Corrections, 151 F.3d 1194,	
7	1197 n.1 (9th Cir. 1998), it may consider allegations raised in opposition papers in deciding	
8	whether to grant leave to amend, see, e.g., Broam v. Bogan, 320 F.3d 1023, 1026 n.2 (9th Cir.	
9	2003).	
10	B. <u>RESPA</u>	
11	The Real Estate Settlement Procedures Act ("RESPA") imposes certain disclosure	
12	obligations on loan servicers who transfer or assume the servicing of a federally-related mortgage	
13	loan. 12 U.S.C. § 2605(b). A borrower may obtain such information by submitting a qualified	
14	written request or "QWR," which is statutorily defined as:	
15	a written correspondence, other than notice on a payment coupon or	
16	other payment medium supplied by the servicer, that—(i) includes, or otherwise enables the servicer to identify, the name and account	
17	of the borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is	
18	in error or provides sufficient detail to the servicer regarding other information sought by the borrower.	
19	12 U.S.C. § 2605(e)(1)(B); see also 24 C.F.R. § 1024.31(definition of QWR in part "provides	
20	sufficient detail to the servicer regarding information relating to the servicing of the mortgage	
21	loan sought by the borrower").	
22	Section 2605(e)(1) requires the servicer to provide information relating to the servicing of	
23	the loan upon a qualified written request ("QWR") by the borrower. If a mortgage loan servicer	
24	receives a QWR from a borrower, the servicer shall provide a written response acknowledging	
25	receipt within five days, 12 U.S.C. § 2605(e)(1); 12 C.F.R. § 1024.36(c), and respond to the	
26	inquiry not later than thirty days. 12 U.S.C. § 2605(e)(2); 12 C.F.R. § 1024.36(d). Requests for	
27	information about loan origination and transfer of the loan do not trigger the protections afforded	
28	////	
	4	

the borrower under § 2605. See MorEquity, Inc. v. Naeem, 118 F.Supp.2d 885, 901

2 (N.D.Ill.2000).

1

3 Plaintiff asserts that he made a QWR to Real Time on April 14, 2015, and that Real Time 4 "failed to respond in a proper and timely way." (Compl. § 55, ECF No. 1 at 16.) Specifically, 5 plaintiff alleges that he requested "pertinent documents pertaining to the Loan and requesting" 6 documentation detailing updated assignments of ownership or necessary proof of Real Time's 7 custodial servicing obligations to GMAC." (Compl. ¶ 53, ECF No. 1 at 15.) According to the 8 complaint, not only did Real Time fail to respond to this request for information, but "also failed 9 to provide evidence of documentation, detailing updated assignments of ownership or necessary 10 proof of their custodial servicing obligations to GMAC per RESPA and FDCPA guidelines 11 surrounding mortgage debt validation." The complaint also claims that Real Time failed to 12 provide "proof of purchase, affidavit of sale, and proper documentation detailing restructure of 13 assignments to deed of trust. Furthermore, Plaintiff has received no payment history that would 14 accurately reflect his actual balance." (Compl. ¶ 53, ECF No. 1 at 15-16.)

The first basis for Real Time's motion to dismiss the RESPA claim is that plaintiff has failed to plead actual damages. The complaint alleges only that plaintiff suffered damages as a result of Real Time's failure to respond to Plaintiff's qualified written requests for information," and seeks "actual, statutory, treble and/or punitive damages...." (Compl. ¶¶ 56, 57 ECF No. 1 at 16.) Plaintiff's opposition adds no other elucidating information, other than claiming he suffered damages due to Ocwen's failure and that he seeks judgment against Wells Fargo; both entities are not parties to this action. (Opp'n, ECF No. 10 at 5.)

Assuming for the moment that plaintiff's letter to Real Time qualifies as a QWR, this bald conclusion does not sufficiently allege actual damages. See 12 U.S.C. § 2605(f) (actual damages must have been suffered as a result of the failure). Plaintiff does not allege what damage he suffered as a result of Real Time's alleged failure to properly and timely respond to his QWR in 26 2015. In fact, as Real Time points out, plaintiff does not allege that he made any payments to Real Time after he submitted a QWR in April, 2015. Moreover, plaintiff concedes he was in 28 //// default on his loan, and that he eventually stopped making payments because he could no longer
 afford it.<sup>6</sup> (Compl. ¶¶ 22, 23, ECF No. 1 at 6.)

3 Real Time contends that plaintiff should not be permitted to amend the complaint because 4 based on plaintiff's admissions as to the content of the QWR, and the fact that he has not incurred 5 damages, he would not be able to cure these defects on amendment. Although not likely, because 6 it is possible that the insufficient allegations might be cured on amendment and because plaintiff 7 is proceeding in proper, he will be permitted an opportunity to amend his complaint.<sup>7</sup> Prose 8 pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 9 595-96 (1972); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1988). Unless it is 10 clear that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding in 11 forma pauperis is entitled to notice and an opportunity to amend before dismissal. See Franklin v. 12 Murphy, 745 F.2d 1221, 1230 (9th Cir. 1984).

An amended complaint must be accompanied by the April 14, 2015 letter plaintiff sent to
Real Time which he claims was a qualified written request, along with Real Time's response. He
must also sufficiently allege the actual pecuniary damages suffered, and how Real Time's
response to his QWR caused the damages he suffered. <u>See Lal v. Am. Home Servicing, Inc.</u>, 680
F.Supp.2d 1218, 1223 (E.D. Cal. 2010) (to comply with RESPA, plaintiff must plead actual
damages incurred *as a result of* the failure) (emphasis in original).

- Real Time's second basis for its motion to dismiss is that plaintiff has failed to plead that
  his correspondence to Real Time qualified as a QWR. Real Time contends that requests for
  documents proving the bank's authority to service the loan or those pertaining to the servicer's
  compensation are not properly the subject of a QWR. According to Real Time's cited case,
  Sheely v. Bank of America, N.A., 36 F.Supp.3d 1364, 1369 (N.D. Ga. 2014), citing §
  2605(e)(1)(A), the QWR must seek "information related to the servicing of the loan."
- <sup>6</sup> Plaintiff filed for bankruptcy protection in 2012, and that action was closed the same year. See
   <u>https://ecf.caeb.uscourts.gov</u>. Judicial notice may be taken of court records. <u>Valerio v. Boise</u>
   <u>Cascade Corp.</u>, 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), aff'd, 645 F.2d 699 (9th Cir.), cert.
   denied, 454 U.S. 1126, 102 S.Ct. 976 (1981).

Plaintiff's motion to amend his complaint, filed May 19, 2016 and renewed on July 11, 2016,
 will be addressed *infra*.

4

1

And servicing is defined narrowly: "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan ... and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan." § 2605(i)(3); see also 12 C.F.R. § 1024.2.

5 <u>Id.</u>

However, both the controlling statute and regulatory definitions include "information 6 relating to the servicing of the mortgage" within the ambit of a QWR. See (e)(1)B7 (request contains sufficient details for "other information sought by the borrower"); 12 CFR § 8 1024-31 (information relating to the servicing of the loan"). While this "relationship" must have 9 some direct nexus with loan servicing, and cannot be construed as having everything and 10 anything to do with a mortgage, the general nature of these words connote something more than 11 an accounting statement. Some of plaintiff's requests, therefore, do not qualify as the subject of a 12 QWR because they seek information about the origination of the loan. Nevertheless, requests for 13 information about Real Time's acquisition of the right to service plaintiff's loan as well as how 14 the mortgage terms permitted Real Time to assume the servicing duties appear to be permitted by 15 § 2605(e)(1)(B) and 12 C.F.R. § 1024.31. Plaintiff's other statements are too vague to make a 16 determination at this stage and require further clarification through an amended complaint. 17 Examples are plaintiff's reference to requesting "pertinent documents pertaining to the Loan" and 18 his statement that he "has received no payment history that would accurately reflect his actual 19 balance." (Compl. ¶ 53, ECF No. 1 at 15-16.) Merely naming a document a QWR does not make 20 it so, as plaintiff seems to suggest in his opposition. Plaintiff does not specify what documents 21 Real Time failed to provide, or whether he requested a payment history and if so, whether he 22 received it or not. Whether plaintiff agrees that his payment history is accurate is not relevant to a 23 QWR under the RESPA. Without a copy of the letter, the court is unable to determine whether 24 the QWR includes a statement of the reasons for the belief of the borrower that the account is in 25 error. 12 U.S.C. § 2605(e)(1)(B). Plaintiff's vague and conclusory allegations fail to meet basic 26 pleading standards. See Coto Settlement v. Eisenberg, 593 F.3d 1031, 1034 (9th Cir. 2010) 27 (plaintiff must allege "enough facts" to state a claim that is "plausible on its face.") (quoting 28

1 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). Therefore, Real Time's motion to dismiss is granted in regard to the RESPA claim, but plaintiff shall have leave to amend.<sup>8</sup> 2 3 On amendment, if plaintiff can allege that he incurred actual damages, and plead details of 4 the QWR, as well as attach a copy of his letter and Real Time's response, consonant with his 5 obligations under Federal Rule of Civil Procedure 11, as well as cure the other deficiencies set 6 forth herein, then he may file an amended complaint. 7 C. FAIR TRADE COMMISSION ACT 8 Real Time's other basis for its motion to dismiss is that the Fair Trade Commission Act ("FTC") does not provide for a private right of action.<sup>9</sup> Real Time is correct. See Izenberg v. 9 10 ETS Services, LLC, 589 F.Supp.2d 1193, 1201 n. 20 (C.D. Cal. 2008); Gardner v. Nationstar 11 Mortg. LLC, 2015 WL 1405539, at \*8 (E.D. Cal. Mar. 26, 2015); Johnson v. Bank of America, 2015 WL 7776808 at \*4 (C.D. Cal. Nov. 30, 2015). Only the Federal Trade Commission may 12 13 file an action to protect against unfair trade practices. Carlson v. Coca-Cola Co., 483 F.2d 279, 14 280 (9th Cir. 1973) ("The protection against unfair trade practices afforded by the Act vests initial remedial power solely in the Federal Trade Commission."); Lemon v. Bear Stearns Residential 15 16 Mortg. Corp., 2012 WL 2395169, at \*5 (C.D. Cal. Jun. 25, 2012). Based on this authority, the 17 court is prevented from implying a private right of action as plaintiff urges. 18 In opposition, plaintiff argues that even if the court agrees with Real Time, plaintiff 19 should be able to proceed under California's version of this act, Cal. Bus. & Prof. Code § 17200. 20 In reply, Real Time objects to the "bait and switch" tactics of plaintiff, and further argues that all 21 allegations in the complaint are against Long Beach and its agent Masacarte only, with no FTC or 22 UCL claims against Real Time. 23 Plaintiff's FTC claim will be dismissed. In his amended complaint, plaintiff may attempt 24 to allege a claim under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200. 25 Plaintiff is warned, however, that if he is unable to state a federal RESPA claim, the federal 26 <sup>8</sup> Real Time's argument that plaintiff is attempting to delay and prevent foreclosure proceedings. as well as his attempt to force modification of the loan terms, is noted for the record. 27 This claim contains allegations only against Long Beach, and no allegations against Real Time. 28 (ECF No. 1 at 13-15.)

statute from which the state version was created, he will not be able to proceed with this state law claim. <u>See Hacker v. Deutsche Nat. Trust Co.</u>, 2015 WL 685595, at \*3 (C.D. Cal. Feb. 17, 2015) ("When a plaintiff's UCL claim is based on an alleged violation of law and the court determines that the defendant did not violate the 'borrowed' law, the UCL claim fails.") Furthermore, if this court retains no federal question jurisdiction and plaintiff is unable to show that the amount in controversy exceeds \$75,000; <u>see</u> discussion regarding state law claims *infra*; the court will not retain jurisdiction over any state law claims remaining.

8

## D. STATE LAW CLAIMS

Plaintiff's state law claims have not been reviewed. Plaintiff is warned, however, that to
allege state law claims without any federal claims in his amended complaint, there must be
independent grounds of subject matter jurisdiction. If plaintiff is unable to cure the defects in his
federal RESPA claim as set forth above, there will be no independent federal question jurisdiction
and the state law claims would have to be dismissed unless there is diversity jurisdiction.<sup>10</sup>

14 For diversity jurisdiction, plaintiff is advised that the amount in controversy in loan 15 modification cases is not determined by the total loan amount. Johnson v. Wells Fargo Home 16 Mortgage, 2012 WL 1229880, at \*3 (C.D. Cal. Apr. 11, 2012). The attempt to avoid foreclosure 17 does not warrant the calculation of an amount in controversy that equates to the value of the 18 house. Id. Here, plaintiff seeks an order preventing defendants from foreclosing on his house and 19 requiring defendants to modify the terms of the loan. He does not specify the amount of damages 20 sought. (ECF No. 1 at 16.) Furthermore, plaintiff has not identified any facts regarding the terms 21 of the requested modification or that it would satisfy the amount in controversy. The amount in 22 controversy is satisfied where plaintiff would win all his claims as pled. Ahmadi v. First Horizon 23 Home Loan Corp., 2011 WL 1303261, at \*3 (D. Nev. Mar. 30, 2011).

<sup>&</sup>lt;sup>10</sup> For diversity jurisdiction pursuant to 28 U.S.C. § 1332, each plaintiff must be diverse from
each defendant, and the amount in controversy must exceed \$75,000. For federal question
jurisdiction pursuant to 28 U.S.C. § 1331, the complaint must either (1) arise under a federal law
or the United States Constitution, (2) allege a "case or controversy" within the meaning of Article
III, section 2, or (3) be authorized by a jurisdiction statute. <u>Baker v. Carr</u>, 369 U.S. 186, 198, 82

<sup>28</sup> S. Ct. 691, 699-700, 7 L. Ed. 2d 663 (1962).

II.

# PLAINTIFF'S MOTION TO AMEND THE COMPLAINT

2 Plaintiff filed a motion to amend the complaint on May 19, 2016. Real Time has not filed a response. The motion is defective in failing to notice a hearing date;<sup>11</sup> however on July 11, 3 2016, plaintiff re-noticed his motion. See E.D. Local Rule 230(b). In any event, the undersigned 4 5 has completed a cursory review of the motion and the proposed amended complaint and finds that 6 it does not allege significant changes in the FTC or RESPA claims. Although the fraud and 7 misrepresentation claims have been modified to add Real Time to these claims, it is not clear that 8 plaintiff will be able to proceed on the federal claims alleged. If there is no diversity jurisdiction, 9 and there is no federal question jurisdiction because plaintiff cannot state an FTC Act or RESPA 10 claim, then the state law claims would be dismissed. Nevertheless, plaintiff is free to include all 11 proposed modifications in the amended complaint to be filed in accordance with this order.<sup>12</sup> 12 Plaintiff's motion to amend is therefore denied as moot. 13 III. DEFENDANT LONG BEACH MORTGAGE COMPANY 14 According to the court record, defendant Long Beach was served with summons on 15 February 9, 2016, but has not responded to the complaint. (ECF No. 4.) See Fed. R. Civ. P. 16 12(a) (responsive pleading due within twenty-one (21) days). Although the complaint concedes

17 that Long Beach had legal troubles, the court can make no pronouncement as to the viability of

18 this defendant until the matter is properly put before the court. Therefore, plaintiff shall file a

19 request for entry of default, followed by a motion for default judgment after the Clerk has entered

20 default.

21 <u>CONCLUSION</u>

Plaintiff is informed that the court cannot refer to a prior pleading in order to make
plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be

complete in itself without reference to any prior pleading. This is because, as a general rule, an

<sup>26 &</sup>lt;sup>11</sup> Plaintiff had previously noticed the motion on the district court's calendar; however, the hearing was vacated as improperly noticed. (ECF No. 14.)

It does not appear from the facts alleged in the proposed amended complaint that plaintiff can state a fraud or misrepresentation claim against Real Time unless plaintiff can show that Real Time was complicit in the alleged fraud and misrepresentation by Long Beach.

1 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th 2 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any 3 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim 4 and the involvement of each defendant must be sufficiently alleged. 5 IT IS ORDERED that: 6 1. Defendant Real Time's amended motion to dismiss, filed March 7, 2016, (ECF NO. 9), 7 is granted in part. 8 2. The complaint is dismissed for the reasons discussed above, with leave to file and 9 serve an amended complaint (but not including a FTC Act claim) within twenty-eight (28) days 10 from the date of service of this Order. The amended complaint must comply with the 11 requirements of the Federal Rules of Civil Procedure, and the Local Rules of Practice; the 12 amended complaint must bear the docket number assigned this case and must be labeled 13 "Amended Complaint;" failure to file an amended complaint will result in a recommendation that 14 this action be dismissed. 15 3. Within twenty-eight (28) days of being served with the First Amended Complaint, 16 defendant Real Time shall file a response. 17 4. Plaintiff's motion to amend his complaint, filed May 19, 2016 and re-noticed on July 18 11, 2016, (ECF Nos. 13, 16), is denied as moot. The August 18, 2016 hearing date is vacated 19 from the calendar. 20 5. Within twenty-eight (28) days of this order, plaintiff shall file a request for entry of 21 default with the Clerk for defendant Long Beach Mortgage Company pursuant to Fed. R. Civ. P. 22 55(a). Within twenty-eight (28) days after default has been entered, plaintiff shall file a motion 23 for default judgment in accordance with Rule 55(b)(2). Failure to file these pleadings will result 24 in a recommendation that this defendant be dismissed from the action. 25 IT IS HEREBY RECOMMENDED that: Plaintiff's Fair Trade Commission Act claim be 26 dismissed without leave to amend. 27 These findings and recommendations are submitted to the United States District Judge 28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty days 11

1	after being served with these findings and recommendations, any party may file written
2	objections with the court and serve a copy on all parties. Such a document should be captioned
3	"Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
4	shall be served and filed within ten days after service of the objections. The parties are advised
5	that failure to file objections within the specified time may waive the right to appeal the District
6	Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
7	Dated: July 14, 2016
8	<u>/s/ Gregory G. Hollows</u>
9	UNITED STATES MAGISTRATE JUDGE
10	
11	
12	GGH:076/Malifrando0223.mtns
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	12