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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON DECK,
Plaintiff,
v.
WELLS FARGO BANK, N.A., et al.,
Defendants.

No. 2:17-cv-0234-MCE-KJN PS

ORDER

Presently pending before the court is plaintiff’s motion for recusal and plaintiff’s first amended complaint. (ECF Nos. 65, 66.)

Having carefully reviewed plaintiff’s motion for recusal (ECF No. 66), the undersigned finds no proper basis to recuse himself from the action. Although the Ninth Circuit disagreed with portions of this court’s analysis and remanded for further proceedings on plaintiff’s claims under the California Homeowner Bill of Rights (“HBOR”), this court is capable of considering such remanded claims fairly and based on the applicable law, and without bias towards any particular party. As such, plaintiff’s motion for recusal is denied.

Having also carefully reviewed plaintiff’s first amended complaint (ECF No. 65), the court finds that it does not comply with the Ninth Circuit’s remand and the court’s subsequent November 28, 2018 order. (ECF Nos. 61, 63, 64.) In its memorandum decision, the Ninth


1 Circuit explicitly reversed and remanded “for Deck’s claims under HBOR only.” (ECF No. 61.)
2 Consequently, in its subsequent November 28, 2018 order, this court specifically instructed
3 plaintiff to file a first amended complaint asserting claims under the HBOR only. (ECF No. 64.)
4 Nevertheless, plaintiff’s first amended complaint asserts several additional claims, along with
5 argument about why plaintiff believes additional claims should be permitted. Contrary to
6 plaintiff’s contention, he is not permitted to enlarge the scope of the claims remanded, which
7 violates both the Ninth Circuit’s remand as well as this court’s November 28, 2018 order.

8 In light of plaintiff’s *pro se* status, the court declines to impose any sanctions at this
9 juncture, and instead provides plaintiff with another opportunity to file a compliant complaint.
10 However, plaintiff is cautioned that future failure to comply with the court’s orders and/or failure
11 to file a compliant complaint will result in the imposition of sanctions.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff’s motion for recusal (ECF No. 66) is DENIED.
- 14 2. Plaintiff’s first amended complaint (ECF No. 65) is DISMISSED, but with leave to
15 amend.
- 16 3. Within 21 days of this order, plaintiff shall file a second amended complaint, limited
17 to no more than 30 pages, that asserts only claims under the HBOR. Failure to comply
18 with this order will result in the imposition of sanctions.
- 19 4. Any response to the second amended complaint shall be due within 21 days of the
20 filing of the second amended complaint.

21 Dated: January 9, 2019

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24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE
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