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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 R. IVANNE VAZQUEZ,
7 Plaintiff,

8 v.

9 SELECT PORTFOLIO SERVICING, et al.,
10 Defendants.
11

Case No. 13-cv-03789-JST

ORDER OF DISMISSAL

Re: ECF Nos. 59, 60, 69

12 In this action by a homeowner challenging a foreclosure, Defendants California
13 Reconveyance Company (“CRC”), ECF No. 60 (“CRC Mot.”), and Select Portfolio Servicing
14 (“SPS”), ECF No. 59 (“SPS Mot.”) move to dismiss the First Amended Complaint. The Court
15 previously dismissed the complaint for failure to state a claim upon which relief can be granted.
16 ECF No. 49. The Court will grant the instant motions to dismiss without leave to amend.

17 On a motion to dismiss, courts accept the material facts alleged in the complaint, together
18 with reasonable inferences to be drawn from those facts, as true. Navarro v. Block, 250 F.3d 729,
19 732 (9th Cir. 2001). However, “the tenet that a court must accept a complaint’s allegations as true
20 is inapplicable to threadbare recitals of a cause of action’s elements, supported by mere conclusory
21 statements.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

22 In addition, to survive a motion to dismiss, a plaintiff must plead “enough facts to state a
23 claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570
24 (2007). Plausibility does not mean probability, but it requires “more than a sheer possibility that a
25 defendant has acted unlawfully.” Iqbal, 556 U.S. at 678. “A claim has facial plausibility when the
26 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
27 defendant is liable for the misconduct alleged.” Id. “[B]efore dismissing a *pro se* complaint the
28 district court must provide the litigant with notice of the deficiencies in his complaint in order to

1 ensure that the litigant uses the opportunity to amend effectively.” Ferdik v. Bonzelet, 963 F.2d
2 1258, 1261 (9th Cir. 1992). Nevertheless, “[p]ro se litigants must follow the same rules of
3 procedure that govern other litigants.” King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987)
4 (overruled on other grounds).

5 The Court previously dismissed Plaintiff’s original complaint, which did not identify
6 specific causes of action, based on the Court’s liberal reading of the complaint. The Court
7 concluded that Plaintiff failed to state a claim because: (1) Plaintiff’s allegation that the
8 foreclosing entities do not possess the promissory note did not affect the validity of the
9 foreclosure; (2) Plaintiff’s demand for access to the original promissory note under the Truth in
10 Lending Act (“TILA”), 15 U.S.C. §§ 1601–1667j, the Real Estate Settlement Procedures Act
11 (“RESPA”), 12 U.S.C. § 2605, and the Uniform Commercial Code was not recognized in the law;
12 (3) Plaintiff’s TILA claim was also time-barred; (4) Plaintiff’s request for rescission was barred by
13 the tender rule; and (5) the Uniform Commercial Code does not apply to non-judicial foreclosure.
14 See ECF No. 49 at 2–4 (citing cases). The Court warned Plaintiff that further failure to state a
15 claim could result in dismissal with prejudice.

16 Plaintiff’s First Amended Complaint, ECF No. 57, suffers from the same deficiencies as
17 the original complaint. Plaintiff makes the same allegations he made before and, although he now
18 states them in more detail, they rest on the same legal theories. These claims remain deficient for
19 the reasons expressed in the Court’s prior order.

20 Plaintiff also makes mention of the Federal Debt Collection Practices Act, the Federal Fair
21 Credit Reporting Act, fraud in the concealment, fraud in the inducement, “international” infliction
22 of emotional distress, and “illegal securitization.” If Plaintiff means to add new causes of action,
23 he cannot do so here because he has not obtained leave of court. In its prior order, the Court
24 granted Plaintiff leave to amend the original complaint “consistent with the terms of” that order,
25 ECF No. 49 at 6, but did not grant leave to add new claims. See Fed. R. Civ. P. 15(a)(2). Even
26 putting that problem aside, none of the claims is adequately pleaded, since the First Amended
27 Complaint does not contain any factual allegations concerning any of these new purported causes
28 of action.

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Finally, Plaintiff purports to petition to quiet title. Plaintiff's quiet title cause of action fails for the same reason as his wrongful foreclosure claim. Plaintiff does not adequately allege that he is the rightful owner of the property, nor has Plaintiff tendered the amount of his indebtedness. See Kelley v. Mortg. Electronic Registration, 642 F. Supp. 2d 1048, 1057 (N.D. Cal. Aug. 12, 2009) (dismissing quiet title claim because plaintiff failed to allege ownership and tender).

Because Plaintiff has failed to amend the complaint in a manner that addresses the deficiencies previously identified by the Court, and because Plaintiff has had ample notice and opportunity to do so, the Court hereby GRANTS Defendants' motions to dismiss the First Amended Complaint and DISMISSES Plaintiff's First Amended Complaint without leave to amend.

The Court notes that in Plaintiff's last filing, ECF No. 69, in addition to opposing the motions to dismiss, Plaintiff requested that the Court forward his case to the Court of Appeals. If Plaintiff wishes to appeal this order, Plaintiff must do so in accordance with the Federal Rules of Appellate Procedure. This Court cannot forward its own order to the Court of Appeals for review.

Defendants shall file a proposed form of judgment within fourteen days from the date of this order.

IT IS SO ORDERED.

Dated: May 20, 2014



JON S. TIGAR
United States District Judge