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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 CEDRIC ARMSTRONG-HARRIS,

8 Plaintiff,

9 v.

10 WELLS FARGO BANK, N.A., et al.,

11 Defendants.

Case No. 21-cv-07637-HSG

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT**

Re: Dkt. No. 33

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13 This is a pro se action filed by Plaintiff Cedric Armstrong-Harris. Defendant Wells Fargo  
14 Bank, N.A. moves to dismiss the First Amended Complaint. Dkt. No. 33 (“Mot.”). For the  
15 reasons below, the Court **GRANTS IN PART** and **DENIES IN PART** the motion.<sup>1</sup>

16 **I. BACKGROUND**

17 Plaintiff brings this lawsuit against Defendants Wells Fargo and Specialized Loan  
18 Servicing. *See* Dkt. No. 32 (“FAC”). Plaintiff’s amended complaint alleges the following:

19 Plaintiff is the fee simple owner of a residential property in Oakland, California. *Id.* at 2,  
20 13. In March 2007, a loan was taken out on the property and issued by World Savings Bank,  
21 which was later acquired by Wells Fargo. *Id.* at 2. Plaintiff entered into a loan modification  
22 agreement with Wells Fargo in January 2015, thinking it would reduce the monthly mortgage  
23 payment. *Id.* at 3. In June 2021, Specialized Loan Servicing demanded payment of the remaining  
24 loan balance under the loan’s terms. *Id.* At some point, Plaintiff attempted to negotiate another  
25 loan modification agreement to reduce his monthly mortgage payment, but the parties never  
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28 <sup>1</sup> The Court finds the matter appropriate for disposition without oral argument and the matter is deemed submitted. *See* Civil L.R. 7-1(b).

1 entered into an agreement. *Id.* at 7, 15, 16, 19. Defendants eventually initiated foreclosure  
2 proceedings on the property. *Id.* at 19, 20–21.

3 Plaintiff initially sued Wells Fargo and Specialized Loan Servicing in Alameda County  
4 Superior Court in July 2021. Dkt. No. 1, ¶ 1, Ex. A. Wells Fargo removed the case to this Court,  
5 Dkt. No. 1, and the Court granted in part and denied in part Wells Fargo’s motion to dismiss, Dkt.  
6 No. 28. Plaintiff filed an amended complaint, bringing causes of action for (1) violations of the  
7 UCL under the unlawful prong, (2) slander of title, (3) alter ego liability, (4) violations of the UCL  
8 under the fraudulent prong, (5) violation of the Home Ownership Equity Protection Act  
9 (“HOEPA”), (6) predatory lending and violations of the Truth in Lending Act (“TILA”), (7)  
10 defamation, (8) false light, (9) cancellation (10) cancellation of a voidable contract, and (11)  
11 intentional misrepresentation. FAC at 11–23. Defendant now moves to dismiss all claims and to  
12 strike the fifth cause of action. *See* Mot. at 1.

## 13 **II. LEGAL STANDARD**

14 Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain  
15 statement of the claim showing that the pleader is entitled to relief.” While a complaint need not  
16 contain detailed factual allegations, facts pleaded by a plaintiff must be “enough to raise a right to  
17 relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To  
18 survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter that,  
19 when accepted as true, states a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662,  
20 678 (2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows  
21 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
22 *Id.* While this standard is not a probability requirement, “[w]here a complaint pleads facts that are  
23 merely consistent with a defendant’s liability, it stops short of the line between possibility and  
24 plausibility of entitlement to relief.” *Id.* (internal quotation marks and citation omitted). In  
25 determining whether a plaintiff has met this plausibility standard, the Court must “accept all  
26 factual allegations in the complaint as true and construe the pleadings in the light most favorable”  
27 to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

1 A “document filed pro se is to be liberally construed and a pro se complaint, however  
2 inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by  
3 lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks and citations  
4 omitted).

### 5 **III. DISCUSSION**

#### 6 **A. Fraudulent Business Practices Under the UCL**

7 Plaintiff’s claim under the fraudulent prong of the UCL is the only claim that survived the  
8 last motion to dismiss. *See* Dkt. No. 28 at 5, 13. Defendant argues that Plaintiff has materially  
9 revised this claim, such that it now fails. *See* Mot. at 7–8. But while Plaintiff has relocated the  
10 key allegations the Court relied on to a different section of the complaint, for reasons unclear to  
11 the Court, they still remain. *See* FAC at 19 (listing alleged fraudulent business practices). Given  
12 the liberal standard for pro se pleadings, the Court will not dismiss a claim it already deemed  
13 adequately pled just because those allegations are now located elsewhere.<sup>2</sup> Defendant’s motion as  
14 to this claim is **DENIED**.

#### 15 **B. Home Ownership Equity Protection Act Claim**

16 Wells Fargo moves to strike Plaintiff’s fifth cause of action for violation of HOEPA, which  
17 was not in the initial complaint, as improperly added. *See* Mot. at 6. The Court explicitly  
18 instructed Plaintiff not to add new claims to any amended complaint without Wells Fargo’s  
19 consent or leave of Court. Dkt. No. 28 at 13. Plaintiff has neither, so the addition of the HOEPA  
20 claim is impermissible. Moreover, it appears the claim is time-barred and that Plaintiff has not  
21 pled any facts showing his loan qualified for HOEPA protection. Thus, the Court **GRANTS**  
22 Defendant’s request to strike the HOEPA claim.

#### 23 **C. Time-Barred Claims**

24 In its order on the last motion to dismiss, the Court found Plaintiff’s predatory lending and  
25 TILA violation claim, as well as the UCL claim predicated on those violations, time-barred. *See*

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27 <sup>2</sup> The paragraphs of the complaint are jumbled with nonsequential numbering, but it appears the  
28 inclusion of the allegations related to the fraudulent prong of the UCL in the defamation section  
was inadvertent—the text indicates the allegations should have appeared after a heading. *See* FAC  
at 19 (“Plaintiff incorporate[s] by reference paragraphs 1 through 56 of this complaint . . .”).

1 Dkt. No. 28 at 4–5, 8–9. In the amended complaint, Plaintiff has not offered any new allegations  
2 that would affect the analysis of the applicable statute of limitations, such as facts supporting  
3 equitable tolling, delayed discovery, or due diligence. *See id.* at 8–9; *King v. State of Cal.*, 784  
4 F.2d 910, 915 (9th Cir. 1986) (“[T]he doctrine of equitable tolling may, in the appropriate  
5 circumstances, suspend the limitations period until the borrower discovers or had reasonable  
6 opportunity to discover the fraud or nondisclosures that form the basis of the TILA action.”).  
7 Thus, the Court incorporates its prior analysis, Dkt. No. 28 at 4–5, 8–9, and **DISMISSES**  
8 Plaintiff’s predatory lending and TILA claim, as well as the UCL claim to the extent it is  
9 predicated on those alleged violations.

#### 10 **D. Remaining Claims**

11 For the remaining claims, Plaintiff has also failed to allege any new facts to address the  
12 deficiencies raised in the Court’s prior order. Plaintiff has only shuffled several paragraphs  
13 around and added politicians’ negative comments about Wells Fargo. *See, e.g.*, FAC at 9–10. But  
14 the comments do not bear directly on Plaintiff’s case, and rearranging allegations is not a fix.  
15 Plaintiff has still not identified (1) how HOLA was violated, (2) a publication supporting slander  
16 of title, (3) facts supporting alter ego liability; (4) a defamatory publication supporting defamation;  
17 (5) a false or misleading publicity and actual malice supporting false light; (6) grounds for why the  
18 deed of trust is void or voidable, (7) facts supporting cancellation of a voidable contract; or (8)  
19 facts supporting the misrepresentation claim. The Court’s prior order described the elements of  
20 each claim and explained what key elements were missing, but Plaintiff has not substantively  
21 altered his complaint. Thus, the Court incorporates its prior analysis, Dkt. No. 28 at 3–13, and  
22 **DISMISSES** Plaintiff’s remaining causes of action.

#### 23 **E. Leave to Amend**

24 All dismissed claims are without leave to amend. In its last order, the Court warned  
25 Plaintiff that failure to plead each claim with sufficient specificity, or to otherwise comply with its  
26 order, would result in dismissal with prejudice. *See* Dkt. No. 28 at 13. But Plaintiff’s amended  
27 complaint is not substantively different than the first and entirely fails to address the identified  
28 deficiencies. Further, the Court warned that Plaintiff (1) could not add claims without consent,

1 and (2) must tailor his allegations and arguments to his own case and may not rely on cut-and-  
2 pasted material that is not based on his own experience or that addresses arguments not made. *Id.*  
3 at 13 n.3. Plaintiff did both here. In addition to adding the HOEPA claim without leave, Plaintiff  
4 failed to meet his opposition deadline, then filed only a copy of the original opposition he filed in  
5 response to the first motion to dismiss. *Compare* Dkt. No. 37 *with* Dkt. No. 23. The opposition  
6 again appears to comprise nonresponsive copy-and-pasted arguments.<sup>3</sup> Between the amended  
7 complaint and the opposition, Plaintiff has not even hinted at facts that would fix the problems the  
8 Court identified last time.

9 The Court is aware of Plaintiff's pro se status and continues to construe his complaint  
10 liberally. However, given Plaintiff's failure to address any of the identified deficiencies in the  
11 complaint for a single claim, respond to Wells Fargo's arguments, or follow the Court's  
12 instructions, the Court is convinced that further attempt to amend would be futile. *Akhtar v. Mesa*,  
13 698 F.3d 1202, 1212 (9th Cir. 2012) ("A district court should not dismiss a pro se complaint  
14 without leave to amend unless it is absolutely clear that the deficiencies of the complaint could not  
15 be cured by amendment." (quotations omitted)); *Zucco Partners, LLC v. Digimarc Corp.*, 552  
16 F.3d 981, 1007 (9th Cir. 2009) ("[W]here the Plaintiff has previously been granted leave to amend  
17 and has subsequently failed to add the requisite particularity to its claims, [t]he district court's  
18 discretion to deny leave to amend is particularly broad." (quotations omitted)).

#### 19 **IV. CONCLUSION**

20 The Court **DENIES** Defendant's motion as to Plaintiff's claim for violation of the fraud  
21 prong of the UCL. The Court **GRANTS** Defendant's motion to strike the HOEPA cause of  
22 action. The Court **GRANTS** Defendant's motion to dismiss all remaining claims without leave to  
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24 <sup>3</sup> Plaintiff did not timely oppose the motion, and the Court issued an order to show cause why the  
25 case should not be dismissed for failure to prosecute for the third time in the case. *See* Dkt. Nos.  
26 16, 20, 36. Plaintiff now accuses Defense counsel of conspiring to get his case dismissed for  
27 failure to prosecute. *See* Dkt. No. 37 at 6–7; Dkt. No. 38. Primarily, Plaintiff asserts that Defense  
28 counsel has failed to send him email notifications. The Court notes that Plaintiff may create a  
[PACER account and sign up to e-file documents, which would allow him to receive and review  
filings immediately on any computer. Instructions for self-registration for pro se litigants can be  
found at https://cand.uscourts.gov/cases-e-filing/cm-ecf/setting-up-my-account/e-filing-self-  
registration-instructions-for-pro-se-litigants/.](https://cand.uscourts.gov/cases-e-filing/cm-ecf/setting-up-my-account/e-filing-self-registration-instructions-for-pro-se-litigants/)

1 amend. The Court further **SETS** a telephonic case management conference on May 2, 2023, at  
2 2:00 p.m. All counsel shall use the following dial-in information to access the call:

3 Dial-In: 888-808-6929;

4 Passcode: 6064255

5 For call clarity, parties shall **NOT** use speaker phone or earpieces for these calls, and where  
6 at all possible, parties shall use landlines. All attorneys and pro se litigants appearing for a  
7 telephonic case management conference are required to dial in at least 15 minutes before the  
8 hearing to check in with the CRD. The Court **DIRECTS** the parties to meet and confer and  
9 submit a joint case management statement, or separate statements, by April 25, 2023. The parties  
10 should be prepared to discuss how to move this case forward efficiently.

11 The Court encourages Plaintiff to seek the assistance of the free Legal Help Center  
12 operated by the Bar Association of San Francisco. The Legal Help Center sets up appointments to  
13 speak with a lawyer for basic legal help, but does not provide legal representation. Appointments  
14 can be scheduled by emailing fedpro@sfbar.org or by calling (415) 782-8982. Plaintiff may wish  
15 to consult resources available on the Court's website, at <https://cand.uscourts.gov/pro-se-litigants/>,  
16 for people who are representing themselves without a lawyer.

17 **IT IS SO ORDERED.**

18 Dated: 4/11/2023

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HAYWOOD S. GILLIAM, JR.  
United States District Judge