

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FAREED SEPEHRY-FARD,

Plaintiff(s),

v.

AURORA BANK FSB, et. al.,

Defendant(s).

CASE NO. 5:12-cv-00871 EJD

**ORDER GRANTING DEFENDANTS’
MOTIONS TO DISMISS**

[Docket Item No(s). 5, 6, 7, 28]

I. INTRODUCTION

Plaintiff Fareed Sepehry-Fard (“Plaintiff”) brings the instant action against Defendants Aurora Bank FSB, Greenpoint Mortgage Funding (erroneously sued as GPM Heloc), Bank of America, U.S. Bank National Association, Frank H. Kim and Severson & Werson (“Defendants”) for violations of 42 U.S.C. §§ 1983 and 1985 and 18 U.S.C. §§ 241 and 242, as well as “corporate and limited liability insurance fraud” under an unidentified section of Title 15 of the United States Code. Federal jurisdiction arises under 28 U.S.C. § 1331.

Presently before the court are three motions to dismiss the Complaint, each filed by a separate defendant or group of defendants. See Docket Item Nos. 5, 6, 7. Plaintiff has filed written opposition.¹ Having carefully reviewed these matters, the court finds them suitable for disposition

¹ The parties also filed requests for judicial notice. Those are not addressed here, however, because the court is able to resolve the motions to dismiss based on the Complaint itself without considering the additional documentation provided.

1 without oral argument pursuant to Civil Local Rule 7-1(b). Accordingly, the hearing scheduled for
2 August 24, 2012, will be vacated and Defendants’ motions will be granted for the reasons stated
3 below.

4 II. LEGAL STANDARD

5 Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with sufficient
6 specificity to “give the defendant fair notice of what the . . . claim is and the grounds upon which it
7 rests.” Bell Atlantic Com. v. Twombly, 550 U.S. 544, (2007) (internal quotations omitted). A
8 complaint which falls short of the Rule 8(a) standard may be dismissed if it fails to state a claim
9 upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). “Dismissal under Rule 12(b)(6) is
10 appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a
11 cognizable legal theory.” Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.
12 2008). Moreover, the factual allegations “must be enough to raise a right to relief above the
13 speculative level” such that the claim “is plausible on its face.” Twombly, 550 U.S. at 556-57.

14 When deciding whether to grant a motion to dismiss, the court generally “may not consider
15 any material beyond the pleadings.” Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d
16 1542, 1555 n. 19 (9th Cir. 1990). The court must generally accept as true all “well-pleaded factual
17 allegations.” Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1950 (2009). The court must also
18 construe the alleged facts in the light most favorable to the plaintiff. Love v. United States, 915 F.2d
19 1242, 1245 (9th Cir. 1988). However, the court may consider material submitted as part of the
20 complaint or relied upon in the complaint, and may also consider material subject to judicial notice.
21 See Lee v. City of Los Angeles, 250 F.3d 668, 688-69 (9th Cir. 2001). “[M]aterial which is properly
22 submitted as part of the complaint may be considered.” Twombly, 550 U.S. at 555. But “courts are
23 not bound to accept as true a legal conclusion couched as a factual allegation.” Id.

24 III. DISCUSSION

25 Plaintiff’s Complaint is subject to dismissal for two principal reasons: (1) Plaintiff failed to
26 meet the pleading standard required by Federal Rules of Civil Procedure 8 and 9, and (2) the
27 allegations which are contained in the Complaint do not support claims under the particular laws
28 cited by Plaintiff. Each of these reasons is discussed below.

1 **A. The Complaint Overall**

2 Having reviewed Plaintiffs brief and rather skeletal Complaint in its entirety, the court
3 concludes that Plaintiff has failed to state a claim. This is primarily due to the lack of sufficient
4 factual information to support the violations of the laws cited. Indeed, it appears Plaintiff utilized a
5 publicly-available form pleading that provides an outline of the information required in any
6 complaint, but did not expand the section entitled “Statement of Facts and Claims” such that the
7 elements of a cause of action can be discerned. In addition, the court is unable to create causes of
8 action for Plaintiff based on the attachments to the Complaint.

9 Here, the overall inadequacy in pleading results is a Complaint which, for the most part,
10 simply lists legal conclusions or factual allegations unconnected to any particular legal theory. That
11 is not enough. Although the federal rules allow for a flexible pleading policy, particularly with
12 regard to a plaintiff appearing *pro se*, a complaint must still provide fair notice of the claims and
13 must allege enough facts to state e elements of each claim plainly and succinctly. Fed. R. Civ. P.
14 8(a)(2); Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers
15 ‘labels and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’
16 Nor does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual
17 enhancements.’” Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 555, 557). “The plaintiff
18 must allege with at least some degree of particularity overt acts which defendants engaged in that
19 support the plaintiff’s claim.” Jones, 733 F.2d at 649 (internal quotations omitted). Plaintiff has
20 missed this mark, even under a liberal reading of the Complaint.

21 Moreover, any claims which sound in fraud, such as those for “corporate and limited liability
22 insurance fraud,” are subject to a heightened pleading standard. Fed. R. Civ. Proc. 9(b) (“In alleging
23 fraud or mistake, a party must state with particularity the circumstances constituting fraud or
24 mistake.”); Swartz v. KPMG LLP, 476 F.3d 756, 765 (9th Cir. 2007) (“Rule 9(b) imposes
25 heightened pleading requirements where ‘the object of the conspiracy is fraudulent.’”). The
26 allegations must be “specific enough to give defendants notice of the particular misconduct which is
27 alleged to constitute the fraud charged so that they can defend against the charge and not just deny
28 that they have done anything wrong.” Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985). To

1 that end, the allegations must contain “an account of the time, place, and specific content of the false
2 representations as well as the identities of the parties to the misrepresentations.” Swartz, 476 F.3d at
3 764. In other words, these claims must generally contain more specific facts than is necessary to
4 support other causes of action.

5 Because Plaintiff failed to allege sufficient facts or present a cognizable legal theory, the
6 Complaint is subject to dismissal with leave to amend under Federal Rule of Civil Procedure
7 12(b)(6).²

8 **B. The Particular Laws**

9 While the court's determination above itself provides adequate ground to grant Defendants’
10 motions, the court addresses the particular laws cited in order to provide guidance to Plaintiff should
11 he choose to amend the Complaint.

12 Plaintiff mentions 42 U.S.C. §§ 1983 and 1985 as a basis for claims against Defendants.
13 Looking first at § 1983, Plaintiffs allegations are deficient to support liability under that section.
14 First, “[a]ctions filed under § 1983 require state action.” Merritt v. Mackey, 932 F.2d 1317, 1323
15 (9th Cir. 1990). Considering all of the Defendants are private entities or individuals, it is not
16 apparent that the allegations in the Complaint can support a claim under § 1983. Second, “[section]
17 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal
18 rights elsewhere conferred.” Graham v. Connor, 490 U.S. 386, 393-94 (1989) (internal quotations
19 omitted). For this reason, Plaintiff was obligated to allege the violation of a separate federal right in
20 addition to identifying a defendant or defendants acting on behalf of the state. Since he did not - and
21 perhaps cannot - accomplish either task with regard to the instant Defendants, it is unlikely that a
22 claim under § 1983 will arise. And since the claim under § 1985 depends on the same set of facts as
23 the claim under § 1983 and can only exist along with a cognizable § 1983 claim, the § 1985 claim is

25 ² Although the court is aware of a parallel lawsuit involving these parties in state court, the
26 court is unable to address Defendants’ abstention argument pursuant to Colorado River
27 Conservation Dist. v. United States, 424 U.S. 800 (1976), because, at this point, it is unclear whether
28 this action is actually an *in rem* or *quasi in rem* proceeding since the laws listed in the Complaint do not
necessarily raise a claim affecting the title to real property. Moreover, Plaintiff seeks only monetary
damages as relief, not title to the property at issue in the state court action.

1 equally unsupportable. See Caldeira v. County of Kauai, 866 F.2d 1175, 1182 (9th Cir. 1989)
2 (“[T]he absence of a section 1983 deprivation of rights precludes a section 1985 conspiracy claim
3 predicated on the same allegations.”). Plaintiff must resolve these issues in any amended pleading.

4 Plaintiff also mentions 18 U.S.C. §§ 241 and 242. Claims under these sections fare no better.
5 “These criminal provisions . . . provide no basis for civil liability.” Aldabe v. Aldabe, 616 F.2d
6 1089, 1092 (9th Cir. 1980). Accordingly, any claims under §§ 241 and 242 cannot be maintained in
7 this action as a matter of law, and should be excluded from any amended complaint.


8 **IV. ORDER**

9 Based on the foregoing, Defendants’ Motions to Dismiss (Docket Item Nos. 5, 6, 7) are
10 GRANTED. Plaintiffs’ Complaint is DISMISSED WITH LEAVE TO AMEND. Any amended
11 complaint must be filed no later than September 20, 2012. Plaintiff is advised that he may not add
12 new claims or parties without first obtaining Defendants’ consent or leave of court pursuant to
13 Federal Rule of Civil Procedure 15. Plaintiff is further advised that failure to file a timely amended
14 complaint or failure to amend the complaint in a manner consistent with this Order may result in
15 dismissal of this action.

16 The hearing and Case Management Conference scheduled for August 24, 2012, are
17 VACATED. Considering the Complaint is presently dismissed, the court declines to set a case
18 schedule at this time but will address scheduling issues as necessary. Docket Item No. 28, which
19 purports to be a notice of reassignment, is TERMINATED.

20 **IT IS SO ORDERED.**

21
22 Dated: August 20, 2012


EDWARD J. DAVILA
United States District Judge

23
24
25
26
27
28