

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS HIX,
Plaintiff,
v.
JPMORGAN CHASE BANK, N.A., et al.,
Defendants.

Case No. [16-cv-01747-PSG](#)

**ORDER GRANTING MOTION TO
DISMISS**

(Re: Docket No. 10)

Now before the court in this foreclosure case is a motion to dismiss by Defendants JPMorgan Chase Bank, N.A. and U.S. Bank, N.A.¹ At the hearing on the motion, Plaintiff Thomas Hix conceded that his initial complaint does not allege that his application for a loan modification was complete, as his cause of action under Cal. Civ. Code § 2923.6 requires.² Meanwhile, Hix’s claim of fraudulent business practices in violation of California’s unfair competition law does not “state with particularity the circumstances constituting fraud”;³ his complaint alleges “false and misleading representations” in conclusory terms, and it claims that

¹ See Docket No. 10. The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. The parties further consented to the jurisdiction of the undersigned magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 72(a). See Docket Nos. 7, 13.

² See Docket No. 1-1 at ¶¶ 10-23; *Penermon v. Wells Fargo Bank, N.A.*, 47 F. Supp. 3d 982, 999 (N.D. Cal. 2014) (requiring a Section 2923.6 plaintiff to “clearly plead that the application as submitted was complete”).

³ Fed. R. Civ. P. 9(b); see *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (citing *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1102-05 (9th Cir. 2003)) (“Rule 9(b)’s heightened pleading standards apply to claims for violations of the . . . UCL.”).

1 certain business practices were “deceptive” without explaining how or why.⁴ And furthermore,
2 Hix’s operative complaint includes no allegations at all related to U.S. Bank.

3 Defendants’ motion to dismiss is GRANTED. Because it is not yet clear that further
4 amendment would be futile, leave to amend also is GRANTED.⁵ Any amended complaint shall be
5 filed within 14 days.

6 **SO ORDERED.**

7 Dated: May 31, 2016

8 _____
9 PAUL S. GREWAL
10 United States Magistrate Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 ⁴ Docket No. 1-1 at ¶¶ 26-27.

27 ⁵ See *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).