

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL DORIAN,
Plaintiff,
v.
COMMUNITY LOAN SERVICING, LLC,
Defendant.

Case No. [22-cv-04372-DMR](#)

**ORDER ON MOTION TO DISMISS
AMENDED COMPLAINT**

Re: Dkt. No. 22

Defendant Community Loan Servicing, LLC fka Bayview Loan Servicing moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff Paul Dorian’s first amended complaint (“FAC”). [Docket No. 22.] This motion is appropriate for determination without oral argument. Civ. L.R. 7-1(b). For the following reasons, the motion is granted.

I. BACKGROUND

Dorian makes the following allegations in the FAC, all of which are taken as true for purposes of the motion to dismiss.¹ Dorian is resident of San Francisco, California and is a “consumer” within the meaning of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq. In January 2020, he began receiving letters from Defendant informing him that he “owed over \$34,000 on his escrow account.” [Docket No. 19 (FAC) ¶¶ 2, 5.] He contacted Defendant and learned that the \$34,000 at issue was for property taxes that Defendant had paid on two of Dorian’s properties located in San Francisco and Tracy, California. Dorian alleges that Defendant never had “any connections to either of these properties” and therefore “should never have paid the property taxes for these properties out of” his escrow account. *Id.* at ¶¶ 6, 7. Accordingly,

¹ When reviewing a motion to dismiss for failure to state a claim, the court must “accept as true all of the factual allegations contained in the complaint.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted).

1 Dorian refused to pay Defendant the \$34,000 on the ground that it “should not have paid the
2 property taxes for these properties in the first place.” He alleges that as a result of his refusal to
3 pay, Defendant removed Dorian’s ability to make online or automatic payments on other loans he
4 owed Defendant. The only way Dorian could make payments on his loans was by calling
5 Defendant to schedule a meeting with an individual employee via an automated system, and then
6 calling back at the scheduled time to process the payment over the phone. In many instances,
7 Defendant’s employees do not join the scheduled meeting at the appointed time. *Id.* at ¶¶ 8-11.
8 As a result, Dorian “has been unable to timely make payments for some of his loans because
9 Defendant refused to accept or make it possible to pay.” *Id.* at ¶ 12.

10 In March 2021, Defendant began reporting on Dorian’s credit report that he was 120 days
11 late on payment for a loan for a third property in Riviera Beach, Florida. Defendant reported
12 Dorian as late on payments in June and July 2021 and that he owed a balance of over \$12,000 as
13 of July 2021. Dorian alleges that these reports, and the amount he allegedly owes, are inaccurate
14 because he made timely payments on his obligations on the mortgage. He further alleges that “the
15 amounts sought by Defendant were unilaterally imposed by Defendant based on its mispayment of
16 escrow taxes” on the unrelated properties in San Francisco and Tracy. *Id.* at ¶¶ 13, 14.

17 Dorian alleges that Defendant furnished inaccurate and false information to all three credit
18 reporting agencies (“CRAs”) relating to his account and payment status for at least March 2021,
19 June 2021, and July 2021, which has had “a significant negative effect” on his credit score. *Id.* at
20 ¶ 15. He “sent Defendant a letter requesting a removal of the reporting,” but “Defendant has not
21 corrected the wrong reporting on his Account at this time.” Dorian submitted a written dispute to
22 all three CRAs in July 2021 disputing the validity of Defendant’s reporting. After receiving the
23 disputes from the CRAs, Defendant responded “by verifying the inaccurate reporting as accurate.”
24 It remains on Dorian’s credit report. *Id.* at ¶¶ 16-17.

25 Dorian alleges that “Defendant failed to conduct a reasonable reinvestigation into the
26 reporting because Defendant knew that its reporting was inaccurate and would have been able to
27 confirm that its reporting was inaccurate had it consulted its account records and the disputes sent
28 by [Dorian].” He further alleges that Defendant “failed to correct the erroneous reporting in a

1 timely manner,” and instead continued to report “incorrect derogatory information” about Dorian
2 to the CRAs. *Id.* at ¶ 18.

3 As a result of Defendant’s inaccurate reporting, Dorian’s credit score decreased. He
4 alleges that he “was and/or will be denied future loans” due to the reporting. He further alleges
5 that at the time of the inaccurate reporting, he was attempting to refinance loans for seven
6 properties. He was unable to refinance several of the properties; for some, he refinanced them at a
7 higher interest rate than he would have received had Defendant not inaccurately reported his
8 accounts. Given the higher interest rates he is paying, he has suffered damages of over \$450,000.
9 *Id.* at ¶¶ 20-22.

10 Dorian filed the complaint against Defendant in San Francisco Superior Court on June 8,
11 2022. Defendant removed the action to this court on July 28, 2022. [Docket No. 1.] Dorian filed
12 the FAC on August 17, 2022, alleging the following claims: 1) violation of the FCRA, 15 U.S.C. §
13 1681s-2(b); 2) violation of the California Consumer Credit Reporting Agencies Act (“CCCRA”),
14 California Civil Code section 1785.25; 3) violation of the Rosenthal Fair Debt Collection Practices
15 Act (the “Rosenthal Act”), California Civil Code section 1788.17; 4) breach of contract; and 5)
16 violation of California’s UCL, California Business and Professions Code section 17200 et seq.,
17 based on the unlawful and fraudulent prongs.

18 Defendant now moves to dismiss.

19 **II. LEGAL STANDARD**

20 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in
21 the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).
22 When reviewing a motion to dismiss for failure to state a claim, the court must “accept as true all
23 of the factual allegations contained in the complaint,” *Erickson*, 551 U.S. at 94 (2007) (citation
24 omitted), and may dismiss a claim “only where there is no cognizable legal theory” or there is an
25 absence of “sufficient factual matter to state a facially plausible claim to relief.” *Shroyer v. New*
26 *Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556
27 U.S. 662, 677-78 (2009); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)) (quotation marks
28 omitted). A claim has facial plausibility when a plaintiff “pleads factual content that allows the

1 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
 2 *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged must demonstrate
 3 “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
 4 will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007) (citing *Papasan v. Allain*, 478
 5 U.S. 265, 286 (1986)); see *Lee v. City of L.A.*, 250 F.3d 668, 679 (9th Cir. 2001), overruled on
 6 other grounds by *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

7 As a general rule, a court may not consider “any material beyond the pleadings” when
 8 ruling on a Rule 12(b)(6) motion. *Lee*, 250 F.3d at 688 (citation and quotation marks omitted).
 9 However, “a court may take judicial notice of ‘matters of public record,’” *id.* at 689 (citing *Mack*
 10 *v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986)), and may also consider “documents
 11 whose contents are alleged in a complaint and whose authenticity no party questions, but which
 12 are not physically attached to the pleading,” without converting a motion to dismiss under Rule
 13 12(b)(6) into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.
 14 1994), *overruled on other grounds by Galbraith*, 307 F.3d at 1125-26. The court need not accept
 15 as true allegations that contradict facts which may be judicially noticed. See *Mullis v. U.S. Bankr.*
 16 *Court*, 828 F.2d 1385, 1388 (9th Cir. 1987).

17 **III. REQUEST FOR JUDICIAL NOTICE²**

18 Defendant asks the court to take judicial notice of three documents: the original complaint
 19 filed in this action; the FAC; and a mortgage recorded on October 29, 2018 as instrument no.
 20 20180383194 in Palm Beach County, Florida. [Docket No. 22-2 (Request for Judicial Notice,
 21 “RJR”) Exs. 1-3.] The request is denied as moot as to Exhibits 1 and 2, as these filings are part of
 22 the court’s docket and are already part of the record in this case. [See Docket Nos. 1 (Notice of
 23 Removal Ex. A), 19.]

24 Exhibit 3, the mortgage recorded in Florida, is judicially noticeable because the document

25 _____
 26 ² Defendant also submitted a declaration by counsel in support of the motion to dismiss. [Docket
 27 No. 22-1 (Thomas Decl. Aug. 31, 2022).] It offers no authority that the court may consider this
 28 evidence in connection with this motion. See *Lee*, 250 F.3d at 688 (“when the legal sufficiency of
 a complaint’s allegations is tested by a motion under Rule 12(b)(6), review is limited to the
 complaint.” (cleaned up)).

1 is a matter of public record. It is a true and correct copy of an official public record of the Palm
2 Beach County Office of the Clerk and Comptroller, and its authenticity is capable of accurate and
3 ready determination by resort to sources whose accuracy cannot reasonably be questioned. *See*
4 Fed. R. Evid. 201(b). Dorian objects that the “request is improper,” but does not set forth the basis
5 for his objection. *See* Opp’n 8 n.4. Accordingly, the objection is overruled.

6 **IV. DISCUSSION**

7 **A. FCRA Claim**

8 Dorian’s first claim for relief is for violation of the FCRA, 15 U.S.C. § 1681s-2(b).
9 Congress enacted the FCRA in 1970 to regulate credit reporting agencies (“CRAs”) and furnishers
10 of information to CRAs in order to ensure fair and accurate credit reporting regarding consumers.
11 *See* 15 U.S.C. § 1681. Section 1681s-2(a) of the FCRA outlines the duties of furnishers of
12 consumer information to maintain and report accurate information and notice of disputes. 15
13 U.S.C. § 1681s-2(a)(1)-(3).

14 The relevant provision of the FCRA, 15 U.S.C. § 1681s-2(b), imposes four duties on
15 furnishers once they have received notice of a dispute from a CRA: (1) conduct an investigation,
16 (2) review all relevant information received from CRA, (3) report any inaccuracies found, (4)
17 modify or delete any incorrect information. 15 U.S.C. § 1681s-2(b)(1)(A)-(E). This subsection is
18 privately enforceable but the duties within it are “triggered only after the consumer notifies the
19 CRA, and the CRA then notifies the furnisher of credit.” *Nelson v. Equifax Info. Servs., LLC*, 522
20 F. Supp. 2d 1222, 1231 (C.D. Cal. 2007) (citing *Nelson v. Chase Manhattan Mortgage Corp.*, 282
21 F.3d 1057, 1060 (9th Cir. 2002)). “[N]otice of a dispute received directly from the consumer does
22 not trigger furnishers’ duties under [§ 1681s-2(b)].” *Gorman v. Wolpoff & Abramson, LLP*, 584
23 F.3d 1147, 1154 (9th Cir. 2009). Assuming a CRA does notify the furnisher of a dispute, a
24 “plaintiff filing suit under section 1681i must make a ‘prima facie showing’” that the report in
25 dispute was inaccurate. *See Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir.
26 2010) (citing *Dennis v. BEH-1, LLC*, 520 F3d 1066, 1069 (9th Cir. 2008)). Then the plaintiff must
27 show that the defendant’s investigation procedures were not reasonable. *See Gorman*, 584 F.3d at
28 1157. The FCRA provides for civil liability for willful and negligent noncompliance. 15 U.S.C.

1 §§ 1681n, 1681o.

2 The FAC alleges that Defendant “failed to conduct a reasonable reinvestigation” of the
3 information it furnished to CRAs, resulting in inaccurate information being included in Dorian’s
4 credit report. FAC ¶¶ 18-20. Dorian alleges that as a result, his credit score decreased and he was
5 denied the opportunity to refinance seven properties at favorable rates, leading to damages of over
6 \$450,000.00, emotional distress, and out-of-pocket expenses. *Id.* at ¶¶ 22, 25. He alleges the
7 violation was both negligent and willful. *Id.* at ¶ 28.

8 Defendant moves to dismiss the FCRA claim on the grounds that Dorian’s alleged
9 damages are not “causally linked to his consumer capacity because his damages result from his
10 attempts to refinance seven properties in a commercial or business capacity.” Mot. 4.
11 Specifically, Defendant argues that the credit reports that resulted from the allegedly inaccurate
12 information Defendant furnished to the CRAs and damaged Dorian were not “consumer credit
13 reports.” Mot. 4. Therefore, it argues, Dorian has not stated a claim under the FCRA.

14 “While the FCRA expressly provides for ‘actual damages’ for a negligent or willful
15 violation, [15 U.S.C.] §§ 1681n and 1681o also expressly provide that a violator is liable ‘to that
16 consumer.’” *Boydston v. U.S. Bank*, 726 F. App’x 601 (9th Cir. 2018) (quoting *Johnson v. Wells*
17 *Fargo Home Mortg., Inc.*, 558 F. Supp. 2d 1114, 1122 (D. Nev. 2008)). In other words, a plaintiff
18 seeking damages for an FCRA violation must show that the defendant’s violation “resulted in
19 damages to [the] [p]laintiff *as a consumer*.” *Id.* (emphasis in original) (quoting *Johnson*, 558 F.
20 Supp. 2d at 1122). The FCRA defines “consumer” to mean “an individual,” 15 U.S.C. § 1681a(c),
21 and defines “consumer report” to mean

22 any written, oral, or other communication of any information by a
23 consumer reporting agency bearing on a consumer’s credit
24 worthiness, credit standing, credit capacity, character, general
25 reputation, personal characteristics, or mode of living which is used
or expected to be used or collected in whole or in part for the purpose
of serving as a factor in establishing the consumer’s eligibility for--

26 (A) credit or insurance to be used primarily for personal, family, or
household purposes;

27 (B) employment purposes; or

28 (C) any other purpose authorized under section 1681b of this title.

1 15 U.S.C.A. § 1681a(d)(1). Courts that have considered the question have concluded that the
2 FCRA does not apply where a consumer report is used to obtain credit for business purposes, as
3 opposed to personal purposes. *See Grigoryan v. Experian Info. Sols., Inc.*, 84 F. Supp. 3d 1044,
4 1081-83 (C.D. Cal. 2014) (collecting cases; granting summary judgment on FCRA claim where
5 plaintiff’s “claimed damages flow[ed] from [the plaintiff’s] inability to supply credit to [his] real
6 estate investment business”); *Mone v. Dranow*, 945 F.2d 306, 308 (9th Cir. 1991) (holding that
7 “[r]eports used for ‘business, commercial, or professional purposes’ [were] not within the purview
8 of” an earlier version of the FCRA).

9 According to Defendant, Dorian could not have been “living on seven properties
10 simultaneously,” and therefore the properties must have been “secured for investment purposes”
11 and are used “for a business or commercial purpose.” Mot. 5. Since his “damages result from his
12 attempts to refinance seven properties in a commercial or business capacity . . . [t]he credit reports
13 relied upon to deny [him] his alleged refinancing opportunities at favorable rates were not
14 consumer reports under the FCRA”; therefore, his damages are not covered by the FCRA. *Id.* at 4.

15 In response, Dorian notes the allegations in the FAC that he is a “consumer” and that the
16 credit reports at issue are “consumer reports” under 15 U.S.C. § 1681a(d), *see* FAC ¶¶ 2, 4, and
17 argues that he “has adequately pled that the harm he is suffering is from consumer reports that
18 qualify under FCRA.” Opp’n 7-8. Essentially, Dorian argues that these allegations must be
19 accepted as true for purposes of this motion, and that whether he will ultimately be able to prove
20 that the reports fall under the FCRA presents a question of fact that is not appropriate for
21 resolution on a motion to dismiss. However, the FAC’s allegations that the credit reports at issue
22 are “consumer reports” under the meaning of the FCRA are entirely conclusory. The FAC does
23 not allege any facts relating to the purpose for which the credit reports were used; specifically,
24 there are no allegations that the reports that allegedly damaged Dorian were to be used to establish
25 his eligibility for “credit or insurance to be used primarily for personal, family, or household
26 purposes,” “employment purposes,” or any other purpose authorized under the FCRA. *See* 15
27 U.S.C. § 1681a(d)(1). Nor does the FAC allege any facts supporting a plausible inference that the
28 reports are “consumer reports” within the meaning of the statute. Accordingly, the FAC fails to

1 plead that the credit reports at issue qualify as consumer reports under the FCRA and that Dorian
2 suffered harm as a result of inaccurate information in consumer reports. As Dorian may be able to
3 cure this deficiency through amendment, the court dismisses the FCRA claim with leave to
4 amend.

5 **B. CCCRA Claim**

6 Dorian's second claim for relief is violation of California Civil Code section 1785.25(a),
7 which prohibits a person from "furnish[ing] information on a specific transaction or experience to
8 any consumer credit reporting agency if the person knows or should know the information is
9 incomplete or inaccurate."

10 As with the FCRA, damages are available to "[a]ny *consumer* who suffers damages as a
11 result of a violation" of the CCCRA. *See* Cal. Civ. Code § 1785.31(a) (emphasis added).
12 "[B]ecause the CCRAA is substantially based on the Federal Fair Credit Reporting Act, judicial
13 interpretation of the federal provisions is persuasive authority and entitled to substantial weight
14 when interpreting the California provisions." *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d
15 876, 889 (9th Cir. 2010) (citation and quotation marks omitted).

16 Defendant moves to dismiss this claim on the same ground as the FCRA claim; namely,
17 that Dorian's credit reports were not "consumer reports" under the CCCRA. Mot. 5-6. *See*
18 *Grigoryan*, 84 F. Supp. 3d at 1081 ("the FCRA and CCRAA do not apply where a consumer
19 report is used for business purposes."). For the reasons discussed above, the FAC does not
20 sufficiently allege facts that would support a plausible inference that the reports at issue were
21 "consumer reports" under the FCRA, and by extension, the CCCRA. This claim is dismissed with
22 leave to amend.

23 **C. Rosenthal Act Claim**

24 Dorian's third claim is for violation of the Rosenthal Act, California Civil Code section
25 1788.17. The Rosenthal Act is a state version of the federal Fair Debt Collection Practices Act
26 ("FDCPA"), *see Riggs v. Prober & Raphael*, 681 F.3d 1097, 1100 (9th Cir. 2012), and requires
27 "every debt collector collecting or attempting to collect a consumer debt" to comply with the
28 substantive provisions of the FDCPA. Cal. Civ. Code § 1788.17. Under the Rosenthal Act, the

1 term “consumer debt” means “money, property, or their equivalent, due or owing or alleged to be
2 due or owing from a natural person by reason of a consumer credit transaction,” and “includes a
3 mortgage debt.” Cal. Civ. Code § 1788.2(f). A “‘consumer credit transaction’ means a
4 transaction between a natural person and another person in which property, services, or money is
5 acquired on credit by that natural person from the other person primarily for personal, family, or
6 household purposes.” Cal. Civ. Code § 1788.2(e).

7 Dorian alleges Defendant violated the Rosenthal Act by “[f]alsely representing the
8 character, amount, or legal status of” his debt and by “[c]ollecting an amount from [him] that is
9 not expressly authorized by the agreement creating the debt . . .” FAC ¶ 29. Defendant argues
10 that this claim must be dismissed because “the loan at issue for the Riviera Beach Property was
11 not a consumer credit transaction under Section 1788.17” and was instead connected to an
12 investment property for business and commercial purposes. Since the loan was not initiated “for
13 personal, family, or household purposes,” Defendant argues, its actions do not fall under the
14 Rosenthal Act. Mot. 6-7.

15 In response, Dorian argues that the FAC alleges that Defendant attempted to collect a debt
16 from him that “qualifies as a ‘consumer debt,’ as defined by” the Rosenthal Act, and notes that the
17 statute provides that mortgage debt is “consumer debt.” Opp’n 9 (citing FAC ¶ 3). As with
18 Dorian’s FCRA and CCCRA claims, the allegation that the debt in question is a “consumer debt”
19 withing the meaning of the Rosenthal Act is entirely conclusory, and the FAC fails to allege any
20 facts about the nature of the debt or facts supporting a plausible inference that the mortgage on the
21 Riviera Beach Property was incurred primarily for personal, family, or household purposes. *See,*
22 *e.g., Gilliam , Tr. of Lou Easter Ross Revocable Tr. v. Levine , Tr. of Joel Sherman Revocable Tr.,*
23 *955 F.3d 1117, 1119, 1123 (9th Cir. 2020) (holding that plaintiff, a trustee, had sufficiently*
24 *alleged that loan to make repairs to a personal residence occupied by her niece, the trust*
25 *beneficiary, was “obtained for a consumer purpose” under the Rosenthal Act because she alleged*
26 *she “obtained this loan for a personal, household, or familial purpose—to enable her niece, the*
27 *trust beneficiary, to continue to live in the trust property.”); see also Norton v. LVNV Funding,*
28 *LLC, 396 F. Supp. 3d 901, 911 (N.D. Cal. 2019) (holding that “[a]lthough [the plaintiff’s]*

1 allegations do not nail down the existence of a consumer debt, they create a plausible inference
2 that the debt was incurred for personal, family, or household expenses, and therefore are sufficient
3 to withstand a Rule 12 challenge” where plaintiff lacked “concrete information about the debt” at
4 issue). Accordingly, Dorian’s Rosenthal Act claim is dismissed with leave to amend.

5 **D. Breach of Contract**

6 Claim four is for breach of contract. Dorian alleges that he and Defendant “entered into a
7 contract by which Defendant would provide a mortgage for the Property [in Riviera Beach] in
8 exchange for ongoing payments, including interests and fees.” FAC ¶¶ 13, 45. Dorian alleges that
9 he “made payments to Defendant according to the mortgage and thus complied with the contract,”
10 and that Defendant breached the contract as follows: “Defendant failed to perform under the
11 contract by charging [Dorian] for payments made by Defendant on taxes unrelated to the Property
12 and not authorized by the mortgage, and thereafter seeking to collect said money from Plaintiff,
13 including by reporting inaccurate credit information about Plaintiff.” *Id.* at ¶ 47. He further
14 alleges that he has been harmed by the breach “because he has had negative credit information
15 reported about him and Defendant has sought to collect amounts that are not owed under the
16 mortgage.” *Id.* at ¶ 48.

17 Defendant moves to dismiss this claim on two grounds: 1) that the FAC does not
18 adequately allege the terms or “legal effect” of the contract; and 2) the FAC alleges that the
19 contract at issue is the mortgage for the Riviera Beach property and that Defendant breached the
20 agreement in part by reporting inaccurate credit information about Dorian, but the mortgage “is
21 silent on responsibilities related to the furnishing of credit to CRAs,” citing RJN Ex. 3. Mot. 7-8.

22 The elements of a claim for breach of contract under California law are: “(1) the existence
23 of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach,
24 and (4) the resulting damages to the plaintiff.” *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811,
25 821 (2011). “To state a cause of action for breach of contract, it is absolutely essential to plead the
26 terms of the contract either in haec verba or according to legal effect.” *Langan v. United Servs.*
27 *Auto. Ass’n*, 69 F. Supp. 3d 965, 979 (N.D. Cal. 2014) (quoting *Twaite v. Allstate Ins. Co.*, 216
28 Cal. App. 3d 239, 252 (1989)); accord *McKell v. Washington Mut., Inc.*, 142 Cal. App. 4th 1457,

1 1489 (2006) (“A written contract may be pleaded either by its terms—set out verbatim in the
2 complaint or a copy of the contract attached to the complaint and incorporated therein by
3 reference—or by its legal effect.” (citation omitted)). “A plaintiff fails to sufficiently plead the
4 terms of the contract if he does not allege in the complaint the terms of the contract or attach a
5 copy of the contract to the complaint.” *Langan*, 69 F. Supp. 3d at 979 (citing *Twaite*, 216 Cal.
6 App. 3d at 252). Although “it is unnecessary for a plaintiff to allege the terms of the alleged
7 contract with precision, the Court must be able generally to discern at least what material
8 obligation of the contract the defendant allegedly breached.” *Id.* (citing *James River Ins. Co. v.*
9 *DCMI, Inc.*, No. C 11-06345 WHA, 2012 WL 2873763, at *3 (N.D. Cal. July 12, 2012)
10 (discussing sufficiency of breach of contract claim under the notice pleading requirements of
11 FRCP 8 rather than under California pleading requirements).

12 Here, the FAC does not meet this standard as it does not plead the material terms of the
13 specific contract at issue or allege which particular obligations Defendant breached. *See Langan*,
14 69 F. Supp. 3d at 979-80 (dismissing breach of contract claim “because there is no way for the
15 Court know even generally what the terms of the contract or contracts were,” among other defects;
16 “[t]o plead a claim for breach of contract, Plaintiff must at least allege the material terms of a
17 specific contract, state that he performed his own obligations under that contract or was excused
18 from performing them, and state which obligations a defendant allegedly breached.”). Moreover,
19 Defendant contends that the contract at issue is the mortgage attached as Exhibit 3 to the RJN and
20 that the mortgage is silent as to Defendant’s credit reporting allegations. Mot. 8. Even though
21 Dorian does not dispute that Exhibit 3 is the contract at issue, he does not identify any particular
22 provisions in the mortgage that Defendant allegedly breached. *See Opp’n* 10-11. Accordingly,
23 Dorian’s breach of contract claim is dismissed with leave to amend.³

24 E. UCL Claim

25 Dorian’s fifth claim for relief is violation of the UCL based on its unlawful and fraudulent
26

27 ³ Because the court dismisses Dorian’s Rosenthal Act and breach of contract claims under Rule
28 12(b)(6), it does not reach Defendant’s challenge to those claims based on Federal Rule of Civil
Procedure 9(b). *See* Mot. 8-10.

1 prongs. Defendant moves to dismiss the claim in its entirety.

2 Under Section 17200, unfair competition is defined as “any unlawful, unfair or fraudulent
3 business act or practice” and “unfair, deceptive, untrue or misleading advertising.” *See* Cal. Bus.
4 & Prof. Code § 17200. A business practice is “unlawful” under section 17200 if it violates an
5 underlying state or federal statute or common law. *See Cal-Tech Commc’ns, Inc. v. Los Angeles*
6 *Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). Dorian’s UCL claim challenging unlawful
7 business practices is based on the alleged violations of the Rosenthal Act and the CCRAA. *See*
8 FAC ¶ 52. Defendant argues that this claim is derivative of the second and third claims for relief
9 and must be dismissed because Dorian has not stated claims under those statutes. Mot. 10.
10 Dorian does not dispute that his UCL claim based on the unlawful prong rises and falls with the
11 underlying statutory claims. *See* Opp’n 13 n.6. As discussed above, the court concludes that the
12 FAC does not state a claim under either the Rosenthal Act or the CCRAA. Accordingly, the UCL
13 claim based on the unlawful prong is dismissed with leave to amend.

14 The UCL claim based on fraudulent business acts or practices rests on the allegations that
15 Dorian “agreed to a mortgage with Defendant under the basic assumption that Defendant would
16 only charge for amounts agreed to under the mortgage and not arbitrarily pay and then charge
17 [Dorian] for unrelated taxes.” FAC ¶ 56. Dorian alleges that “[t]he mortgage explicitly set forth
18 the amounts that would be charged under the mortgage,” and that his “reliance upon Defendant’s
19 deceptive statements in the mortgage is reasonable due to the unequal bargaining powers of
20 Defendant and [Dorian,” and that “it is likely that Defendant’s fraudulent business practice would
21 deceive other members of the public.” *Id.*

22 “A plaintiff may bring a claim under the fraudulent prong of the UCL if the defendant’s
23 conduct is ‘likely to deceive.’” *Langan*, 69 F. Supp. 3d at 984 (quoting *Newsom v. Countrywide*
24 *Home Loans, Inc.*, 714 F. Supp. 2d 1000, 1012 (N.D. Cal. 2010) (citations omitted)). “To state a
25 claim for fraud under the UCL, a plaintiff must allege the existence of (1) a duty to disclose, and
26 (2) reliance,” and must satisfy the heightened pleading requirements of Rule 9(b). *Id.* (citations
27 omitted). The FAC fails to satisfy this standard as it does not allege a duty to disclose. “Absent a
28 duty to disclose, the failure to do so does not support a claim under the fraudulent prong of the

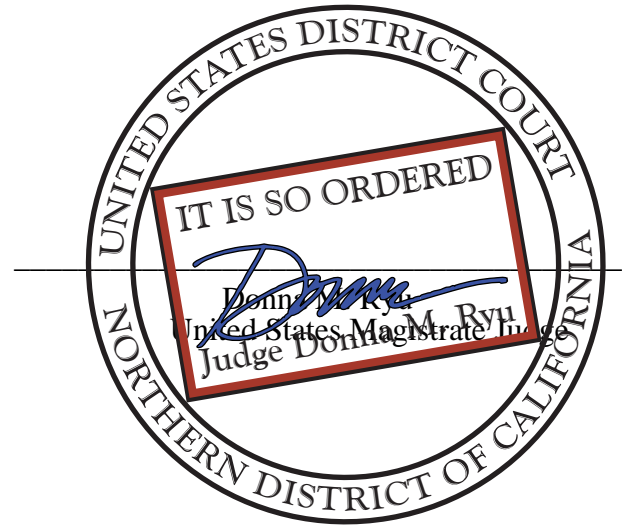
UCL.” *Newsom*, 714 F. Supp. 2d at 1012. Additionally, the FAC does not allege the specifics of the alleged “deceptive statements in the mortgage” as required by Rule 9(b). Accordingly, this claim is dismissed with leave to amend.

V. CONCLUSION

For the foregoing reasons, Defendant’s motion to dismiss is granted. Dorian shall file a second amended complaint in accordance with this order within 14 days of the date of the order and shall **plead his best case**.

IT IS SO ORDERED.

Dated: October 13, 2022



United States District Court
Northern District of California

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