

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Terrance Marsh, et al. v. Freedom Mortgage Corporation, et al.

Marsh · No. 1:23-cv-01451-JLT-EPG · Decided January 9, 2026

SUMMARY

The United States District Court for the Eastern District of California issued findings and recommendations addressing Freedom Mortgage Corporation’s motion to dismiss and screening claims against newly added defendant Nestor Solutions LLC. The court recommends granting Freedom’s motion, dismissing the claims against Nestor, and dismissing the action without prejudice, primarily because the action is duplicative of another pending case involving the same parties and underlying mortgage-related allegations. The document also discusses the plaintiffs’ untimely opposition and the applicable dismissal and screening standards.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	January 9, 2026
DOCKET	1:23-cv-01451-JLT-EPG
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a United States magistrate judge on a motion to dismiss and mandatory screening of claims against a newly added defendant in an in forma pauperis action.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes inferences in the nonmoving party's favor, but need not accept conclusory allegations, unwarranted deductions, or unreasonable inferences. A complaint must contain sufficient factual matter to state a plausible claim. Pro se pleadings are construed liberally, but the court may not supply essential elements not pleaded. For dismissal based on failure to oppose or comply with court orders, the court weighs the public interest in expeditious resolution, docket management, prejudice, the policy favoring decisions on the merits, and the availability of less drastic sanctions. Claims brought by an in forma pauperis plaintiff are screened under 28 U.S.C. § 1915(e)(2)(B)(ii).

PRECEDENTIAL VALUE	Unknown; findings and recommendations from a federal district court magistrate judge, subject to district judge review.
PARTIES	Terrance Marsh, Gesele Marsh v. Freedom Mortgage Corporation, Nestor Solutions LLC

TOPICS

[motions to dismiss](#)
[civil procedure](#)
[credit reporting](#)
[consumer protection](#)
[foreclosure](#)

PRACTICE AREAS

[Civil procedure](#)
[Consumer credit](#)
[Mortgage and foreclosure law](#)
[Fair Credit Reporting Act](#)

QUESTIONS PRESENTED

1. Whether the action against Freedom should be dismissed as duplicative of plaintiffs' pending related action involving the same parties, transactions, and claims.
2. Whether dismissal was warranted because plaintiffs failed to timely oppose the motion to dismiss and failed to comply with the court's extended deadline and order.
3. Whether the claims against Nestor Solutions LLC stated a cognizable claim under Federal Rule of Civil Procedure 8(a)(2) and survived screening under 28 U.S.C. § 1915(e)(2)(B)(ii).
4. Whether the action should be dismissed without prejudice rather than with prejudice.

HOLDINGS

1. A district court may dismiss duplicative claims when a plaintiff maintains two actions in the same court involving the same subject matter, parties, and defendant, and the court reasonably determines that the actions substantially overlap.
2. A court may treat a failure to timely oppose a motion, particularly after an extension and warning, as non-opposition and may dismiss an action after weighing the required dismissal factors.
3. Claims against a newly added defendant must be dismissed at screening when the complaint does not identify what the defendant did, explain why the conduct violated a legal obligation, or provide a short and plain statement showing entitlement to relief.

KEY QUOTATIONS

“Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.” (at 688)

“It is well established that a district court has broad discretion to control its own docket, and that includes the power to dismiss duplicative claims.” (at 1091)

“Before dismissing the action, the district court is required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the

defendants; (4) the public policy favoring disposition of cases of their merits; and (5) the availability of less drastic sanctions.” (at 53)

FACTUAL BACKGROUND

Plaintiffs alleged that Freedom and Nestor improperly administered a mortgage on their property, filed or relied on a notice of default, and reported inaccurate credit information that damaged plaintiffs' credit and interfered with refinancing. Plaintiffs had also filed a related action in the same district involving the same parties, property, loan-modification allegations, and substantially similar FCRA and California Homeowner Bill of Rights claims. In this action, plaintiffs filed untimely oppositions to Freedom's motion to dismiss and alleged only generalized conduct by Nestor without identifying specific acts or legal obligations violated.

PROCEDURAL HISTORY

Plaintiffs filed this action in October 2023 concerning alleged mortgage administration and inaccurate credit reporting. After screening, plaintiffs amended twice; the second amended complaint asserted claims against Freedom Mortgage Corporation and added Nestor Solutions LLC. Freedom moved to dismiss, plaintiffs failed to timely oppose despite an extension and warning, and the magistrate judge recommended granting the motion, dismissing the claims against Nestor for failure to state a claim, and dismissing the action without prejudice. The recommendation was subject to objections within thirty days and had not yet been finally adopted by the district judge in the opinion text.

DISPOSITION

other

CASES CITED

- Godecke v. Kinetic Concepts, Inc., 937 F.3d 1201, 1208 (9th Cir. 2019)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 557, 570 (2007)
- Barker v. Riverside County Office of Education, 584 F.3d 821, 824 (9th Cir. 2009)
- Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001), opinion amended on denial of rehearing, 275 F.3d 1187
- Hebbe v. Pliler, 627 F.3d 338, 341-42 (9th Cir. 2010)
- Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992), as amended (Oct. 9, 1992)
- Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
- Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)
- Littleton v. Pacific Gas & Electric Co., No. 2:12-CV-02236-TLN-AC, 2013 WL 3804769, at *1 (E.D. Cal. July 18, 2013)
- Adams v. California Department of Health Services, 487 F.3d 684, 688 (9th Cir. 2007)
- Taylor v. Sturgell, 553 U.S. 880 (2008)
- M.M. v. Lafayette School District, 681 F.3d 1082, 1091 (9th Cir. 2012)

- Porter v. Mabus, 457 Fed. Appx. 619, 620 (9th Cir. 2011)
- Sheen v. Wells Fargo Bank, N.A., 12 Cal. 5th 905, 915-16, 922 (2022)
- Pasadena Live, LLC v. City of Pasadena, 114 Cal. App. 4th 1089, 1094 (Cal. Ct. App. 2004)
- McKnight v. Torres, 563 F.3d 890, 893 (9th Cir. 2009)
- Roybal v. Equifax, 405 F. Supp. 2d 1177, 1181-82 (E.D. Cal. 2005)
- Sears v. Rocket Mortgage, LLC, No. 2:25-cv-0409 TLN AC PS, 2025 U.S. Dist. LEXIS 120806, at *14-15 (E.D. Cal. June 24, 2025)
- Lance Camper Manufacturing Corp. v. Republic Indemnity Co., 44 Cal. App. 4th 194, 203 (Cal. Ct. App. 1996)
- Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002)
- Yourish v. California Amplifier, 191 F.3d 983, 990-91 (9th Cir. 1999)
- Hill v. Escobar, No. 2:21-CV-02118-DAD-JDP (PC), 2024 WL 170132, at *2 (E.D. Cal. Jan. 16, 2024), report and recommendation adopted, 2024 WL 1858217 (E.D. Cal. Apr. 26, 2024)
- Kaye v. Superior Court of California, No. SA CV 18-01520 JLS (AFM), 2018 WL 4372675, at *1 (C.D. Cal. Sept. 11, 2018)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

Marsh

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

8

EASTERN DISTRICT OF CALIFORNIA

9 10 11 TERRANCE MARSH, et al., Case No. 1:23-cv-01451-JLT-EPG 12 Plaintiffs, FINDINGS
AND RECOMMENDATIONS,

RECOMMENDING THAT (1) FREEDOM

13 v. MORTGAGE CORPORATION'S MOTION

TO DISMISS BE GRANTED; (2) THE

14 FREEDOM MORTGAGE CORPORATION, CLAIMS AGAINST DEFENDANT

et al., NESTOR SOLUTIONS LLC BE

15 DISMISSED; AND (3) THIS ACTION BE

Defendants. DISMISSED WITHOUT PREJUDICE 16 (ECF Nos. 83, 85) 17

OBJECTIONS, IF ANY, DUE WITHIN

18 THIRTY (30) DAYS

19 ORDER TO ADD NESTOR SOLUTIONS

LLC AS A DEFENDANT ON THE

20 DOCKET

21 22

I. INTRODUCTION

23 Plaintiffs Terrance Marsh and Gesele Marsh proceed pro se and in forma pauperis (IFP) 24 in
this civil action. (ECF Nos. 1, 7, 9, 83). Plaintiffs commenced this action on October 10, 2023 25
by filing a complaint against Defendant Freedom Mortgage Corporation (Freedom). (ECF No. 1).
26 On October 3, 2025, Plaintiffs filed a second amended complaint against Freedom and
Defendant 27 28 1 Nestor Solutions LLC (Nestor).¹ (ECF No. 83). Plaintiffs' second amended
complaint alleges that 2 Freedom and Nestor violated Federal and state laws related to the
administration of their 3 mortgage on their property. (ECF No. 83). 4 Now before the Court is
Freedom's motion to dismiss Plaintiffs' second amended 5 complaint.² (ECF No. 85). Freedom
argues that Plaintiff's complaint is duplicative of another lawsuit in this District and fails to state
cognizable claims against it. 6 As further explained below, Plaintiffs have filed untimely
oppositions to the motion to 7 dismiss. (ECF Nos. 95, 96). 8 Freedom argues that the untimely
oppositions should not be considered, but even if the 9 Court were to consider Plaintiffs'
arguments, they fail to address its argument that their lawsuit is 10 duplicative of another case in
this District. (ECF No. 97). 11 Additionally, as Plaintiffs' second amended complaint for the first
time asserts claims 12 against Nestor, those claims are before this Court for screening. 13 For the
reasons given below, the Court will recommend that (1) Freedom's motion to 14 dismiss be
granted; (2) the claims against Nestor be dismissed; and (3) this action be dismissed in 15 its
entirety without prejudice.

16 II. BACKGROUND

17 A. Plaintiffs' Original Complaint 18 Plaintiffs filed this case against Freedom on October 10,
2023. (ECF No. 1). Plaintiffs' 19 original complaint included only the following factual
allegations: Defendants reported false information to all major credit bureaus on both plaintiffs 20
record, causing credit scores to plummet and denial of credit from other agencies, 21 including the
sale or refinance of the home with defendant. defendant and their affiliates made numerous
inquiries on plaintiffs credit. Defendants falsely reported 22 late payments on report, bringing
score down. plaintiffs complained to credit bureaus and supplied all rec[ei]pts for the defendants
claim to dates of accounts 23 not paid by plaintiff. Defendants has not fixed problem and credit
score damage had already been done and plaintiffs credit continues to be harshly affected and 24
plaintiffs cannot get a refinance due to false credit reporting. 25 (ECF No. 1, at p. 4). 26 27 1 As
Nestor Solutions LLC is not currently listed on the docket, the Court will direct the Clerk of Court
to add this Defendant. 28 2 The assigned District Judge referred this motion to the undersigned on
November 4, 2025. (ECF No. 86). 1 The Court screened the initial complaint on November 27,
2023, concluding that 2 Plaintiffs' complaint failed to state any cognizable claims, and granted
leave to amend. (ECF No. 3 8). 4 B. Plaintiffs' First Amended Complaint 5 Plaintiffs filed a first
amended complaint against Freedom on December 22, 2023. (ECF No. 9). The Court screened the

first amended complaint and found that it sufficiently stated a 6 claim against Freedom for violation of Section 1681s-2(b) of the Fair Credit Reporting Act 7 (FCRA) to proceed past screening. (ECF No. 10, p. 5) (“Plaintiffs have sufficiently alleged that a 8 consumer reporting agency notified Defendant of the disputed information. Third, Plaintiffs 9 allege that, despite being notified of disputes regarding credit information, Defendant failed to 10 take the remedial measures outlined in the statute, e.g., it “failed to rectify the reported 11 inaccuracies.”). 12 On January 26, 2024, the Court directed Plaintiffs to complete necessary forms for service 13 on Freedom. (ECF No. 11). 14 After Plaintiffs repeatedly failed to provide sufficient information to facilitate service on 15 Freedom, on July 22, 2024, the Court issued findings and recommendations that this case be 16 dismissed without prejudice because of Plaintiffs’ failure to comply with court orders and failure 17 to provide an address for the United States Marshals Service (USMS) to serve defendant. (ECF

18 No. 21). On August 19, 2024, Plaintiffs filed objections to the findings and recommendations, 19 which included an additional address to serve Freedom. (ECF No. 23). On August 21, 2024, the 20 Court vacated its findings and recommendations for dismissal and gave Plaintiffs an additional 21 opportunity to return service documents for USMS service. (ECF No. 24). 22 Subsequently, Plaintiffs’ first amended complaint was served on Freedom, and Freedom 23 filed a waiver of service on September 11, 2024. (ECF No. 28). On December 10, 2024, Freedom filed a motion to dismiss Plaintiffs’ complaint. (ECF 24 No. 34). However, as Freedom’s motion to dismiss addressed the allegations in Plaintiffs’ initial 25 complaint, rather than the operative first amended complaint, the Court issued findings and 26 recommendations that Freedom’s motion to dismiss be denied. (ECF No. 47). The District Judge 27 adopted the Court’s findings and recommendations on February 26, 2025, denying Defendant’s 28 1 motion to dismiss because it failed to address Plaintiffs’ operative complaint. (ECF No. 48). 2 C. Plaintiffs File Another Case on Same Allegations 3 In the meantime, as explained in Freedom’s notice of related case, on March 28, 2024, 4 Plaintiffs filed another case in the Superior Court for the State of California County of Kern, titled 5 Terrance Marsh and Gesele Marsh vs. Freedom Mortgage, Case No. BCV24101027. (ECF No. 39). That case was later removed to Federal court and now proceeds in this District in the case of 6 Marsh, et al. v. Freedom Mortgage Corporation, United States District Court for the Eastern 7 District of California, Case No. 1:24-CV-01304-JLT-CDB (Related Case) on Plaintiffs’ first 8 amended complaint, filed on December 9, 2024 (Related Case, ECF No. 13). 9 Freedom’s notice of related case describes that Related Case as follows: 10 The parties in the Related Action and this instant action (“Instant Action”) 11 (collectively, the “Actions”) are identical. The Plaintiffs in both Actions are Terrance Marsh and Gesele Marsh (“Plaintiffs”) and the Defendant in both Actions 12 is Freedom Mortgage Corporation (“Freedom”). Plaintiffs represent themselves in both Actions and Counsel for Freedom is the same in both Actions. As alleged in 13 the Related Action, Plaintiffs reside at 10140 Mendiburu Road California City, CA 14 93505 (the “Property”). Related Action Amended Complaint (“Compl.”). at 1-2. Plaintiffs allege they entered into an

agreement with Freedom in September of 15 2021 for a full modification of their VA loan (“Loan Agreement”). Compl. at 1-2. Allegedly, the Loan Agreement required Plaintiffs to make “higher monthly 16 payments for a period of 90 days, after, which, the original interest rate before the pandemic would stay the same on Plaintiffs VA backed loan, and a full 17 modification would be sent.” Id at 2. Plaintiffs allege they made payments on their 18 loan for over two years and that Freedom did not fulfill its promise to give credits for payments and did not send a modification agreement. Id at 3. 19 Plaintiffs allege that in 2023 Freedom sent Plaintiffs a partial modification plan 20 “after two years of broken agreement, and a continuous payment from Plaintiff without any qualification of rescindment”. Id at 3. Plaintiffs claim they were 21 prevented from using equity in their Property during that time to pay accounts due to false and inaccurate reporting to credit bureaus by Freedom. Id at 8. Plaintiffs 22 allege that Freedom placed Plaintiffs’ home in foreclosure/default because of their inaccurate reporting. Id. Based on the foregoing, Plaintiffs’ Amended Complaint in 23 the Related Action asserts a claim for promissory estoppel and requests 24 preliminary and permanent injunctive relief from foreclosure and equitable disgorgement. Compl. at 1. Plaintiffs seek actual, special or exemplary and 25 punitive damages. Id. at 1, 10. 26 Plaintiffs are before this Court again, concerning claims that pertain to the same Property and based on the same set of facts. See generally Instant Action and 27 Related Action. Accordingly, this Instant action and the Related Action are related cases because each action involves the same parties, same transactions and events, 28 1 same questions of fact and/or law, and would therefore entail a substantial duplication of labor if the Actions were heard by different judges and/or 2 magistrates. 3 (ECF No. 39, at pp. 2-3). 4 In the Related Case, Freedom filed a motion to dismiss Plaintiffs’ first amended complaint 5 on January 8, 2025, which remains pending. (Related Case, ECF No. 17).3 6 D. Plaintiffs Second Amended Complaint 7 On August 6, 2025, in this case, the Court approved the parties’ stipulation for Plaintiffs 8 to file a second amended complaint, which was ultimately filed on October 3, 2025. (ECF Nos. 77, 83). In addition to asserting the one claim that the Court previously allowed to proceed, for 9 violation of the FCRA against Freedom, the second amended complaint also includes additional 10 claims for negligence, Violations of Business and Profession Code § 17200, Unjust Enrichment, 11 Breach of the Implied Covenant Good Faith and Fair Dealing, and Violation of HBOR 2923.7 12 2923.6 2924.11 2923.55 2924.9. (ECF No. 83, p. 1). It also adds an additional defendant: Nestor. 13 As with the previous complaints, Plaintiffs’ claims in the second amended complaint stem 14 from Plaintiffs’ allegation that they own a property, and in connection with the mortgage on the 15 property administered by Defendants, Defendants improperly filed a notice of default and 16 reported inaccurate credit information. (See id. at 2-4). 17

III. FREEDOM’S MOTION TO DISMISS

18 A. Freedom’s Motion to Dismiss Plaintiffs’ Second Amended Complaint 19 Freedom moved to dismiss Plaintiffs’ second amended complaint in this case on October 20 31, 2025. (ECF No. 85). Freedom first argues that Plaintiffs’ second amended complaint should 21 be dismissed as

duplicative Plaintiff's pending claims in *Marsh, et al. v. Freedom Mortgage 22 Corporation*, 1:24-cv-1304-JLT-CDB, where a motion to dismiss is already pending. (ECF No. 23 85, pp. 10-12; see ECF Nos. 13, 17 of Case No. 1:24-cv-1304-JLT-CDB). Freedom argues that 24 the claims in this case are "based on the same allegations as in the Companion Case," with the 25 operative first amended complaint in that case being filed on December 9, 2024, i.e., before the 26 October 3, 2025 filing of the second amended complaint in the instant case. (ECF No. 85, pp. 8, 27 3 The parties in this case and the Related Case made multiple attempts to participate in a settlement 28 conference, which were unsuccessful. (ECF Nos. 34, 35). 1 11). 2 Alternatively, Freedom argues that the claims in Plaintiffs' Second Amended Complaint 3 should be dismissed on the merits: (1) the negligence claim should be dismissed as barred by the 4 economic loss doctrine and because it is preempted by the FCRA, (2) the claim for breach of the 5 covenant of good faith and fair dealing should be dismissed because Plaintiffs fail to state the necessary elements of the claim and it is preempted by the FCRA; (3) the claim for violation of 6 California's Business and Professions Code § 17200 should be dismissed because Plaintiffs fail to 7 state the necessary elements of the claim and fail to allege compensable damages; (4) the unjust 8 enrichment claim should be dismissed because it is not an independent cause of action, and if the 9 Court construes a quasi-contract claim from Plaintiffs' allegations, such a claim is barred because 10 the parties have an express contract; (5) the FCRA and FDCPA claims should be dismissed 11 because they are not directed at Freedom, but rather a non-party listed in the second amended 12 complaint as "Nations Direct," but even if the allegations were brought against Freedom, 13 Plaintiffs fail to state the necessary elements of the claim; and (6) the California Homeowner Bill 14 of Rights (HBOR) claims should be dismissed because Plaintiffs fail to state the necessary 15 elements of the claims. (Id. at pp. 10-23). 16 B. Plaintiffs Fail to Timely Oppose Motion to Dismiss 17 Plaintiffs failed to timely oppose Freedom's motion to dismiss under Local Rule 230(c), 18 which requires a party to file any opposition within fourteen days. 19 On November 17, 2025, the Court issued a minute order noting Plaintiffs' failure to 20 oppose the motion and gave them a single sua sponte extension of time to November 28, 2025, to 21 file an opposition, or statement of non-opposition, warning that their failure to timely respond 22 "may result in the dismissal of this case." (ECF No. 87). 23 On December 7, 2025, Plaintiffs filed a "Notice of Corrected Filing," stating that their second amended complaint incorrectly listed the Court (i.e., the Kern County Superior Court), 24 instead of the Eastern District of California, and requesting leave to file a corrected version of the 25 second amended complaint on the docket. (ECF No. 92) (capitalization omitted). The Court 26 denied this request the next day, noting that the second amended complaint was properly filed in 27 this Court, despite listing the incorrect court, and concluding that it was not necessary to file a 28 1 second amended complaint. (ECF No. 94). Additionally, the Court noted that the second amended 2 complaint filed on October 3, 2025, remained the operative complaint and Freedom's unopposed 3 motion to dismiss remained pending. (Id.). 4 C. Plaintiffs' Untimely Opposition 5 On December 28, 2025, one month after the

final deadline the Court gave Plaintiffs to oppose Defendant's motion to dismiss, Plaintiffs filed their opposition briefs. (ECF Nos. 95, 96). 6 Plaintiffs argue that they have stated valid claims. 7 Notably, Plaintiffs' untimely opposition does not address Defendant's argument that 8 Plaintiffs' case is duplicative of Marsh, et al. v. Freedom Mortgage Corporation, 1:24-cv-1304- 9 JLT-CDB. 10 D. Freedom's Reply 11 On January 6, 2026, Defendant Freedom filed its reply. (ECF No. 97). Defendant argues 12 that the Court should not consider Plaintiffs' untimely oppositions, which, in any event, fail to 13 dispute its argument that this case is duplicative of Marsh, et al. v. Freedom Mortgage 14 Corporation, 1:24-cv-1304-JLT-CDB. (Id. at 2-4). Lastly, Defendant argues that dismissal is 15 warranted on the merits. (Id. at 5-7).

16 IV. LEGAL STANDARDS

17 A. Motions to Dismiss 18 Motions to dismiss under Fed. R. Civ. P. 12(b)(6) may be based on "the lack of a 19 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal 20 theory." *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019) (citation 21 omitted). To survive such a motion, "a complaint must contain sufficient factual matter, accepted 22 as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 23 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible when a plaintiff pleads facts that permit the court to reasonably infer the defendant's liability for 24 the alleged misconduct. *Id.* A complaint does not suffice if it offers only "labels and conclusions," 25 a "formulaic recitation of the elements," or "naked assertion[s] devoid of further factual 26 enhancement." *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555, 557). 27 When ruling on a motion to dismiss, the court must accept all well-pleaded factual 28 1 allegations as true and construe all inferences in the light most favorable to the non-moving 2 party. *Barker v. Riverside Cnty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (citations 3 omitted). The court need not, however, "accept as true allegations that are merely conclusory, 4 unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 5 266 F.3d 979, 988, opinion amended on denial of reh'g, 275 F.3d 1187 (9th Cir. 2001). Furthermore, although pro se pleadings are construed liberally, *Hebbe v. Pliler*, 627 F.3d 338, 6 341-42 (9th Cir. 2010), the court "may not supply essential elements of the claim that were not 7 initially pled." *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992), as amended (Oct. 9, 1992). 8 B. Failure to File a Timely Opposition to the Motion to Dismiss 9 A failure to timely oppose a motion may be construed as a non-opposition to the motion. 10 Specifically, Local Rule 230(c) provides as follows: 11 Opposition, if any, to the granting of the motion shall be in writing and shall be 12 filed and served no later than fourteen (14) days after the motion was filed. A responding party who has no opposition to the granting of the motion shall serve 13 and file a statement to that effect, specifically designating the motion in question. No party will be entitled to be heard in opposition to a motion at oral arguments if 14 opposition to the motion has not been timely filed by that party. See L.R. 135. A 15 failure to file a timely opposition may also be construed by the Court as a nonopposition to the motion. 16 Local Rule 230(c) (emphasis added). 17 Noting that

“[f]ailure to follow a district court’s local rules is a proper ground for dismissal,” the Ninth Circuit in *Ghazali v. Moran* upheld a district court’s dismissal of a case “pursuant to a Nevada district court local rule because [the plaintiff] failed to file an opposition to the motion [by the defendants] to compel/motion to dismiss.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). In so doing, the Ninth Circuit noted that, while a motion for summary judgment “cannot be granted simply as a sanction for a local rule violation, without an appropriate exercise of discretion,” the relevant caselaw behind this rule “address[ed] only summary judgment motions, not motions to dismiss.” *Id.* at 54. However, the Ninth Circuit concluded that, [b]efore dismissing the action, the district court is required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases of their merits; and (5) the availability of less drastic sanctions.

1 *Id.* at 53 (citation and quotation marks omitted); see also *Sidorov ex rel. Natalya v. Transamerica*
2 *Life Ins. Co.*, No. 2:17-CV-00002-KJM-DB, 2017 WL 2911676, at *2 (E.D. Cal. July 7, 3 2017)
3 (“Although a court may not grant a motion for summary judgment simply because there is 4 no
5 opposition, the Ninth Circuit has repeatedly affirmed district courts that have dismissed a 5
6 complaint on that basis.”) (citations omitted). Additionally, the failure to obey court orders is
7 another ground for imposing the sanction 6 of dismissal and warrants consideration of the same
8 factors. See *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir.1987) (listing the
9 same above factors for consideration before 8 dismissing a case for failure to comply with a court
10 order). 9 Additionally, Local Rule 110 provides as follows: “Failure of counsel or of a party to 10
11 comply with these Rules or with any order of the Court may be grounds for imposition by the 11
12 Court of any and all sanctions authorized by statute or Rule or within the inherent power of the 12
13 Court.” Local Rule 110; see also Local Rule 183 (noting that “[a]ll obligations placed on 13
14 ‘counsel’ by these Rules apply to individuals appearing in propria persona. Failure to comply 14
15 therewith may be ground for dismissal, judgment by default, or any other sanction appropriate 15
16 under these Rules.”) 16 Courts have relied on both Local Rule 230(c) and Local Rule 110 to
17 dismiss claims when 17 a plaintiff fails to timely respond to a motion to dismiss and court order
18 about such failure to 18 respond. See, e.g., *Littleton v. Pac. Gas & Elec. Co.*, No. 2:12-CV-02236-
19 TLN-AC, 2013 WL 19 3804769, at *1 (E.D. Cal. July 18, 2013) (relying on *Ghazali*, Local Rule
20 230(c), and Local Rule 20 110 to dismiss claims with prejudice after the plaintiff failed to respond
21 to the defendants’ 21 motions to dismiss). 22 C. Screening Requirement 23 Claims brought by
24 plaintiffs proceeding in forma pauperis are also subject to screening under 28 U.S.C. § 1915. (ECF
25 No. 7). “Notwithstanding any filing fee, or any portion thereof, 24 that may have been paid, the
26 court shall dismiss the case at any time if the court determines that 25 the action or appeal fails to
27 state a claim upon which relief may be granted.” 28 U.S.C. § 26 1915(e)(2)(B)(ii). 27 A complaint
28 is required to contain “a short and plain statement of the claim showing that 28 1 the pleader is
entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 2 required, but

“[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 4 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 868 (9th Cir. 2009) (citation and internal quotation marks omitted). Additionally, a plaintiff’s legal conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678. Pleadings of pro se plaintiffs “must be held to less stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). 12

V. ANALYSIS

13 A. Freedom’s Motion to Dismiss 14 With these standards in mind, and in light of Plaintiffs’ failure to timely oppose the 15 motion to dismiss as ordered, the Court recommends granting Defendant Freedom’s motion to 16 dismiss. 17 As Freedom’s motion first argues, Plaintiffs are currently litigating similar claims against 18 it, based on the same underlying allegations, in a Related Case in this district, Case No. 1:24-cv- 19 1304-JLT-CDB. Defendant’s motion explains: 20 The new allegations and claims asserted in the SAC are based on the same allegations as in the Companion Case, against the same parties, and pending at the 21 same time. In the Companion Case, Plaintiffs base their allegations on the trial loan modification Freedom allegedly offered Plaintiffs and which they accepted on 22 September 17, 2021. Companion Case, DN 13, 2:8-13. Plaintiffs further allege, 23 just as in the present SAC, that they began making payments in accordance with the permanently modified loan on November 1, 2021, continuing with the required 24 payments through May 1, 2023. Companion Case, DN 13, 2:14-18. Even more telling, Plaintiffs allege incredibly similar claims in both cases, including FCRA 25 and HBOR claims. See Companion Case, DN 13. 26 (ECF No. 85, p. 11). 27 Notably, Plaintiffs filed the operative complaint in the Related Case on December 9, 2024 28 (Related Case, ECF No. 13), almost ten months before Plaintiffs filed their second amended 1 complaint in this case on October 3, 2025. (ECF No. 83). Defendant’s motion to dismiss 2 Plaintiffs’ claims in the Related Case is currently pending. 3 “Plaintiffs generally have no right to maintain two separate actions involving the same 4 subject matter at the same time in the same court and against the same defendant.” *Adams v. Cal. 5 Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (citation and quotation marks omitted) (overruled in part on other grounds by, *Taylor v. Sturgell*, 553 U.S. 880 (2008)); see also *M.M. v. 6 Lafayette School Dist.*, 681 F.3d 1082, 1091 (9th Cir. 2012) (“It is well established that a district 7 court has broad discretion to control its own docket, and that includes the power to dismiss 8 duplicative claims.”); *Porter v. Mabus*, 457 Fed. Appx. 619, 620 (9th Cir. 2011) (unpublished) 9 (“The district court did not abuse its discretion by dismissing Porter’s claims that were 10 duplicative of his claims in his other pending actions.”) (citing *Adams*, 487 F.3d at 688). 11

Plaintiffs failed to timely file an opposition to Freedom’s motion to dismiss. (ECF Nos. 12 87, 95, 96). Moreover, Plaintiffs’ untimely oppositions failed to respond to Defendant’s argument 13 that this action is duplicative of the Related Case. Based on the Court’s review of the Related 14 Case, the Court agrees that the claims in this case are based on the same underlying conduct in the 15 Related Case and are duplicative of the claims in this case. 16 Defendant’s motion to dismiss otherwise provides a colorable legal basis to dismiss each 17 of Plaintiffs’ claims against it for failure to state a claim. Specifically, Defendant’s motion argues 18 as follows: 19 • Plaintiffs’ negligence claim is barred by the economic loss doctrine. Under California law, Plaintiffs may not recover economic losses under alternative tort 20 theories when the parties’ relationship is governed by contract. . Sheen v. Wells Fargo Bank, N.A., 12 Cal. 5th 905, 915-916; 922 (Cal. 2022). . . . Here, Plaintiffs’ 21 negligence claim, sounding in tort law, is clearly barred by the economic loss 22 doctrine as in Sheen. Plaintiffs admit they entered into a contract with Freedom that provided the terms governing their mortgage. 23 • As the California Court of Appeal has emphasized, “[t]he implied covenant of 24 good faith and fair dealing is limited to assuring compliance with the express terms 25 of the contract, and cannot be extended to create obligations not contemplated by the contract.” Pasadena Live, LLC v. City of Pasadena, 114 Cal. App. 4th 1089, 26 1094 (Cal. Ct. App. 2004). Federal courts applying this point of California law have consistently applied this same rule. As the Ninth Circuit Court of Appeals 27 explained: “Assuming arguendo that the implied duty of good faith and fair dealing applies here, it is limited to assuring compliance with the express terms of 28 1 the contract, and cannot be extended to create obligations not contemplated by the contract.” McKnight v. Torres, 563 F.3d 890, 893 (9th Cir. 2009). As alleged, 2 Plaintiffs have not cited any provisions in the contract between Freedom and the 3 Plaintiffs setting forth the obligations Freedom allegedly breached. 4 • The FCRA contains an “absolute immunity provision” which bars and preempts state law claims against “furnishers of information” for allegedly providing 5 inaccurate information to consumer credit reporting agencies. See Roybal v. Equifax, 405 F. Supp. 2d 1177, 1181-82 (E.D. Cal. 2005) (The “FCRA precludes 6 all state statutory or common law causes of action that would impose any 7 ‘requirement or prohibition’ on the furnishers of credit.[] Because Plaintiffs’ State Claims are based on alleged injury arising purely from the reporting of credit 8 information by a furnisher of credit, they are completely preempted.”). . . . Like in Desser, Plaintiffs’ negligence claim involves alleged actions Freedom took in 9 furnishing allegedly inaccurate credit information to the CRAs, the precise conduct governed by the FCRA. Therefore, any potential causes of action related to this 10 alleged conduct are solely limited to claims and remedies provided by the FCRA. 11 • Plaintiffs’ SAC merely contains a conclusory declaration that Freedom 12 “committed acts of unfair competition” without providing any specific factual allegations. There are simply no facts to even attempt to determine the root of 13 Plaintiffs’ allegations, as they do not allege any specific unlawful, unfair, or fraudulent acts taken by Freedom in violation of the statute. 14 15 • Because there is no independent cause of action for unjust enrichment, Plaintiffs’ claim must be dismissed.

Sears v. Rocket Mortg., LLC, No. 2:25-cv-0409 TLN AC 16 PS, 2025 U.S. Dist. LEXIS 120806, at *14-15 (E.D. Cal. June 24, 2025) (dismissing claim because California does not recognize an independent cause of 17 action). For this reason alone, the claim should be dismissed. Even if the Court 18 reads the claim generously as a “quasi-contract” claim, it still fails. California law is clear that “an action based on an implied-in-fact or quasi-contract cannot lie 19 where there exists between the parties a valid express contract covering the same subject matter.” *Lance Camper Manufacturing Corp. v. Republic Indemnity Co.*, 20 44 Cal. App. 4th 194, 203 (Cal. Ct. App. 1996). 21 • Plaintiffs have only alleged Freedom’s reporting of them as 120 days late was 22 inaccurate. DN 83, 8:13-20. They have not alleged a single other element of a FCRA claim, including that they sent a dispute to the CRAs, that the CRAs 23 notified Freedom of the dispute, or that Freedom failed to investigate the dispute. . . . Plaintiffs fail to allege a single element of an FDCPA claim. 24 25 • [N]othing in the SAC indicates Freedom’s alleged violation resulted in anything that “affected the borrower’s loan obligations, disrupted the borrower’s loan 26 modification process, or otherwise harmed the borrower.” Therefore, Plaintiffs did not allege a material violation of section 2923.55, as required by the statute. . . . 27 Similarly, in this case, Plaintiffs do not allege anything beyond the mere statement that “Defendants did not provide the Plaintiffs with Single Point of Contact.” DN 28 1 83, 9: 25-26. Clearly, this does not establish “the alleged violation affected a plaintiff’s loan obligations or the modification process.” . . . Similar to the analysis 2 of Plaintiffs’ Section 2923.7 claim, the SAC does not contain any allegations that 3 Freedom’s conduct “affected the borrower’s loan obligations, disrupted the borrower’s loan-modification process, or otherwise harmed the borrower,” as 4 required to sufficiently plead a material violation of 2923.6. 5 (ECF No. 85, pp. 12-22). Plaintiffs failed to timely oppose Defendants’ arguments or follow the Court’s order 6 regarding the filing of an opposition brief. Thus, the Court also considers whether dismissal is 7 warranted for a failure to comply with a local rule, which likewise apply to dismissals for failure 8 to comply with a court order. 9 “The public’s interest in expeditious resolution of litigation always favors dismissal.” 10 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (quoting *Yourish v. California 11 Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly, this first factor weighs in favor of 12 dismissal. 13 As to the Court’s need to manage its docket, “[t]he trial judge is in the best position to 14 determine whether the delay in a particular case interferes with docket management and the 15 public interest.” *Id.* Here, Plaintiffs had two opportunities to timely respond to the motion to 16 dismiss: (1) the fourteen-day period provided under Local Rule 230(c); and (2) the extended 17 period of time that the Court sua sponte provided to Plaintiffs. However, Plaintiffs failed, without 18 explanation, to timely file their oppositions. Plaintiff’s failure to follow court orders and respond 19 to dispositive arguments is interfering with the Court’s ability to manage the docket. See *Hill v. 20 Escobar*, No. 2:21-CV-02118-DAD-JDP (PC), 2024 WL 170132, at *2 (E.D. Cal. Jan. 16, 2024), 21 report and recommendation adopted, 2024 WL 1858217 (E.D. Cal. Apr. 26, 2024) 22 (recommending dismissal of case where a plaintiff, after multiple opportunities, failed to provide

23 an address for defendants). Therefore, the second factor weighs in favor of dismissal. Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in 24 and of itself to warrant dismissal.” Pagtalunan, 291 F.3d at 642 (citing Yourish, 191 F.3d at 991). 25 However, “delay inherently increases the risk that witnesses’ memories will fade and evidence 26 will become stale,” id. at 643, and it is Plaintiffs’ failure to timely respond to the motion to 27 dismiss and comply with court orders that has delayed this case. 28 1 Once again, even considering Plaintiffs’ untimely opposition, they have still failed to 2 oppose Defendant’s argument that the case is subject to dismissal because it is duplicative of a 3 pending case. Given that Freedom’s claims will still proceed in another case, subject to the 4 motion to dismiss in that case, there is little risk of prejudice to Plaintiffs in dismissal of this case. 5 As for the availability of lesser sanctions, given that Plaintiffs have failed to timely respond to the motion to dismiss, despite an extension to do so and being warned of possible 6 dismissal, there is little available to the Court that would constitute a satisfactory lesser sanction 7 while protecting the Court from further unnecessary expenditure of its scarce resources. 8 Moreover, given the pendency of similar claims in a related proceeding that are currently subject 9 to a motion to dismiss, the Court is recommending dismissal without prejudice. *Kaye v. Superior 10 Ct. of California*, No. SA CV 18-01520 JLS (AFM), 2018 WL 4372675, at *1 (C.D. Cal. Sept. 11 11, 2018) (noting that “dismissal without prejudice is the most efficient way to address the 12 problem of a duplicative case”). It has thus not recommended the harshest possible sanction 13 available. 14 Finally, while public policy favors disposition on the merits, the Court is recommending 15 dismissal of these claims without prejudice, so that Plaintiffs may continue to litigate their claims 16 in the Related Case. Accordingly, this factor is neutral. 17 In short, the balance of the factors weighs in favor of granting Freedom’s motion to 18 dismiss. 19 B. Nestor 20 The Court also recommends dismissing Plaintiffs’ claims against Nestor without 21 prejudice. 22 As the second amended complaint included Nestor for the first time, and those claims 23 have not yet been screened by this Court and allowed to proceed, Nestor has not been served with the second amended complaint or responded to that complaint. 24 The Court has reviewed Plaintiffs’ claims against Nestor pursuant to its authority under 28 25 U.S.C. § 1915(e)(2)(B)(ii) and finds that they do not assert cognizable claims against it. 26 The following are the only allegations against Nestor in Plaintiffs’ second amended 27 complaint: 28 1 Defendants Nestor Solutions LLC an entity formed in the State of Florida filing date June 8, 2022. 2 3 With Defendants Nestor Solutions working alongside Defendants without confirming or questioning documentation, they are just as culpable. 4 Alternatively, if the note and deed of trust was validly and properly assigned to the 5 Defendants, Nestor Solutions (Defendants) did not act in good faith and did not deal fairly with Plaintiffs in connection with the filing of the Notice of Default. 6 (ECF No. 83, pp. 2, 4, 7). 7 The second amended complaint also includes citations to documents that supposedly 8 concern Nestor, but no documents are attached to the complaint. (ECF No. 83, at p. 3) (“The 9 Defendants’ Notice of Default claimed payments due from May 1, 2022 (See exhibit E- Notice of 10 Default filed by

Nestors Solutions-in violations of state and federal regulations).”); and p. 4 11 (“(Exhibit I-Email to Nestor Solutions, Barbara Johnson).”). 12 These allegations are not sufficient to state any cognizable claim against Nestor. They do 13 not identify what Nestor is alleged to have done and why those actions or inactions violate 14 Nestor’s relevant legal obligations. They do not include any statement of claim showing that 15 Plaintiffs are entitled to relief. Fed. R. Civ. P. 8(a)(2). 16 Additionally, to the extent the second amended complaint alleges that Nestor is “just as 17 culpable” as Freedom, Freedom’s arguments for dismissal, which remain to be litigated in the 18 Related Case, likewise apply to Nestor. 19 The Court also does not recommend giving Plaintiffs leave to file a third amended 20 complaint in this case to amend their claims against Nestor. This case has been pending since October 10, 2023 and Plaintiffs have already amended their complaint twice. Notably, Plaintiffs 21 did not identify the new claims against Nestor in the stipulation to amend their complaint, and 22 they have not been given leave to add such claims to this case. The Court has twice screened 23 Plaintiffs’ complaints, and provided legal standards related to Plaintiffs’ claims. 24 Accordingly, pursuant to the Court’s screening authority, the Court will also recommend 25 dismissing all claims against Nestor without prejudice. 26

VI. CONCLUSION, ORDER, AND RECOMMENDATIONS

27 For the reasons given above, the Court concludes that dismissal of this entire action, 28 1 || without prejudice, is appropriate. 2 Accordingly, IT IS ORDERED that the Clerk of Court shall add Nestor Solutions LLC as 3 || a defendant on the docket. 4 Further, the Court RECOMMENDS that: 5 1. Defendant Freedom Mortgage Corporation’s motion to dismiss be granted. (ECF 6 No. 85).

7 2. The claims against Defendant Nestor Solutions LLC be dismissed for failure to g state a claim. 9 3. This entire action be dismissed without prejudice.

4. The Clerk of Court be directed to close this case.

These findings and recommendations will be submitted to the United States District Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636 (b)(1). Within thirty 2 (30) days after being served with a copy of these findings and recommendations, any party may 13 file written objections with the Court and serve a copy on all parties. Any objections shall be limited to no more than fifteen (15) pages, including exhibits. Such a document should be 15 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the 16 objections shall be served and filed within fourteen (14) days after service of the objections. The 17 parties are advised that failure to file objections within the specified time may result in the waiver 18 || of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.* 19 || *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 20 > IT IS SO ORDERED. Dated: _ January 9, 2026 [spe hey ☐☐

3 UNITED STATES MAGISTRATE JUDGE

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