APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Appeal No. 16-17615-AA

D.C. No. 1:16-cv-00494-WKW-GMB
(Hon. Gray M. Borden and Hon. W. Keith Watkins)

James Bryson Graham
Plaintiff- Appellant

versus

Wells Fargo Bank, N.A. et al
JOHN G. STUMPF,
Chairman & CEO WELLS FARGOB,
Defendants-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

_ON PETITION FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARTIN, JORDAN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ Beverly B. Martin
UNITED STATES CIRCUIT JUDGE

Submitted December 29, 2017

APPENDIX B

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17615
Non-Argument Calendar

D.C. Docket No. 1:16-cv-00494-WKW-GMB

JAMES BRYSON GRAHAM,

Plaintiff-Appellant,

Versus

WELLS FARGO BANK, N.A.,
JOHN G. STUMPF
Chairman & CEO WFB,

Defendants-Appellees,

Appeal from the United States District Court
For the Middle District of Alabama

(October 23, 2017)

Before MARTIN, JORDAN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

James Bryson Graham, proceeding pro se appeals the dismissal of his Complaint brought under the truth in lending act capital TILA for failure to state a claim upon which relief can be granted. Graham contends that a district court erred in dismissing his complaint because he raised a plausible claim under capital TILA. After careful review, we affirm.

I.

In the late 1990s Graham executed a number of promissory notes in favor of South Trust Bank, Wells Fargo's predecessor in interest. In 2000, after Graham defaulted on one of those notes, South Trust Bank used funds from a money market account that Graham had also had with South trust to offset that debt. Graham has since filed a number of actions alleging fraud, conversion, due process violations, and that Wells Fargo was required to surrender written original loan documents. All of these actions were dismissed.

In May 2016, Graham sent Wells Fargo a letter seeking to rescind his original promissory notes. He also requested the return of his "paid-in-full original, unaltered and verified debt instruments" within 20 days. In June 2016, Graham filed suit in the United States District Court for the Middle District of Alabama seeking return of his original loan

documents and damages. He based his claims on the TILA, Generally Accepted Accounting Principles (GAAP) and Supreme Court precedent. Graham's case was referred to a magistrate judge, who recommended it to be dismissed with prejudice for failure to state a claim. The magistrate judge found both at the TILA did not require Wells Fargo to return Graham's original note, and that Graham's claim was time-barred. The district court dismissed Graham's claim, adopted the recommendation of the magistrate judge in full.

II.

We review de novo dismissal of actions for failure to state a claim upon which can be granted, accepting the factual allegations in the complaint as true. *Am. Dental Ass'n v. Cigna Corp.*, 605 F. 3d 1283, 1288 (11th Cir. 2010). In addition, we construe pro se complaints liberally. *Alba v. Montford,* 517 F.3d 1249, 1252 (11th Cir. 2008).

The TILA requires creditors to provide consumers with "clear and accurate disclosure of terms deal with things like finance charges, annual percentage rate of interest, and the borrower's rights". *Beach v. Ocwen Fed. Bank,* 523 U.S. 410, 412, 118 S. Ct. 1408, 1410 (1998); see also 15 U.S.C. §§1631, 1632, 1635, 1638. If a creditor does not make the required disclosures, a borrower may sue for damages or rescission of the loan. See *Beach* 523 U.S. at 412, 118 S. Ct. at 1410. The TILA contains two separate limitations periods for filing an action. For claims seeking damages, action must be brought within one

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year the purported TILA violation. 15 U.S.C. §1640(e). For claim seeking rescission of the loan, actions must be brought within three years of the date of closing. Id § 1635(f); *Beach,* 523 U.S. at 411 - 12 118 S. Ct. at 1409.

The District Court properly dismissed Grams complaint because his actions was untimely while

Graham is correct that *Jesinoski v. Countrywide Home Loans, Inc.,* 574 U.S.___, 135 S. Ct. 790 (2015), recognized a right of rescission under the TILA, it also recognized that that right must be exercised "within three years after transaction is consummated." Id at 792. The loan instruments challenged in this case were executed in the late 1990s. Wells Fargo's predecessor in interest South Trust bank satisfied Graham's indebtedness with funds from his money market account in 2000. But Graham did not send a letter seeking rescission until 2016. As the transactions that are the subject of this suit happened over 15 years ago, both the one-year limitation period for damages actions and a three-year limitation period for rescission actions have passed. 15 U.S.C. §§1635(f), 1640(e). Graham does not argue that there is any basis for total tele-statue limitations, but instead argues that no statue limitations should apply to his action. He relies on a discussion of Alabama quiet title actions. But Graham asserts a claim under the TILA, not an Alabama quiet title action. Thus, Graham's complaint is time-barred.

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Liberally construed Graham's appeal may also be read to raise claims based on GAAP and a Due Process Clauses of the U.S. Constitution. To the extent that these claims are raised in the district court, the district court did not err in dismissing them for failure to state a claim upon which relief can be granted. GAAP principles have no legal force standing alone. *Cf. Ziemba v. Cascade Int'l, Inc.,* 256 F.3d 1194, 1208 (11th Cir. 2001). And private parties, including the defendants in this case, cannot be sued for violation of the Due Process Clause See *Jackson* *v. Metro.Edison Co.,* 419 U.S. 345, 349, 95 S. Ct. 449, 453 (1974). To the extent Graham raises these claims for the first time on appeal, they are waived. See *Access Now, Inc. v. Sw. Airlines Co.,* 385F.3d 1324, 1331 (11th Cir. 2004).

We affirm the district court's dismissal of Graham's action.

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Appeal No. 16-17615-AA

D.C. No. 1:16-cv-00494-WKW-GMB
(Hon. Gray M. Borden and Hon. W. Keith Watkins)

James Bryson Graham
Plaintiff- Appellant

versus

Wells Fargo Bank, N.A. et al
JOHN G. STUMPF,
Chairman & CEO WELLS FARGOB,
Defendants-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this court.

Entered: October 23, 2017
For the court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch

NOTE: *Received as enclosure in letter Dated January 09, 2018 (See next page.)*

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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January 09, 2018

Debra P. Hackett
U.S. District Court POBOX711
MONTGOMERY, AL 36101-0711

Appeal Number: 16-17615-AA
Case Style: James Graham v. Wells Fargo Bank, N.A., et al District Court Docket No: 1:16-cv-00494-WKW-GMB

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and prose parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,
DAVID J. SMITH, Clerk of Court
Reply to: Lois Tunstall
Phone#: (404) 335-6191
Enclosure(s) MDT-1 Letter Issuing Mandate

APPENDIX D

Case 1:16-cv-00494-WKW-GMB Doc. 27 Filed 11/28/16 Page 1 of 1

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA SOUTHERN DIVISION

JAMES BRYSON GRAHAM	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE
	)	NO. 1:16-
Wells Fargo Bank, N.A.	)	cv-494-
and John G. Stumpf	)	WKW-
	)	GMB
Defendants,	)	

FINAL JUDGMENT

In accordance with prior proceedings, opinions, and orders of the court, it is ORDER, JUDGMENT, and DECREE of the court that this action is DISMISSED with prejudice.

The Clerk of the Court is DIRECTED to enter this document on the civil docket as a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DONE this 28th day of November, 2016

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX E

Case 1:16-cv-00494-WKW-GMB Doc. 27 Filed 11/28/16 Page 1 of 1

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA SOUTHERN DIVISION

JAMES BRYSON GRAHAM	)	
	)	
Plaintiff,	)	
v	)	CASE
	)	NO. 1:16-
Wells Fargo Bank, N.A.	)	cv-494-
and John G. Stumpf	)	WKW--
	)	GMB
Defendants,	)	

ORDER

Before the court is the Recommendation of the Magistrate Judge. (Doc. #20.) There being no timely objection filed to the recommendation, and based on a review of the record, it is ORDERED as follows:

1. The Recommendation of the Magistrate Judge (Doc. # 20 is ADOPTED;
2. Defendants' motion to dismiss (Doc.#8) is GRANTED; and
3. This case is DISMISSED with prejudice.

A final judgment will be entered separately.
DONE this 28th day of November 2016.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA SOUTHERN DIVISION

JAMES BRYSON GRAHAM	)	
	)	
Plaintiff,	)	
v..	)	
	)	CASE
	)	NO. 1:16-
Wells Fargo Bank, N.A.	)	cv-494-
and John G. Stumpf	)	WKW-
	)	GMB
Defendants,	)	

ORDER

Before the court is a motion for Sanctions filed Defendants Wells Fargo Bank, N.A. and John G. Stumpf (collectively, "Defendants"). Doc. 22 Defendants request the entry of sanctions against Graham for filing "meritless lawsuits against Wells Fargo." The court has reviewed Defendants' motion and the attached exhibits, and the court finds that Graham's actions, at least at this point in the litigation, do not merit the entry of sanctions under Rule 11 of the Federal Rules of Civil Procedure or the court's inherent power to manage its docket. Thus, Defendants' motion (Doc. 22) is DENIED.

However, the court cautions Graham that it will not tolerate abusive litigation or frivolous filings. The undersigned entered Report and Recommendation on November 2016, recommending that Graham's claims be dismissed for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Doc. 20. After the entry of that recommendation, the court gave Graham two weeks to file objections to the proposed findings. In federal court, once this objection period passes, the assigned district judge either adopts, rejects, or modifies the Report and Recommendation, or returns the case to the undersigned for additional proceedings. Under this procedure, Graham had until November 15, 2016 to file written objections to the Report and Recommendation (*see* Doc. 20), but no objections were filed by that date. Instead, Graham filed various motions that do not specifically address the proposed findings and recommendations in the undersigned's report, which the court denied. Docs. 21, 23, & 24. At this point in the proceedings, while the Report and Recommendation remains under review by the district judge, no further action is needed by Graham. The court, however, is not convinced that Graham will follow this advice.

Accordingly, it is ORDERED that, from this point forward in this lawsuit, before Graham may file a motion, pleading, or other filing, he must first file a motion for leave to file that motion, pleading, or filing with the court, with the motion, pleading, or filing he is seeking to file attached as an exhibit to his motion. Only after the court reviews Graham's motion and requested filing, and grants him leave to file, will the filing be permitted. From this point forward, any motion, pleading, or filing made by Graham without first obtaining leave of court in accordance with this order will be stricken promptly from the record. If Graham fails to comply with this order, or otherwise litigates in an abusive or harassing manner, the court grants Wells Fargo leave to refiles motion for sanctions, as may be appropriate.

DONE this 21st day of November 2016.

/s/Gray M. Borden
UNITED STATES MAGISTRATE JUDGE

APPENDIX G

IN THEUNITEDSATES DISTRICTCOURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JAMES BRYSON GRAHAM	)	
	)	
Plaintiff,	)	
	)	Case No. 1:16
v.	)	-cv-494-|VKM
	)	-GMB
WELLS FARGO BANK, N.A., et al.,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION OF THE MAGISTRATE ,JUDGE

On .lune 27, 2016, Plaintiff James Bryson Graham ("Graham") filed this *pro se* action against Defendants Wells Fargo Bank, N.A. ("Wells Fargo") and John G. Stump ("Stump") (collectively, "Defendants") to obtain the return of an "unaltered instrument stamped paid-in-full" in purp01ted accordance with the Truth in Lending Act ("TILA"). Doc. I. Before the court is Defendants' motion to dismiss pursuant to Rules 8 and 1 2(b) of the Federal Rules of Civil Procedure. Doc. 8. Pursuant to 28 U.S.C. § 636, this matter was referred to the undersigned United States Magistrate Judge for review and submission of a report with recommended findings of facts and conclusions of law. Doc. 3. For the reasons that follow, it is the recommendation of the Magistrate Judge that Defendants' motion (Doc. 8) be GRANTED and that Graham's complaint be DISMISSED WITH PREJUDICE.

I. JURISDICTION

Jurisdiction over this matter is asserted pursuant to 28 U.S.C. § 1331 (federal question). The parties do not contest personal jurisdiction or venue, and the court finds

adequate allegations to support both.

11. STATEMENT OF FACTS

The court accepts as true all relevant facts set forth by Graham in the complaint. Graham had a money market deposit account with South Trust Bank of Ozark, Alabama, which is now Wells Fargo. Doc. I at *2.* Graham was a debtor on a promissory note executed in the late 1990s in favor of Wells Fargo. Doc. 1 at 4. On or about June or September 2000, Wells Fargo withdrew $401,452.15 from Graham's money market account to satisfy this unpaid promissory note.[1] Doc. 1 at 4. Although Graham alleges that this withdrawal was done without notice or due process, the crux of his complaint is that the promissory note has been paid in full and therefore Wells Fargo must return the "authen-

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[1] It is unclear from the complaint when this conversion of funds actually took place, as Graham alleges it occurred both on June 9, 2000 (Doc. l at 2) and September 9, 2000 (Doc. l at 4).

ticcated, original, and unaltered instrument" to him evidencing that this debt has been satisfied.[2] Doc. 1 at 3. All of the allegations in Graham's complaint arc against Wells Fargo; he makes no specific allegations againstStump.

After Defendants' filed their motion to dismiss, the court entered a briefing order, and on October 12, 2016 Graham filed his response to the Defendants' motion.[3] Docs. 15 & I 8. On October *20,* 2016, Defendants filed their reply. Doc. I9. With briefing

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[2] **Graham acknowledges in his complaint that he has previously litigated various fraud and due process** claims related to the execution and payment of the promissory note at issue in both state and federal court. Specifically, Graham alleges that he "unsuccessfully litigated a complaint based on fraudulent inducement" in the Circuit Court of Dale County, Alabama, which was dismissed in 2004. *See Graham v. SouthTrust Bank,* Dale County Circuit Court Case No. CV-2002-00204. He also alleges that he litigated due process, fraud, and wrongful conversion claims in this court, albeit before a different judge, which were also dismissed in 2013. *See Graham v. Wells Fargo Bank, N.A.,* Case No. 1:12-cv-1034-MHT-CSC (M.D. Ala.); Doc. 1 at 7-10.

[3] Graham filed a brief in accordance with the court's briefing order even though he previously informed the court that he "will not file a Brief" because "[t]hcre is no dispute in the law." Doc 14

completed, this matter is ripe for disposition.[4]

III. STANDARD OFREVIEW

To withstand Rule 12(b)(6) scrutiny and satisfy Rule S(a), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face;' so as to nudge the claim across the line from conceivable to plausible. *Bell Atl. Corp. v. 1\vomb{v,* 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556

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[4] The court notes that Graham claims he was not served with a copy of Defendants' motion to dismiss, but the court's service records show that a copy of Defendants' motion was mailed to Graham's address on file with the court. Moreover, in Graham's motion for an extension of time to respond to Defendants' motion to dismiss, he claims that he obtained a copy of the court's August 30. 20 1 6 briefing order from the clerk's office. Graham docs not allege that he obtained a copy of Defendants' motion to dismiss from the clerk's office, even though he knew from the court's briefing order (which he did obtain from the clerk's office) that such a motion had been filed. And there is no indication from Graham's motion for extension of time that his address on file with the court was or is incorrect. *See* Docs. 1 5 & 1 8. That being said, whether Graham received a copy of Defendants' motion does not affect the court's ultimate conclusion that Graham ·s complaint fails as a matter of law.

U.S. 662, 678 (2009). However, more than labels and conclusions is required, and "a fomrnlaic recitation of the elements of a cause of action will not do." *TwombZv,* 550 U.S. at 555. "As the Eleventh Circuit has explained, *Twombly/Iqbal* principles require that a complaint's allegations be enough to raise a right to relief above the speculative level." *Cochran v. S. Co.,* 2015 WL 3508018, at *I (S.D. Ala. June 3, 2015) (internal quotation marks omitted). Courts are "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain,* 478 U.S. 265, 286 (1986). Indeed, the granting of a motion to dismiss is appropriate "when it is demonstrated beyond a doubt the plaintiff can prove no set of facts in support of his claim

that would entitle him to relief." *Reeves v. DSI Sec. Se11Js.* • 331 F. App• x 659, 661 (11th Cir. 2009).

IV. DISCUSSION

Defendants argue that Graham's complaint is due to be dismissed because he fails to state a claim upon which relief can be granted.[5] Docs. 8 &

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[5] Defendants also argue that dismissal of Graham's complaint is warranted because he did not serve either defendant in accordance with the Federal Rules of Civil Procedure. Doc. 9. Be-cause the court finds that Graham's com-plaint is due to be dismissed pursuant to Rule 12(b)(6) for failure to state a viable claim for relief, the court pretermits discussion of the propriety of service.

9. The court agrees. First, Graham's complaint does not comply with Rule 8 of the Federal Rules of Civil Procedure in that it does not contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Nor does it contain "simple, concise, and direct" allegations set forth "in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 8(d)(1) & 1O(a). No specific causes of action are identified in Graham's complaint, nor are there sufficient factual allegations to support any causes of action against either defendant. *See* Doc. 1. Indeed, Graham's complaint contains precisely the type of "unadorned, the-defendant-unlawfully-hanned-me" accusations that *Iqbal* prohibits. *See Iqbal,* 556 U.S. at 678. In short, even affording Graham significant leniency as a *pro se* plaintiff, these pleading deficiencies, standing alone, are sufficient grounds on which to recommend dismissal of Graham's complaint.

However, even if the court were to set these pleading deficiencies aside, Graham's complaint still fails as a matter of law. Although Graham does mention a lack of"notice" and "due process" in his complaint, the real crux of his claim is that, under TILA, Wells

Fargo must return to him the original, unaltered, and authenticated promissory note that was satisfied by the $401,452.15 setoff from Graham's money market account with Wells Fargo. But TILA does not require production of the original note.[6] *See Cardin v. Wilmington Finance, Inc.,* 2013 \VL 1123815, at *2 (D. Ariz. Mar. 18, 2013); *Vazquez v. Select Portfolio Serv.,* 2013 WL 5770995, at *3 (N.D. Cal. Oct. 23, 2013) (explaining that "'show me the note' requests do not fall within the purview of TILA"). Thus, as a matter of law, Graham's complaint fails to plead an actual violation of TILA's tenns by either defendant.

Finally, even if Graham had alleged an actionable violation of TILA, his claim is time-barred. Taking Graham's factual allegations as true, as the court must at this stage of the proceedings, Graham executed the promissory note at issue in the late 1990s, and Wells Fargo withdrew funds from Graham's money market account to satisfy his debt on this promissory note in 2000. *See* Doc. 1. These actions occurred, at the very latest, over 15 years ago, well past TILA's one-year and three-year statutes of limitations. *See* 15 U.S.C. § 1640(e) (one-year statute of limitations applies to claims for damages); 15 U.S.C. § 1635(f) (statute of limitations for actions for rescission is three years from the date of closing). Moreover, Graham does not allege any facts that demonstrate or

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[6] "TILA is primarily concerned with disclosures made at the inception of the loan, and requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights." *Vazquez v. Select Portji,lio Serv.,* 2013 WL 5770995, at *3 (N.D. Cal. Oct. 23, 2013).

support the timeliness of his claim, nor does he allege any facts that suggest his claim is subject to some f0In1 of tolling. Finally, Graham's attempt to rescind the loan by letter dated May

20I 6 does not salvage the timeliness of his claim, as the right to rescind under TILA expired three days after the loan closed or, to the extent requisite ILLA disclosures were not provided, three years after the loan closed. *See* 15 U.S.C. § 1635(!). In short, no matter how Graham's claimed is viewed under TILA, it is untimely. For this reason and the reasons stated above, Graham's complaint is due to be dismissed under Rule 12(6)(6) for failure to state a claim upon which relief can be granted.[7]

V. CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that Defendants' motion to dismiss (Doc. 8) be GRANTED and that Graham's complaint be DISMISSED WITH

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[7] Defendants also moved to dismiss Graham's complaint on the basis of res judicata. Like Defendants' argument based on ineffective service, because the court is dismissing Graham's complaint under Rule 12(b)(6), the court pretennits discussion of the applicability of the doctrine of res judicata to Graham's complaint.

PREJUDICE.[8]

It is further ORDERED that the parties shall file any objections to this report and recommendation **on or before November 15, 2016.** Any objections filed must specifically identify the findings in the Magistrate Judge's report and recommendation to which an objection is being asserted. Frivolous, conclusive, or general objections will not be considered by the district court. The parties are advised that this report and recommendation is not a final order of the court and, therefore, is not appealable.

Page 7 Of 7

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report and recommendation

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[8] Where it appears that a more carefully drafted pleading might state a claim, a *pro se* plaintiff "must be given at least one chance to amend ... before the district court dismisses the action with prejudice." *See Bank v. Pitt,* 928 F.2d 1 108, 1 112 (] Ith Cir. 1991), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Cmp.,* 314 F.3d 541, 542 (11th Cir. 2002) (holding that this rule does not apply to counseled plaintiffs). But the district court need not grant leave to amend "where amendment would be futile." *Corsello v. Lincare, Inc.,* 428 F.3d 1008, 1014 (! Ith Cir. 2005). Here, as explained above, amendment of Graham's complaint would be futile, as he cannot allege a viable, timely TILA claim. Thus, a recommendation of dismissal with prejudice is appropriate.

shall bar the party from a *de novo* determination by the district court of issues addressed in the report and recommendation, and shall bar the party from attacking on appeal factual findings in the report and recommendation that are accepted or adopted by the district court, except upon grounds of plain en-or or manifest injustice. *See Nettles v. Wainwright,* 677 F.2d 404 (5th Cir. 1982); *Stein v. Reynolds Sec.. Inc.,* 667 F.2d 33 (11th Cir. 1982).

DONE this 1st day of November, 2016.

IslGray M. Borden
UNITED STATES MAGISTRATE JUDGE

APPENDIX H

IN THE CIRCUIT COURT OF DALE COUNTY, AL

Joe Godwin, in an individual)
Keith Petty, an individual,)
Wells Fargo Bank, N.A.,)
)
PLAINTIFFS,)
)
VS) cv-2011-900069
)
JAMES B. GRAHAM, individual,)
And MIKE HOLLAND, individual,)
)
DEFENDANTS,)

ORDER

This cause coming on to be heard is submitted for a ruling on the motion for temporary restraining order and preliminary injunction filed by the plaintiffs, response thereto filed by the defendants and testimony taken orally before the court and, the Court having considered the same, the court finds as follows:

All issues concerning the playmaker loan, note, and guarantee agreement in question were resolved in the case of Graham versus South Trust Bank at all CV 2002 – 2004 by summary judgment granted for the defendants on March 5, 2004, and he dismissed on the appeal by the Alabama Supreme Court on September 15, 2004

After a set off against the account, the holder of the note claims a balance of accrued interest and other charges as of June 9 and 2000. So far, the court can ascertain, there has been no effort to collect the accrued interest and other charges since 2004.

The court further finds that Joe Godwin, Keith Petty, William C. Carn, and W. Davis Malone have no control over the loan, note, or guaranty agreement. The entity that ownes the loan, note and guarantee still claims accrued interest and other charges.

The court finds that all the issues concerning this loan have been resolved and cannot be resurrected.

Therefore, it is ORDERED and ADJUDGED as follows:

1. That the defendants James B. Graham and Leon Michael (Mike) Holland shall not harass Keith Petty, Joe Godwin, W. Davis Malone or William C. Carn, with harassing and threatening communications demanding millions of dollars related to the Wells Fargo loan to playmaker that were subject to Graham and Holland 2002 lawsuit referred to above.
2. That the defendants are hereby enjoined from further communicating with Keith Petty, Joe Garvin, Wells Fargo and their respective current and/or former employees, directors, agents, and representatives including attorneys and insurers, as such communication reason relates, directly or indirectly to Wells Fargo's collection of sums owed under that loan.
3. That the defendants are enjoined from inquiring or encumbering or causing or attempting to cause injury to or the encumbrance of any of the property of Keith Petty, Joe Garvin, Wells Fargo, or their respective current or former employees, directors agents and representatives, including attorneys and insurers, as such action relates, directly or indirectly to Wells Fargo's loan to playmaker or Wells Fargo collection of sums owed under the loan in question.
4. That the defendants are not to arrest, threaten, intimidate, or bother Keith Petty or Joe Godwin.

5. That any or all documents filed in the probate always of Dell County by the defendants pertaining to the loan in question particularly the truth affidavit filed in miscellaneous book 250 pages 302 303 304 305, 306, 307, 308, 3009, 310 and 311in the office of the judge of probation of Dell County, Alabama, is hereby expunged from the records and is null and void and held for naught.
6. That the defendant's may have non—threatening inquiry with the holder of the note and guaranty Wells Fargo, in order to resolve the issue of the accrued interest and other charges which may be owed in an effort to satisfy the note.

This the 4th day of August 2011.

/s/P. B. McLaughlin, JR., Judge
33rd JUDICIAL CIRCUIT
DALE COUNTY, ALABAMA

APPENDIX I

IN THE CIRCUIT COURT OF DALE COUNTY, AL

JAMES B. GRAHAM, an individual and LEON M. "MIKE" HOLLAND, an individual,	)
PLAINTIFFS,	)
VS	) CASE) No. CV-02-204-Q
SOUTHTRUST BANK, SOUTHTRUST And MIKE HOLLAND, an individual,	)
DEFENDANTS,	)

ORDER

This cause is before the court on defendant's *Motion for Summary Judgment* filed on behalf of all the defendants, and *Plaintiff's Response to Motion for Summary Judgment* and argument of counsel heard on February 20, 2004. This court finds that the standard of review as set forth in defendant's *Motion for Summary Judgment* is correctly stated and the court has applied that standard in this decision.

In response to defendant's motion, plaintiff asserts that, "[u]nder either Rule 56(f) or Rule 56 in general, crucial questions of material fact remain for the jury in this motion for summary judgment should be denied or a continuance granted so that additional discovery may be had." Our appellate courts have held that mere pendency of discovery does not bar summary judgment, and the burden is on the non-moving party to show that the Reese quested discovery is crucial. *Dorsey v. Bowers,* 709 So.2d 51 (Ala. Civ. App. 1998) and *Gollette v. Peterbilt of Mobile, Inc.,* 582 So.2d 459 (Ala.1991). Based on the findings set forth herein after this court finds that the plaintiff has failed to meet his burden of showing that a requested discovery is crucial and that any facts discovered could not influence this decision. Any facts produced by additional discovery are not necessary to the court's decision on this summary judgment motion.

The court finds the defendants made no misrepresentation of a material existing fact the alleged misrepresentation is that Playmaker "would pay for itself like it was going". Stated in other words, Playmaker will service the debt for its acquisition by plaintiffs with the income it was producing at that time. Plaintiffs have failed to produce substantial evidence, or any evidence that the court has found, that this was a false statement of fact. The falsity of this statement could easily be proven with information at the plaintiff's disposal. If this statement could reasonably be interpreted as a statement about the future financial prospects of program playmaker, it was a prediction upon which plaintiffs could not have reasonably relied or had the right to act and does not support a fraud claim.

With regard to the guarantee agreements the court finds, based on the plaintiff's testimony and the documents signed, that there could have been no reasonable reliance on any alleged misrepresentation. The court finds that defendant's brief is well taken with regard to this issue.

The court finds the defendants had no duty to disclose the credit offering report as argued in their brief. The court finds that the contents of the report is no evidence of fraud, and that fair-minded persons in the exercise of impartial judgment could not reasonably infer the existence of fraud therefrom. The statement contained in the report relied upon by plaintiffs simply recognize as the other risk the chance of loss that playmaker sales and profits will not be sufficient to service the debt the risk could conceivably exist in every business loan. The fact that this statement is not a prediction of expected loss is supported by the stated mendicant. The credit offer report should be considered as a whole.

Finally, the court finds that, if the alleged misrepresentations are actionable fraud, plaintiff's complaint is barred by the Statute of Limitations. Plaintiff had access to the facts necessary to discover the alleged fraud more than two years prior to the filing of this complaint.

It is, therefore, ORDERED and DECREED as follows:

1. Defendants' *Motion for Summary Judgment* is granted on all grounds set forth therein and Plaintiff's complaint is dismissed with prejudice.

2. All pending motions are rendered moot by this decision and, therefore, denied.

3. Court cost are taxed to the plaintiff's

DONE and ORDERED this 5th day of March 2004

/s/ Kenneth W. Quattlebaum, Circuit Judge

APPENDIX J

BAKER DONNELSON
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September 2, 2011
VIA US MAIL

Mr. James B. Graham
1393 Jernigan Rd
Ozark, AL 36360

Mr. Mike Holland
2363 S Brannonstand Rd
Dothan, AL 36305

Re: *Joe Godwin, Keith Petty, and Wells Fargo Bank, v. James B. Graham and Mike Holland*

Circuit Court of Dale County, AL CV-2011-900069

Dear Mr. Graham and Mr. Holland:

We have received your notice of appeal in the above-referenced matter. As relayed to you by letter dated March 30, 2011, the allegations are barred by the legal doctrine or res judicata (a plaintiff cannot have two bites at the apple), and accordingly the claims were meritless and frivolous. Obviously. Judge McLauchlin agreed and dismissed your se. Candidly, any appeal of Judge McLauchlin's order would likewise be meritless and frivolous. If this malter is not dismissed or resolved as discussed below, then the Plaintiffs are in no way releasing their claims against you under the Alabama Litigation Accountability Act.

During trial of the case, Mr. Graham testified that "all I ever wanted was the copy of my original loan marked satisfied. "**Wells Fargo is in possession of the original loan document, and is willing to provide it to you,** and it will forgive all amounts owed thereunder, in exchange for a complete dismissal of the appeal of Judge McLauchlin's order. Please understand this resolution will not release the court's order for you to refrain from harassing Mr. Petty or Mr. Godwin again.

Neither of you have' returned. my calls to discuss this matter. Please contact me if you have any questions, and I look forward to learning your response.

Sincerely,

D. Keith Andress

DKA/ywr Cc: Davis Malone, Esq.