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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT MAAG, individually, and on
behalf of a class of similarly situated
persons,

Plaintiff,

v.

U.S. BANK, NATIONAL
ASSOCIATION,

Defendant.

Case No.: 21-cv-00031-H-LL

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

[Doc. No. 19.]

On March 9, 2021, Defendant U.S. Bank, National Association filed a motion to dismiss Plaintiff Robert Maag’s second amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 19.) On March 26, 2021, Plaintiff filed a response in opposition to Defendant’s motion to dismiss. (Doc. No. 23.) On April 5, 2021, Defendant filed a reply. (Doc. No. 24.) A hearing on the motion is currently scheduled for Monday, April 12, 2021. (Doc. No. 19.) The Court, pursuant to its discretion under Civil Local

1 Rule 7.1(d)(1), determines the matter is appropriate for resolution without oral argument,
2 submits the motion on the parties’ papers, and vacates the hearing. For the reasons that
3 follow, the Court grants Defendant’s motion to dismiss.

4 **Background**¹

5 Defendant, a large national banking association, provides banking services to
6 Plaintiff. (Doc. No. 14 ¶¶ 6, 13.) During this relationship, Plaintiff entrusted Defendant
7 with his personal identifiable information (“PII”). (Id. ¶ 13.) For example, Plaintiff
8 provided Defendant with his name, account number, and social security number, among
9 other things. (Id. ¶¶ 2, 16.) Defendant stored Plaintiff’s PII on its servers without
10 redacting, encrypting, or otherwise de-identifying the information. (See id. ¶ 15.)

11 On July 30, 2020, a server containing Plaintiff’s PII was physically stolen from one
12 of Defendant’s offices. (Id. ¶ 15.) In September 2020, Defendant provided written notice
13 to Plaintiff that his PII may have been compromised because of this incident. (Id.) While
14 Plaintiff does not allege that his PII has been misused in any way as a result of the server
15 theft, Plaintiff claims he was nonetheless harmed because his privacy was invaded, his PII
16 depleted in value, he faces an increased risk of future identity theft, and he was forced to
17 spend money on a credit-monitoring service. (Id. ¶ 6.)

18 On February 2, 2021, Plaintiff filed a second amended class action complaint against
19 Defendant, alleging claims under California’s Consumer Privacy Act (the “CCPA”) and
20 California’s Unfair Competition Law (the “UCL”). (Doc. No. 14.) With the present
21 motion, Defendant moves to dismiss both claims under Rule 12(b)(6). (Doc. No. 19.)

22 **Discussion**

23 **I. Legal Standards**

24 A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint.
25 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). A complaint must provide “a short
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28 ¹ The following allegations are taken from Plaintiff’s second amended complaint unless otherwise provided.

1 and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ.
2 P. 8(a)(2), and “enough facts to state a claim to relief that is plausible on its face,” Bell Atl.
3 Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the
4 plaintiff pleads factual content that allows the court to draw the reasonable inference that
5 the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678
6 (2009). A court must assume the plaintiff’s factual allegations as true and construe all
7 reasonable inferences in favor of the plaintiff. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
8 337-38 (9th Cir. 1996). But the court is “not bound to accept as true a legal conclusion
9 couched as a factual allegation.” Iqbal, 556 U.S. at 678 (citation omitted).

10 **II. Plaintiff’s UCL Claim**

11 Defendant moved to dismiss both Plaintiff’s UCL and CCPA claims. (Doc. No. 19
12 at 1-2.) In his opposition, Plaintiff specifically stated that he does not oppose Defendant’s
13 motion to dismiss his UCL claim. (Doc. No. 23 at 5, 14.) Accordingly, the Court grants
14 Defendant’s motion to dismiss the UCL claim with prejudice.

15 **III. Plaintiff’s CCPA Claim**

16 Plaintiff also fails to state a claim under the CCPA. To state a CCPA claim, a
17 plaintiff must allege that his or her PII was accessed “as a result of the business’s violation
18 of the duty to implement and maintain reasonable security procedures and practices
19 appropriate to the nature of the information.” Cal. Civ. Code § 1798.150(a)(1). Here,
20 Plaintiff fails to allege any facts to support the notion that Defendant’s security was
21 deficient. Plaintiff only makes unsupported allegations that his PII was compromised
22 because Defendant did not “implement and maintain reasonable security procedures and
23 practices,” (Doc. No. 14 ¶¶ 18-19), “failed to effectively monitor its systems for security
24 vulnerabilities,” (id. ¶ 4), and had “lax security,” (id. ¶ 20).² These conclusory allegations
25

26 ² Plaintiff does allege that Defendant failed to protect his PII with an encryption or password. (Doc.
27 No. 14 ¶ 22.) But this allegation goes to a separate element of Plaintiff’s CCPA claim. See Cal. Civ.
28 Code § 1798.150(a)(1). The CCPA only applies to “nonencrypted and nonredacted personal information”
in the first place. Id. Thus, holding that the failure to password protect PII also amounts to a failure to
adopt “reasonable security measures” would read the latter element out of the CCPA altogether, and would

1 are alone insufficient to state a CCPA claim. See Iqbal, 556 U.S. at 678 (“Threadbare
 2 recitals of the elements of a cause of action, supported by mere conclusory statements, do
 3 not suffice.” (citing Twombly, 550 U.S. at 555)); Anderson v. Kimpton Hotel & Rest. Grp.,
 4 LLC, 19-CV-01860-MMC, 2019 WL 3753308, at *5 (N.D. Cal. Aug. 8, 2019) (dismissing
 5 claim under the California Customer Records Act (the “CCRA”) because the plaintiffs
 6 “fail[ed] to allege any facts in support of their conclusory allegation that” the defendant
 7 did not implement reasonable security protocols); Razuki v. Caliber Home Loans, Inc., 17-
 8 CV-1718-LAB (WVG), 2018 WL 6018361, at *2 (S.D. Cal. Nov. 15, 2018) (dismissing
 9 CCRA claim alleging security procedures did not comply with industry standards absent
 10 factual allegations regarding how procedures were noncompliant). Accordingly, the Court
 11 also grants Defendant’s motion to dismiss Plaintiff’s CCPA claim.

12 In his opposition, Plaintiff requested leave to amend his CCPA claim. (Doc. No. 23
 13 at 14.) Defendant opposed this request. (Doc. No. 24 at 1, 4-5.) Where a motion to dismiss
 14 is granted, “leave to amend should be granted ‘unless the court determines that the
 15 allegation of other facts consistent with the challenged pleading could not possibly cure
 16 the deficiency.’” DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992)
 17 (quoting Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir.
 18 1986)). The Court grants Plaintiff one additional opportunity to attempt to state a CCPA
 19 claim if he can do so. Plaintiff is on notice that he must cure the deficiencies as to the
 20 CCPA claim noted in this Order or face dismissal with prejudice.

21 Conclusion

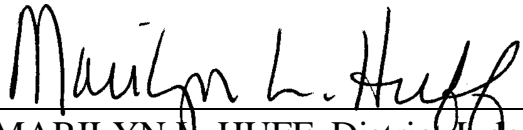
22 For the reasons above, the Court grants Defendant’s motion to dismiss. The Court
 23 dismisses Plaintiff’s UCL claim with prejudice and dismisses Plaintiff’s CCPA claim with
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 26 mean that any theft of unencrypted PII could create CCPA liability. Courts generally interpret statutes to
 27 avoid such results. City of Huntington Beach v. Bd. of Administration, 841 P.2d 1034, 1038 (Cal. 1992)
 28 (“[L]egislation must be construed as a whole while avoiding an interpretation which renders any of its
 language surplusage.”). Thus, Plaintiff’s allegation that his PII was not password protected is insufficient
 to state a CCPA claim on its own.

1 limited leave to amend. Plaintiff must file an amended complaint, if any, to cure the
2 deficiencies noted in this Order, within thirty (30) days from the date of this Order.³

3 **IT IS SO ORDERED.**

4 DATED: April 8, 2021

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6 MARILYN L. HUFF, District Judge
7 UNITED STATES DISTRICT COURT
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27 ³ Plaintiff requested judicial notice of several items mentioned in a complaint in a related case. (Doc.
28 No. 23-1.) Because the Court did not need to rely on any of these items to resolve the issues presented in
Defendant's motion to dismiss, the Court denies Plaintiff's request for judicial notice as moot.