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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN FAULKNER, on behalf of himself
and all others similarly situated,

Plaintiff - Appellant,

v.

ADT SECURITY SERVICES, INC.; et al.,

Defendants - Appellees.

No. 13-17124

D.C. No. 3:11-cv-00968-JSW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted December 9, 2015**
San Francisco, California

Before: O'SCANNLAIN, SILVERMAN, and BEA, Circuit Judges.

John Faulkner appeals the district court's denial of his motion to amend his complaint following a previous remand. *Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017 (9th Cir. 2013). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court did not abuse its discretion by denying leave to amend as futile. The newly alleged claim does not relate back to the original complaint under Rule 15(c)(1)(B) because it arises out of a different series of phone calls than the calls alleged in the original complaint. *See Oja v. U.S. Army Corps of Eng'rs*, 440 F.3d 1122, 1134-35 (9th Cir. 2006) (holding that a Privacy Act claim premised on a different disclosure of personal information did not relate back to the original complaint). As the district court correctly ruled, amendment would be futile because the new claim would be barred by the statute of limitations. *Deutsch v. Turner Corp.*, 324 F.3d 692, 718 n.20 (9th Cir. 2003) (amendment is futile if the claim will be barred by the statute of limitations).

AFFIRMED.