

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Nicholas Stephens v. Liberty Mutual Insurance Company

Stephens · No. 24-cv-04218-HSG · Decided October 28, 2025

OPINION

Stephens

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 NICHOLAS STEPHENS, Case No. 24-cv-04218-HSG 8 Plaintiff, ORDER DECLINING
REPORT AND

RECOMMENDATION AND

9 v. DISMISSING CASE

10 LIBERTY MUTUAL INSURANCE Re: Dkt. Nos. 10, 11

COMPANY,

11 Defendant. 12

13 I. REPORT & RECOMMENDATION

14 Plaintiff Nicholas Stephens filed a complaint against Defendant Liberty Mutual and an 15
application for leave to proceed in forma pauperis (“IFP”). Dkt. Nos. 1, 2. Magistrate Judge 16
Donna Ryu granted the IFP application but found that Plaintiff’s complaint failed to state a claim
17 on which relief may be granted pursuant to 28 U.S.C. § 1915(e). Dkt. No. 9 at 1. Plaintiff was
18 given the opportunity to file an amended complaint to address these deficiencies by November
27, 19 2024. Id. at 4. 20 Plaintiff timely filed an amended complaint on November 25, 2024. Dkt.
No. 11 (“FAC”). 21 However, due to the Thanksgiving holiday, the complaint was not entered on
the docket until 22 approximately 5:00 p.m. on December 4, 2024. See id. As a result of this delay,
before the 23 complaint was entered on the docket, Judge Ryu issued a report and
recommendation that the 24 Court dismiss Plaintiff’s complaint for failure to prosecute. Dkt. No.
10. Plaintiff accordingly 25 objected to the report and recommendation. Dkt. No. 14. Because
Plaintiff did timely file an 26 amended complaint, the Court DECLINES to adopt the report and
recommendation, Dkt. No. 10.

27 II. 28 U.S.C. § 1915(e) SCREENING ORDER

1 that Defendant Liberty Mutual accessed Plaintiff’s medical records without authorization during
a 2 workers’ compensation investigation and then denied him compensation in retaliation for his 3
complaints about unsafe work conditions. FAC at 13. Plaintiff brings claims for (1) violation of 4

the Health Insurance Portability and Accountability Act (“HIPAA”); (2) intentional infliction of 5 emotional distress; (3) violation of due process under the Fourth and Fourteenth Amendments; and 6 (4) violation of California Civil Code §§ 1708 and 3281. *Id.* at 14–22. 7 a. Legal Standard 8 “The standard for determining whether a plaintiff has failed to state a claim upon which 9 relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 10 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 11 2012) (citing *Lopez v. Smith*, 203 F.3d 1122, 1127–31 (9th Cir. 2000)). The complaint must 12 include a “short and plain statement,” Fed. R. Civ. P. 8(a)(2), and “sufficient factual matter, 13 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 14 662, 678 (2009) (quotation omitted). Plaintiff must provide the grounds that entitle him to relief. 15 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Because Plaintiff is pro se, the Court 16 construes the complaint liberally and affords him the benefit of any doubt. See *Karim-Panahi v.* 17 *L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988); cf. Fed. R. Civ. P. 8(e) (“Pleadings must be 18 construed so as to do justice.”). The Court is not, however, required to accept as true allegations 19 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *Spewell 20 v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). 21 b. Discussion 22 Judge Ryu found that Plaintiff failed to sufficiently allege a basis for subject matter 23 jurisdiction because the complaint did not state any federal claims, did not sufficiently establish 24 that the parties were diverse, and did not clearly satisfy the amount in controversy requirement. 25 Dkt. No. 9 at 3–4. The amended complaint corrects this and sufficiently alleges federal diversity 26 jurisdiction under 28 U.S.C. § 1332. Plaintiff alleges that there is complete diversity of citizenship 27 1 between the parties because he was born in and resides in California, 1 and Defendant is 2 incorporated and has its principal place of business in Massachusetts. FAC at 2–3. 2 In addition, 3 Plaintiff has added an allegation that he is entitled to at least \$1,000,000 because of Defendant’s 4 invasion of privacy. FAC at 23. “[T]he sum claimed by the plaintiff controls if the claim is 5 apparently made in good faith,” and here the Court cannot say “to a legal certainty that the claim is 6 really for less than the jurisdictional amount to justify dismissal” given the damages available for 7 the claims here. See *Naffe v. Frey*, 789 F.3d 1030, 1040 (9th Cir. 2015) (quotation omitted). 8 However, having reviewed the substance of the amended complaint, the Court finds that 9 the amended complaint still fails to sufficiently state a claim for relief under 28 U.S.C. § 1915(e). 10 First, Plaintiff argues that Defendant violated HIPPA, citing 45 C.F.R. § 164.508(b)(5). FAC at 11 14. HIPAA does not provide a private right of action. *Webb v. Smart Document Sols., LLC*, 499 12 F.3d 1078, 1081 (9th Cir. 2007). The Court dismisses this claim with prejudice. 13 Second, Plaintiff argues that Defendant intentionally caused emotional distress by 14 “obtain[ing] sacred patient doctor conversations from [his] medical provider” that were “not 15 related to the claim[,] including nude images of [his] body.” FAC at 16. It appears that Plaintiff 16 initially consented to have Kaiser release his medical records as part of his workers’ compensation 17 claim, but he later emailed Defendant’s counsel and withdrew his consent after

he determined the 18 19 1 Judge Ryu initially noted that Plaintiff only alleged that he was a California resident, and “[a] person residing in a given state is not necessarily domiciled there,” and thus is not necessarily a 20 citizen of that state. Dkt. No. 9 at 3 (quoting *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). In his amended complaint, Plaintiff added an allegation that he was born in 21 California, but he did not explicitly state that he is a California citizen or that he intends to remain in California. While the Ninth Circuit has not yet adopted the presumption that residency is prima 22 facie evidence of domicile, the Court is persuaded that Plaintiff’s allegations about residency coupled with his efforts to amend his complaint with citizenship information about where he was 23 born—liberally construed—are sufficient to allege diversity jurisdiction. *Mondragon v. Cap. One Auto Fin.*, 736 F.3d 880, 887 (9th Cir. 2013). However, for the avoidance of doubt, Plaintiff 24 should explicitly allege what state he is a citizen of. 25 2 The Court notes that in the amended complaint, which Plaintiff brings against Defendant “& Doe(s) 1-10,” Plaintiff identifies and names three individuals he describes as “Doe 1,” “Doe 2,” 26 and “Doe 3.” See FAC at 12 (“Doe 1 Legal counsel identified as Monika height. Doe 2 Liberty Mutual employee identified as Tiffany Tooley. Doe 3 Liberty Mutual employee identified as 27 Scott Shattuck.”). Given that these individuals are only listed in a section of the complaint titled 1 release was too broad. Dkt. No. 11-2 at 8. Plaintiff alleges that Defendant nevertheless requested 2 the documents from Kaiser using his prior authorization. FAC at 13. He alleges that this has led 3 to “a state of constant worry” and “extreme difficulties in social interaction.” *Id.* at 17, 19. 4 To state a cause of action for intentional infliction of emotional distress, “the plaintiff must 5 allege: (1) extreme and outrageous conduct by the defendant with the intention of causing, or 6 reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering 7 severe or extreme emotional distress; (3) and actual and proximate causation of the emotional 8 distress by the defendant’s outrageous conduct.” *Hailey v. Cal. Physicians’ Serv.*, 158 Cal. App. 9 4th 452, 473–74 (2007) (quotation omitted). Plaintiff’s bare allegations that he is suffering from 10 social anxiety are insufficient to show “severe or extreme” emotional distress. See *Lawler v. 11 Montblanc N. Am., LLC*, 704 F.3d 1235, 1246 (9th Cir. 2013) (rejecting argument that anxiety, 12 sleeplessness, upset stomach, and some muscle twitches alone rise to the level of “severe”) (citing 13 *Hughes v. Pair*, 46 Cal. 4th 1035, 1051 (2009)); *Landucci v. State Farm Ins. Co.*, 65 F. Supp. 3d 14 694, 711–12 (N.D. Cal. 2014) (dismissing on similar grounds).³ Because Plaintiff may be able to 15 allege additional details on amendment, the Court dismisses this claim without prejudice.⁴ 16 Third, Plaintiff argues that Defendant violated the Fourth and Fourteenth Amendments, 17 citing 18 U.S.C. § 1001. See FAC at 14, 20. Plaintiff has not alleged any facts allowing him to 18 bring these claims against a private insurance company. See *Brentwood Acad. v. Tennessee 19 Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001) (only state action or private behavior that 20 may be attributed to the state is subject to the Fourteenth Amendment); *United States v. Rosenow*, 21 22 3 The Court also notes that the current complaint does not allege extreme and outrageous conduct. Such conduct must be “so extreme as to exceed

all bounds of that usually tolerated in a civilized community.” *Christensen v. Superior Ct.*, 54 Cal. 3d 868, 903 (1991) (quotation omitted). Here, Plaintiff alleges he previously consented to release his medical records as part of a workers’ compensation request. Even if Defendant acted improperly by sending Plaintiff’s original authorization after he revoked his consent, requesting medical records for an insurance claim— without any other allegations that Defendant used those documents improperly or shared them elsewhere—is unlikely to meet this high standard. Plaintiff also briefly mentions that Defendant intentionally inflicted emotional distress by denying him workers’ compensation benefits. FAC at 14. Besides suffering from the same 150 F.4th 715, 728–29 (9th Cir. 2022) (a private search may only implicate the Fourth Amendment 2 where “the private party acts as an agent of the Government or with the participation or knowledge 3 of any governmental official”) (quotation omitted). Additionally, private individuals do not have 4 standing to assert claims for relief through federal criminal statutes such as 18 U.S.C. § 1001 that 5 do not provide a private right of action. See *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). 6 Accordingly, this claim is dismissed with prejudice. 7 Finally, Plaintiff argues that he suffered an invasion of privacy when Defendant obtained 8 Plaintiff’s medical records after he had withdrawn his consent. FAC at 21–22. Plaintiff brings 9 this claim under California Civil Code §§ 1708 and 3281, but these sections do not appear to 10 provide Plaintiff with private causes of action for the invasion of privacy he alleges. Section 1708 11 states that “[e]very person is bound, without contract, to abstain from injuring the person or 12 property of another, or infringing upon any of his or her rights.” Section 1708.8 deals with 13 invasions of privacy, but Plaintiff does not—and probably could not—state a claim under those 14 narrow provisions. See Cal. Civ. Code § 1708.8(a)–(c) (addressing physical invasions of privacy, 15 recordings, and false imprisonment). Section 3281 states that “[e]very person who suffers 16 detriment from the unlawful act or omission of another, may recover from the person in fault a 17 compensation therefor in money, which is called damages” and is a provision to authorize 18 compensatory damages generally. 19 Given the substance of the FAC, Plaintiff appears to be asserting a common law cause of 20 action for an invasion of privacy. See FAC at 22. Plaintiff does not specify which type of 21 invasion he is asserting, but the most plausible claim given the current allegations is an intrusion 22 upon seclusion. *Caraccioli v. Facebook, Inc.*, 167 F. Supp. 3d 1056, 1063 (N.D. Cal. 23 2016), *aff’d*, 700 F. App’x 588 (9th Cir. 2017) (discussing public disclosure requirement in other 24 common law privacy torts). The tort for intrusion upon seclusion “has two elements: (1) intrusion 25 into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable 26 person.” *Shulman v. Grp. W Prods., Inc.*, 18 Cal. 4th 200, 231 (1998), as modified on denial of 27 1 reh’g (July 29, 1998).⁵ There must be an “objectively reasonable expectation of seclusion or 2 solitude in the place, conversation or data source. *Id.* at 232. “A court determining the existence 3 of ‘offensiveness’ would consider the degree of intrusion, the context, conduct and circumstances 4 surrounding the intrusion as well as the intruder’s motives and objectives, the setting into which 5 he intrudes, and the expectations of

those whose privacy is invaded.” *Miller v. Nat’l Broad. Co.*, 6 187 Cal. App. 3d 1463, 1483–84 (1986). “A plaintiff who prevails on an intrusion upon seclusion 7 claim may recover damages for ‘anxiety, embarrassment, humiliation, shame, depression, feelings 8 of powerlessness, anguish, etc.’” *Opperman v. Path, Inc.*, 87 F. Supp. 3d 1018, 1061 (N.D. Cal. 9 2014) (quotation omitted). The Court notes that, at the pleading stage, allegations that Defendant 10 accessed Plaintiff’s full medical records without authorization—including pictures of Plaintiff’s 11 naked body—could at least in theory suffice to meet these elements. Because Plaintiff may be 12 able to amend the complaint with a different legal claim for an invasion of privacy, the Court 13 dismisses this claim without prejudice.

14 III. CONCLUSION

15 For the reasons above, the Court DECLINES to adopt the report and recommendation, 16 Dkt. No. 10, and DISMISSES Plaintiff’s amended complaint, Dkt. No. 11, with leave to amend 17 Plaintiff’s claims for intentional infliction of emotional distress and invasion of privacy. The 18 Court ORDERS Plaintiff to file any amended complaint by December 15, 2025. 19 The Court further advises Plaintiff, who is representing himself, that he can seek assistance 20 at the Legal Help Center if he desires assistance complying with this order. The Legal Help 21 Center provides free information and limited-scope legal assistance to pro se litigants. More 22 information about the Legal Help Center is provided at [https://cand.uscourts.gov/representing-](https://cand.uscourts.gov/representing-23-yourself) 23 yourself. Telephone appointments may be scheduled either over the phone at (415) 782-8982 or 24 by email at FedPro@sfbar.org. 25 26 27 5 Plaintiff may have also intended to allege an invasion of privacy under the California 1 IT IS SO ORDERED. 2 || Dated: 10/28/2025 3 □ eo S. GILLIAM, JR. / 4 United States District Judge 5 6 7 8 9 10 11 12 © 15 16 & = 17 Z 18 19 20 21 22 23 24 25 26 27 28