

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Amin v. Momand

No. 2:24-cv-03557-TLN-SCR (E.D. Cal. Aug. 7, 2025) · No. No. 2:24-cv-03557-TLN-SCR · Decided August 7,
2025

OPINION

(PS) Amin v. Momand

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 NAJIBULLA AMIN, No. 2:24-cv-03557-TLN-SCR

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 DAMAN MOMAND, et al., 15 Defendants. 16 17 Plaintiff is proceeding pro se in this matter, which is referred to the undersigned pursuant 18 to Local Rule 302(c)(21) and 28 U.S.C. § 636(b) (1). Before the Court is Defendant’s Motion to 19 Dismiss (ECF No. 26), which seeks to dismiss the first amended complaint (“FAC”) for lack of 20 subject matter jurisdiction and for failure to state a claim. Plaintiff failed to file an opposition to 21 the motion. ECF No. 26. The Court recommends that the Motion to Dismiss be GRANTED and 22 that Plaintiff be given a final opportunity to further amend. 23 I. Background and Procedural History 24 The Complaint was filed on December 18, 2024. ECF No. 1. Plaintiff alleged jurisdiction 25 based on diversity of citizenship and that Defendants owed him \$37,234. Id. at 5. It appeared 26 that Plaintiff alleged Defendants made a false report that Plaintiff refused a drug and alcohol test 27 which resulted in Plaintiff’s commercial license being suspended for three months. Id. Attached 28 to the Complaint were some pay stubs as well as a “personal statement” from a purported witness.

1 Id. at 14. The statement claimed that Defendant Mr. Momand fired Plaintiff and then made a 2 false report about him to the Federal Motor Carrier Safety Administration (“FMCSA”). Id. The 3 personal statement claimed Defendants withheld Plaintiff’s wages, and wages of other drivers. 4 Id. Plaintiff attached additional affidavits with similar information. Id. at 15-18. There was also 5 a unsigned statement from Plaintiff. Id. at 19-20. It stated Defendants withheld a final paycheck 6 in the amount of \$4,000 and made a false report to FMCSA, which resulted in Plaintiff being 7 unable to work for three months. 8 Defendants moved to dismiss the original complaint based on lack of jurisdiction and 9 failure to state a claim. ECF No. 12. A hearing was held on the motion to dismiss, but Plaintiff 10 failed to appear. ECF No. 16. The Court granted the motion and allowed

Plaintiff leave to 11 amend. ECF Nos. 17 & 23. Plaintiff filed objections to the prior Findings and Recommendations 12 and an untimely opposition to the prior motion. ECF Nos. 19, 20. 13 Plaintiff filed the FAC on May 12, 2025. ECF No. 25. The FAC contains extraneous 14 material, such as a paragraph objecting to the F&R which had already been adopted, and a further 15 statement explaining why Plaintiff was unable to appear at the prior hearing. The FAC asserts in 16 a jurisdictional statement that the amount in controversy exceeds \$75,000 “including claims for 17 backpay, tax liability consequences, emotional distress, reputational harm, and injunctive relief.” 18 ECF No. 25 at 2. 19 The FAC alleges Plaintiff is owed a final paycheck of \$4,000, that Defendants 20 misreported his income on a 1099 tax form resulting in erroneous increased tax liability, and that 21 Defendant Momand reported him to the FMCSA resulting in suspension of his commercial 22 license. Id. Plaintiff alleges that Defendant Momand threatened him in December 2023, and that 23 the inaccurate tax reporting and report to the FMCSA followed shortly thereafter in December 24 2023 and January 2024. Id. Plaintiff lists three claims for relief: 1) fraudulent tax reporting; 2) 25 retaliation and witness intimidation; and 3) unpaid wages/breach of contract. Id. at 3. 26 II. Legal Standard for Motion to Dismiss Under Rule 12(b)(1) 27 A motion under Rule 12(b)(1) challenges whether the court has subject-matter jurisdiction 28 over the action. Such jurisdictional challenge can be either facial or factual. *Safe Air for 1 Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “In a facial attack, the challenger 2 asserts that the allegations contained in a complaint are insufficient on their face to invoke federal 3 jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations 4 that, by themselves, would otherwise invoke federal jurisdiction.” Id. In resolving a factual 5 attack on jurisdiction, the court may review evidence beyond the complaint without converting 6 the motion to dismiss into a motion for summary judgment. Id. If a facial challenge is made, the 7 court presumes the truth of a plaintiff’s allegations and draws all reasonable inferences therefrom. 8 *Williams v. A&M Bros, LLC*, 2023 WL 4747481 (E.D. Cal. July 25, 2023) (citation and quotation 9 omitted). 10 III. Legal Standard on a Motion to Dismiss under Rule 12(b)(6) 11 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal 12 sufficiency of the complaint. *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 13 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of 14 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 15 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to 16 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A 17 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw 18 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. 19 Iqbal*, 556 U.S. 662, 678 (2009). 20 In determining whether a complaint states a claim on which relief may be granted, the 21 court accepts as true all well-pleaded factual allegations in the complaint and construes the 22 allegations in the light most favorable to the plaintiff. *Walker v. Fred Meyer, Inc.*, 953 F.3d 1082, 23 1086 (9th Cir. 2020). However, the court need not assume the truth of legal conclusions cast in

24 the form of factual allegations. *Paulsen v. CNF, Inc.*, 559 F.3d 1061, 1071 (9th Cir. 2009). 25 While Rule 8(a) does not require detailed factual allegations, “it demands more than an 26 unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A 27 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the 28 elements of a cause of action.” *Twombly*, 550 U.S. at 555; see also *Iqbal*, 556 U.S. at 678 1 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory 2 statements, do not suffice.”). It is inappropriate to assume that the plaintiff “can prove facts that 3 it has not alleged or that the defendants have violated the ... laws in ways that have not been 4 alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 5 519, 526 (1983). 6 IV. Analysis 7 Defendants move to dismiss Plaintiff’s FAC on two grounds: 1) the Court lacks subject 8 matter jurisdiction because the amount in controversy is not met for purposes of diversity of 9 citizenship jurisdiction; and 2) Plaintiff fails to state a claim. ECF No. 26 at 2. Defendants 10 present a facial challenge to jurisdiction, alleging that even taking the allegations as true, 11 jurisdiction is not sufficiently alleged. ECF No. 26 at 5-6. Alternatively, Defendants move for 12 more definite statement pursuant to Rule 12(e). *Id.* at 2. Rule 12(e) allows for a motion for more 13 definite statement when a complaint is “so vague or ambiguous that the party cannot reasonably 14 prepare a response.” Fed. R. Civ. P. 12(e). If the court issues an order requiring more definite 15 statement, and the order is not complied with, the court may strike the pleading. *Id.*, see also 16 *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). 17 A. Subject Matter Jurisdiction 18 Defendants argue that under the allegations of the FAC the amount in controversy is not 19 met and the only specific amount alleged is \$4,000. ECF No. 26 at 6.1 This argument somewhat 20 ignores that the jurisdictional statement of the FAC states that the amount in controversy exceeds 21 \$75,000 “including claims for backpay, tax liability consequences, emotional distress, reputational 22 harm.” ECF No. 25 at 2. 23 When a complaint is filed initially in federal court, as it was here, “the amount in 24 controversy is determined from the face of the pleadings.” *Geographic Expeditions, Inc. v. Estate 25 of Lhotka*, 599 F.3d 1102, 1106 (9th Cir. 2010). The amount alleged in the complaint controls so 26 long as the claim is made in good faith. *Id.* “To justify dismissal, it must appear to a legal 27 1 Page references herein are to the number generated by the Court’s CM/ECF system and 28 appearing on the upper right corner of the page. 1 certainty that the claim is really for less than the jurisdictional amount.” *Id.* “A legal certainty 2 exists when a rule of law or limitation of damages would make it virtually impossible for a 3 plaintiff to meet the amount-in-controversy requirement.” *Chey v. Orbitz Worldwide*, 983 4 F.Supp.2d 1219, 1230 (D. Hawaii 2013) (internal citation and quotation omitted). 5 The Court acknowledges that the initial complaint sought only \$37,234, and that the Court 6 found the original complaint insufficient to establish subject matter jurisdiction. However, 7 Plaintiff has also argued that he lost three months wages due to the false report to FMCSA, was 8 not paid his final paycheck, incurred over \$10,000 in increased tax liability, and suffered 9 emotional distress due to Defendants actions.2 Particularly in light of the emotional distress 10

component of Plaintiff's asserted damages, it would not be impossible to a legal certainty for 11 Plaintiff to meet the amount-controversy requirement. 12 B. Failure to State a Claim 13 Defendants also argue the FAC should be dismissed for failure to state a claim. ECF No. 14 26 at 7-11. Defendants argue that Count I concerning the misreporting of tax liability does not 15 state a cognizable claim. Defendants contend that to the extent this is some sort of fraud claim, it 16 is not plead with particularity as required by Federal Rule of Civil Procedure 9(b). ECF No. 26 at 17 7. The FAC alleges that "Defendants issued Plaintiff a 1099 tax form that inaccurately reflected 18 his income, omitting substantial amounts and/or misreporting figures." ECF No. 25 at 2. 19 Plaintiff describes this claim as "fraudulent" tax reporting. Id. at 3. To the extent this is a claim 20 for fraud, the Court agrees it is insufficiently pled. 21 Federal Rule of Civil Procedure 9(b)'s particularity requirement applies to state law 22 causes of action. See *Vess v. Ciba-Geigy Corp.*, 307 F.3d 1097, 1103 (9th Cir. 2003). This is true 23 even where the Court's jurisdiction is based on diversity. Id. ("We therefore reject [plaintiff's] 24 argument that we should refuse to apply Rule 9(b) to his state-law causes of action in this 25 diversity case."). Even where fraud is not a necessary element of a claim, if the claim is 26 "grounded in fraud" or "sound[s] in fraud," the "pleading of the claim as a whole must satisfy the 27 2 Although not necessary to the Court's conclusion, Plaintiff filed a post-hearing supplement 28 (ECF No. 30) in which he itemized claimed damages totaling \$79,362. 1 particularity requirement of Rule 9(b)." Id. at 1103-04. In order to meet the heightened pleading 2 standard, "a party must state the particularity of the circumstances constituting fraud," meaning 3 that the "pleading must identify the who, what, when, where, and how of the misconduct 4 charged." *United States ex rel. Cafasso v. Gen. Dynamics*, 637 F.3d 1047, 1055 (9th Cir. 2011) 5 (internal citations and quotation omitted). 6 Plaintiff's Count I fails to state a claim. Under California law, the elements of fraud are: 7 "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of 8 falsity (or 'scienter'); (c) intent to defraud, i.e. to induce reliance; (d) justifiable reliance; and (e) 9 resulting damage." *Lazar v. Superior Court*, 12 Cal.4th 981, 984 (1996). Plaintiff has only 10 alleged that his taxes were misreported, and that the misreporting resulted in damages in that his 11 tax liability was erroneously inflated. Plaintiff has not alleged that there was an intentional 12 misrepresentation made with intent to defraud, or any facts that would support such an allegation. 13 Plaintiff's second count is that Defendant Daman Momand "made verbal threats and 14 admitted retaliation in a recorded message," and his actions were meant to silence Plaintiff and 15 prevent him from pursuing his legal rights. ECF No. 25 at 3. Plaintiff labels this claim as 16 "retaliation." Defendants correctly point out that it is unclear under what provision of law this 17 retaliation claim allegedly arises. ECF No. 26 at 9. Defendants argue that if the claim is brought 18 under FEHA, it is not cognizable. Id. at 8-9. "[I]n order to establish a prima facie case of 19 retaliation under the FEHA,3 a plaintiff must show (1) he or she engaged in a "protected activity," 20 (2) the employer subjected the employee to an adverse employment action, and (3) a causal link 21 existed between the protected activity and the employer's action." *Yanowitz v. L'Oreal*

USA, Inc., 22 36 Cal.4th 1028, 1042 (2005). Defendants argue that Plaintiff is not an employee of Defendants, 23 and the FEHA protections do not apply to independent contractors, citing *Sada v. Robert F. Kennedy Medical Center*, 56 Cal.App.4th 138, 158 (1997). In *Sada*, the court noted that under 25 California's antidiscrimination statutes "independent contractors arguably do not fare as well." 26 However, the court did not definitely decide the question: "[W]e find it unnecessary to decide in 27 28 3 Fair Employment and Housing Act, Ca. Gov. Code § 12940. 1 this case whether the FEHA protects independent contractors against retaliation." *Id.* at 159. 2 Subsequent to *Sada*, in 2001, the Ninth Circuit recognized that "[i]n California's intermediate 3 courts, the question of whether the FEHA protects independent contractors is unsettled." *Walker 4 v. City of Lakewood*, 272 F.3d 1114, 1125 (9th Cir. 2001). 5 More recently, in *Herron v. Feast and Fareway, LLC*, 2023 WL 3488815 (Cal. Ct. App. 6 2023), the California Court of Appeal found that a non-employee could bring a retaliation claim 7 under FEHA: "As to the FEHA retaliation claim, we conclude that even though the statute covers 8 retaliation against a non-employee, the trial court correctly ruled that [plaintiff] failed to allege 9 she had suffered an adverse employment action." *Id.* at *1. The court further stated: "[T]he plain 10 language of the statute is not limited to retaliation against employees. Rather, it more broadly 11 prohibits retaliation against any individual ... for opposing a FEHA violation, filing a FEHA 12 complaint, or testifying or assisting in any FEHA proceeding." *Id.* at *6 (emphasis is original). 13 The court further held that second element of an adverse employment action, was still required 14 even as to non-employees. *Id.* at *7. The court stated, "it is possible for an employer to retaliate 15 against a non-employee in a manner resulting in an adverse employment action. For example, an 16 employer could cause a non-employee to be fired from a job with another employer." *Id.* 17 Thus, the Court rejects Defendants' argument that it would be impossible for Plaintiff to 18 assert a legally cognizable retaliation claim under FEHA. However, the Court agrees with 19 Defendants that the claim is inadequately pled. It is unclear if Plaintiff sought to bring his 20 "retaliation" claim under the FEHA, and if that is the claim, Plaintiff has failed to adequately 21 plead the three elements set forth above. The Court finds Count II fails to state a claim. 22 Plaintiff's third claim is a claim for unpaid wages. He states that despite multiple 23 demands Defendants failed to pay him his final \$4,000 paycheck which "constitutes a breach of 24 contract and/or labor law violations under California law." ECF No. 25 at 3. Defendants argue 25 that Plaintiff has not alleged he was an employee of either Defendant. ECF No. 26 at 10. 26 Defendants argue that "defenses and potential liability under a wage claim are different than those 27 under a breach of contract or common count claim," and they cannot respond without clearer 28 allegations. *Id.* Thus, Defendants argue alternatively that the Court order a more definite 1 statement under Fed. R. Civ. P. 12(e). *Id.* at 11. 2 The Court agrees this third count is indefinite. Plaintiff alleges he is "owed a final 3 paycheck of \$4,000" and "is owed \$4,000.00 in final wages." ECF No. 25 at 2-3. However, 4 Plaintiff does not assert what work was performed, during what time period, or the agreed 5 compensation for the work. Plaintiff does attach a "Lease Agreement" (ECF No. 25 at 5), but 6

should provide greater detail as to the work performed under the agreement and the alleged 7 failure to pay. The elements of a claim for breach of contract are: (1) a contract existed, (2) 8 plaintiff performed or is excused for nonperformance, (3) defendant breached, and (4) plaintiff 9 was damaged.” *Satvati v. Allstate Northbrook Indemnity Company*, 634 F.Supp.3d 792, 797 10 (C.D. Cal. 2022). Plaintiff has not alleged the manner in which he performed under the 11 agreement. Defendants’ breach may just be failure to pay, but the allegations are lacking as to 12 what work was performed, at what agreed price, and the basis for the \$4,000 owed. The Court 13 will dismiss this count with leave to amend to provide a more definite statement. 14 C. Leave to Amend 15 Plaintiff is proceeding pro se and a pro se litigant should be given leave to amend unless it 16 is absolutely clear that the deficiencies cannot be cured by amendment. *Akhtar v. Mesa*, 698 F.3d 17 1202, 1212 (9th Cir. 2012). Further leave to amend is appropriate here. 18 Defendants correctly argued that Count I was not pled with particularity, and have argued in the 19 alternative for a more definite statement. The Court agrees that the exact nature of Plaintiff’s 20 claims is unclear. For example, Plaintiff asserts that Defendants made a report to the FMCSA 21 that resulted in his license being suspended and loss of wages. He also requests in his prayer for 22 relief that the Court declare Defendants’ conduct was “intentional interference,” yet there is no 23 count asserting such. If Plaintiff intends to assert a claim for tortious interference with business 24 relations, he must allege facts in support of the following elements: 1) an economic relationship 25 between the plaintiff and some third party, with the probability of future economic benefit to 26 plaintiff; 2) the defendant’s knowledge of the relationship; 3) intentional acts on the part of the 27 defendant designed to disrupt the relationship; 4) actual disruption of the relationship; and 5) 28 economic harm to plaintiff proximately caused by defendant. *Athena Feminine Tech., Inc. v. 1 | Wilkes*, 2011 WL 4079927, *8 (N.D. Cal. Sept. 13, 2011). 2 Additionally, the FAC and Plaintiff’s presentation at oral argument suggested that he may 3 || seeking to pursue a claim for intentional infliction of emotional distress. If Plaintiff is pursuing 4 || such claim, he must allege facts supporting the following elements: “1) extreme and outrageous 5 || conduct by the defendant with the intention of causing, or reckless disregard of the probability of 6 || causing, emotional distress; 2) that plaintiff suffered severe or extreme emotional distress; and 3) 7 || actual and proximate causation of the emotional distress by defendant’s outrageous conduct.” 8 || *Sabow v. United States*, 93 F.3d 1445, 1454 (9th Cir. 1996). The Court concludes that leave to 9 || amend is appropriate for Plaintiff to clarify his allegations and to plead sufficient factual matter in 10 || support of his claims.

11 V. CONCLUSION

12 For the foregoing reasons, IT IS HEREBY RECOMMENDED: 13 1. Defendant’s Motion to Dismiss (ECF No. 26) be GRANTED, with leave to amend, 14 and; 15 2. Plaintiff be allowed 28 days to file a Second Amended Complaint. 16 These findings and recommendations will be submitted to the United States District Judge 17 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 18 || after being served with these findings and

recommendations, either party may file written 19 | objections with the court. The document should be captioned “Objections to Magistrate Judge's 20 | Findings and Recommendations.” The parties are advised that failure to file objections within the 21 || specified time may result in waiver of the right to appeal the district court’s order. Martinez v. 22 || Yist, 951 F.2d 1153 (9th Cir. 1991). 23 || DATED: August 7, 2025 kmh 25

SEAN C. RIORDAN

26 UNITED STATES MAGISTRATE JUDGE

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