

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Dunn v. Department of Consumer Affair

No. 1:25-cv-0777 JLT SKO (E.D. Cal. Aug. 21, 2025) · No. 1:25-cv-0777 JLT SKO · Decided August 21, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted findings and recommendations dismissing Alana Dunn and Emma Dunn’s action for failure to state a claim. The court denied leave to amend and denied a construed motion to file a second amended complaint, finding the proposed amendment futile because it did not present a cognizable federal or state claim. The action was dismissed without prejudice, and the Clerk was directed to close the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 21, 2025
DOCKET	1:25-cv-0777 JLT SKO
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court conducted de novo review of a magistrate judge's findings and recommendations recommending dismissal without prejudice and without leave to amend. Plaintiffs lodged a second amended complaint and a construed motion to amend while the findings and recommendations were pending.
STANDARD OF REVIEW	De novo review under 28 U.S.C. § 636(b)(1) of the findings and recommendations.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	Alana Dunn, Emma Dunn v. Department of Consumer Affair, other defendants

TOPICS

- pleadings
- motion to amend
- civil procedure
- consumer protection
- administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiffs' amended and lodged second amended complaints stated a cognizable claim and complied with Federal Rule of Civil Procedure 8.
2. Whether further amendment under Federal Rule of Civil Procedure 15 would be futile.
3. Whether the magistrate judge's findings and recommendations should be adopted after de novo review under 28 U.S.C. § 636(b)(1).

HOLDINGS

1. Plaintiffs failed to state a cognizable claim because their pleadings did not allege specific facts establishing liability by the named defendants, did not comply with Rule 8, and did not identify a federal statute or constitutional doctrine supporting their claims.
2. The construed Rule 15 motion to amend was denied because the proposed second amended complaint did not cure the pleading deficiencies and amendment would be futile.
3. The district court adopted the findings and recommendations in full after conducting de novo review.

KEY QUOTATIONS

“Plaintiffs do “not allege any specific facts giving rise to liability by the named defendants,” and it was “unclear how the alleged conduct by the defendants establishes the claims that Plaintiffs purport to bring against them.”” (at 1)

“Plaintiffs fail to state a cognizable claim, and review of the lodged amended pleading confirms that further amendment would be futile.” (at 2)

FACTUAL BACKGROUND

Alana Dunn and Emma Dunn sought to impose liability on defendants based on alleged conduct involving an unlicensed architect, tax benefits, privacy-related photographs, theft of funds, a language barrier, and rude actions. Their pleadings cited California Penal Code and Business and Professions Code provisions, 28 U.S.C. § 2255, and possibly the Federal Tort Claims Act. The court found that the pleadings did not allege specific facts connecting the named defendants to liability or identify a federal statute or constitutional doctrine supporting a cognizable claim.

PROCEDURAL HISTORY

The magistrate judge screened Plaintiffs' amended complaint under 28 U.S.C. § 1915(e)(2), found that it violated Federal Rule of Civil Procedure 8 and failed to state a cognizable claim, and recommended dismissal without prejudice and without leave to amend. Plaintiffs did not object within the prescribed period but lodged a second amended complaint and a document construed as a Rule 15 motion to amend. After de novo review, the district court adopted the findings and recommendations, dismissed the action without prejudice and without leave to amend, denied the motion to amend as futile, and directed the Clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Cleveland v. Xiong, 2023 WL 2354817, at *5 (E.D. Cal. Mar. 3, 2023), adopted, 2023 WL 4352629 (E.D. Cal. July 5, 2023)
- Wilson v. Mule Creek State Prison, 2024 WL 4289852, at *3 (E.D. Cal. Sept. 25, 2024)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 ALANA DUNN, et al.,) Case No.: 1:25-cv-0777 JLT SKO) 12 Plaintiffs,)
ORDER ADOPTING FINDINGS AND) RECOMMENDATIONS, DISMISSING THE 13 v.)
ACTION FOR FAILURE TO STATE A CLAIM,) DENYING PLAINTIFFS’ REQUEST TO
AMEND, 14 DEPARTMENT OF CONSUMER) AND DIRECTING THE CLERK OF COURT
TO AFFAIR, et al.,) CLOSE THIS CASE 15) Defendants.) (Docs.

11, 12, 13) 16) 17 Alana Dunn and Emma Dunn seek to hold the defendants liable for wrongful
acts related to a 18 transaction with an unlicensed architect, various tax benefits, breach of privacy
related to photos taken 19 in their living space, theft of funds, a language barrier, and rude actions.
(See Doc. 9.)

The magistrate 20 judge screened the amended complaint pursuant to 28 U.S.C. § 1915(e)(2) and
found Plaintiffs failed to 21 comply with Rule 8 of the Federal Rules of Civil Procedure and failed
to state any cognizable claim. 22 (Doc. 11.) Specifically, the magistrate judge determined Plaintiffs
do “not allege any specific facts 23 giving rise to liability by the named defendants,” and it was
“unclear how the alleged conduct by the 24 defendants establishes the claims that Plaintiffs
purport to bring against them.” (Id. at 3.)

Because the 25 Court previously provided the relevant pleading standards and Plaintiffs failed to
state a cognizable 26 claim or identify “a federal statute or constitutional doctrine that gives rise to
their claims,” the 27 magistrate judge found further leave to amend would be futile. (Id. at 4.)

Therefore, the magistrate 28 judge recommended dismissal “without prejudice and without leave
to amend.” (Id.) 1 The Court served the Findings and Recommendations on Plaintiffs and notified
them that any 2 objections were due within 21 days. (Doc. 11 at 4.)

The Court advised Plaintiffs that the “failure to file 3 objections within the specified time may
result in the waiver of rights on appeal.” (Id., citing Wilkerson 4 v. Wheeler, 772 F.3d 834, 838-39

(9th Cir. 2014).) Plaintiffs did not file objections, and the time to do so has passed.

However, Plaintiffs lodged a second amended complaint on August 5, 2025, and 6 followed by a second document that the Court construes to be a motion to amend under Rule 15 of the 7 Federal Rules of Civil Procedure. (Docs. 12, 13.) 8 In the SAC, Plaintiffs state: “You ask what is my complaint: penal code—no license penal code 9 collapse license; re-fraud on a license.

Need to retake the license as a contractor.” (Doc. 12 at 5.) 10 Plaintiffs cite to several provisions of the California Penal Code and the California Business & 11 Profession Code. (Id. at 6-7.) Importantly, it does not appear there is a private right of action under the 12 identified provisions of state law, let alone claims that would invoke this Court’s jurisdiction.

See 13 *Cleveland v. Xiong*, 2023 WL 2354817, at *5 (E.D. Mar. 3, 2023) (“Generally, the California Penal 14 Code does not permit a private right of action”), adopted 2023 WL 4352629 (E.D. Cal. July 5, 2023); 15 see also *Wilson v. Mule Creek State Prison*, 2024 WL 4289852, at *3 (E.D. Sept. 25, 2024) (noting that 16 sections of the Cal. Business and Profession Code do not provide private causes of action).

Plaintiffs 17 next invoke Section 2255 of the United States Code (Doc. 12 at 7-9), but Plaintiffs are not in custody 18 and did not file a petition for writ of habeas corpus. Finally, Plaintiffs also indicate their claims “might 19 be cognizable under the Federal Tort Claims Act.” (Id. at 10.)

However, there are no allegations to 20 support such a claim, let alone for the Court to conclude Plaintiffs complied with the pre-filing 21 requirements to state a claim under the FTCA. Consequently, the Court’s review of the lodged SAC 22 shows that Plaintiffs do not state a cognizable claim, and they do not cure the deficiencies identified by 23 the magistrate judge.

To the extent Plaintiffs seek leave for their SAC to be filed under Rule 15 of the 24 Federal Rules of Civil Procedure (Doc. 13), the motion is denied because the amendment is futile. 25 According to 28 U.S.C. § 636(b)(1), this Court performed a de novo review of this case.

Having 26 carefully reviewed the matter, including the lodged SAC, the Court concludes the Findings and 27 Recommendations are supported by the record and proper analysis. Plaintiffs fail to state a cognizable 28 claim, and review of the lodged amended pleading confirms that further amendment would be futile. 1 || See *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.

2000). Thus, the Court ORDERS: 2 1. The Findings and Recommendations dated July 29, 2025 (Doc. 11) are ADOPTED 3 in full. 4 2. Plaintiffs’ amended complaint is DISMISSED without leave to amend. 5 3. Plaintiffs’ construed motion to amend (Doc. 13) is DENIED. 6 4.

The action is DISMISSED without prejudice for failure to state a claim. 7 5. The Clerk of Court is directed to close this case. 8 9 || IT IS SO ORDERED. Dated: _ August 21, 2025 (LAW ph L. wan 11 TED STATES DISTRICT JUDGE 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

