

**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

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 5 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 1 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