

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Jonathan Cruz, et al. v. Townsquare Media, Inc., et al.

Cruz · No. 25-cv-03902-WHO · Decided December 4, 2025

OPINION

Cruz

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 JONATHAN CRUZ, et al., Case No. 25-cv-03902-WHO 8 Plaintiffs,

ORDER GRANTING DEFENDANTS'

9 v. MOTION TO DISMISS

10 TOWNSQUARE MEDIA, INC, et al., Re: Dkt. Nos. 40, 41, 42 Defendants. 11 12 Defendants
Townsquare Media, Inc., Townsquare Interactive, LLC, and Tim 13 Pirrone (collectively,
“defendants”) move to dismiss plaintiff Jonathan Cruz and Cruz 14 Collaborative Architecture,
LLC’s (collectively, “plaintiffs”) First Amended Complaint (“FAC”) 15 with prejudice pursuant to
Federal Rule of Civil Procedure 12(b)(6) and 9(b). See Notice of 16 Motion and Motion to
Dismiss First Amended Complaint (“Mot.”) [Dkt. No 40]. Plaintiffs 17 initially did not file an
opposition, which defendants noted in their October 13, 2025 reply. See 18 Notice of Non-
Opposition to Motion to Dismiss First Amended Complaint (“Repl.”) [Dkt. No. 19 41]. However,
plaintiffs responded on October 29, 2025—twenty (20) days past the deadline— 20 indicating that
their “brief delay” was “caused by an internal calendaring error” which they 21 corrected
“immediately . . . upon discover[y].” See Plaintiffs’ Opposition to Defendants’ Motion 22 to
Dismiss First Amended Complaint [Dkt. No. 42] at 2–3. They also claim that because a hearing 23
on this motion was set for November 5, 2025, defendants “ha[d] ample opportunity to respond.”
24 Id. at 3.

25 I am quite troubled by plaintiffs’ response. As explained below, this is not a one-off delay, 26
but rather a pattern of repeated untimeliness and failure to respond to court orders. To be certain, I
27 agree with plaintiffs that the Ninth Circuit strongly favors “resolution on the merits.” Id. at 2.
But 1 recurring basis, warrants dismissal. Fed. R. Civ. P. 41(b). Considering plaintiffs’ behavior
and 2 seeming lack of interest in adhering to the basic requirements set forth by this Court, I
DISMISS 3 this action. I do so WITH PREJUDICE. My decision to dismiss with prejudice is
bolstered by 4 my analysis of plaintiffs’ First Amended Complaint (FAC): I find that it fails to
successfully 5 address the deficiencies I pointed out before and does not state a claim on which

relief could be 6 granted. That is an additional reason to dismiss with prejudice.

7 LEGAL STANDARD

8 Rule 41(b)

9 Federal Rule of Civil Procedure 41(b) allows a court to dismiss an action if the plaintiff 10 “fails to prosecute or to comply with . . . a court order.” Fed. R. Civ. P. 41(b). When considering 11 a motion to dismiss for violation of pretrial orders, courts weigh five factors: “(1) the public’s 12 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the 13 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their 14 merits; and (5) the availability of less drastic sanctions.” *Malone v. United States Postal Serv.*, 15 833 F.2d 128, 130 (9th Cir. 1987) (quoting *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 16 831 (1986)). “These factors are not a series of conditions precedent before the judge can do 17 anything, but a way for a district judge to think about what to do.” In re *Phenylpropanolamine* 18 (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Valley Eng’rs Inc. v. Elec. 19 Eng’g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998) (internal quotations omitted)).

20 Rule 12(b)(6)

21 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint 22 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to 23 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its 24 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when 25 the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant 26 is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation 27 omitted). There must be “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* 1 sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555, 570. 2 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the 3 Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the 4 plaintiff. See *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court 5 is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of 6 fact, or unreasonable inferences.” In re *Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 7 2008). 8 If the court dismisses the complaint, it “should grant leave to amend even if no request to 9 amend the pleading was made, unless it determines that the pleading could not possibly be cured 10 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making 11 this determination, the court should consider factors such as “the presence or absence of undue 12 delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, 13 undue prejudice to the opposing party and futility of the proposed amendment.” *Moore v. Kayport* 14 Package Express, 885 F.2d 531, 538 (9th Cir. 1989).

15 DISCUSSION

16 I. Cruz’s Untimely Opposition 17 This is the second lawsuit plaintiffs have filed against

defendants; I dismissed the first 18 without prejudice in August 2024 for failure to prosecute and then related that case to this one. 19 See Order Requiring Response from Plaintiffs re Late Filed Amended Complaint (“Late Order”) 20 [Dkt. No. 27] at 1. After I related the cases, defendants filed a motion to dismiss plaintiffs’ 21 complaint. See Re-Notice of Motion to Dismiss [Dkt. No. 16]. Plaintiffs failed to file an 22 opposition, and I admonished their untimeliness when granting defendants’ motion on July 23, 23 2025. See Order Granting Motion to Dismiss [Dkt. No. 22] at 1–2. I granted leave to amend, 24 however, giving plaintiffs twenty (20) days to file an amended complaint. Id. at 17. 25 On August 15, 2025, three days after their deadline to amend had passed, plaintiffs filed 26 their FAC. See First Amended Complaint for Damages [Dkt. No. 26]. I subsequently ordered 27 plaintiffs to submit a motion for leave to file the late-amended complaint, requiring them to 1 prosecute. See Late Order at 2. 2 On August 19, 2025, defendants filed a case management statement, indicating that they 3 “reached out to Plaintiffs’ counsel multiple times, over a period of several weeks in an attempt to 4 meet and confer . . . but Plaintiffs’ counsel did not respond.” See Defendants’ Case Management 5 Statement (“Def. CMC”) [Dkt. No. 28] at 1. Then, on August 25, 2025, plaintiffs filed their 6 motion for leave to file the FAC. See Plaintiffs’ Notice of Motion & Motion for Leave to Amend 7 [Dkt. No. 30]. They explained that their delay was “caused by staffing transitions within 8 Plaintiffs’ counsel’s office that temporarily disrupted calendaring and filing procedures.” Id. at 4. 9 That same day, plaintiffs filed their own case management statement, indicating that the staffing 10 changes in their office were the reason for their unresponsiveness to defendants’ case management 11 statement. See Plaintiffs’ Case Management [Dkt. No. 31]. 12 On August 26, 2025, I held a case management conference with the parties. See Civil 13 Minute Entry for Proceedings (“Further CMC”) [Dkt. No. 34]. There, I provided plaintiffs’ 14 counsel the choice of “either dismissing the case with prejudice or, on or before August 29, 2025, 15 paying sanctions of \$1,000.00 to defense counsel for the wasted time and effort it has taken to 16 address [deficiencies in their FAC] and filing a proper redline (track change) version of the 17 Amended Complaint he intends to pursue in this case.” Id. (emphasis in original). 18 Plaintiffs filed variations of their redlined FAC on August 29, 2025, September 2, 2025, 19 and September 4, 2025. See Supplement First Amended Complaint for Damages Redlined as per 20 Order [Dkt. Nos. 35, 36, 38]. However, on September 2, 2025, defendants notified the Court that 21 plaintiffs failed to pay the required \$1,000.00 sanction to defense counsel. See Notice of Non- 22 Compliance with Court Order [Dkt. No. 37]. As a result, I issued an order on September 9, 2025, 23 requiring plaintiffs to pay the \$1,000.00 sanction “immediately if they have not already done so,” 24 as well as for defendants to file a response to the FAC within twenty (20) days of this order. See 25 Order Regarding Cruz’s Amended Complaint (“Sanctions Order”) [Dkt. No. 39]. Defendants then 26 filed this motion to dismiss. See Mot. at 1. 27 Unfortunately, as described above, plaintiffs’ failure again to respond to defendants’ 1 court orders. I have raised these concerns on multiple instances with plaintiffs’ counsel and have 2 indicated to them that “any further failures to comply with the rules of this Court, including with 3

respect to timeliness, will likely result in further sanctions, up to and including dismissal.” See 4 Further CMC. These failures have resulted in “prejudice to the defendants,” including increased 5 litigation costs and unsuccessful attempts to communicate with plaintiffs. See Malone, 833 F.2d at 6 130; Def. CMC. They also inhibit my ability to manage the progression of this case, or to ensure 7 the “public’s interest in expeditious resolution of litigation,” as the delays have prohibited me 8 from reaching the merits of the case. See Malone, 833 F.2d at 130. Any “less drastic sanctions” 9 would be futile here, as plaintiffs still have not complied with my previous \$1,000.00 sanctions 10 order, despite being reminded twice. See *id.*; Sanctions Order. While I do not take dismissal 11 lightly, the Malone factors all suggest that this is the proper outcome under the circumstances. 12

II. Merits of Cruz’s Claims 13 Even if I were to focus this order on the merits of Cruz’s opposition, dismissal would still 14 be warranted, as Cruz has not corrected the issues raised in my prior motion to dismiss. See Order 15 Granting Motion to Dismiss. I address each claim below. 16

A. Breach of Contract (First Claim) 17 The standard elements plaintiffs must satisfy to prove breach of contract are ““(1) the 18 contract, (2) plaintiff[s]’ performance or excuse for nonperformance, (3) defendant[s]’ breach, and 19 (4) damage to plaintiff[s] therefrom.”” *Wall St. Network, Ltd. v. New York Times Co.*, 164 Cal.

20 App. 4th 1171, 1178 (2008).

21 In my previous order granting defendants’ motion to dismiss, I noted that for plaintiffs’ 22 breach of contract claim to proceed, they “must set forth facts from which I can infer what contract 23 provisions Townsquare Interactive allegedly breached and how it breached them.” Order Granting 24 Motion to Dismiss at 12. “Only then [could] I assess the plausibility claim.” *Id.* 25 Plaintiffs largely failed to correct their prior complaint. They argue that the FAC “sets 26 forth clear contractual obligations and specific facts demonstrating how Defendants breached 27 them,” but this still is not clear from the face of the amended complaint. *Oppo.* at 3. For example, 1 “deliver a customized, functional, secure, and professionally designed website incorporating 2 Plaintiffs’ specified content and revisions.” FAC ¶ 9. The FAC then notes that the website was 3 launched with “unresolved design and functionality issues,” including the “failure to use high- 4 resolution images provided by Plaintiffs; failure to implement functional navigational buttons; 5 misaligned and unprofessional text layout; use of unauthorized terms exposing Plaintiffs to 6 potential licensing liability; failure to provide administrative access; and negligent security 7 measures leading to a site breach in January 2023.” *Id.* ¶ 12. 8 While Cruz argued that he identified the “key terms of the contract . . . [and] describe[d] 9 how specific provisions . . . were violated,” I squarely rejected similar allegations in my prior 10 order granting the motion to dismiss. *Oppo.* at 4; Order Granting Motion to Dismiss at 11–12. 11 There, I noted that “nowhere in the Complaint do the plaintiffs explain what provisions of the 12 Agreement these purported deficiencies violated,” nor that the defendants “promised to perform 13 their work to a certain degree of quality, or on a particular timeline, or with a particular level of 14 involvement by the plaintiffs.” *Id.* Here, Cruz’s FAC makes the same fatal error— even when 15 reading it liberally

under Federal Rule of Civil Procedure 8(a), the FAC does not allege with 16 enough specificity the terms of the Agreement and how defendants' conduct breached the 17 contract,. Iqbal, 556 U.S. at 678. Cruz's breach of contract claim is DISMISSED. 18 B. Breach of the Implied Covenant of Good Faith and Fair Dealing (Second Claim) 19 "Under California law, every contract 'imposes upon each party a duty of good faith and 20 fair dealing in its performance and its enforcement.'" Rosenfeld v. JPMorgan Chase Bank, N.A., 21 732 F. Supp. 2d 952, 968 (N.D. Cal. 2010) (citation omitted). The covenant of good faith and fair 22 dealing is violated by "a conscious and deliberate act, which unfairly frustrates the agreed 23 common purposes and disappoints the reasonable expectations of the other party thereby depriving 24 that party of the benefits of the agreement." Careau & Co. v. Sec. Pac. Bus. Credit, Inc., 222 Cal.

25 App. 3d 1371, 1395 (Cal. Ct. App. 1990); see also id. at 1393 ("[T]he 'implied covenant imposes

26 upon each party the obligation to do everything that the contract presupposes they will do to 27 accomplish its purpose.'") (internal citations omitted). 1 state a claim, "the scope of conduct prohibited by the covenant of good faith is circumscribed by 2 the purposes and express terms of the contract." Carma Devs. (Cal.), Inc. v. Marathon Dev. Cal., 3 Inc., 2 Cal. 4th 342, 373 (Cal. 1992). That is, "the implied covenant of good faith and fair dealing 4 'cannot impose substantive duties or limits on the contracting parties beyond those incorporated in 5 the specific terms of their agreement.'" Rosenfeld, 732 F. Supp. 2d at 968 (citation omitted). At 6 the same time, "if the allegations do not go beyond the statement of a mere contract breach and, 7 relying on the same alleged acts, simply seek the same damages or other relief already claimed in 8 a companion contract [cause] of action, they may be disregarded as superfluous as no additional 9 claim is actually stated." Celador Int'l Ltd. v. Walt Disney Co., 347 F. Supp. 2d 846, 852 (C.D.

10 Cal. 2004) (citation omitted). One exception to this limitation is "where the plaintiff alleges that

11 the defendant acted in bad faith to frustrate the contract's benefits." Id. 12 As explained in my previous order: 13 Plaintiffs' claims for breach of contract and for breach of the [implied] covenant of good faith for failure to complete the website 14 as agreed "rise and fall together." Travelers Prop. Cas. Co. of Am. v. Centex Homes, No. 11-cv-03638-SC, 2012 WL 1657121, at *8 (N.D. 15 Cal. May 10, 2012). And their allegation that the defendants "fail[ed] to act in good faith," Compl. ¶ 51, does not identify any acts by the 16 defendants that constituted bad faith. It is too generalized to plausibly state a claim. 17 Order Granting Motion to Dismiss at 13. Here too must plaintiffs' claims for breach of contract 18 and breach of the implied covenant of good faith "rise and fall together." See id. Plaintiffs allege 19 that defendants breached the implied covenant of good faith and fair dealing by "prematurely 20 launching the website, withholding administrative access, ceasing communication, and leveraging 21 proprietary control of Plaintiffs' domain to frustrate Plaintiffs' rights under the Agreement." FAC 22 ¶ 24. However, no facts are readily apparent in the FAC indicating that defendants "launch[ed] 23 the website prematurely to

force acceptance” or “with[held] administrative access . . . to frustrate 24 Plaintiffs’ rights.” *Id.* Nor do the plaintiffs allege that the Agreement mandated that Townsquare 25 “secure the plaintiffs’ express permission before launching a product they had been contracted to 26 provide.” Order Granting Motion to Dismiss at 11. 27 The FAC, as currently pleaded, does not support any claim for a breach of contract or 1 breach of the implied covenant of good faith and fair dealing. Plaintiffs’ second claim is 2 DISMISSED. 3 C. Fraudulent Deceit and Promissory Fraud (Third and Fourth Claims) 4 “The elements of fraud are (a) a misrepresentation (false representation, concealment, or 5 nondisclosure); (b) scienter or knowledge of its falsity; (c) intent to induce reliance; (d) justifiable 6 reliance; and (e) resulting damage.” *Hinesley v. Oakshade Town Ctr.*, 135 Cal. App. 4th 289, 294 7 (2005). Plaintiffs bringing fraud claims must meet the Rule 9(b) pleading requirements, which 8 requires a showing of the “who, what, when, where, and how” of the fraudulent conduct. *Kearns 9 v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009). 10 Plaintiffs’ fraudulent deceit and promissory fraud claims arise from the same set of facts. 11 The FAC alleges that Townsquare made representations that they would provide Cruz with a 12 website that “would be completed to professional standards, revisions would be implemented, and 13 Plaintiffs would retain full administrative access.” FAC ¶ 27. However, Townsquare “knew these 14 representations were false when made, or they made the representations recklessly and without 15 regard for the truth of the representations.” *Id.* ¶ 28. 16 In my prior order dismissing these claims, I noted that plaintiffs’ fraud claims made 17 “[c]onclusory allegations,” and that they “utilize[d] the right key words, but the substance [was] 18 missing.” Order Granting Motion to Dismiss at 14. Cruz has failed to rectify this issue. The FAC 19 fraud claims do not identify how defendants breached the Agreement; nor does it explain how 20 defendants “knew these representations were false when made.” FAC ¶ 28. While plaintiffs 21 include slightly more detail than the original complaint, the FAC does not provide the specificity 22 that Rule 9(b) demands. Accordingly, these claims are DISMISSED. 23 D. Intentional Infliction of Emotional Distress (Claim Five) 24 The Supreme Court of California has held that “[t]he economic loss rule requires a [party] 25 to recover in contract for purely economic loss due to disappointed expectations, unless he can 26 demonstrate harm above and beyond a broken contractual promise.” *Robinson Helicopter Co., Inc. 27 v. Dana Corp.*, 34 Cal. 4th 979, 988 (2004) (citations omitted). The doctrine “is designed to 1 Recordings, Inc. v. Glob. Eagle Entm’t, Inc., 117 F. Supp. 3d 1092, 1103 (C.D. Cal. 2015). 2 In my previous order, I noted that plaintiffs’ intentional infliction of emotional distress 3 (“IIED”) claim should be dismissed because the plaintiffs “explicit[ly] repackag[ed]” a breach of 4 contract claim into a tort claim, in violation of the economic loss rule. Order Granting Motion to

5 Dismiss at 16–17. Plaintiffs now attempt to rehash their argument that the conduct underlying the

6 IIED claim constitutes “duties independent of contract,” thus falling within a Robinson Helicopter 7 exception. See *id.* at 16; *Oppo.* at 6. But the conduct alleged in the FAC does not

show such an 8 exception applies. Plaintiffs suggest that the FAC alleges defendants “ma[de] knowingly false 9 representations, manipul[at]ed] domain access, and fail[ed] to exercise reasonable care in 10 safeguarding Plaintiffs’ online property,” which involve “obligations arising from professional 11 standards, not from the contract alone.” Oppo. at 6. But plaintiffs fail to clearly articulate this 12 theory in their pleadings. Nor do they explain how the individual elements of the IIED claim are 13 satisfied in the FAC, as they merely recite that each element is met. See FAC ¶¶ 39–43. 14 Plaintiffs’ IIED claim is DISMISSED. 15 E. Slander of Title / Wrongful Lien (Claim Six) 16 Finally, plaintiffs raise a new claim in their FAC for slander of title and wrongful lien. See 17 FAC ¶¶ 44–47. Confusingly, plaintiffs do not address this claim in their opposition; rather, they 18 argue that their “negligence” claim should not be dismissed, despite their FAC no longer including 19 such a claim. See Oppo. at 7–8. While I assume plaintiffs have forfeited their slander of title and 20 wrongful lien claims, I address them here briefly. 21 To prevail on a slander of title claim, a plaintiff must allege “(1) a publication, (2) which is 22 without privilege or justification, (3) which is false, and (4) which causes direct and immediate 23 pecuniary loss.” *Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal. App. 4th 1040, 1051 24 (2009). Here, plaintiffs’ FAC indicates that defendants “owed Plaintiffs a duty to perform the 25 website and SEO services with reasonable care and in accordance with professional standards,” and 26 that they breached this duty by “failing to use reasonable care in the design, construction, and 27 launch of Plaintiffs’ website, and in handling Plaintiffs’ domain and email systems.” FAC ¶¶ 45– 1 any title involved in this case. It is unclear why, exactly, plaintiffs raised this claim in the first 2 || place. Because plaintiffs have failed to meet the Rule 8 pleading standard, Claim Six is 3 || DISMISSED.

4 CONCLUSION

5 Considering plaintiffs’ seeming disinterest in litigating this case or adhering to court 6 || orders, as well as their inability to cure the deficiencies identified in my previous order, I 7 DISMISS this case WITH PREJUDICE. All upcoming deadlines and hearing dates are 8 VACATED. Plaintiffs are ORDERED to pay the \$1,000.00 sanction to defendants immediately. 9 IT IS SO ORDERED. 10 Dated: December 4, 2025 2 . liam H. Orrick 13 United States District Judge © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28