

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

White v. BMO Bank N.A.

White · No. 25-cv-07717-JST · Decided December 8, 2025

SUMMARY

The United States District Court for the Northern District of California screened Todd White’s pro se complaint against BMO Bank N.A. under 28 U.S.C. § 1915(e)(2). The court held that White adequately stated claims under the Electronic Fund Transfer Act, Fair Credit Reporting Act, breach of contract, and California’s Unfair Competition Law, but dismissed his negligence claim with prejudice under the economic loss rule. The court ordered issuance of the summons and service by the U.S. Marshal without prepayment of fees.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jon S. Tigar
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 8, 2025
DOCKET	25-cv-07717-JST
DISPOSITION	other
PROCEDURAL POSTURE	Screening of a pro se complaint filed in forma pauperis under 28 U.S.C. § 1915(e)(2).
STANDARD OF REVIEW	Under 28 U.S.C. § 1915(e)(2), the court screens an in forma pauperis action for frivolousness, maliciousness, failure to state a claim, or claims seeking relief from an immune defendant. The failure-to-state-a-claim standard under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard. The court accepts factual allegations as true and construes the pleadings in the light most favorable to the nonmoving party, while requiring sufficient factual matter beyond labels, conclusions, or formulaic recitations.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- pleadings
- motions to dismiss
- civil procedure
- consumer protection
- breach of contract
- negligence

PRACTICE AREAS

civil procedure

consumer protection

contracts

torts

QUESTIONS PRESENTED

1. Whether White's complaint stated claims under the Electronic Fund Transfer Act and Regulation E based on BMO's alleged charging of overdraft fees despite his opt-out election.
2. Whether White adequately pleaded a Fair Credit Reporting Act claim based on BMO's alleged failure to investigate disputed information after notice from a consumer reporting agency.
3. Whether White adequately pleaded a breach-of-contract claim based on BMO's alleged violation of the checking-account and overdraft-service agreement.
4. Whether California's economic loss rule barred White's negligence claim for economic losses arising from the alleged breach of the checking-account contract.
5. Whether White adequately pleaded a claim under California's Unfair Competition Law based on the alleged Regulation E violation.

HOLDINGS

1. The court applies the Federal Rule of Civil Procedure 12(b)(6) failure-to-state-a-claim standard when screening an in forma pauperis action under 28 U.S.C. § 1915(e)(2)(B)(ii), accepting factual allegations as true and construing the pleadings in the plaintiff's favor.
2. White adequately stated a claim under the Electronic Fund Transfer Act by alleging that BMO charged overdraft fees for transactions despite his election not to receive overdraft services.
3. White adequately stated a claim under 15 U.S.C. § 1681s–2(b) by alleging that BMO failed to conduct a reasonable investigation after ChexSystems notified BMO of his dispute concerning furnished information.
4. White adequately stated a breach-of-contract claim by identifying the checking-account and overdraft-service agreement, alleging his performance or compliance with its terms, BMO's alleged breach, and resulting damages.
5. White's negligence claim was dismissed with prejudice because the alleged losses were purely economic and arose from the alleged breach of the same contract, and White alleged no physical injury.
6. White adequately stated a claim under California's Unfair Competition Law by alleging that BMO violated Regulation E through the alleged unauthorized overdraft fees.

KEY QUOTATIONS

“The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under [Section] 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” (at 1)

“The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual

promise.” (at 5)

“[R]ecoverly in negligence for purely economic losses [is] the exception, not the rule.” (at 6)

FACTUAL BACKGROUND

White previously maintained a checking account with BMO Bank N.A. He alleges that, despite opting out of BMO's overdraft protection service, BMO processed transactions that overdrew the account and charged overdraft fees, causing the account to become negative and be closed. He further alleges that BMO reported the negative balance and account closure to ChexSystems, affecting his credit and ability to obtain banking services, and that BMO failed to reasonably investigate after ChexSystems notified it of his dispute.

PROCEDURAL HISTORY

Todd White filed an action against BMO Bank N.A. alleging violations of the Electronic Fund Transfer Act, the Fair Credit Reporting Act, breach of contract, negligence, and violation of California's Unfair Competition Law. On screening, the court found that all claims except negligence were adequately pleaded. The negligence claim was dismissed with prejudice, the summons was ordered issued, and service by the U.S. Marshal was directed.

DISPOSITION

other

CASES CITED

- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Lopez v. Smith, 203 F.3d 1122, 1127–31 (9th Cir. 2000)
- Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)
- Erickson v. Pardus, 551 U.S. 89, 93 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Knieval v. ESPN, 393 F.3d 1068, 1072 (9th Cir. 2005)
- Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 52 (2007)
- Sanai v. Saltz, 170 Cal. App. 4th 746, 763 (2009)
- Nelson v. Chase Manhattan Mortg. Corp., 282 F.3d 1057, 1059–60 (9th Cir. 2002)
- Johnson v. Wells Fargo Home Mortg., Inc., 558 F. Supp. 2d 1114, 1120 (D. Nev. 2008)
- Oasis W. Realty, LLC v. Goldman, 51 Cal. 4th 811, 821 (2011)
- Caraccioli v. Facebook, Inc., 167 F. Supp. 3d 1056, 1064 (N.D. Cal. 2016), aff'd, 700 F. App'x 588 (9th Cir. 2017)
- Donohue v. Apple, Inc., 871 F. Supp. 2d 913, 930 (N.D. Cal. 2012)
- Peredia v. HR Mobile Servs., Inc., 25 Cal. App. 5th 680, 687 (2018)
- Artiglio v. Corning Inc., 18 Cal. 4th 604, 614 (1998)
- Robinson Helicopter Co. v. Dana Corp., 34 Cal. 4th 979, 988–89 (2004)

- Moore v. Centrelake Med. Grp., Inc., 83 Cal. App. 5th 515, 535 (2022)
- S. Cal. Gas Leak Cases, 7 Cal. 5th 391, 406 (2019)
- Leadsinger, Inc. v. BMG Music Pub., 512 F.3d 522, 532 (9th Cir. 2008)
- Rubio v. Cap. One Bank, 613 F.3d 1195, 1203–05 (9th Cir. 2010)
- Kearns v. Ford Motor Co., 567 F.3d 1120, 1127 (9th Cir. 2009)
- Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999)
- State Farm Fire & Casualty Co. v. Superior Court, 45 Cal. App. 4th 1093, 1103 (1996)
- Gregory v. Albertson's, Inc., 104 Cal. App. 4th 845, 854 (2002)
- Cortes v. Univ. & State Emps. Credit Union, No. 22-CV-444-LAB-DEB, 2023 WL 12009972, at *12 (S.D. Cal. Mar. 13, 2023)
- Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)

OPINION

White

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 TODD WHITE, Case No. 25-cv-07717-JST 8 Plaintiff,

SCREENING ORDER

v. 9 Re: ECF No. 1

10 BMO BANK N.A.,

Defendant. 11 12

13 I. STANDARD OF REVIEW

14 Section 1915(e)(2) requires the Court to screen in forma pauperis proceedings to

15 determine if the action is frivolous or malicious, fails to state a claim on which relief may be 16 granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C.

17 § 1915(e)(2). “The standard for determining whether a plaintiff has failed to state a claim upon

18 which relief can be granted under [Section] 1915(e)(2)(B)(ii) is the same as the Federal Rule of

19 Civil Procedure 12(b)(6) standard for failure to state a claim.” Watison v. Carter, 668 F.3d 1108,

20 1112 (9th Cir. 2012) (citing Lopez v. Smith, 203 F.3d 1122, 1127–31 (9th Cir. 2000)). If the

Court 21 determines that the action “fails to state a claim on which relief may be granted,” it must

dismiss 22 the case. 28 U.S.C. § 1915(e)(2)(B)(ii); see also Barren v. Harrington, 152 F.3d 1193,

1194 (9th

23 Cir. 1998).

24 Fed. R. Civ. P. 8(a)(2) requires only “a short and plain statement of the claim showing that 25

the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the 26

statement need only give the defendant fair notice of what the . . . claim is and the grounds upon

27 which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (internal quotations and citation 1
unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 2
678 (2009). A pleading that offers only labels and conclusions, or a formulaic recitation of the 3
elements of a cause of action, or naked assertions devoid of further factual enhancement does not 4
suffice. *Id.*

5 II. DISCUSSION

6 For purposes of screening under 28 U.S.C. § 1915(e)(2), the Court “accept[s] all factual 7
allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the
8 nonmoving party.” *Kniesel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). Todd White filed this
9 action against BMO Bank, N.A., a national bank at which he previously held a checking
account. 10 ECF No. 1 ¶¶ 2, 5. He alleges that even though he opted out of BMO’s overdraft
protection 11 service, BMO allowed transactions to be processed causing an overdraft and charged
White 12 overdraft fees. *Id.* ¶¶ 6–9. He further alleges that the overdrafts and accompanying fees
caused 13 his account to become negative, at which point BMO closed his account. *Id.* ¶¶ 10–11.
BMO 14 then allegedly reported the negative balance and account closure to a consumer reporting
agency, 15 impacting White’s credit and causing him to be denied banking services elsewhere. *Id.*
¶¶ 12–13. 16 White brings claims for: (1) violation of the Electronic Fund Transfer Act (“EFTA”);
(2) 17 violation of the Fair Credit Reporting Act (“FCRA”); (3) breach of contract; (4) negligence;
and 18 (5) violation of the California Unfair Competition Law (“UCL”). For the reasons explained
19 herein, the Court finds that White has adequately stated a claim with respect to all causes of
action 20 except his claim for for negligence. 21 A. Violation of the Electronic Fund Transfer Act
and Regulation E 22 The EFTA is a federal consumer protection law “establishing the rights,
liabilities, and 23 responsibilities of participants in electronic fund and remittance transfer
systems.” 15 U.S.C. 24 § 1693(b). The EFTA, together with its implementing regulation,
Regulation E, governs 25 electronic fund transfers that directly affect consumer accounts. See *id.* §
1693a(7). The EFTA 26 provides that “any person who fails to comply with any provision of [the
EFTA] with respect to 27 any consumer . . . is liable to such consumer.” 15 U.S.C. § 1693m(a);
see also *Widjaja v.* 1 “authorizes a private right of action” against banks that violate the EFTA). 2
Regulation E states that a financial institution “shall not assess a fee or charge on a 3 consumer’s
account for paying an ATM or one-time debit card transaction pursuant to the 4 institution’s
overdraft service, unless the institution” provides the consumer written notice 5 describing the
service and obtains the consumer’s affirmative consent. See 12 C.F.R. 6 § 1005.17(b)(1)(i)–(iii).
Subject to enumerated exceptions not applicable here, “the term 7 ‘overdraft service’ means a
service under which a financial institution assesses a fee or charge on a 8 consumer’s account held
by the institution for paying a transaction (including a check or other 9 item) when the consumer
has insufficient or unavailable funds in the account.” 12 C.F.R. 10 § 1005.17(a). 11 White alleges
that BMO paid overdraft charges and charged him overdraft fees even 12 though he had opted out
of such services. ECF No. 1 ¶ 21. He has stated a claim for a violation of 13 the EFTA. 14 B.

Violation of the Fair Credit Reporting Act 15 “Congress enacted FCRA in 1970 to ensure fair and accurate credit reporting, promote 16 efficiency in the banking system, and protect consumer privacy.” *Safeco Ins. Co. of Am. v. Burr*, 17 551 U.S. 47, 52 (2007). With respect to entities that furnish financial information to consumer 18 credit reporting agencies, the FCRA imposes two general duties: the duty to provide accurate 19 information, 15 U.S.C. § 1681s–2(a), and the duty to investigate the accuracy of reported 20 information upon receiving notice of a dispute, 15 U.S.C. § 1681s–2(b). See *Sanai v. Saltz*, 170 21 Cal. App. 4th 746, 763 (2009), as modified on denial of reh’g (Feb. 18, 2009). The statute gives 22 consumers a private right of action to enforce Section 1681s–2(b) (but not to enforce Section 23 1681s–2(a)). *Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1059–60 (9th Cir. 2002). 24 Moreover, to trigger the duty to investigate under Section 1681s–2(b), the furnisher of information 25 must be notified of the disputed information by the consumer credit reporting agency—not by the 26 consumer. See *id.* at 1060; *Johnson v. Wells Fargo Home Mortg., Inc.*, 558 F. Supp. 2d 1114, 27 1120 (D. Nev. 2008). Once the duty is triggered, the furnisher must conduct “a 1 1157 (9th Cir. 2009). 2 White alleges that BMO violated the FCRA by furnishing to ChexSystems, a credit 3 reporting agency, information that was “inaccurate because it was based on improper draft fees 4 and a failure to honor [White’s] opt-out election.” ECF No. 1 ¶ 25. He alleges that he “disputed 5 this inaccurate information with ChexSystems” and that ChexSystems subsequently notified BMO 6 of the dispute but that BMO “failed to conduct a reasonable investigation or to correct the 7 inaccurate information.” *Id.* ¶¶ 15, 26. 8 White therefore alleges that ChexSystems, a furnisher of credit information under Section 9 1681s–2(b), failed to conduct the requisite reasonable investigation after being duly notified by the 10 credit reporting agency of a dispute. He has adequately alleged a violation of Section 1681s–2(b). 11 C. Breach of Contract 12 The elements of a cause of action for breach of contract under California law are: “(1) the 13 existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) 14 defendant’s breach, and (4) the resulting damages to the plaintiff.” *Oasis W. Realty, LLC v. 15 Goldman*, 51 Cal. 4th 811, 821 (2011). “To properly plead breach of contract, ‘[t]he complaint 16 must identify the specific provisions of the contract allegedly breached by the defendant.’” 17 *Caraccioli v. Facebook, Inc.*, 167 F. Supp. 3d 1056, 1064 (N.D. Cal. 2016), *aff’d*, 700 F. App’x 18 588 (9th Cir. 2017) (quoting *Donohue v. Apple, Inc.*, 871 F. Supp. 2d 913, 930 (N.D. Cal. 2012)). 19 White alleges that he entered into a contract with BMO bank when he opened a checking 20 account and opted out of BMO’s overdraft services. ECF No. 1 ¶¶ 5–6. He alleges that BMO 21 violated that contract by processing withdrawals that overdrew his account and charging him 22 overdraft fees. *Id.* ¶¶ 8–9. And he alleges that he was harmed when BMO’s breach caused him to 23 incur fees and caused his account to become negative, which BMO reported to credit reporting 24 agencies, harming White’s ability to obtain banking services at other financial institutions. *Id.* 25 ¶¶ 10, 13. White has stated a claim for a breach of contract and identified the contract with the 26 requisite particularity. 27 D. Negligence 1 and damages.” *Peredia v. HR Mobile Servs., Inc.*, 25 Cal. App. 5th 680, 687 (2018) (citing 2 *Artiglio v.*

Corning Inc., 18 Cal. 4th 604, 614 (1998)). 3 White alleges that BMO negligently failed to honor his decision to opt out of its overdraft 4 protection program. He alleges that BMO owed him a duty of care to manage his account in a 5 commercially reasonable manner and abide by his instructions, including the opt-out election. 6 ECF No. 1 ¶ 35. He further alleges that BMO breached its duty of care by “failing to properly 7 implement Plaintiff’s opt-out election,” “improperly charging overdraft fees,” and “allowing his 8 account to become overdrawn.” Id. ¶ 36. He alleges that “BMO’s breach of its duty of care was a 9 direct and proximate cause of [his] injuries and damages.” Id. ¶ 37. Finally, he alleges damages, 10 including the aforementioned fees, his account closure, and the harm caused by the negative credit 11 report. Id. ¶ 38. 12 White appears to have pleaded the elements of a negligence claim. However, he cannot 13 recover in negligence for purely economic damages stemming from a breach of contract. “The 14 economic loss rule requires a purchaser to recover in contract for purely economic loss due to 15 disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual 16 promise.” Robinson Helicopter Co. v. Dana Corp., 34 Cal. 4th 979, 988 (2004). White’s claims 17 are not independent of the contract at issue. See Moore v. Centrelake Med. Grp., Inc., 83 Cal. 18 App. 5th 515, 535 (2022) (holding that the economic loss rule applies where “the claim is not 19 independent of the contract”). White also does not allege that he suffered physical injury. See 20 Robinson Helicopter, 34 Cal. 4th at 989 (“Tort damages have been permitted in contract cases 21 where a breach of duty directly causes physical injury.”). He therefore may not also recover in 22 negligence for harm stemming from BMO’s alleged breach of contract. See S. Cal. Gas Leak 23 Cases, 7 Cal. 5th 391, 406 (2019) (“[R]ecovery in negligence for purely economic losses [is] the 24 exception, not the rule.”). White’s negligence claim is dismissed. Because the claim is bound up 25 inextricably with his contract claim, amendment would be futile and dismissal is with prejudice. 26 See Leadsinger, Inc. v. BMG Music Pub., 512 F.3d 522, 532 (9th Cir. 2008) (futility of 27 amendment is basis for denial of leave to amend).

1 E. Violation of California’s Unfair Competition Law 2 White’s fifth claim alleges that BMO violated California’s UCL, Cal. Bus. & Prof. Code 3 §17200, et seq., in failing to honor his opt-out election and charging him improper overdraft fees. 4 The UCL is a consumer protection statute that broadly prohibits “any unlawful, unfair or 5 fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. “Each of these three 6 adjectives captures ‘a separate and distinct theory of liability.’” Rubio v. Cap. One Bank, 613 F.3d 7 1195, 1203 (9th Cir. 2010) (quoting Kearns v. Ford Motor Co., 567 F.3d 1120, 1127 (9th Cir. 8 2009)). The unlawful prong “‘borrows’ violations of other laws and treats them as unlawful 9 practices that the unfair competition law makes independently actionable.” Cel-Tech Commc’ns, 10 Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999) (quoting State Farm Fire & Casualty 11 Co. v. Superior Court, 45 Cal. App. 4th 1093, 1103 (1996)). Thus, a plaintiff states a claim under 12 the unlawful prong by sufficiently alleging a violation of another statute. Rubio, 613 F.3d at 1204. 13 Similarly, a plaintiff may state a claim under the unfair prong by pleading facts that “show that a 14 practice violates public policy as declared by ‘specific constitutional,

statutory or regulatory 15 provisions.” Id. at 1205 (quoting Gregory v. Albertson’s, Inc., 104 Cal. App. 4th 845, 854 16 (2002)). 17 White argues that BMO’s conduct violated the UCL’s “unlawful” prong by violating 18 Regulation E, 12 C.F.R. § 1005.17, and its “unfair” prong because it is “immoral, unethical, 19 oppressive,” and “caus[es] substantial injury to consumers that outweighs any countervailing 20 benefits.” ECF No. 1 ¶ 41. The Court has already held that White sufficiently states a claim 21 under Regulation E by alleging that BMO charged him overdraft fees without his written consent 22 and despite his decision to opt-out of the overdraft protection program. White’s allegation that 23 BMO violated Regulation E is sufficient to state a claim under the UCL. See Cortes v. Univ. & 24 State Emps. Credit Union, No. 22-CV-444-LAB-DEB, 2023 WL 12009972, at *12 (S.D. Cal.

25 Mar. 13, 2023).

26 CONCLUSION

27 In screening White’s complaint, the Court finds that he has stated a claim with respect to 1 leave to amend because amendment would be futile. White has satisfied the threshold for a pro se 2 || litigant to proceed past the screening stage. See Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th 3 || Cir. 2012). 4 The Clerk of Court shall issue the summons. Furthermore, the U.S. Marshal for the 5 || Northern District of California shall serve, without prepayment of fees, a copy of the complaint, 6 || any amendments or attachments, White’s affidavit and this order upon the defendant. White’s 7 motion to direct the marshal to effect service, ECF No. 6, is denied as moot. 8 IT IS SO ORDERED. 9 ® Dated: December 8, 2025 10 ‘

JON S. TIGA

nited States District Judge 12 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28