

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHANNON O. MURPHY, SR.,

No. C 14-02156 SI

Plaintiff,

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Defendant’s motion to dismiss the complaint is scheduled for hearing on September 19, 2014. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and hereby VACATES the hearing. Having considered the arguments presented by the parties in the papers submitted to the Court, the Court hereby GRANTS defendant’s motion to dismiss and dismisses the action without leave to amend.

BACKGROUND

On May 9, 2014, pro se plaintiff Shannon O. Murphy, Sr. filed this lawsuit against the United States Postal Service (“Postal Service”) alleging premises liability, professional negligence, discrimination, and breach of contract arising from his denial of postal services at a United States post office. Docket No. 1, Compl. at 2. Plaintiff alleges the following: on January 14, 2014, from approximately 3:20 p.m. to 3:55 p.m., plaintiff visited a United States post office in Martinez, California

1 to obtain postage for court papers in a case pending in the Superior Court of California. *Id.* at 3. After
2 plaintiff entered the post office, a Postal Service clerk closed the service window and did not return
3 during business hours despite being aware that customers were present, including plaintiff. *Id.* at 2. A
4 sheriff’s deputy eventually escorted plaintiff and others from the premises. *Id.* at 3. The incident caused
5 plaintiff to suffer a panic attack, for which he was later diagnosed and treated at a hospital. *Id.* Plaintiff
6 seeks to recover \$24,500.00 in damages for his alleged injuries. *Id.* at 4.

7 In a memorandum accompanying his complaint, plaintiff alleges that on April 4, 2014, he mailed
8 a letter addressed to the postmaster of the Martinez post office requesting forms to submit an
9 administrative claim with defendant. *Id.* at 5; *see also* Docket 13-1, Opp’n to Def.’s Mot. at 2. The
10 memorandum alleges that on April 9, 2014, two Postal Service employees contacted plaintiff by
11 telephone and denied his request. *Id.*

12 Defendant has brought the instant motion to dismiss for lack of jurisdiction pursuant to Federal
13 Rule of Civil Procedure 12(b)(1) and for failure to state a claim pursuant to Rule 12(b)(6). Docket No.
14 12, Def.’s Mot. at 2. Defendant alleges that plaintiff has not filed any administrative tort claims with
15 the Postal Service. *Id.* at 7; *see also* Docket 12-1, Conny Beatty Decl. ¶¶ 4-5.

16
17 **LEGAL STANDARDS**

18 **I. Rule 12(b)(1) Motion to Dismiss**

19 Federal Rule of Civil Procedure 12(b)(1) allows a party to challenge a federal court’s jurisdiction
20 over the subject matter of the complaint. *See* Fed. R. Civ. Pro. 12(b)(1). The party invoking the
21 jurisdiction of the federal court bears the burden of establishing that the court has the requisite subject
22 matter jurisdiction to grant the relief requested. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511
23 U.S. 375, 377 (1994) (citation omitted). A complaint will be dismissed if, looking at the complaint as
24 a whole, it appears to lack federal jurisdiction either “facially” or “factually.” *Safe Air for Everyone v.*
25 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). When the complaint is challenged for lack of subject
26 matter jurisdiction on its face, all material allegations in the complaint will be taken as true and
27 construed in the light most favorable to the plaintiff. *NL Indus. v. Kaplan*, 792 F.2d 896, 898 (9th Cir.
28 1986). In deciding a Rule 12(b)(1) motion that mounts a factual attack on jurisdiction, “no presumptive

1 truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not
2 preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the
3 plaintiff will have the burden of proof that jurisdiction does in fact exist.” *Mortensen v. First Fed. Sav.*
4 *& Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977).

5
6 **II. Rule 12(b)(6) Motion to Dismiss**

7 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it
8 fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. Pro. 12(b)(6). To survive a Rule
9 12(b)(6) motion to dismiss, the plaintiff must allege “enough facts to state a claim to relief that is
10 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “facial plausibility”
11 standard requires the plaintiff to allege facts that add up to “more than a sheer possibility that a
12 defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court must assume
13 that the plaintiff’s allegations are true and must draw all reasonable inferences in the plaintiff’s favor.
14 *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the Court is not required to
15 accept as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
16 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

17
18 **III. Dismissal of Pro Se Complaints**

19 Pro se complaints are held to “less stringent standards than formal pleadings drafted by lawyers.”
20 *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The complaints of pro se plaintiffs must be “liberally
21 construed” and dismissal of a pro se complaint without leave to amend is proper only if it is “absolutely
22 clear that no amendment can cure the defect.” *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980); *Lucas v. Dep’t*
23 *of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995). Although the district court must provide a pro se
24 plaintiff notice of the deficiencies of the complaint prior to dismissal, a pro se plaintiff must still allege
25 facts sufficient to allow a reviewing court to determine that a claim has been stated. *Ferdik v. Bonzelet*,
26 963 F.3d 1258, 1261 (9th Cir. 1992); *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th
27 Cir. 1982).

28

1 U.S.C. § 2675(a); *see also* *McNeil v. United States*, 508 U.S. 106, 113 (1993). Federal courts do not
2 have subject matter jurisdiction unless the agency denies the claim or six months have passed since the
3 claim was filed. *See* 28 U.S.C. § 2675(a). The Ninth Circuit has repeatedly held that “the
4 [administrative] exhaustion requirement is jurisdictional in nature and must be interpreted strictly.”
5 *Vacek v. U.S. Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006); *see also* *Jerves v. United States*, 966
6 F.2d 517, 519 (9th Cir. 1992). While there may be exceptional circumstances in which it is appropriate
7 to excuse compliance with the exhaustion requirement, the record here does not compel such a finding.
8 *See, e.g., Bowen v. City of N.Y.*, 476 U.S. 467, 482 (1986) (statutory requirement that plaintiffs
9 challenging agency decision exhaust administrative remedies was excused where government’s secretive
10 conduct precluded claimants from being aware that government was acting pursuant to illegal internal
11 policy).

12 Plaintiff has not exhausted any administrative remedies for his premises liability and professional
13 negligence claims. Under the FTCA, plaintiff must first file these tort claims with defendant before
14 asserting them in court. *See* 28 U.S.C. § 2675(a). Plaintiff’s allegation that two Postal Service
15 employees denied his request for administrative claim forms does not excuse compliance with the
16 exhaustion requirement. *See* Docket No. 1, Compl. at 5. If plaintiff is dissatisfied with the outcome of
17 his administrative claim or if defendant fails to reach a decision within six months, then plaintiff may
18 refile his tort claims and this Court will have subject matter jurisdiction. *See* 28 U.S.C. § 2675(a).

19 Pursuant to the FTCA, an administrative tort claim against the United States must be presented
20 to “the appropriate Federal agency within two years after such claim accrues.” 28 U.S.C. § 2401(b).
21 The Court notes that, under the FTCA, the two-year statute of limitations has not run and plaintiff still
22 has time to exhaust his administrative remedies. The Court also notes that plaintiff’s administrative tort
23 claim need not be extensive to be exhausted. *See Goodman v. United States*, 298 F.3d 1048, 1055 (9th
24 Cir. 2002).³ Plaintiff only needs to file a brief written notice or statement with Defendant “containing
25 a general description of the time, place, cause and general nature of the injury and the amount of
26 compensation demanded.” *Id.*

27
28 ³Defendant noted in its motion to dismiss that administrative tort claim forms are publicly
available online at the following address: http://www.justice.gov/civil/docs_forms/SF-95.pdf.

1 Defendant's motion to dismiss the tort claims is granted without prejudice to refile after
2 plaintiff exhausts his administrative remedies.

3
4 **II. Plaintiff's Discrimination Claim**

5 Defendant argues that plaintiff's discrimination claim is a complaint that must be filed with the
6 Postal Regulatory Commission ("PRC") pursuant to 39 U.S.C. § 3662. Docket No. 12, Def.'s Mot. at
7 7-8. The PRC has exclusive jurisdiction over service-related complaints with the Postal Service covered
8 by section 3662. *See LeMay v. U.S. Postal Serv.*, 450 F.3d 797, 801 (8th Cir. 2006); *McDermott v.*
9 *Potter*, No. C09-0776RSL, 2009 WL 2971585, at *3 (W.D. Wash. Sept. 11, 2009), *aff'd sub nom.*,
10 *McDermott v. Donahue*, 408 F. App'x 51 (9th Cir. 2011). As relevant here, section 3662 provides that
11 any person "who believes the Postal Service is not operating in conformance with the requirements of
12 [subsection 403(c)]" must lodge a complaint with the PRC. 39 U.S.C. § 3662. Under subsection 403(c),
13 the Postal Service shall not "make any undue or unreasonable discrimination" among postal customers
14 unless expressly authorized by statute. 39 U.S.C. § 403(c).

15 Plaintiff alleges that defendant unlawfully discriminated among postal customers when a Postal
16 Service clerk closed a service window and did not return while plaintiff attempted to obtain service.
17 Docket No. 1, Compl. at 2. Plaintiff's discrimination claim thus contends that defendant was acting in
18 violation of subsection 403(c). 39 U.S.C. § 403(c). Section 3662 requires such claims to be filed with
19 the PRC. The Court does not have jurisdiction over the claim.

20 Defendant's motion to dismiss plaintiff's discrimination claim for lack of subject matter
21 jurisdiction is granted with prejudice.

22
23 **III. Plaintiff's Breach of Contract Claim**

24 Defendant argues that plaintiff's breach of contract claim must also be lodged with the PRC
25 pursuant to section 3662. Docket No. 12, Def.'s Mot. at 7-8. None of the subsections covered by
26 section 3662 pertains to the Postal Service's contracts or contractual obligations, *see* 39 U.S.C. § 3662,
27 but the PRC's exclusive jurisdiction still applies to claims that are essentially disputes over postal
28 services, even if "[t]he words [of the complaint] echo contract." *LeMay*, 450 F.3d at 801; *see also*

1 *Richards v. Great W. Ins. Co.*, CIV. No. 11-00965 (JRT/TNL), 2012 WL 718715, at *4 (D. Minn. Mar.
2 5, 2012).⁴

3 Plaintiff alleges that defendant breached a contract when it failed to provide customers, including
4 plaintiff, with appropriate postal services during its advertised business hours. *See* Docket No. 1,
5 Compl. at 2. Plaintiff does not allege the existence or breach of any specific contract that he or
6 defendant entered into, nor does plaintiff specify any particular contractual obligations that defendant
7 may have violated. Rather, plaintiff more generally complains that he was not provided with proper
8 postal services as advertised. *Id.* Such a service-related claim cannot avoid the reach of section 3662's
9 administrative remedy simply because it "echo[es] contract." *LeMay*, 450 F.3d at 801. As such, the PRC
10 has exclusive jurisdiction over plaintiff's breach of contract claim under section 3662. The Court does
11 not have jurisdiction over the claim.


12 Defendant's motion to dismiss plaintiff's breach of contract claim for lack of subject matter
13 jurisdiction is granted with prejudice.

14
15 **CONCLUSION**

16 For the foregoing reasons, the Court GRANTS the Defendant's Rule 12(b)(1) motion to dismiss
17 plaintiff's claims for premises liability, professional negligence, discrimination, and breach of contract
18 for lack of subject matter jurisdiction. Defendant's motion to dismiss plaintiff's premises liability and
19 professional negligence claims is granted without prejudice to refile after plaintiff exhausts his
20 administrative remedies pursuant to 28 U.S.C. § 1346(b).

21 **IT IS SO ORDERED.**

22 Dated: September 9, 2014

23 
24 _____
25 SUSAN ILLSTON
26 UNITED STATES DISTRICT JUDGE

27 _____
28 ⁴The Contract Disputes Act of 1978 ("CDA"), Pub. L. No. 111-350, § 3, 124 Stat. 3677, 3816-
26, bars contractual claims against the Postal Service related to contracts entered into by the Postal
Service for the procurement of property, services, construction, repair, or the disposal of personal
property. Pub.L. No. 111-350, § 3, 124 Stat. 3677, 3817 (2011) (codified at 41 U.S.C. § 7102(a)). *See*
Anselma Crossing, L.P. v. U.S. Postal Serv., 637 F.3d 238, 242-43 (3d Cir. 2011).