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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DAVID HARMON,
Plaintiff,
vs.
GE MONEY CORP.,
Defendants.

CASE NO. CV F 10-0499 LJO GSA
**ORDER ON DEFENDANT GE MONEY BANK,
FSB’S F.R.Civ.P. 12 MOTION TO DISMISS
(Doc. 8.)**

INTRODUCTION

Defendant GE Money Bank, FSB (“GEMB”) seeks to dismiss pro se plaintiff David Harmon (“Mr. Harmon’s”) Judicial Council of California form amended complaint (“complaint”) for failure to satisfy F.R.Civ.P. 8. This Court considered GEMB’s F.R.Civ.P. 12(b)(6) motion to dismiss on the record and VACATES the April 28, 2010 hearing, pursuant to this Court’s sua sponte dismissal of the complaint.

BACKGROUND

Prior to this action’s removal to this Court, Mr. Harmon filed his complaint in Kern County Superior Court. The complaint references “causes of action” of “Fabrication and nondisclosure of debt by defendant,” “Nonwithdrawal of false debt claim by defendant,” and “False reporting of debt to credit tracking agencies.” The complaint claims “[d]amage to personal credit” and “emotional distress.” The complaint lacks supporting facts for the “causes of action.” Attached to the complaint are exhibits, one

1 of which states” “GE Money has taken unfair advantage of me and my uncle by tricking him into a credit
2 agreement he could not afford, and then harassing me for money I don’t owe them.”

3 **DISCUSSION**

4 **F.R.Civ.P. 12(b)(6) Motion To Dismiss Standards**

5 GEMB seeks dismissal given the complaint’s failure “to satisfy the notice pleading requirements
6 of federal court” and “to plead facts that would, if proved, establish that [Mr. Harmon] is entitled to
7 relief” based on GEMB’s “violations of law.” GEMB points to the absence of reference to “laws or
8 statutes that GEMB violated.” For the reasons discussed below, this Court concludes that the complaint
9 is subject to sua sponte dismissal with leave to amend.

10 “A trial court may dismiss a claim sua sponte under Fed.R.Civ.P. 12(b)(6). . . . Such dismissal
11 may be made without notice where the claimant cannot possibly win relief.” *Omar v. Sea-Land Service,*
12 *Inc.*, 813 F.2d 986, 991 (9th Cir. 1987); *see Wong v. Bell*, 642 F.2d 359, 361-362 (9th Cir. 1981). Sua
13 sponte dismissal may be made before process is served on defendants. *Neitzke v. Williams*, 490 U.S.
14 319, 324 (1989) (dismissals under 28 U.S.C. § 1915(d) are often made sua sponte); *Franklin v. Murphy*,
15 745 F.2d 1221, 1226 (9th Cir. 1984) (court may dismiss frivolous in forma pauperis action sua sponte
16 prior to service of process on defendants).

17 A F.R.Civ.P. 12(b)(6) motion to dismiss is a challenge to the sufficiency of the pleadings set
18 forth in the complaint. “When a federal court reviews the sufficiency of a complaint, before the reception
19 of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not
20 whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to
21 support the claims.” *Scheurer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683 (1974); *Gilligan v. Jamco*
22 *Development Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). A F.R.Civ.P. 12(b)(6) dismissal is proper where
23 there is either a “lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a
24 cognizable legal theory.” *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990); *Graehling*
25 *v. Village of Lombard, Ill.*, 58 F.3d 295, 297 (7th Cir. 1995).

26 In resolving a F.R.Civ.P. 12(b)(6) motion, a court must: (1) construe the complaint in the light
27 most favorable to the plaintiff; (2) accept all well-pleaded factual allegations as true; and (3) determine
28 whether plaintiff can prove any set of facts to support a claim that would merit relief. *Cahill v. Liberty*

1 *Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir. 1996). Nonetheless, a court is not required “to accept as
2 true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”
3 *In re Gilead Sciences Securities Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted). A court
4 “need not assume the truth of legal conclusions cast in the form of factual allegations,” *U.S. ex rel.*
5 *Chunie v. Ringrose*, 788 F.2d 638, 643, n. 2 (9th Cir.1986), and a court must not “assume that the
6 [plaintiff] can prove facts that it has not alleged or that the defendants have violated . . . laws in ways
7 that have not been alleged.” *Associated General Contractors of California, Inc. v. California State*
8 *Council of Carpenters*, 459 U.S. 519, 526, 103 S.Ct. 897 (1983). A court need not permit an attempt
9 to amend if “it is clear that the complaint could not be saved by an amendment.” *Livid Holdings Ltd.*
10 *v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005).

11 “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
12 allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more
13 than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
14 *Bell Atl. Corp. v. Twombly*, 550 U.S. 554,127 S. Ct. 1955, 1964-65 (2007) (internal citations omitted).
15 Moreover, a court “will dismiss any claim that, even when construed in the light most favorable to
16 plaintiff, fails to plead sufficiently all required elements of a cause of action.” *Student Loan Marketing*
17 *Ass'n v. Hanes*, 181 F.R.D. 629, 634 (S.D. Cal. 1998). In practice, “a complaint . . . must contain either
18 direct or inferential allegations respecting all the material elements necessary to sustain recovery under
19 some viable legal theory.” *Twombly*, 550 U.S. at 562, 127 S.Ct. at 1969 (quoting *Car Carriers, Inc. v.*
20 *Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

21 In *Ashcroft v. Iqbal*, __ U.S. __, 129 S.Ct. 1937,1949 (2009), the U.S. Supreme Court recently
22 explained:

23 To survive a motion to dismiss, a complaint must contain sufficient factual
24 matter, accepted as true, to “state a claim to relief that is plausible on its face.” . . . A
25 claim has facial plausibility when the plaintiff pleads factual content that allows the court
26 to draw the reasonable inference that the defendant is liable for the misconduct alleged.
27 . . . The plausibility standard is not akin to a “probability requirement,” but ask it asks
28 for more than a sheer possibility that a defendant has acted unlawfully. (Citations
omitted.)

27 After discussing *Iqbal*, the Ninth Circuit Court of Appeals summarized: “In sum, for a complaint
28 to survive a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that

1 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret*
2 *Service*, 572 F.3d 962, 989 (9th Cir. 2009) (quoting *Iqbal*, __ U.S. __, 129 S.Ct. at 1949).

3 The U.S. Supreme Court applies a “two-prong approach” to address a motion to dismiss:

4 First, the tenet that a court must accept as true all of the allegations contained in
5 a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of
6 a cause of action, supported by mere conclusory statements, do not suffice. . . . Second,
7 only a complaint that states a plausible claim for relief survives a motion to dismiss. . .
8 . Determining whether a complaint states a plausible claim for relief will . . . be a
9 context-specific task that requires the reviewing court to draw on its judicial experience
10 and common sense. . . . But where the well-pleaded facts do not permit the court to infer
11 more than the mere possibility of misconduct, the complaint has alleged – but it has not
12 “show[n]”-“that the pleader is entitled to relief.” Fed. Rule Civ. Proc. 8(a)(2).

13 In keeping with these principles a court considering a motion to dismiss can
14 choose to begin by identifying pleadings that, because they are no more than conclusions,
15 are not entitled to the assumption of truth. While legal conclusions can provide the
16 framework of a complaint, they must be supported by factual allegations. When there are
17 well-pleaded factual allegations, a court should assume their veracity and then determine
18 whether they plausibly give rise to an entitlement to relief.

19 *Iqbal*, __ U.S. __, 129 S.Ct. at 1949-1950.

20 With these standards in mind, this Court turns to GEMB’s challenges to the complaint.

21 **Failure To Satisfy F.R.Civ.P. 8**

22 The complaint references three “causes of action,” but as GEMB notes, such “vague allegations”
23 lack “facts” and fail to “cite statutes or otherwise provide a basis for Plaintiff’s claims.” GEMB further
24 notes that the “narrative” attached to the complaint “does not specify whether, how, or which causes of
25 action these alleged facts relate to or support” to fail to satisfy F.R.Civ.P. 8. GEMB concludes that the
26 complaint is “fatally flawed” in “absence of facts and alleged legal violations.”

27 F.R.Civ.P. 8 requires a plaintiff to “plead a short and plain statement of the elements of his or
28 her claim, identifying the transaction or occurrence giving rise to the claim and the elements of the prima
facie case.” *Bautista v. Los Angeles County*, 216 F.3d 837, 840 (9th Cir. 2000).

F.R.Civ.P. 8(d)(1) requires each allegation to be “simple, concise, and direct.” This requirement
“applies to good claims as well as bad, and is the basis for dismissal independent of Rule 12(b)(6).”
McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996). “Something labeled a complaint but written
more as a press release, prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to
whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint.”

1 *McHenry*, 84 F.3d at 1180. “Prolix, confusing complaints . . . impose unfair burdens on litigants and
2 judges.” *McHenry*, 84 F.3d at 1179.

3 Moreover, a pleading may not simply allege a wrong has been committed and demand relief.
4 The underlying requirement is that a pleading give “fair notice” of the claim being asserted and the
5 “grounds upon which it rests.” *Yamaguchi v. United States Department of Air Force*, 109 F.3d 1475,
6 1481 (9th Cir. 1997). Despite the flexible pleading policy of the Federal Rules of Civil Procedure, a
7 complaint must give fair notice and state the elements of the claim plainly and succinctly. *Jones v.*
8 *Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). A plaintiff must allege with at least some
9 degree of particularity overt facts which defendant engaged in to support plaintiff’s claim. *Jones*, 733
10 F.2d at 649. A complaint does not suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further factual
11 enhancement.’” *Iqbal*, ___ U.S. ___, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 557, 127 S.Ct.
12 1955). The U.S. Supreme Court has explained:

13 While, for most types of cases, the Federal Rules eliminated the cumbersome
14 requirement that a claimant “set out in detail the facts upon which he bases his claim,”
15 *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957) (emphasis added),
16 Rule 8(a)(2) still requires a “showing,” rather than a blanket assertion, of entitlement to
relief. Without some factual allegation in the complaint, it is hard to see how a claimant
could satisfy the requirement of providing not only “fair notice” of the nature of the
claim, but also “grounds” on which the claim rests.

17 *Twombly*, 550 U.S. at 556, n. 3, 127 S.Ct. 1955.

18 The complaint fails to satisfy F.R.Civ.P. 8. The complaint makes mere references to “Fabrication
19 and nondisclosure of debt,” “Nonwithdrawal of false debt claim,” and “False reporting of debt to credit
20 tracking agencies.” The complaint lacks facts to support claims or valid, cognizable legal theories as
21 to GEMB. The complaint fails to give GEMB fair notice of claims plainly and succinctly to warrant
22 dismissal of the complaint. Nonetheless, Mr. Harmon is granted an opportunity to amend his complaint
23 to attempt to satisfy F.R.Civ.P. 8.

24 **Amended Complaint**

25 This Court admonishes Mr. Harmon that this Court’s Local Rule 220 requires an amended
26 complaint to be complete in itself without reference to any prior pleading. As a general rule, an amended
27 complaint supersedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). After
28 the filing of an amended complaint, the original pleadings serves no further function. Thus, in an

1 amended complaint, each claim and involvement of each defendant must be sufficiently alleged.

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CONCLUSION AND ORDER

For the reasons discussed above, this Court:

1. DISMISSES Mr. Harmon’s complaint with leave to amend; and
2. ORDERS Mr. Harmon, no later than April 15, 2010, to file an amended complaint in compliance with this order.

This Court admonishes Mr. Harmon that failure to file an amended complaint in compliance with this order will result in dismissal of this action for failure to obey a court order.

IT IS SO ORDERED.

Dated: March 31, 2010

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE