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

DONALD WILLIAMS,)	1:10-CV-02358 AWI SKO
)	
Plaintiff,)	ORDER GRANTING
)	DEFENDANT’S MOTION TO
v.)	DISMISS PLAINTIFF’S
)	CLAIMS FOR INTENTIONAL
LYCOMING, A TEXTRON CO., et al.,)	TORT AND PUNITIVE
)	DAMAGES
Defendants.)	
_____)	[Doc. #6]

BACKGROUND

This lawsuit arises from the alleged failure of Plaintiff Donald Williams’ (“Plaintiff”) airplane engine while he was flying on July 14, 2010. Defendant AVCO Corporation and its Lycoming Engines Division (“AVCO”) move to dismiss Plaintiff’s claims for intentional tort and punitive damages pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.¹ Plaintiff has filed a Statement of Non-Opposition to AVCO’s motion. For the reasons that follow, the motion will be granted.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a claim may be dismissed because of the

¹ The Court notes that AVCO was erroneously sued by Plaintiff as “Lycoming, (A Textron Co.)”

1 plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A
2 dismissal under Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the
3 absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside
4 Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008); Navarro v. Block, 250 F.3d 729, 732 (9th
5 Cir. 2001). In reviewing a complaint under Rule 12(b)(6), all allegations of material fact are
6 taken as true and construed in the light most favorable to the non-moving party. Marceau v.
7 Blackfeet Hous. Auth., 540 F.3d 916, 919 (9th Cir. 2008); Vignolo v. Miller, 120 F.3d 1075,
8 1077 (9th Cir. 1999). The Court is not required "to accept as true allegations that are merely
9 conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Scis. Sec.
10 Litig., 536 F.3d 1049, 1056-57 (9th Cir. 2008); Sprewell v. Golden State Warriors, 266 F.3d 979,
11 988 (9th Cir. 2001). Although they may provide the framework of a complaint, legal conclusions
12 are not accepted as true and "[t]hreadbare recitals of elements of a cause of action, supported by
13 mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50 (2009);
14 see also Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). As the
15 Supreme Court has explained:

16 While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need
17 detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his
18 'entitlement to relief' requires more than labels and conclusions, and a formulaic
19 recitation of the elements of a cause of action will not do. Factual allegations must
20 be enough to raise a right to relief above the speculative level, on the assumption
21 that all the allegations in the complaint are true (even if doubtful in fact).

22 Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964-65 (2007). To avoid a Rule 12(b)(6)
23 dismissal, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim
24 to relief that is plausible on its face.'" Iqbal, 129 S.Ct. at 1949. "A claim has facial plausibility
25 when the plaintiff pleads factual content that allows the court to draw the reasonable inference
26 that the defendant is liable for the misconduct alleged." Id.

27 The plausibility standard is not akin to a 'probability requirement,' but it asks
28 more than a sheer possibility that a defendant has acted unlawfully. Where a
complaint pleads facts that are 'merely consistent with' a defendant's liability, it
stops short of the line between possibility and plausibility of 'entitlement to
relief.'

1 . . .

2 Determining whether a complaint states a plausible claim for relief will . . . be a
3 context specific task that requires the reviewing court to draw on its judicial
4 experience and common sense. But where the well-pleaded facts do not permit the
5 court to infer more than the mere possibility of misconduct, the complaint has
6 alleged – but it has not shown – that the pleader is entitled to relief.

7 Iqbal, 129 S.Ct. at 1949-50. “In sum, for a complaint to survive a motion to dismiss, the non-
8 conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly
9 suggestive of a claim entitling the plaintiff to relief.” Moss v. United States Secret Serv., 572
10 F.3d 962, 969 (9th Cir. 2009).

11 **ALLEGED FACTS**

12 The Complaint alleges that on July 14, 2010, Plaintiff was flying his Piper Arrow airplane
13 near the Madera County Airport. (Doc. 1-1 at 5.) Shortly after takeoff, Plaintiff’s engine
14 “suffered a catastrophic failure.” Id. Plaintiff was able to land safely, but “experienced a
15 considerable amount of fear and anxiety.” Id.

16 The Complaint alleges that Plaintiff’s engine was manufactured by AVCO and
17 improperly remanufactured by Defendant Elite Air Service (“Elite”) because Elite used an
18 unsuitable part that caused the engine failure. Id. The Complaint alleges that AVCO and Elite
19 were aware that Elite’s use of the improper part could result in engine failure, but failed to notify
20 anyone about the problem. Id.

21 **DISCUSSION**

22 AVCO contends that Plaintiff’s claims for intentional tort and punitive damages fail to
23 state a claim upon which relief can be granted. (Doc. 9 at 1.) Plaintiff states that he “has no
24 opposition to the granting of [AVCO’s] motion.” (Doc. 12 at 1.)

25 With respect to Plaintiff’s intentional tort claim, Plaintiff merely incorporates the
26 allegations from his negligence cause of action. (Doc. 1-1 at 6.) Plaintiff fails to allege any facts
27 explaining what intentional tort was committed. Therefore, Plaintiff has failed to state a claim
28 for intentional tort.

1 With respect to Plaintiff's punitive damages claim, Plaintiff simply concludes that he is
2 entitled to punitive damages because AVCO was guilty of oppression, fraud and malice. Id. at 7.
3 There are no factual allegations explaining how Plaintiff was guilty of oppression, fraud and
4 malice. Therefore, Plaintiff has failed to state a claim for punitive damages.

5 **CONCLUSION**

6 Accordingly, IT IS HEREBY ORDERED that AVCO's Motion to Dismiss Plaintiff's
7 claims for intentional tort and punitive damages is GRANTED.

8
9 IT IS SO ORDERED.

10 Dated: February 16, 2011

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12 _____
13 CHIEF UNITED STATES DISTRICT JUDGE
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