

1 part, as a notice by Plaintiff that he wishes to stand on the original Complaint. Nevertheless,
2 because the Court finds that both the Complaint and the First Amended Complaint fail to state a
3 claim, the Court recommends that this action be dismissed, with prejudice. Plaintiff may file
4 objections within twenty-one (21) days from the date of service of these findings and
5 recommendations.

6 I. SCREENING REQUIREMENT

7 Under 28 U.S.C. § 1915(e)(2), the Court must conduct a review of an *in forma pauperis*
8 complaint to determine whether it “state[s] a claim on which relief may be granted,” is “frivolous
9 or malicious,” or “seek[s] monetary relief against a defendant who is immune from such relief.” If
10 the Court determines that the complaint fails to state a claim, it must dismiss the complaint. *Id.*
11 Leave to amend may be granted to the extent that the deficiencies of the complaint can be cured
12 by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 A complaint must contain “a short and plain statement of the claim showing that the
14 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
15 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
16 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
17 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
18 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.
19 at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal
20 conclusions are not. *Id.* at 678.

21 In determining whether a complaint states an actionable claim, the Court must accept the
22 allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738, 740
23 (1976), construe *pro se* pleadings liberally in the light most favorable to the Plaintiff, *Resnick v.*
24 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor. *Jenkins*
25 *v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of *pro se* plaintiffs “must be held to less
26 stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342
27 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally construed after
28 *Iqbal*).

1 **II. ALLEGATIONS IN THE COMPLAINT**

2 Plaintiff’s allegations are again difficult to understand. Plaintiff alleges that William L.
3 Schmidt, Esq., an attorney practicing in Fresno, California, solicited employment in Prison Legal
4 News in violation of Texas Government Code § 82.0651(b)-(c). Plaintiff attaches to the
5 Complaint a copy of the advertisement from the Prison Legal News.

6 **III. ALLEGATIONS IN THE FIRST AMENDED COMPLAINT**

7 Plaintiff’s allegations are again difficult to understand. From what the Court can deduce,
8 Plaintiff alleges that (1) the Court lacks jurisdiction to hear this matter; (2) the Court has failed to
9 apply Texas law; (3) the Court has violated Plaintiff’s First, Fourteenth, and Sixth Amendment
10 rights and the Crime Victim Rights Act; and (4) the Plaintiff is entitled to \$3 million in
11 restitution.

12 **IV. DISCUSSION**

13 **A. Screening Jurisdiction**

14 Plaintiff is proceeding *in forma pauperis*. (ECF No. 1, 3.) The Court’s jurisdiction to
15 screen *in forma pauperis* complaints arises under 28 U.S.C. § 1915(e)(2). Under § 1915(e)(2), the
16 Court must screen *in forma pauperis* complaints to determine whether they “state a claim on
17 which relief may be granted,” are “frivolous or malicious,” or “seek monetary relief against a
18 defendant who is immune from such relief.” Accordingly, to the extent Plaintiff is attempting to
19 challenge the Court’s jurisdiction to screen his complaint, Plaintiff’s argument fails.

20 **B. Failure to State a Claim under Texas Law**

21 Texas Government Code § 82.0651 provides, in pertinent part:

22 (a) A client may bring an action to void a contract for legal services
23 that was procured as a result of conduct violating Section 32.12(a)
24 or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules of
25 Professional Conduct of the State Bar of Texas, regarding barratry
26 by attorneys or other persons, and to recover any amount that may
27 be awarded under Subsection (b). A client who enters into a
28 contract described by this subsection may bring an action to recover
29 any amount that may be awarded under Subsection (b) even if the
30 contract is voided voluntarily.

31 (b) A Client who prevails in an action under Subsection (a) shall
32 recover from any person who committed barratry:

1 all fees and expenses paid to that person under the contract;
2 the balance of any fees and expenses paid to any other person under
3 the contract, after deducting fees and expenses awarded based on a
4 quantum meruit theory as provided by Section 82.065(c);
5 actual damages caused by the prohibited conduct;
6 a penalty in the amount of \$10,000; and
7 reasonable and necessary attorney's fees.

8 (c) A person who was solicited by conduct violating Section
9 38.12(a) or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary
10 Rules of Professional Conduct of the State Bar of Texas, regarding
11 barratry by attorneys or other persons, but who did not enter into a
12 contract as a result of that conduct, may file a civil action against
13 any person who committed barratry.

14 In turn, Tex. Penal Code Ann. § 38.12 (West) provides, in pertinent part:

- 15 (a) A person commits an offense if, with intent to obtain an
16 economic benefit the person:
17 (1) knowingly institutes a suit or claim that the person has not been
18 authorized to pursue;
19 (2) solicits employment, either in person or by telephone, for
20 himself or for another;
21 (3) pays, gives, or advances or offers to pay, give, or advance to
22 prospective client money or anything of value to obtain
23 employment as a professional from the prospective client;
24 (4) pays or gives or offers to pay or give person money or anything
25 of value to solicit employment;
26 (5) pays or gives or offers to pay or give a family member of a
27 prospective client money or anything of value to solicit
28 employment; or
(6) accepts or agrees to accept money or anything of value to solicit
employment.

29 Similarly, Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct of the State
30 Bar of Texas provides, in relevant part:

- 31 (a) A lawyer shall not by in-person contact, or by regulated
32 telephone or other electronic contact as defined in paragraph (f)
33 seek professional employment concerning a matter arising out of a
34 particular occurrence or event, or serious of occurrences or events,
35 from a prospective client or nonclient who has not sought the
36 lawyer's advice regarding employment or with whom the lawyer

1 has no family or past or present attorney-client relationship when a
2 significant motive for the lawyer's doing so is the lawyer's
pecuniary gain....

3 (f) As used in paragraph (a), "regulated telephone or other
4 electronic contact" means any electronic communication initiated
5 by a lawyer or by any person acting on behalf of a lawyer or law
6 firm that will result in the person contacted communicating in a
7 live, inactive manner with any other person by telephone or other
electronic means. For purposes of this Rule a website for a lawyer
or law firm is not considered a communication initiated by or on
behalf of that lawyer or firm.

8 Relevant to Plaintiff's claim, Texas Gov't Code § 82.0651 prohibits an attorney from
9 soliciting employment in person or by telephone. Plaintiff alleged in the Complaint, (ECF No. 1),
10 that Defendant solicited employment in Prison Legal News. Texas Gov't Code § 82.0651 does
11 not prohibit this conduct. As Plaintiff has failed to amend his allegations, the Court maintains that
12 Plaintiff has still failed to state a claim against Defendant Schmidt for violating Tex. Gov't Code
§ 82.0651.

13 **C. Unrelated Claims in Amended Complaint**

14 Plaintiff has failed to comply with the parameters of an amended complaint. The Court
15 advised Plaintiff in the screening order, (ECF No. 4 at 5), that an opportunity to amend a
16 complaint was not for changing the nature of a suit or adding unrelated claims. Giving a plaintiff
17 leave to amend a complaint is not a license to introduce new and unrelated claims against a
18 different defendant. *See* Fed. R. Civ. P. 20(a)(2) ("Persons... may be joined in one action as
19 defendants if: any right to relief is asserted against them jointly, severally, or in the alternative
20 with respect to or arising out of the *same transaction, occurrence, or series of transactions or*
21 *occurrences...*) (emphasis added); *see also* *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)
22 (no "buckshot" complaints). Instead of amending the allegations in the Complaint against
23 Defendant Schmidt, Plaintiff appears to have added argument regarding why the Court's order is
24 void. The amendment thus did not add factual allegations to Plaintiff's claims to state cognizable
25 claims under the relevant legal standards.

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