

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

SCOTT HOLLAND,
Plaintiff,
vs.
BP AMERICA, INC.,
Defendant.

No. CIV S-11-0580-KJM-CMK

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff, who is proceeding pro se, brings this civil action. This action was removed to this court from the Siskiyou County Court on March 2, 2011. Pending before the court is defendant’s motion to dismiss (Doc. 7). No timely opposition was filed, so the hearing on the motion was taken off calendar pursuant to Local Rule 230. Plaintiff did file an untimely opposition to the motion (Doc. 11), which the court has read and considered.

I. Background

Plaintiff originally filed this action in the small claims court of Siskiyou County. After receiving service, defendant removed the action to this court. Following removal, plaintiff filed an amended complaint in order to further set forth his claim. In his amended complaint, plaintiff alleges that following the Deepwater Horizon oil spill, the defendant solicited help from

1 citizens for possible solutions. Plaintiff responded to defendant’s call for help “forego[ing] any
2 intellectual property protection.” Plaintiff alleges that defendant’s solicitation and acceptance of
3 plaintiff’s ideas created an implied contract. He then billed defendant for payment. After
4 defendant failed to respond to the billing, he proceeded with this legal action. His claims are for
5 fraud, violations of the California Consumer Legal Remedies Act (CLRA), and breach of implied
6 contract.¹

7 **II. Motion to Dismiss**

8 Defendant filed the motion to dismiss pursuant to Federal Rules of Civil
9 Procedure 9(b) and 12(b)(6). Defendant argues plaintiff’s complaint fails to state a claim, and
10 fails to meet the heightened pleading standard required to state a fraud claim. In plaintiff’s
11 untimely response to the motion, he fails to dispute any of defendant’s arguments. Instead, he
12 simply points out that he is proceeding in pro per and argues he cannot compete with the
13 sophistication of trained lawyers.

14 **A. Legal Standards**

15 In considering a motion to dismiss, the court must accept all allegations of
16 material fact in the complaint as true. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The
17 court must also construe the alleged facts in the light most favorable to the plaintiff. See Scheuer
18 v. Rhodes, 416 U.S. 232, 236 (1974); see also Hospital Bldg. Co. v. Rex Hospital Trustees, 425
19 U.S. 738, 740 (1976); Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (per curiam). All
20 ambiguities or doubts must also be resolved in the plaintiff’s favor. See Jenkins v. McKeithen,
21 395 U.S. 411, 421 (1969). However, legally conclusory statements, not supported by actual
22 factual allegations, need not be accepted. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50
23 (2009). In addition, pro se pleadings are held to a less stringent standard than those drafted by
24

25 ¹ Plaintiff’s amended complaint filed with the court abruptly ends on page 8,
26 without any concluding paragraphs. However, defendant has provided the court with a more
complete document with the motion to dismiss. See Memorandum in Support (Doc. 8), Ex. A.

1 lawyers. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

2 Rule 8(a)(2) requires only “a short and plain statement of the claim showing that
3 the pleader is entitled to relief” in order to “give the defendant fair notice of what the . . . claim is
4 and the grounds upon which it rests.” Bell Atl. Corp v. Twombly, 550 U.S. 544, 555 (2007)
5 (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for
6 failure to state a claim under Rule 12(b)(6), a complaint must contain more than “a formulaic
7 recitation of the elements of a cause of action;” it must contain factual allegations sufficient “to
8 raise a right to relief above the speculative level.” Id. at 555-56. The complaint must contain
9 “enough facts to state a claim to relief that is plausible on its face.” Id. at 570. “A claim has
10 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
11 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct. at
12 1949. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more
13 than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting Bell Atl. Corp., 550
14 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s
15 liability, it ‘stops short of the line between possibility and plausibility for entitlement to relief.’”
16 Id. (quoting Bell Atl. Corp., 550 U.S. at 557).

17 To determine whether a complaint states a claim upon which relief can be granted,
18 the court generally may not consider materials outside the complaint and pleadings. See Cooper
19 v. Pickett, 137 F.3d 616, 622 (9th Cir. 1998); Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir.
20 1994). The court may, however, consider: (1) documents whose contents are alleged in or
21 attached to the complaint and whose authenticity no party questions, see Branch, 14 F.3d at 454;
22 (2) documents whose authenticity is not in question, and upon which the complaint necessarily
23 relies, but which are not attached to the complaint, see Lee v. City of Los Angeles, 250 F.3d 668,
24 688 (9th Cir. 2001); and (3) documents and materials of which the court may take judicial notice,
25 see Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir. 1994).

26 ///

1 Finally, leave to amend must be granted “[u]nless it is absolutely clear that no
2 amendment can cure the defects.” Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
3 curiam); see also Lopez v. Smith, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc).

4 **B. Discussion**

5 1. Application of Law

6 Defendant argues Louisiana, not California, law applies to this case. As such,
7 plaintiff’s claims under the CLRA cannot continue, and his other claims must be evaluated under
8 Louisiana law. As discussed below, whether Louisiana or California law applies does not impact
9 the claims greatly. Except for the CLRA claims, the law for fraud and breach of contract do not
10 vary greatly regardless of which state’s law applies.

11 2. Fraud

12 Plaintiffs claim for fraud is based on an allegation that the defendant solicited help
13 from the public, via their website, without the intention of paying for any proposed solutions to
14 their emergency. He claims he reasonably believed the defendant would pay for the services he
15 provided.

16 The elements of a California fraud claim are: (1) misrepresentation (false
17 representation, concealment or nondisclosure); (2) knowledge of the falsity (or “scienter”); (3)
18 intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. Lazar
19 v. Superior Court, 49 Cal. Rptr. 2d 377, 380-81 (Cal. 1996). Similarly, under Louisiana law, a
20 claim for “fraud consists of the following elements: (1) a misrepresentation of material facts; (2)
21 made with the intent to deceive; and (3) causing justifiable reliance with resultant injury.”
22 Gonzales v. Gonzales, 20 So.3d 557,563 (La. Ct. App. 2009) (citing Becnel v. Grodner, 982
23 So.2d 891, 894 (La Ct. App. 2008)).

24 In addition, Federal Rule of Civil Procedure 9(b) requires that “the circumstances
25 constituting fraud or mistake shall be stated with particularity.” This heightened pleading
26 standard “requires a pleader of fraud to detail with particularity the time, place, and manner of

1 each act of fraud, plus the role of each defendant in each scheme.” Lancaster Cmty. Hosp. v.
2 Antelope Valley Dist., 940 F.2d 397, 405 (9th Cir. 1991). Thus, “allegations of fraud must be
3 specific enough to give defendants notice of the particular misconduct which is alleged to
4 constitute the fraud charged so that they can defend against the charge and not just deny that they
5 have done anything wrong.” Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001)
6 (citation and internal quotations omitted).

7 Rule 9(b)’s heightened pleading standard “is not an invitation to disregard Rule
8 8’s requirement of simplicity, directness, and clarity” and “has among its purposes the avoidance
9 of unnecessary discovery.” McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996). “A pleading
10 is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the
11 defendant can prepare an adequate answer from the allegations.” Neubronner v. Milken, 6 F.3d
12 666, 671-672 (9th Cir. 1993) (internal quotations omitted; citing Gottreich v. San Francisco Inv.
13 Corp., 552 F.2d 866, 866 (9th Cir. 1997)). The Ninth Circuit Court of Appeals has explained:

14 Rule 9(b) requires particularized allegations of the circumstances
15 *constituting* fraud. The time, place and content of an alleged
16 misrepresentation may identify the statement or the omission
17 complained of, but these circumstances do not “constitute” fraud.
18 The statement in question must be false to be fraudulent.
19 Accordingly, our cases have consistently required that
20 circumstances indicating falseness be set forth. . . . [W]e [have]
21 observed that plaintiff must include statements regarding the time,
22 place, and *nature* of the alleged fraudulent activities, and that
23 “mere conclusory allegations of fraud are insufficient.” . . . The
24 plaintiff must set forth what is false or misleading about a
25 statement, and why it is false. In other words, the plaintiff must set
26 forth an explanation as to why the statement or omission
27 complained of was false or misleading. . . . In certain cases, to be
28 sure, the requisite particularity might be supplied with great
29 simplicity.

30 In Re Glenfed, Inc. Sec. Litig., 42 F.3d 1541, 1547-1548 (9th Cir. 1994) (en banc) (italics in
31 original) *superseded by statute on other grounds as stated in* Marksman Partners, L.P. v. Chantal
32 Pharm. Corp., 927 F. Supp. 1297 (C.D. Cal. 1996); *see* Cooper v. Pickett, 137 F.3d 616, 627 (9th
33 Cir. 1997) (fraud allegations must be accompanied by “the who, what, when, where, and how” of

1 the misconduct charged).

2 Here, defendant argues plaintiff's complaint is insufficient to state a claim for
3 fraud as plaintiff fails to plead any fraudulent statement and fails to establish that defendant owed
4 him a duty of disclosure. Plaintiff's fraud claim is based on an alleged solicitation for help on
5 defendant's website. He states that defendant knew that consumers would respond to the disaster
6 with potentially valuable solutions who would then deserve to be compensated. He further states
7 that the defendant solicited assistance "with the knowledge they would fight rather than pay for
8 services rendered" (Am. Comp. at 5). Plaintiff claims he reasonably believed he would be
9 paid for the services he rendered in responding to the emergency.

10 Plaintiff fails to state a claim for fraud. Specifically, plaintiff fails to allege that
11 the defendant made any false representation. Even if defendant sent out a plea for assistance,
12 plaintiff does not allege that defendant indicated in any way that people submitting proposed
13 solutions to the oil leak would be compensated. Without such a statement, the court is hard
14 pressed to find a reasonable person would assume, simply based on a solicitation for ideas, that
15 any financial payment would be made upon such submission, especially if their idea was used
16 (and there is no indication that plaintiff's idea was used by the defendant). Plaintiff's statement
17 that he reasonably believed he would be paid for his time is insufficient. In addition to there
18 being no actual misrepresentation alleged, plaintiff also fails to plead that there was any intention
19 by the defendant to deceive plaintiff, or the public in general. Plaintiff's belief that he would be
20 compensated for any ideas submitted to the defendant is not equivalent to the defendant making a
21 false statement with the intention to deceive. Plaintiff's allegations also fail to satisfy the
22 pleading requirements of Rule 9 in that plaintiff fails to allege with particularity what statement
23 was made, and how such a statement was misleading.

24 Defendant also contends that no duty of disclosure was owed to plaintiff to
25 support a claim of fraud based on omission. To the extent plaintiff alleges fraud by omission,
26 such a claim requires an allegation that the defendant was under a duty to disclose the alleged

1 omission. See Cal. Civ. Code § 1710(3), La. Civ. Code Ann. art 1953; see also, Greene v. Gulf
2 Coast Bank, 593 So.2d 630, 632 (La. 1992). Plaintiff fails to allege the defendant had a duty to
3 disclose that anyone submitted ideas would not be compensated.

4 Further, the undersigned finds that no amendment can cure the defects in this
5 claim. Assuming plaintiff could plead with sufficient particularity what fraudulent statements
6 were made, it is clear that it is not possible to plead the defendant acted with the intent to
7 defraud. Indeed, the undersigned agrees with the defendant's argument that plaintiff's claim is
8 facially implausible. It is simply not plausible that a broad request set forth on the defendant's
9 website for ideas on how to stop the flow of oil, without a specific offer to pay for an idea
10 submitted at a set price, would lead to an expectation of payment. Even if someone submits an
11 idea and expected payment in return, failure to pay for an idea submitted under those conditions
12 does not amount to fraud. Plaintiff does not allege that defendant at any time offered to pay for
13 the submission of ideas; he specifically states that defendant did not advertise payment for
14 services. Based on plaintiff's statements that it was his own belief that reasonable compensation
15 would be forthcoming, it is not plausible that he could amend his complaint to sufficiently plead
16 any misrepresentation to support his claim for fraud. Thus, this claim should be dismissed
17 without leave to amend.

18 3. Consumer Legal Remedies Act

19 Next plaintiff alleges violation of California's Consumer Legal Remedies Act
20 (CLRA), relying of California Civil Code §§ 1770(a)(5), (10), (14), and (19). Specifically,
21 plaintiff alleges that defendant's open solicitation for ideas represented a service, otherwise they
22 would have advertised a limitation on any compensation. In addition, plaintiff alleges that
23 defendant's emergency solicitation represented a transaction that conferred involvement in an
24 emergency with a reasonable expectation of compensation. Finally, plaintiff alleges that
25 defendant omitted terms to the contract, specifically that there would be no compensation, which
26 is unconscionable.

1 Defendant argues that plaintiff’s claim fails because California law does not
2 apply. In addition, even if California law did apply, plaintiff cannot state a claim under the
3 CLRA because he is not a consumer, as defined therein.

4 “The CLRA was enacted ‘to protect consumers against unfair and deceptive
5 business practices and to provide efficient and economical procedures to secure such
6 protection.’” McKell v. Washington Mut., Inc., 49 Cal. Rptr. 3d 227, 253 (Cal. Ct. App. 2006)
7 (quoting Cal. Civ. Code § 1760). The CLRA makes unlawful certain “unfair methods of
8 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
9 intended to result or which results in the sale or lease of goods or services to any consumer.”
10 Cal. Civ. Code § 1770(a). “Goods” are defined as “tangible chattels bought or leased for use
11 primarily for personal, family, or household purposes.” Cal. Civ. Code § 1761(a). “Services”
12 are defined as “work, labor, and services for other than a commercial or business use, including
13 services furnished in connection with the sale or repair of goods.” Cal. Civ. Code § 1761(b).

14 As defendant argues, plaintiff’s claim fails because he is not a consumer. As
15 defined in the CLRA, a “consumer” is “an individual who seeks or acquires, by purchase or
16 lease, any goods or services for personal, family, or household purposes.” Cal. Civ. Code §
17 1761(d). Despite his attempt to plead otherwise, plaintiff’s allegations could lead, at best, to a
18 finding that he was working as an independent contractor for the defendant. He is not, nor could
19 he be under the facts of this action, a consumer of defendant’s products or services. Plaintiff’s
20 conclusory allegation that he “responded primarily as a consumer” is insufficient for the court to
21 find otherwise. Thus, even if California law did apply to this action, plaintiff cannot state a claim
22 for violation of the CLRA given the facts alleged in this case. This claim should be dismissed
23 without leave to amend.

24 ///

25 ///

26 ///

1 4. Breach of Contract

2 Defendant argues that plaintiff’s amended complaint² fails to plead a plausible
3 contract claim. Plaintiff alleges the defendant breached an implied contract by failing to
4 compensate plaintiff for his time, effort, and expenses expended in devising a possible solution
5 to the oil leak. Defendant argues plaintiff fails to plead any agreement, expressed or implied,
6 between the parties.

7 Before there can be a breach of contract, there must be a contract in existence.
8 Here, defendant argues no contract, expressed or implied, exists between the parties. Plaintiff
9 alleges that defendant solicited solutions without warnings that there would be no compensation.

10 Under California law, “[t]he essential elements of a contract are: parties capable
11 of contracting; the parties’ consent; a lawful object; and sufficient cause or consideration.”
12 Lopez v. Charles Schwab & CO., Inc., 118 Cal.App.4th 1224, 1230, 13 Cal.Rptr.3d 544 (Cal. Ct.
13 App. 2004) (citing Cal. Civ. Code § 1550). An implied contract “consists of obligations arising
14 from a mutual agreement and intent to promise where the agreement and promise have not been
15 expressed in words.” Silva v. Providence Hosp. of Oakland, 14 C.2d 762, 773, 97 P.2d 798
16 (1939). “An essential element of any contract is the consent of the parties, or mutual assent.
17 Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance
18 communicated to the offeror.” Donovan v. RRL Corp., 26 Cal.4th 261, 271, 27 P.3d 702, 709
19 (Cal. 2001) (citations omitted). An “advertisement or other notice disseminated to the public at
20 large generally does not constitute an offer, but rather is presumed to be an invitation to consider,
21 examine, and negotiate.” Id.

22 ///

24 ² The incomplete amended complaint filed with the court does not contain a breach
25 of contract claim. However, it is included in the complete amended complaint provided by
26 defendants, as discussed supra. The court’s discussion of the breach of contract claim is based
on the amended complaint provided by defendant, instead of simply dismissing the claim as
nonexistent.

1 Similarly, under Louisiana law, there are four elements of a valid contract: “(1)
2 the parties must possess the capacity to contract; (2) the parties’ mutual consent must be freely
3 given; (3) there must be a certain object for the contract; and (5) the contract must have a lawful
4 purpose.” La Bo J. P’ship v. Louisiana Lottery Corp, 6 So.3d 191, 194 (La. Ct. App. 2009).

5 Here, plaintiff alleges a contract based on defendant’s request for assistance
6 posted on it’s website, which he apparently construed as an offer. He alleges he accepted that
7 offer by submitting his proposal, and reasonably expected compensation therefore. However,
8 whether there was a contract formed by the parties’ actions depends in part on whether the
9 defendant’s request for ideas is considered an offer or an advertisement to the public at large. In
10 interpreting the subject request for ideas, which plaintiff fails to provide the precise language of
11 to the court, the court looks to determine whether the communication defines all of the terms
12 necessary for form a contract. The undersigned finds that based on the information before the
13 court, the solicitation for ideas fails to provide sufficient terms to constitute a contract, including
14 what each party would be agreeing to. In particular, plaintiff fails to allege a mutual agreement
15 as to the price to be paid for any ideas submitted. Instead, plaintiff alleges he reasonably
16 believed he should be entitled to compensation. This shows that there was no mutual assent.
17 Rather, the request for ideas is similar to an advertisement, and would be presumed to be an
18 invitation to negotiate. If plaintiff wished to enter into an actual contract with the defendant, he
19 could have made an actual offer to the defendant setting forth his proposal and request for
20 compensation. He did not do so. Instead, he unilaterally submitted his idea and thereafter his
21 invoice. The submission of plaintiff’s invoice is insufficient to transform the request for
22 assistance from an advertisement to a contract. Defendant’s failure to pay the invoice for the
23 idea submitted does not amount to a breach of contract, as there was no contract formed wherein
24 the parties agreed to the payment of a specific fee for the ideas submitted. Defendant’s motion to
25 dismiss this claim should be granted without leave to amend.

26 ///

