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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD OLAJIDE,
Plaintiff,
v.
EDMUND G. BROWN, et al.
Defendants.

No. 2:17-cv-02168-TLN-KJN PS

ORDER AND FINDINGS AND
RECOMMENDATIONS

Presently before the court are defendants’ motions to dismiss the complaint and motion to quash service of summons. (ECF Nos. 12, 21.) Plaintiff filed an opposition and defendants filed a reply. (ECF Nos. 30, 31.) These motions came on regularly for hearing on January 25, 2018, at 10:00 am. (ECF No. 39.) Appearing telephonically were *pro se* plaintiff, Ronald Olajide and John Robert Whitefleet, on behalf of defendants. Upon review of the documents in support and opposition, upon hearing the arguments of counsel, and good cause appearing therefor, the court finds as follows:

I. BACKGROUND

Plaintiff Ronald Olajide, who is proceeding without counsel, filed this action against thirty-one defendants, on October 18, 2017.¹ (ECF No. 1.) Subsequently, defendants Don

¹ This action proceeds before the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 Nottoli, Phil Serna, Patrick Kennedy, Susan Peters, and Sue Frost (“Moving Defendants”) moved
2 to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6); and
3 defendants Nick Sareeram, Basden #1281, Ogle #688, Mills #1358, Brigs #1126, Robinson
4 #1008, and Mrozinski #945 (“Specially Appearing Defendants”) moved to quash service of
5 summons pursuant to Federal Rule of Civil Procedure 12(b)(5). (See ECF Nos. 12, 21.)
6 Remaining defendants Edmund G. Brown, Nancy Skinner, Rob Bonta, John Chaing, Xavier
7 Becerra, Trevor Dewar, Jared Metcalf, Elizabeth Dunas, Michelle Gregory, Nason Namikawa,
8 Tera Mackey, Brian Cardwell, Sean Kelly, Michael Sparks, Mike Robertson, John Winn, Thomas
9 Asker, Taylor Herrlinger, and Hernandez #51 (“Non-Moving Defendants”) have not yet appeared
10 in this matter.²

11 On November 29, 2017, plaintiff requested that the Clerk of Court enter default as to
12 numerous defendants. (See ECF No. 16.) Subsequently, the Clerk of Court entered default as to
13 Non-Moving Defendants, but declined to enter default against any Moving or Specially
14 Appearing Defendants. (See ECF Nos. 22, 23.) At the hearing, Mr. Whitefleet requested that the
15 court set aside the Clerk’s entry of default.

16 A. Complaint

17 Plaintiff’s complaint is vague, difficult to follow, and at times nonsensical. (See ECF No.
18 1.) The complaint purports to bring claims for (1) “Breach of Contract,” (2) “Breach of implied
19 Covenant of Public Trust,” and (3) “violation of An Act to enforce the Provisions of the
20 Fourteenth Amendment to the Constitution of the United States, and for other Purposes.” (Id. at
21 20–25.)

22 The gravamen of plaintiff’s complaint appears to be that various state and local
23 government officials have allegedly conspired to use his likeness, name, and other biometric
24 data—which plaintiff collectively refers to as his “natural liberty, an immediate gift from the God
25 of Nature at his birth” (id. at 3, 5)—without his permission, to enrich themselves through federal
26 grants. According to plaintiff,

27 ² At the January 25, 2018 hearing, attorney John Robert Whitefleet appeared on behalf of Moving
28 Defendants and Specially Appearing Defendants only.

1 [Defendants] by and through people employed under their
2 conspiracy have been using legislative and executive powers
3 derived from the California constitution since the year 2003 to
4 identify [plaintiff] as a “black” male, then physically capture and
5 take possession of an image of the plaintiff’s likeness, his
6 fingerprints, DNA, given names and family names and used said
7 private property within permanent public databases, public
8 documents, public records and public security instruments
9 associated with California identification number D5970875, County
10 of Alameda personal file number BDJ279 and County of
11 Sacramento x-reference number 5138810 to further accuse the
12 Plaintiff of public crimes and further compel his service to satisfy
13 the performance of obligations maintained and executed pursuant to
14 their conspiracy, then secure and collect public funds created on
15 account of the United States Government to pay themselves, but not
16 the Plaintiff.

17 (ECF No. 1 at 10.)

18 Plaintiff further asserts that he has offered defendants various contracts to use his “natural
19 liberty” through so-called “private bills of exchange” that defendants have allegedly accepted by
20 their silence. (See Id. at 11–15.) Specifically, plaintiff alleges,

21 As a direct result of each defendant’s conduct in failing to rebut any
22 of the claims and facts presented to them in the private bill of
23 exchanges [sic] and certified agreements (private contracts), by
24 being silent, they have accepted, agreed and stipulated that all
25 terms, facts and claims made within are reasonable, valid and that
26 they are personally obligated to cause for the full performance and
27 satisfaction of each contract.

28 (ECF No. 1 at 15.) According to plaintiff, as a result of defendants’ conduct, he has “incurred
actual damages, amounting to one trillion seventy six million dollars.” (Id. at 19.)

In his prayer for relief, plaintiff asserts that he “has no adequate remedy at law” (id. at 25)
and requests that the court issue declaratory judgments that defendants have accepted plaintiff’s
contracts “by their acts of silence” (id. at 26) and that defendants’ conduct has violated “clearly
established law of the United States of America” (id. at 27), as well as an order compelling full
performance of the alleged contracts (id. at 26).

B. Oral Argument

At the hearing, the undersigned sought clarification from plaintiff regarding the issues he
raised in the complaint. Plaintiff appeared particularly evasive in the answers he provided. He
continually attempted to avoid answering questions, claiming the answers were in the complaint.

1 Initially, plaintiff could not recall whether he had a California driver’s license or state
2 identification (“ID”) card. Later, he admitted that at some point he had some form of ID from the
3 state, but that it had probably expired. Strangely, he could not recall why he receives mail at the
4 address that he has provided to the court—but he did indicate that he does not live at the location.

5 When questioned, plaintiff confirmed that he is not alleging that defendants had used his
6 likeness in any commercial, sign, or billboard, without permission. At the same time, plaintiff
7 maintained that defendants were using his intangible property for private profit, by somehow
8 using his likeness, name, and fingerprints to obtain federal grant money. He could not explain
9 how this process occurred with any specificity. In an attempt to justify his claims, plaintiff
10 asserted that after an arrest, government officials must first pay him before they may take his
11 booking photo or fingerprints.

12 Toward the end of the hearing, plaintiff orally asserted that the court had overlooked his
13 claim for unlawful arrest that allegedly occurred in June of 2017, in Sacramento County.
14 Plaintiff’s written complaint in this case does not state such a claim. (See ECF No. 1.) On June
15 17, 2017, however, plaintiff filed a federal prisoner civil rights complaint, while housed in the
16 Sacramento County Jail, which appears to raise issues related to his underlying arrest. (See 2:17-
17 cv-01477-GEB-CMK, ECF No. 1.)

18 II. LEGAL STANDARDS

19 Federal courts are courts of limited jurisdiction. A motion to dismiss brought pursuant to
20 Federal Rule of Civil Procedure 12(b)(1) challenges the court’s subject matter jurisdiction to hear
21 the complaint. A federal court has an independent duty to assess whether federal subject matter
22 jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co. v.
23 Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that “the district court had a duty
24 to establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties
25 raised the issue or not”); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir. 1996).
26 The court must *sua sponte* dismiss the case if, at any time, it determines that it lacks subject
27 matter jurisdiction. Fed. R. Civ. P. 12(h)(3). A federal district court generally has original
28 jurisdiction over a civil action when: (1) a federal question is presented in an action “arising

1 under the Constitution, laws, or treaties of the United States” or (2) there is complete diversity of
2 citizenship and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a).

3 A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6)
4 challenges the sufficiency of the pleadings set forth in the complaint. Vega v. JPMorgan Chase
5 Bank, N.A., 654 F. Supp. 2d 1104, 1109 (E.D. Cal. 2009). Under the “notice pleading” standard
6 of the Federal Rules of Civil Procedure, a plaintiff’s complaint must provide, in part, a “short and
7 plain statement” of plaintiff’s claims showing entitlement to relief. Fed. R. Civ. P. 8(a)(2); see
8 also Paulsen v. CNF, Inc., 559 F.3d 1061, 1071 (9th Cir. 2009). “To survive a motion to dismiss,
9 a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that
10 is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v.
11 Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads
12 factual content that allows the court to draw the reasonable inference that the defendant is liable
13 for the misconduct alleged.” Id.

14 In considering a motion to dismiss for failure to state a claim, the court accepts all of the
15 facts alleged in the complaint as true and construes them in the light most favorable to the
16 plaintiff. Corrie v. Caterpillar, Inc., 503 F.3d 974, 977 (9th Cir. 2007). The court is “not,
17 however, required to accept as true conclusory allegations that are contradicted by documents
18 referred to in the complaint, and [the court does] not necessarily assume the truth of legal
19 conclusions merely because they are cast in the form of factual allegations.” Paulsen, 559 F.3d at
20 1071.

21 The court must construe a *pro se* pleading liberally to determine if it states a claim and,
22 prior to dismissal, tell a plaintiff of deficiencies in her complaint and give plaintiff an opportunity
23 to cure them if it appears at all possible that the plaintiff can correct the defect. See Lopez v.
24 Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc); accord Balistreri v. Pacifica Police
25 Dep’t, 901 F.2d 696, 699 (9th Cir. 1990) (stating that “pro se pleadings are liberally construed,
26 particularly where civil rights claims are involved”); see also Hebbe v. Pliler, 627 F.3d 338, 342
27 & n.7 (9th Cir. 2010) (stating that courts continue to construe *pro se* filings liberally even when
28 evaluating them under the standard announced in Iqbal).

1 In ruling on a motion to dismiss filed pursuant to Rule 12(b)(6), the court “may generally
2 consider only allegations contained in the pleadings, exhibits attached to the complaint, and
3 matters properly subject to judicial notice.” Outdoor Media Group, Inc. v. City of Beaumont, 506
4 F.3d 895, 899 (9th Cir. 2007) (citation and quotation marks omitted). Although the court may not
5 consider a memorandum in opposition to a defendant’s motion to dismiss to determine the
6 propriety of a Rule 12(b)(6) motion, see Schneider v. Cal. Dep’t of Corrections, 151 F.3d 1194,
7 1197 n.1 (9th Cir. 1998), it may consider allegations raised in opposition papers in deciding
8 whether to grant leave to amend, see, e.g., Broam v. Bogan, 320 F.3d 1023, 1026 n.2 (9th Cir.
9 2003).

10 “[I]f a complaint is dismissed for failure to state a claim upon which relief can be granted,
11 leave to amend may be denied . . . if amendment of the complaint would be futile . . . [or if] the
12 ‘allegation of other facts consistent with the challenged pleading could not possibly cure the
13 deficiency.’” Albrecht v. Lund, 845 F.2d 193, 195 (9th Cir.), amended, 856 F.2d 111 (9th Cir.
14 1988) (internal citations omitted).

15 III. DISCUSSION

16 Moving Defendants seek to dismiss plaintiff’s complaint for lack of subject matter
17 jurisdiction and for failure to state a claim. (See ECF Nos. 12, 21.) Specially Appearing
18 Defendants seek to quash service of summons. (See ECF No. 12.) For the reasons below, the
19 undersigned recommends that defendants’ motions to dismiss be GRANTED as to all defendants
20 without leave to amend; defendants’ motion to quash service be DENIED as moot; the Clerk’s
21 entry of default be set aside; and the case be closed.

22 A. Subject Matter Jurisdiction

23 The court must dismiss this action because it lacks subject matter jurisdiction over
24 plaintiff’s claims. See Fed. R. Civ. P. 12(h)(3). As explained, the gravamen of plaintiff’s
25 complaint centers on the alleged unauthorized use of plaintiff’s likeness, name, and other
26 biometric data, by defendants, in violation of purported contracts between plaintiff and
27 defendants.

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1 The first cause of action is for breach of contract. (See ECF No. 1 at 20.) The second
2 cause of action is entitled “Breach of the implied Covenant of Public Trust” (id. at 21), but is
3 essentially a restatement of plaintiff’s breach of contract claim. (See id. at 22 “Each of the
4 defendants have breached the covenant of public trust by failing to make any effort to meet the
5 contractual terms and failing to cause for the full performance and satisfaction of the private
6 contracts”). Similarly, while the third cause of action references the Fourteenth Amendment of
7 the United States Constitution, the details of the claim reveal a mere reassertion of the breach of
8 contract claim. (See ECF No. 1 at 25 “by refusing to return the plaintiff’s [likeness, name, and
9 other biometric data] after his written request and also refusing to cause for the payment of
10 satisfaction of his private contracts, [defendants] have directly and indirectly caused the Plaintiff
11 actual property damages”). As such, the complaint only states one cause of action, breach of
12 contract.

13 Ignoring for the moment the glaring contract formation issues present on the face of the
14 complaint, if the court were to assume that a contract had been formed, it would have been
15 formed pursuant to state law. These contracts were allegedly formed between plaintiff and state
16 and local officials. He does not assert that any of these contracts were formed with the federal
17 government or any of its agencies or employees.

18 Therefore, the court does not have federal question subject matter jurisdiction over this
19 matter because none of these claims arise “under the Constitution, laws, or treaties of the United
20 States.” See 28 U.S.C. §§ 1331. Neither does the court have diversity subject matter jurisdiction
21 because plaintiff and defendants are all citizens of the same state, California. See 28 U.S.C.
22 § 1332(a). Because the court has neither federal question nor diversity subject matter jurisdiction,
23 it lacks jurisdiction to hear plaintiff’s complaint, and this matter must be dismissed. See Fed. R.
24 Civ. P. 12(h)(3).

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1 B. Leave to Amend

2 The undersigned finds that leave to amend would be futile. Liberally construed, plaintiff
3 may be attempting to state a claim under 42 U.S.C. §§ 1983 or 1985(3).³ “Section 1983 provides,
4 in pertinent part, that ‘(e)very person who, under color of any statute of any state . . . , subjects, or
5 causes to be subjected, any citizen of the United States . . . to the deprivation of any rights,
6 privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured
7’ A person ‘subjects’ another to the deprivation of a constitutional right, within the meaning
8 of section 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits to
9 perform an act which he is legally required to do that causes the deprivation of which complaint is
10 made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (internal citations omitted).

11 To state a claim under § 1985(3) “a complaint must allege that the defendants did (1)
12 ‘conspire or go in disguise on the highway or on the premises of another’ (2) ‘for the purpose of
13 depriving, either directly or indirectly, any person or class of persons of the equal protection of
14 the laws, or of equal privileges and immunities under the laws.’” Griffin v. Breckenridge, 403
15 U.S. 88, 102 (1971). The Supreme Court has clarified that § 1985(3) does not apply to any
16 private conspiracy, rather “there must be some racial, or perhaps otherwise class-based,
17 invidiously discriminatory animus behind the conspirators’ action. The conspiracy, in other
18 words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.” Id.

19 Here, plaintiff’s complaint does not—and could not, consistent with what has been pled—
20 state a claim based upon facts evidencing a deprivation of any of his constitutional rights,
21 privilege, or immunities. There is simply no constitutional provision to enforce a contract to
22 which the other party has not assented. Nor is there any provision that prevents a state or
23 municipality from collecting a citizen’s likeness, name, and biometric data, in connection with a
24 driver’s license, ID card, arrest, or criminal conviction. Moreover, as explained, plaintiff’s
25 complaint is for breach of contract. It does not allege any facts to suggest that defendants’

26 ³ Indeed, in his opposition to the motions to dismiss, plaintiff asserts that his claims have been
27 brought under 42 U.S.C. § 1985(3). (See ECF 30 at 2.) While, this statute is not referenced in
28 the complaint, it is proper to consider whether or not plaintiff could state a claim under § 1985(3)
if given leave to amend.

1 alleged conduct was motivated by some racial or otherwise class-based, invidiously
2 discriminatory animus. Therefore, leave to amend would be futile because plaintiff could not
3 plead facts consistent with the challenged complaint to state a viable claim. See Albrecht, 845
4 F.2d at 195, amended, 856 F.2d 111.

5 To the extent that plaintiff would seek to raise issues of unlawful arrest, in any amended
6 complaint, the court finds that these issues are already included in plaintiff's pending prisoner
7 civil rights action. (See 2:17-cv-01477-GEB-CMK, ECF No. 1.)⁴

8 C. Dismissal of Non-Moving Defendants

9 "A District Court may properly on its own motion dismiss an action as to defendants who
10 have not moved to dismiss where such defendants are in a position similar to that of moving
11 defendants or where claims against such defendants are integrally related." Silverton v. Dep't of
12 Treasury, 644 F.2d 1341, 1345 (9th Cir. 1981). "Such a dismissal may be made without notice
13 where the [plaintiffs] cannot possibly win relief." Omar v. Sea-Land Serv., Inc., 813 F.2d 986,
14 991 (9th Cir. 1987). The court's authority in this regard includes *sua sponte* dismissal as to
15 defendants who have not been served and defendants who have not yet answered or appeared.
16 Columbia Steel Fabricators, Inc. v. Ahlstrom Recovery, 44 F.3d 800, 802 (9th Cir. 1995) ("We
17 have upheld dismissal with prejudice in favor of a party which had not yet appeared, on the basis
18 of facts presented by other defendants which had appeared."); see also Bach v. Mason, 190
19 F.R.D. 567, 571 (D. Idaho 1999); Ricotta v. California, 4 F. Supp. 2d 961, 978-79 (S.D. Cal.
20 1998).

21 Here, the undersigned finds that all defendants are similarly situated. Indeed, the
22 complaint asserts each cause of action against each defendant, without differentiation. (See ECF
23 No. 1.) Therefore, plaintiff's complaint is equally flawed as to each defendant and the
24 undersigned recommends that the complaint be dismissed as to all defendants, and that the
25 Clerk's entry of default be set aside. Because this dismissal would include the Specially
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27 ⁴ Moreover, any claim of unlawful arrest appears dubious at best. During the hearing, plaintiff
28 admitted that he was represented by an attorney, accepted a plea bargain, and pled guilty to a
criminal offense, in connection with the allegedly unlawful June 2017 arrest.

1 Appearing Defendants, their motion to quash service (ECF No. 12) is moot.

2 IV. CONCLUSION

3 For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

- 4 1. Defendants' motions to dismiss plaintiff's complaint (ECF Nos. 12, 21) be
5 GRANTED as to all defendants without leave to amend.
- 6 2. Defendants' motion to quash service (ECF No. 12) be DENIED as moot.
- 7 3. The Clerk's entry of default as to defendants Thomas Asker, Xavier Becerra, Rob
8 Bonta, Edmund G. Brown, Brian Cardwell, John Chiang, Tevor Dewar, Elizabeth
9 Dunas, Michelle Gregory, Taylor Herrlinger, Sean Kelly, Tera Mackey, Jared
10 Metcalf, Nason Namikawa, Mike Robertson, Nancy Skinner, Michael Sparks, John
11 Winn (ECF No. 22) be set aside.
- 12 4. The Clerk of Court be ordered to close the case.

13 In light of these recommendations, IT IS ALSO HEREBY ORDERED that all pleading,
14 discovery, and motion practice in this action are STAYED pending resolution of the findings and
15 recommendations. With the exception of objections to the findings and recommendations and
16 any non-frivolous motions for emergency relief, the court will not entertain or respond to any
17 motions and other filings until the findings and recommendations are resolved.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
20 days after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
23 shall be served on all parties and filed with the court within fourteen (14) days after service of the
24 objections. The parties are advised that failure to file objections within the specified time may

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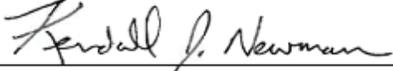
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1 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
2 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

3 IT IS SO ORDERED AND RECOMMENDED.

4 Dated: January 30, 2018

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

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