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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT C. LOFTUS, JR.,
Plaintiff,
v.
AT&T, INC.,
Defendant.

No. 2:18-cv-2866 TLN DB PS

ORDER

Plaintiff Robert Loftus is proceeding in this action pro se. This matter was, therefore, referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On February 11, 2019, the undersigned took under submission defendant’s motion for a more definitive statement and alternative motion to dismiss. (ECF No. 11.) For the reasons stated below, defendant’s motion to dismiss will be granted and plaintiff will be granted leave to file an amended complaint.

BACKGROUND

Plaintiff, proceeding pro se, commenced this action on September 25, 2018, by filing a complaint in the Amador County Superior Court. (Compl. (ECF No. 1-1) at 8.¹) The complaint alleges that the defendant denied plaintiff retirement benefits resulting in \$3,200 in damages. (Id.

¹ Page number citations such as this one are to the page number reflected on the court’s CM/ECF system and not to page numbers assigned by the parties.

1 at 9.) On October 26, 2018, defendant removed the matter to this court pursuant to the court's
2 federal question jurisdiction. (ECF No. 1.)

3 On November 2, 2018, defendant filed the pending motion for a more definitive statement
4 and alternative motion to dismiss. (ECF No. 3.) After plaintiff failed to file a timely opposition,
5 the undersigned issued an order to show cause on November 26, 2018. (ECF No. 5.) Plaintiff
6 filed an opposition on December 6, 2018. (ECF No. 7.) On January 9, 2019, the undersigned
7 issued an order requiring plaintiff to provide a current address and defendant to file a
8 supplemental brief addressing the basis for subject matter jurisdiction. (ECF No. 8.) Defendant
9 filed a supplemental brief on February 1, 2019. (ECF No. 10.) The undersigned took defendant's
10 motion under submission on February 11, 2019. (ECF No. 11.) Plaintiff filed a sur-reply on
11 February 13, 2019.² (ECF No. 12.)

12 STANDARD

13 I. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(6)

14 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
15 sufficiency of the complaint. N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir.
16 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of
17 sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901
18 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege "enough facts to state a claim to
19 relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A
20 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
21 the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v.
22 Iqbal, 556 U.S. 662, 678 (2009).

23 In determining whether a complaint states a claim on which relief may be granted, the
24 court accepts as true the allegations in the complaint and construes the allegations in the light
25 most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Love v.

27 ² The filing of a sur-reply is not authorized by the Federal Rules of Civil Procedure or the Local
28 Rules. See Fed. R. Civ. P. 12; Local Rule 230. Nonetheless, in light of plaintiff's pro se status,
the undersigned has considered the sur-reply in evaluating defendant's motion.

1 United States, 915 F.2d 1242, 1245 (9th Cir. 1989). In general, pro se complaints are held to less
2 stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519,
3 520-21 (1972). However, the court need not assume the truth of legal conclusions cast in the
4 form of factual allegations. United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th
5 Cir. 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than
6 an unadorned, the defendant-unlawfully-harmed-me accusation.” Iqbal, 556 U.S. at 678. A
7 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the
8 elements of a cause of action.” Twombly, 550 U.S. at 555; see also Iqbal, 556 U.S. at 676
9 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements, do not suffice.”). Moreover, it is inappropriate to assume that the plaintiff “can prove
11 facts which it has not alleged or that the defendants have violated the . . . laws in ways that have
12 not been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters,
13 459 U.S. 519, 526 (1983).

14 In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court is permitted
15 to consider material which is properly submitted as part of the complaint, documents that are not
16 physically attached to the complaint if their authenticity is not contested and the plaintiff’s
17 complaint necessarily relies on them, and matters of public record. Lee v. City of Los Angeles,
18 250 F.3d 668, 688-89 (9th Cir. 2001).

19 **II. Legal Standards Applicable to Motions For a More Definite Statement Pursuant to** 20 **Rule 12(e)**

21 Federal Rule of Civil Procedure 12(e) provides:

22 A party may move for a more definite statement of a pleading to
23 which a responsive pleading is allowed but which is so vague or
24 ambiguous that the party cannot reasonably prepare a response. The
25 motion must be made before filing a responsive pleading and must
26 point out the defects complained of and the details desired. If the
court orders a more definite statement and the order is not obeyed
within 14 days after notice of the order or within the time the court
sets, the court may strike the pleading or issue any other appropriate
order.

27 Fed. R. Civ. P. 12(e); see also Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) (“If a
28 pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant

1 can move for a more definite statement under Rule 12(e) before responding.”); C.B. v. Sonora
2 Sch. Dist., 691 F. Supp. 2d 1170, 1190-91 (E.D. Cal. 2010) (“A Rule 12(e) motion is proper only
3 if the complaint is so indefinite that the defendant cannot ascertain the nature of the claim being
4 asserted, i.e., so vague that the defendant cannot begin to frame a response.”).

5 “Motions pursuant to Rule 12(e) are generally ‘viewed with disfavor and are rarely
6 granted[.]’” Nguyen v. CTS Electronics Manufacturing Solutions Inc., 301 F.R.D. 337, 340
7 (N.D. Cal. 2014) (quoting E.E.O.C. v. Alia Corp., 842 F.Supp.2d 1243, 1250 (E.D. Cal. 2012)).
8 A court should deny a motion for a more definite statement “if the complaint is specific enough to
9 notify [a] defendant of the substance of the claim being asserted” or “if the detail sought by a
10 motion for more definite statement is obtainable through discovery.” C.B., 691 F. Supp. 2d at
11 1191. A Rule 12(e) motion “is likely to be denied where the substance of the claim has been
12 alleged, even though some of the details are omitted.” Neveu v. City of Fresno, 392 F. Supp. 2d
13 1159, 1169 (E.D. Cal. 2005). This liberal pleading standard is consistent with Federal Rule of
14 Civil Procedure 8(a) which allows pleadings that simply contain a “short and plain statement of
15 the claim.” Id.

16 ANALYSIS

17 Here, plaintiff’s complaint must be dismissed for failure to allege enough facts to state a
18 claim to relief that is plausible on its face. In this regard, the only allegations found in plaintiff’s
19 complaint read “Denial of retirement benefits of \$2700 for 2018 plus \$500 for breach of
20 agreement and pain and suffering.” (Compl. (ECF No. 1-1) at 9.) Although the Federal Rules of
21 Civil Procedure adopt a flexible pleading policy, a complaint must give the defendant fair notice
22 of the plaintiff’s claims and must allege facts that state the elements of each claim plainly and
23 succinctly. Fed. R. Civ. P. 8(a)(2); Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th
24 Cir. 1984).

25 “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements
26 of cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertions’
27 devoid of ‘further factual enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting
28 Twombly, 550 U.S. at 555, 557). A plaintiff must allege with at least some degree of

1 particularity overt acts which the defendants engaged in that support the plaintiff's claims.³

2 Jones, 733 F.2d at 649.

3 **LEAVE TO AMEND**

4 For the reasons stated above, the complaint must be dismissed. The undersigned has
5 carefully considered whether plaintiff may amend the complaint to state a claim upon which relief
6 can be granted. "Valid reasons for denying leave to amend include undue delay, bad faith,
7 prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d
8 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau,
9 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the
10 court does not have to allow futile amendments).

11 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
12 may be dismissed "only where 'it appears beyond doubt that the plaintiff can prove no set of facts
13 in support of his claim which would entitle him to relief.'" Franklin v. Murphy, 745 F.2d 1221,
14 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)); see also Weilburg v.
15 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) ("Dismissal of a pro se complaint without leave to
16 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
17 cured by amendment.") (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
18 1988)).

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21 ³ It appears plaintiff may be attempting to assert a claim involving employee retirement benefits.
22 Plaintiff is advised that "Congress enacted ERISA [the Employee Retirement Income Security
23 Act of 1974] to 'protect . . . the interests of participants in employee benefit plans and their
24 beneficiaries' by setting out substantive regulatory requirements for employee benefit plans and
25 to 'provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts.'" Aetna
26 Health Inc. v. Davila, 542 U.S. 200, 208 (2004) (quoting 29 U.S.C. § 1001(b)). Under ERISA, a
27 plaintiff may bring a claim: (1) "to recover benefits due to him under the terms of his plan, to
28 enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the
plan," 29 U.S.C. § 1132(a)(1)(B); (2) for a breach of fiduciary duties, 29 U.S.C. § 1132(a)(2), or;
(3) "to enjoin any act or practice which violates any provision of [ERISA] or terms of the plan or
to obtain other appropriate equitable relief[.]" 29 U.S.C. § 1132(a)(3). However,
"[e]xtracontractual, compensatory and punitive damages are not available under ERISA." Bast v.
Prudential Ins. Co. of America, 150 F.3d 1003, 1009 (9th Cir. 1998).

1 Here, given the extremely vague nature of the complaint, the undersigned cannot yet say
2 that it appears beyond doubt that leave to amend would be futile.⁴ Plaintiff's complaint will
3 therefore be dismissed, and plaintiff will be granted leave to file an amended complaint. Plaintiff
4 is cautioned, however, that if plaintiff elects to file an amended complaint "the tenet that a court
5 must accept as true all of the allegations contained in a complaint is inapplicable to legal
6 conclusions. Threadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice." Ashcroft, 556 U.S. at 678. "While legal conclusions can
8 provide the complaint's framework, they must be supported by factual allegations." Id. at 679.
9 Those facts must be sufficient to push the claims "across the line from conceivable to
10 plausible[.]" Id. at 680 (quoting Twombly, 550 U.S. at 557).

11 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an
12 amended complaint complete. Local Rule 220 requires that any amended complaint be complete
13 in itself without reference to prior pleadings. The amended complaint will supersede the original
14 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,
15 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption
16 and identified in the body of the complaint, and each claim and the involvement of each
17 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file
18 must also include concise but complete factual allegations describing the conduct and events
19 which underlie plaintiff's claims.

20 CONCLUSION

21 Accordingly, IT IS HEREBY ORDERED that:


- 22 1. Defendant's November 2, 2018 motion to dismiss (ECF No. 3) is granted.
- 23 2. The complaint filed September 25, 2018 (ECF No. 1) is dismissed with leave to
24 amend.

25 ⁴ As articulated in the January 9, 2019 order, it remains unclear to the undersigned whether the
26 court has subject matter jurisdiction over this action. If plaintiff files an amended complaint, the
27 undersigned will look carefully at the allegations contained therein to ensure the court has subject
28 matter jurisdiction over this action, as it is the obligation of the district court "to be alert to
jurisdictional requirements." Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 593
(2004).

1 3. Within twenty-eight days from the date of this order, an amended complaint shall be
2 filed that cures the defects noted in this order and complies with the Federal Rules of Civil
3 Procedure and the Local Rules of Practice.⁵ The amended complaint must bear the case number
4 assigned to this action and must be titled “Amended Complaint.”

5 4. Failure to comply with this order in a timely manner may result in a recommendation
6 that this action be dismissed.

7 Dated: June 6, 2019

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11 DEBORAH BARNES
12 UNITED STATES MAGISTRATE JUDGE
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27 _____
28 ⁵ Alternatively, if plaintiff no longer wishes to pursue this action plaintiff may file a notice of
voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.