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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GONZALO R. RUBANG, JR.,
Plaintiff,
v.
ALLY FINANCIAL INC.,
Defendant.

No. 2:19-cv-0154 MCE DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Gonzalo Rubang Jr., is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending before the court are plaintiff’s amended complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 2 & 4.) Therein, plaintiff complains about plaintiff’s defective vehicle.

The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiff’s amended complaint is deficient. Accordingly, for the reasons stated below, the undersigned will recommend that plaintiff’s amended complaint be dismissed without further leave to amend.

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1 **I. Plaintiff's Application to Proceed In Forma Pauperis**

2 Plaintiff's in forma pauperis application makes the financial showing required by 28
3 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma
4 pauperis status does not complete the inquiry required by the statute. "A district court may deny
5 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
6 complaint that the action is frivolous or without merit." Minetti v. Port of Seattle, 152 F.3d
7 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th
8 Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th
9 Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed
10 IFP because it appears from the face of the amended complaint that McGee's action is frivolous
11 or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the
12 District Court to examine any application for leave to proceed in forma pauperis to determine
13 whether the proposed proceeding has merit and if it appears that the proceeding is without merit,
14 the court is bound to deny a motion seeking leave to proceed in forma pauperis.").

15 Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of
16 poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to
17 state a claim on which relief may be granted, or seeks monetary relief against an immune
18 defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an
19 arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v.
20 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a
21 complaint as frivolous where it is based on an indisputably meritless legal theory or where the
22 factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

23 To state a claim on which relief may be granted, the plaintiff must allege "enough facts to
24 state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
25 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as
26 true the material allegations in the complaint and construes the allegations in the light most
27 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v.
28 Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

1 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by
2 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true
3 conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western
4 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

5 The minimum requirements for a civil complaint in federal court are as follows:

6 A pleading which sets forth a claim for relief . . . shall contain (1) a
7 short and plain statement of the grounds upon which the court's
8 jurisdiction depends . . . , (2) a short and plain statement of the claim
showing that the pleader is entitled to relief, and (3) a demand for
judgment for the relief the pleader seeks.

9 Fed. R. Civ. P. 8(a).

10 **II. Plaintiff's Amended Complaint**

11 Here, plaintiff's amended complaint fails to contain a short and plain statement of a claim
12 showing that plaintiff is entitled to relief. In this regard, the amended complaint alleges that the
13 defendant is "careless to" plaintiff's safety because it is "not interested to discuss engine defects
14 of [plaintiff's] car." (Am. Compl. (ECF No. 4) at 5.) The amended complaint asserts that
15 defendant is "charged" with "unfair business practice for the reason not even interested to have
16 joint discussions with Hyundai Motor America to talk to avoid highway disaster." (Id. at 5.) The
17 amended complaint, however, does not identify a claim or allege why the defendant has any
18 responsibility to address the mechanical issues found in plaintiff's vehicle.

19 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
20 complaint must give the defendant fair notice of the plaintiff's claims and must allege facts that
21 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.
22 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels
23 and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor
24 does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual
25 enhancements.'" Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
26 557). A plaintiff must allege with at least some degree of particularity overt acts which the
27 defendants engaged in that support the plaintiff's claims. Jones, 733 F.2d at 649.

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1 Plaintiff may be attempting to allege a claim pursuant to California’s Unfair Competition
2 Law. California’s Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business
3 act or practice.” Cal. Bus. & Prof. Code § 17200. § 17200 incorporates other laws and treats a
4 violation of those laws as an unlawful business practice independently actionable under
5 California state law. Chabner v. United Omaha Life Ins. Co., 225 F.3d 1042, 1048 (9th Cir.
6 2000). “In order to state a claim for a violation of [§ 17200], a plaintiff must allege that the
7 defendant committed a business act that is either fraudulent, unlawful, or unfair.” Levine v. Blue
8 Shield of California, 189 Cal.App.4th 1117, 1136 (2010).

9 However, “[t]o state a claim for an ‘unlawful’ business practice under the UCL, a plaintiff
10 must assert the violation of some other law.” Welenco, Inc. v. Corbell, 126 F.Supp.3d 1154,
11 1178 (E.D. Cal. 2015); see also Pantoja v. Countrywide Home Loans, Inc., 640 F.Supp.2d 1177,
12 1190 (N.D. Cal. 2009) (“[S]ince the court has dismissed all of Plaintiff’s predicate violations,
13 Plaintiff cannot state a claim under the unlawful business practices prong of the UCL.”). Here,
14 the amended complaint fails to allege a violation of any law.

15 **III. Leave to Amend**

16 For the reasons stated above, plaintiff’s amended complaint should be dismissed. The
17 undersigned has carefully considered whether plaintiff could further amend the complaint to state
18 a claim over which the court would have jurisdiction. Valid reasons for denying leave to amend
19 include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg. Prod. v.
20 Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n
21 v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to
22 amend shall be freely given, the court does not have to allow futile amendments).

23 Here, given the deficiencies noted above and plaintiff’s inability to successfully amend the
24 complaint, the undersigned finds that granting plaintiff further leave to amend would be futile.

25 **CONCLUSION**

26 Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that:

27 1. Plaintiff’s January 25, 2019 application to proceed in forma pauperis (ECF No. 2) be
28 denied;

1 2. Plaintiff's October 17, 2019 amended complaint (ECF No. 4) be dismissed without
2 further leave to amend; and

3 3. This action be closed.

4 These findings and recommendations will be submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
6 being served with these findings and recommendations, plaintiff may file written objections with
7 the court. A document containing objections should be titled "Objections to Magistrate Judge's
8 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
9 specified time may, under certain circumstances, waive the right to appeal the District Court's
10 order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: April 9, 2020

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15 DEBORAH BARNES
16 UNITED STATES MAGISTRATE JUDGE
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