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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHALLA C. ALFARO BUTTANY,
Plaintiff,
v.
GREYHOUND CORPORATION,
Defendants.

No. 2:19-cv-02063 MCE AC (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). ECF No. 2. The motion to proceed IFP will therefore be GRANTED.

I. SCREENING

The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”). The Federal Rules of Civil Procedure are available online at www.uscourts.gov/rules-

1 [policies/current-rules-practice-procedure/federal-rules-civil-procedure](#). Under the Federal Rules
2 of Civil Procedure, the complaint must contain (1) a “short and plain statement” of the basis for
3 federal jurisdiction (that is, the reason the case is filed in this court, rather than in a state court),
4 (2) a short and plain statement showing that plaintiff is entitled to relief (that is, who harmed the
5 plaintiff, and in what way), and (3) a demand for the relief sought. Fed. R. Civ. P. 8(a).
6 Plaintiff’s claims must be set forth simply, concisely and directly. Fed. R. Civ. P. 8(d)(1).

7 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
8 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
9 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
10 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
11 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von
12 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.
13 denied, 564 U.S. 1037 (2011).

14 The court applies the same rules of construction in determining whether the complaint
15 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court
16 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must
17 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
18 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520
19 (1972). However, the court need not accept as true conclusory allegations, unreasonable
20 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,
21 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice
22 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,
23 556 U.S. 662, 678 (2009).

24 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
25 state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has
26 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
27 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at
28 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity

1 to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v.
2 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

3 A. The Complaint

4 Plaintiff brings suit against Greyhound Corporation, which plaintiff alleges is located in
5 Sacramento, California. ECF No. 1 at 2. Plaintiff checks a box marking the basis for jurisdiction
6 as federal question. Id. at 3. When asked to provide the specific federal law or constitutional
7 provision providing federal question jurisdiction, plaintiff wrote “contract product liability.” Id.
8 at 4. Plaintiff alleges that on the way to Reno, Nevada, “it felt like something broke and hit me
9 on the right upper thigh leg, and my left forehead.” Id. at 5. Plaintiff sustained bruises on the leg
10 and couldn’t sleep on the right side for a couple of months, and still experiences pain. Id. at 6. It
11 is also alleged that there are still bruises and a bump on plaintiff’s forehead. Id.

12 B. Analysis

13 Because plaintiff’s complaint contains no basis for federal jurisdiction it must be
14 dismissed with prejudice. “Federal courts are courts of limited jurisdiction.” Kokkonen v.
15 Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). In 28 U.S.C. §§ 1331 and 1332(a),
16 “Congress granted federal courts jurisdiction over two general types of cases: cases that ‘aris[e]
17 under’ federal law, § 1331, and cases in which the amount in controversy exceeds \$ 75,000 and
18 there is diversity of citizenship among the parties, § 1332(a). These jurisdictional grants are
19 known as ‘federal-question jurisdiction’ and ‘diversity jurisdiction,’ respectively.” Home Depot
20 U. S. A., Inc. v. Jackson, -- U.S. --, 139 S. Ct. 1743, 1746 (2019), reh’g denied, No. 17-1471,
21 2019 WL 3538074 (U.S. Aug. 5, 2019).

22 The court notes that diversity cannot serve as a basis for jurisdiction because plaintiff
23 alleges that both plaintiff and defendant are California citizens. ECF No. 1 at 4. Plaintiff’s case
24 alleges jurisdiction based on federal question. Id. at 3. There is no federal question jurisdiction
25 available because no federal law or constitutional right is at issue in this case. A case “arises
26 under” federal law either where federal law creates the cause of action or “where the vindication
27 of a right under state law necessarily turn[s] on some construction of federal law.” Republican
28 Party of Guam v. Gutierrez, 277 F.3d 1086, 1088–89 (9th Cir. 2002) (quoting Franchise Tax Bd.

1 v. Construction Laborers Vacation Trust, 463 U.S. 1, 8–9 (1983)). “[T]he presence or absence of
2 federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides
3 that federal jurisdiction exists only when a federal question is presented on the face of the
4 plaintiff’s properly pleaded complaint.” Id. at 1089 (quoting Rivet v. Regions Bank, 522 U.S. 470,
5 475 (1998)). Plaintiff’s complaint does not invoke any federal law or constitutional right, and
6 clearly presents only a state tort claim and/or a contract claim that does not require the court to
7 resolve a federal question.

8 Because there is no federal jurisdiction, the undersigned recommends that this case be
9 dismissed and that leave to amend not granted in this instance because, in light of the facts at
10 issue in this case, the complaint’s deficiencies could not be cured by amendment. Noll, 809 F.2d
11 at 1448.

12 III. CONCLUSION

13 Accordingly, the undersigned recommends that plaintiff’s request to proceed in forma
14 pauperis (ECF No. 2) be GRANTED but that the complaint (ECF No. 1) be DISMISSED for lack
15 of federal jurisdiction. It is further recommended that leave to amend not be granted because
16 amendment would be futile.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days
19 after being served with these findings and recommendations, plaintiff may file written objections
20 with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document
21 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure
22 to file objections within the specified time may waive the right to appeal the District Court’s
23 order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153,
24 1156-57 (9th Cir. 1991).

25 DATED: November 1, 2019

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27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE