

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERNESTO DUGAR,
Plaintiff,
v.
PAK “N” SAVE STORE #3111,
Defendant.

Case No. 21-cv-08904-JSC

**SCREENING ORDER PURSUANT TO
28 U.S.C. § 1915**

Re: Dkt. No. 1

The Court previously granted Plaintiff’s Application to Proceed in Forma Pauperis. (Dkt. No. 5.) It must now review the complaint’s allegations under 28 U.S.C. § 1915. Because Plaintiff’s claims do not comply with Federal Rule of Civil Procedure 8, the Court gives Plaintiff the opportunity to amend the complaint.

COMPLAINT ALLEGATIONS

Defendant operates a store at 555 Floresta Boulevard in San Leandro, California. In May 2021, Plaintiff went to the store to apply for a job and was directed to an upstairs break room for an interview. After waiting while another person was interviewed, Plaintiff interviewed with a manager for a “night stocker” position. (Dkt. No. 1 at 2.) Plaintiff gave the manager his email address and phone number, and left. Plaintiff never heard back after the interview.

In August 2021, Plaintiff received a check and a letter from Defendant stating that Plaintiff had been terminated due to “Job Abandonment.” (*Id.* at 3.) According to the letter, Plaintiff clocked in on June 28, 2021, but did not show up on June 29, June 30, or July 1. Plaintiff alleges that Defendant told another employee to clock Plaintiff in on June 28 or otherwise fraudulently clocked him in. He was not aware that he had been hired until he received the termination letter. As a result of not being able to work for Defendant, Plaintiff alleges that he was evicted and is

1 currently homeless.

2 Plaintiff brings claims for “constructive dismissal” and “wrongful [] termination,” citing
3 Title VII of the Civil Rights Act of 1964 (“Title VII”) and Section 2922 of the California Labor
4 Code. (*Id.* at 1, 5.)

5 **LEGAL STANDARD**

6 A court must dismiss an *in forma pauperis* complaint before service of process if it is
7 frivolous, fails to state a claim, or contains a complete defense to the action on its face. 28 U.S.C.
8 § 1915(e)(2). Section 1915(e)(2) parallels the language of Federal Rule of Civil Procedure
9 12(b)(6) regarding dismissals for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2); *see also*
10 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000). The complaint therefore must allege
11 facts that plausibly establish each defendant’s liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S.
12 544, 555-57 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that
13 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
14 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

15 A complaint must also comply with Federal Rule of Civil Procedure 8, which requires the
16 complaint to contain “a short and plain statement of the claim showing that the pleader is entitled
17 to relief.” Fed. R. Civ. P. 8(a)(2); *see also Moss v. Infinity Ins. Co.*, No. 15-CV-03456-JSC, 2015
18 WL 5360294, at *2 (N.D. Cal. Sept. 14, 2015). “While the federal rules require brevity in
19 pleading, a complaint nevertheless must be sufficient to give the defendants ‘fair notice’ of the
20 claim and the ‘grounds upon which it rests.’” *Coleman v. Beard*, No. 14-CV-05508-YGR (PR),
21 2015 WL 395662, at *4 (N.D. Cal. Jan. 29, 2015) (quoting *Erickson v. Pardus*, 551 U.S. 89, 93
22 (2007)). A complaint that fails to state a defendant’s specific acts “that violated the plaintiff’s
23 rights fails to meet the notice requirements of Rule 8(a).” *Medina Chiprez v. Becerra*, No. 20-CV-
24 00307-YGR (PR), 2020 WL 4284825, at *3 (N.D. Cal. July 27, 2020) (citing *Hutchinson v.*
25 *United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982)).

26 Plaintiff is proceeding without representation by a lawyer. While the Court must construe
27 the complaint liberally, *see Garaux v. Pulley*, 739 F.2d 437, 439 (9th Cir. 1984), it may not add to
28 the factual allegations in the complaint, *see Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992).

1 Litigants unrepresented by a lawyer remain bound by the Federal Rules and Local Rules of this
2 District. *See* N.D. Cal. Civ. L.R. 3-9(a).

3 DISCUSSION

4 I. Constructive Discharge

5 Constructive discharge does not provide a cause of action for Plaintiff. “Standing alone,
6 constructive discharge is neither a tort nor a breach of contract, but a doctrine that transforms what
7 is ostensibly a resignation into a firing. Even after establishing *constructive* discharge, an
8 employee must independently prove a breach of contract or tort in connection with employment
9 termination in order to obtain damages for *wrongful* discharge.” *Turner v. Anheuser-Busch, Inc.*,
10 876 P.2d 1022, 1030 (Cal. 1994) (in bank). “An employee may prove, for example, that a
11 constructive discharge is a breach of an express or implied contract of employment. In the
12 absence of an express or implied agreement to the contrary, an employment relationship without a
13 fixed term is presumed to be validly terminable at the will of either party, employer or employee,
14 at any time.” *Id.* Plaintiff’s complaint does not allege an express or implied agreement that he
15 would be employed for a particular length of time. Moreover, Plaintiff’s complaint does not
16 allege that Defendant’s conduct caused him to ostensibly resign; rather, it alleges that Defendant
17 terminated Plaintiff before Plaintiff even knew he was employed. Thus, Plaintiff’s claim of
18 constructive discharge does not entitle him to any relief.

19 II. Wrongful Termination

20 The elements of a claim for wrongful termination under California law are: (1) the plaintiff
21 was employed by the defendant; (2) the defendant discharged the plaintiff; (3) a violation of public
22 policy was a motivating reason for the discharge; and (4) the discharge harmed the plaintiff.
23 *Robles v. Agreserves, Inc.*, 158 F. Supp. 3d 952, 1009 (E.D. Cal. 2016). The relevant public
24 policy must be “(1) delineated in either constitutional or statutory provisions; (2) ‘public’ in the
25 sense that it inures to the benefit of the public rather than serving merely the interests of the
26 individual; (3) well established at the time of the discharge; and (4) substantial and fundamental.”
27 *Id.* (cleaned up). Plaintiff’s complaint does not identify any public policy violated by his alleged
28 termination. He cites to a statutory provision which states: “An employment, having no specified

1 term, may be terminated at the will of either party on notice to the other. Employment for a
2 specified term means an employment for a period greater than one month.” Cal. Lab. Code §
3 2922. The complaint does not allege that Plaintiff’s employment by Defendant had a specified
4 term; indeed, he alleges that he was not told Defendant hired him. Thus, the cited provision does
5 not articulate a public policy violated by Plaintiff’s termination. Similarly, while Title VII
6 articulates a public policy against discrimination, *see Phillips v. St. Mary Reg’l Med. Ctr.*, 116
7 Cal. Rptr. 2d 770, 781–85 (Cal. Ct. App. 2002), as explained below the complaint does not allege
8 facts sufficient to support an inference that Plaintiff’s termination violated that public policy.
9 Accordingly, Plaintiff’s claim for wrongful termination does not comply with Rule 8.

10 **III. Title VII**

11 The elements of a prima facie claim of discrimination under Title VII are: “(1) the plaintiff
12 belongs to a protected class; (2) he was qualified for the position; (3) he was subject to an adverse
13 employment action; and (4) similarly situated individuals outside his protected class were treated
14 more favorably” or “other circumstances surrounding the adverse employment action give rise to
15 an inference of discrimination.” *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th Cir.
16 2010); *Chuang v. Univ. of Cal. Davis*, 225 F.3d 1115, 1123 (9th Cir. 2000). Title VII forbids
17 discrimination on the basis of “race, color, religion, sex, [and] national origin.” 42 U.S. Code §
18 2000e–2(a)(1). Plaintiff’s complaint does not identify his membership in any protected class or
19 other circumstances giving rise to an inference of discrimination on the basis of race, color,
20 religion, sex, or national origin. Again, he does not even allege facts that show he knew
21 Defendant hired him. Thus, the complaint does not adequately allege facts to give Defendant “fair
22 notice” of the Title VII claim and the “grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S.
23 89, 93 (2007).

24 **CONCLUSION**

25 For the reasons explained above, the complaint as pleaded does not comply with Rule 8. If
26 Plaintiff believes he can cure the deficiencies, or at least some of the deficiencies, the Court has
27 identified, he may file an amended complaint on or before **February 11, 2022**. If he chooses to
28 amend, Plaintiff should: set forth the complaint’s allegations in separate numbered paragraphs; set

1 forth each claim in a separate numbered paragraph; and identify each factual allegation that
2 supports each claim for relief. Additionally, Plaintiff is informed that the Court cannot refer to
3 prior pleadings in order to make an amended complaint complete. The amended complaint must
4 be complete in itself because it replaces the previously filed complaints. *See Ferdik v. Bonzelet*,
5 963 F.2d 1258, 1262 (9th Cir. 1992). Finally, Plaintiff is warned that failure to comply with the
6 Federal Rules of Civil Procedure, the Local Rules, or any court order could result in a report and
7 recommendation that his complaint be dismissed. Similarly, failure to file an amended complaint
8 that cures the above-identified deficiencies could also lead to a report and recommendation that his
9 complaint be dismissed.

10 The Court encourages Plaintiff to seek free assistance from the Northern District's Legal
11 Help Center, 450 Golden Gate Avenue, 15th Floor, Room 2796, San Francisco, CA 94102. In
12 light of the ongoing COVID-19 pandemic, Plaintiff should make a telephone appointment by
13 calling (415) 782-8982. The website for the Northern District of California also has information
14 for litigants who are not represented by counsel.

15 The initial case management conference scheduled for February 17, 2022 is vacated.

16 **IT IS SO ORDERED.**

17 Dated: January 11, 2022

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20 JACQUELINE SCOTT CORLEY
21 United States Magistrate Judge
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