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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 KEVIN JEROME HARRIS JR.,

8 Plaintiff,

9 v.

10 TOYOTA MOTOR SALES U.S.A., et al.,

11 Defendants.

Case No. 21-cv-09570-JCS

**ORDER GRANTING APPLICATION
TO PROCEED IN FORMA PAUPERIS
AND ORDER TO SHOW CAUSE WHY
COMPLAINT SHOULD NOT BE
DISMISSED**

Re: Dkt. Nos. 1, 2

12
13 **I. INTRODUCTION**

14 Plaintiff Kevin Jerome Harris Jr., pro se, applies to proceed in forma pauperis. *See* dkt. 2.
15 Sufficient cause having been shown, that application is GRANTED.

16 The Court now reviews the sufficiency of Harris's complaint against Defendants Toyota
17 Motor Sales U.S.A. and Vancouver Toyota¹ under 28 U.S.C. § 1915(e)(2)(B). Harris is
18 ORDERED TO SHOW CAUSE why his complaint should not be dismissed for the reasons
19 discussed below. No later than January 10, 2022, Harris must file either an amended complaint
20 curing the deficiencies addressed in this order or a response arguing why his current complaint is
21 sufficient. If Harris does not file such a response or his response fails to cure the deficiencies
22 addressed herein, the case will be reassigned to a United States district judge with a
23 recommendation for dismissal.

24 **II. THE COMPLAINT**

25 Because a plaintiff's allegations are generally taken as true in resolving the sufficiency of a
26 complaint, this section summarizes the allegations of Harris's complaint as if true. Nothing in this

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28 ¹ This defendant is also referenced as "Toyota of Vancouver" in Harris's complaint, apparently referring to the same entity.

1 order should be construed as resolving any issue of fact that might be disputed.

2 On an unspecified date, Harris was driving on Interstate 84 at a speed of eighty miles per
3 hour. Compl. (dkt. 1) at 3. His brakes failed, and he swerved into the shoulder, damaging the
4 bumper of his car. *Id.* As a result, Harris was “completely deterr[ed] . . . from the progression of
5 [his] work,” and his life was placed at risk. *Id.* at 3–4. He took his car to a certified Toyota
6 dealership—apparently Defendant Vancouver Toyota, in Vancouver, Washington—where he was
7 charged a diagnosis fee that he could not afford and was quoted \$4,500 to repair the brake
8 compressor and tune up the car. *Id.* at 4. Harris continues to experience anxiety regarding how he
9 could have been killed when the brakes failed, and his career as a delivery driver has suffered. *Id.*
10 at 4–5.

11 Harris asserts a claim for “Personal Injury – Product Liability” against Toyota Motor Sales
12 U.S.A., and a claim under the False Claims Act, 31 U.S.C. §§ 3792–33, against Vancouver
13 Toyota, asserting that Vancouver Toyota charged him for a loaner vehicle while his car was in for
14 repairs and accused Harris of stealing that vehicle. Compl. at 5–6.

15 **III. ANALYSIS**

16 **A. Legal Standard**

17 Where a plaintiff is found to be indigent under 28 U.S.C. § 1915(a)(1) and is granted leave
18 to proceed in forma pauperis, courts must engage in screening and dismiss any claims which:
19 (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek
20 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see*
21 *Marks v. Solcum*, 98 F.3d 494, 495 (9th Cir. 1996). Rule 8(a)(2) of the Federal Rules of Civil
22 Procedure provides that a pleading must contain a “short and plain statement of the claim showing
23 that the pleader is entitled to relief.” A complaint that lacks such statement fails to state a claim
24 and must be dismissed.

25 In determining whether a plaintiff fails to state a claim, the court assumes that all factual
26 allegations in the complaint are true. *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th
27 Cir. 1995). However, “the tenet that a court must accept a complaint’s allegations as true is
28 inapplicable to legal conclusions” and to “mere conclusory statements.” *Ashcroft v. Iqbal*, 556

1 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “A pleading
2 that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action
3 will not do.’” *Id.* (quoting *Twombly*, 550 U.S. at 555). The pertinent question is whether the
4 factual allegations, assumed to be true, “state a claim to relief that is plausible on its face.”
5 *Twombly*, 550 U.S. at 570.

6 Where the complaint has been filed by a pro se plaintiff, as is the case here, courts must
7 “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe v.*
8 *Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). “A district court should not dismiss a
9 pro se complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of the
10 complaint could not be cured by amendment.’” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
11 2012) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203–04 (9th Cir. 1988) (per curiam)).

12 **B. Harris Has Not Established Subject Matter Jurisdiction**

13 Federal district courts are courts of limited jurisdiction, and may only hear cases falling
14 within their subject matter jurisdiction. Two of the most common grounds for federal subject
15 matter jurisdiction are federal question jurisdiction under 28 U.S.C. § 1331, which encompasses
16 claims arising from federal law, and diversity jurisdiction 28 U.S.C. § 1332(a), which
17 encompasses cases where no plaintiff is a citizen of the same state as any defendant and the
18 amount in controversy exceeds \$75,000. Here, Harris has asserted only diversity jurisdiction
19 under § 1332, but he has not met his burden to show either that there is complete diversity of
20 citizenship or that the amount in controversy exceeds \$75,000.

21 Harris’s complaint includes no allegations of the citizenship of any party, instead listing
22 only addresses for each party: his own address in North Carolina, Toyota Motor Sales U.S.A.’s
23 address in Texas, and Vancouver Toyota’s address in Washington. An individual’s citizenship for
24 the purpose of diversity jurisdiction is determined by their state of domicile, i.e., the state where
25 the individual last lived and intended to remain. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
26 857 (9th Cir. 2001). Without more, Harris’s address does not necessarily establish that he is
27 domiciled in North Carolina. *See id.* The test for citizenship of a corporate entity depends on the
28 type of entity. A corporation, for example, is a citizen of the state where it is incorporated and the

1 state where it has its principal place of business. *3123 SMB LLC v. Horn*, 880 F.3d 461, 462–63
 2 (9th Cir. 2018). A limited liability company, on the other hand, is a citizen of each state where its
 3 members or owners are citizens. *Id.* at 465. Harris has not included sufficient allegations to
 4 determine the corporate forms or the states of citizenship of either defendant, and thus has not
 5 shown that there is complete diversity of citizenship between the parties. Moreover, while
 6 Harris’s allegations regarding emotional distress and loss of employment could perhaps bring the
 7 amount in controversy above the \$75,000 threshold, he has not included sufficient factual
 8 allegations to determine whether that is the case. Harris thus has not met his burden to show that
 9 jurisdiction for this case lies under § 1332.

10 Harris’s second claim under the False Claims Act could give rise to federal question
 11 jurisdiction under 28 U.S.C. § 1331, which might then support supplemental jurisdiction over
 12 related state law claims pursuant to 28 U.S.C. § 1367(a). Harris has not asserted jurisdiction under
 13 either of those statutes. His federal claim appears to be subject to dismissal for the reasons stated
 14 below, and it does not appear likely that he could cure the defects in that claim through
 15 amendment. In the event that all claims falling within a district court’s original jurisdiction are
 16 dismissed before trial, courts will generally decline to exercise supplemental jurisdiction over any
 17 remaining state law claims.

18 Harris is therefore ORDERED TO SHOW CAUSE why this case should not be dismissed
 19 for lack of subject matter jurisdiction

20 **C. Harris Has Not Established Personal Jurisdiction Over Defendants**

21 Personal jurisdiction depends on both substantive law and constitutional due process
 22 considerations. “Where . . . there is no applicable federal statute governing personal jurisdiction,
 23 the district court applies the law of the state in which the district court sits.”² *Dole Food Co., Inc.*

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 25 ² The False Claims Act provides that a case may be “brought in any judicial district in which the
 26 defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts
 27 business, or in which any act proscribed by section 3729 occurred,” with summons to be served at
 28 any place in the world. 31 U.S.C. § 3732(a). Courts have differed as to whether or how that
 provision implicates the test for personal jurisdiction. *See, e.g., United States ex rel. N. Santiam
 Watershed Council v. Kinross Gold USA, Inc.*, No. C 96-3673 THE, 1998 WL 118176, at *3 (N.D.
 Cal. Mar. 9, 1998) (holding that the connection to a district required by § 3732(a) is statute-
 specific test for personal jurisdiction, somewhat broader than the standard test); *United States ex*

1 v. *Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002). “Because California’s long-arm jurisdictional
2 statute is coextensive with federal due process requirements, the jurisdictional analyses under state
3 law and federal due process are the same.” *Dole Food*, 303 F.3d at 1110 (citing Cal. Civ. Proc.
4 Code § 410.10).

5 “For a court to exercise personal jurisdiction over a non-resident defendant, that defendant
6 must have at least ‘minimum contacts’ with the relevant forum such that the exercise of
7 jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Id.* at
8 1110–11 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “In judging minimum
9 contacts, a court properly focuses on ‘the relationship among the defendant, the forum, and the
10 litigation.’” *Calder v. Jones*, 465 U.S. 781, 788 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186,
11 204 (1977)).

12 Personal jurisdiction may be either general or specific. *See Bancroft & Masters, Inc. v.*
13 *Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). The Supreme Court has explained that a
14 “court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to
15 hear any and all claims against them when their affiliations with the State are so ‘continuous and
16 systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires*
17 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (citing *Int’l Shoe*, 326 U.S. at 317). On the
18 other hand, “[s]pecific jurisdiction . . . depends on an ‘affiliatio[n] between the forum and the
19 underlying controversy,’ principally, activity or an occurrence that takes place in the forum State

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22 *rel. Alexander v. Dyncorp, Inc.*, 924 F. Supp. 292, 297 (D.D.C. 1996) (same); *United States ex rel.*
23 *McCarthy v. Straub Clinic & Hosp., Inc.*, 140 F. Supp. 2d 1062, 1071 (D. Haw. 2001) (holding
24 that § 3732(a) addresses only venue and does not alter the standard state-specific test for personal
25 jurisdiction); *United States ex rel. Fadlalla v. DynCorp Int’l LLC*, 402 F. Supp. 3d 162, 177 (D.
26 Md. 2019) (holding that because § 3732(a) authorizes nationwide service of process, the
27 appropriate test for personal jurisdiction is whether a defendant’s connections to the United States
28 as a whole satisfy due process, with the statute’s requirement for connections to a particular
district instead addressing venue); *United States ex rel. Silingo v. Mobile Med. Examination*
Servs., Inc., No. SA CV 13-1348 FMO (SHx), 2015 WL 12752552, at *4 (C.D. Cal. Sept. 29,
2015) (same); *U.S. ex rel. Vallejo v. Investronica, Inc.*, 2 F. Supp. 2d 330, 334 (W.D.N.Y. 1998)
(same). Harris is unlikely to be able to cure the substantive defects in his False Claims Act claim
discussed below, and cannot rely on that statute for personal jurisdiction as to whatever other
claims he might be able to assert based on the facts at issue. Harris also has not alleged a
sufficient connection to this district to meet § 3732(a)’s test, regardless of whether that test is best
considered one of venue or personal jurisdiction.

1 and is therefore subject to the State’s regulation.” *Id.* (alteration in original; citation omitted).
2 Thus, “[i]n contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to
3 adjudication of issues deriving from, or connected with, the very controversy that establishes
4 jurisdiction.” *Id.* (citation and internal quotation marks omitted).

5 Here, Harris has not alleged that either defendant has sufficient contacts with California to
6 be essentially at home in this state for the purpose of general personal jurisdiction, or that any
7 events at issue occurred in this state such that specific personal jurisdiction might be appropriate.
8 Instead, he alleges that his brakes failed while he was driving on Interstate 84, which does not pass
9 through California, and that the events at issue occurred in “Clark County,” which does not exist
10 in California. Harris is therefore ORDERED TO SHOW CAUSE why the case should not be
11 dismissed for lack of personal jurisdiction over either defendant.

12 **D. Harris Has Not Shown That Venue Is Proper**

13 Cases in federal court must generally be brought in either the district where a defendant
14 resides (if all defendants reside in the same state) or the district where a substantial part of the
15 events giving rise to the claim occurred. 28 U.S.C. § 1391(b). As discussed above in the context
16 of personal jurisdiction, Harris has not alleged any connection to this district either with respect to
17 the defendants’ residence or with respect to the events giving rise to his claims. Harris is therefore
18 ORDERED TO SHOW CAUSE why this case should not be dismissed, or perhaps transferred to a
19 different district, for improper venue.

20 **E. Harris States No Claim Under the False Claims Act**

21 Harris’s second claim, and the only claim he asserts under federal law, is against
22 Vancouver Toyota under the False Claims Act. That statute applies to false claims submitted to
23 the government of the United States—or in other words, obtaining federal funds through fraud—
24 not to false statements more generally. *See, e.g., Universal Health Servs., Inc. v. United States,*
25 *579 U.S. 176, 181–82 (2016).* Harris has not alleged that any defendant submitted a false claim
26 for payment to the United States. He is therefore ORDERED TO SHOW CAUSE why this claim
27 should not be dismissed with prejudice for failure to state a claim on which relief may be granted.
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IV. CONCLUSION

For the reasons discussed above, Harris is ORDERED TO SHOW CAUSE why his complaint should not be dismissed, by filing either an amended complaint or a response arguing why his current complaint is sufficient, no later than January 10, 2022.

Any amended complaint must include the caption and civil case number used in this order (21-cv-09570) and the words FIRST AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the previous complaint, any amendment may not incorporate claims or allegations of Harris’s original complaint by reference, but instead must include all of the facts and claims Harris wishes to present and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

Harris is encouraged to contact the Federal Pro Bono Project’s Pro Se Help Desk for assistance as he continues to pursue this case. Lawyers at the Help Desk can provide basic assistance to parties representing themselves but cannot provide legal representation. Although in-person appointments are not currently available due to the COVID-19 public health emergency, Harris may contact the Help Desk at (415) 782-8982 or FedPro@sfbbar.org to schedule a telephonic appointment.

IT IS SO ORDERED.

Dated: December 13, 2021



JOSEPH C. SPERO
Chief Magistrate Judge