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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MOHAMMAD SAATNIA,

CASE NO. 5:11-CV-02003-EJD

Plaintiff,

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS WITH LEAVE TO
AMEND**

v.

WALGREEN COMPANY,

[Re: Docket Item Nos. 4, 11]

Defendant.

Plaintiff Mohammad Saatnia filed this action pro se on May 10, 2010 in the Superior Court of California, County of Santa Clara. Defendant Walgreen Co. (“Walgreens”) was served with the summons and complaint on March 26, 2011 and removed the case to this court on April 25, 2011. Walgreens immediately moved to dismiss the form complaint under federal pleading standards. The court held hearing on Walgreens’s motion on October 21, 2011. Before addressing Walgreens’s motion to dismiss for failure to state a claim upon which relief can be granted, the court takes up the question of subject matter jurisdiction. For the reasons set forth below, the motion is granted, and Plaintiff is afforded leave to amend his complaint..

I. SUBJECT MATTER JURISDICTION

A. Legal Standards

A district court must have subject matter jurisdiction over a case in order to rule on its

1 merits. Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998); Valdez v. Allstate
2 Ins. Co., 372 F.3d 1115 (9th Cir. 2004). The principal bases for original subject matter jurisdiction
3 in federal district courts are (1) the existence of a federal question, 28 U.S.C. § 1331; and (2)
4 diversity of citizenship between the parties paired with an amount in controversy exceeding \$75,000,
5 28 U.S.C. § 1332. A court may also exercise supplemental jurisdiction over state law claims which
6 are related to claims over which the court has original jurisdiction. 28 U.S.C. § 1367.

7 District courts have federal question jurisdiction over claims “in which a well-pleaded
8 complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to
9 relief necessarily depends on resolution of a substantial question of federal law.” Franchise Tax Bd.
10 of the State of Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1, 27–28 (1983). In
11 actions between one plaintiff and one defendant, diversity jurisdiction is proper when the parties are
12 citizens of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332.

13 A suit may be removed from state court to federal court if the federal court would have had
14 original jurisdiction over the case, i.e., if the requirements of federal question or diversity
15 jurisdiction are met. 28 U.S.C. § 1441(a). However, “[i]f at any time before final judgment it appears
16 that the district court lacks subject matter jurisdiction, the case shall be remanded” to the originating
17 state court. 28 U.S.C. § 1447(c). The court must “strictly construe the removal statute against
18 removal jurisdiction.” Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

19 B. Discussion

20 Walgreens’s Notice of Removal is based on the existence of both federal question and
21 diversity jurisdiction. Upon review, the former is lacking, but the latter is present.

22 1. Removal Based on Federal Question Jurisdiction

23 “In determining the existence of removal jurisdiction based upon a federal question, we must
24 look to the complaint as of the time the removal petition was filed.” Libhart v. Santa Monica Dairy
25 Co., 592 F.2d 1062, 1065 (9th Cir. 1979). In particular, a complaint which would not give rise to
26 federal question jurisdiction “cannot be made removable by any statement in the petition for
27 removal or in subsequent pleadings by the defendant.” Great Northern Railway Co. v. Alexander,
28 246 U.S. 276, 281 (1917). The existence of the EEOC Charge and Dismissal—which Walgreens

1 submitted concurrently with the Notice of Removal—is therefore immaterial to the issue of federal
2 question jurisdiction.

3 In its statement of the claims, Plaintiff’s form complaint does nothing more than list the five
4 causes of action he attempts to bring: “Employment, Wrongful Constructive Termination,
5 Conspiracy, Harassment, Defamation.” No attachments containing any more information relating to
6 these claims are present in the record even though the form purports to require them. None of these
7 “causes of action” is explicitly federal. To the contrary, each one could be grounded in state law, so
8 the “artful pleading” doctrine does not apply Redwood Theatres, Inc. v. Festival Enterprises, Inc.,
9 908 F.2d 477, 479 (9th Cir. 1990). For the same reason, the complaint does not establish that
10 Plaintiff’s claims necessarily depend on resolution of a substantial question of federal law.

11 2. Removal Based on Diversity Jurisdiction

12 In determining whether removal is proper based on diversity jurisdiction, the court can look
13 past the complaint to evidence submitted along with the Notice of Removal. Where, as here, it is not
14 facially apparent from the complaint that a federal court would have diversity jurisdiction over the
15 case, the defendant bears the burden of proving by a preponderance of the evidence that jurisdiction
16 is proper. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 403–04 (9th Cir. 1996); Gaus, 980
17 F.2d at 567.

18 Walgreens has established diversity of citizenship: the Plaintiff is a citizen of California, and
19 Walgreens is a citizen of Illinois. Notice of Removal 2:6–14; Murray Decl. ¶¶ 2–3, ECF No. 2.

20 As to the amount in controversy, the complaint asserts only that the demand exceeds
21 \$25,000. To show that the amount in controversy exceeds the federal jurisdictional
22 minimum—\$75,000—the Defendant argues that since Plaintiff’s claims are employment-related, he
23 almost certainly seeks back pay as a remedy, and that the back pay he would be owed exceeds
24 \$96,000.¹

25 The EEOC Charge, which is attached as Exhibit A to the Murray Declaration accompanying
26

27 ¹ Defendant calculated this number by by multiplying the Plaintiff’s \$36,296 annual salary
28 by the two years and eight months between the termination of Plaintiff’s employment and the
removal of this case to federal court.

1 the Notice of Removal, demonstrates that Plaintiff’s claim for wrongful termination likely includes
2 employment discrimination claims for which back pay is an available remedy. At hearing, Plaintiff
3 confirmed that he seeks the “maximum” possible remedy. As a result, the court finds that the
4 amount-in-controversy requirement of the diversity statute has been shown by a preponderance of
5 the evidence, and that this court may properly exercise jurisdiction over the case. If circumstances
6 arise that call this conclusion into question, the court will exercise its duty to reexamine the issue at
7 that time.

8 9 II. DEFENDANT’S MOTION TO DISMISS

10 A. Legal Standard

11 Under Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed if it fails to
12 state a claim upon which relief can be granted. In deciding whether to grant a motion to dismiss, the
13 court generally “may not consider any material beyond the pleadings.” Hal Roach Studios, Inc. v.
14 Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). However, “material which is
15 properly submitted as part of the complaint may be considered.” Id.

16 In considering a motion pursuant to Rule 12(b)(6), the court must accept as true all
17 “well-pleaded factual allegations.” Ashcroft v. Iqbal, 556 U.S. —, 129 S. Ct. 1937, 1950 (2009). The
18 court must also construe the alleged facts in the light most favorable to the plaintiff. Love v. United
19 States, 915 F.2d 1242, 1245 (9th Cir. 1988). Even so, “courts are not bound to accept as true a legal
20 conclusion couched as a factual allegation.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
21 (2007).

22 “[T]o survive a motion to dismiss, a complaint must contain sufficient factual matter,
23 accepted as true, ‘to state a claim to relief that is plausible on its face.’” Iqbal, 129 S. Ct. at 1949
24 (internal citations omitted); Fed. R. Civ. P. 8(a). “A claim has facial plausibility when the plaintiff
25 pleads factual content that allows the court to draw the reasonable inference that the defendant is
26 liable for the misconduct alleged.” Iqbal, 129 S. Ct. at 1949. “While legal conclusions can provide
27 the framework of a complaint, they must be supported by factual allegations.” Id. at 1950. The
28 factual allegations must “raise [the] right to relief above the speculative level.” Twombly, 550 U.S.

1 at 555.

2 Leave to amend should be freely granted “unless the court determines that the allegation of
3 other facts consistent with the challenged pleading could not possibly cure the deficiency.”
4 Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986); see Lopez
5 v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000); Fed. R. Civ. P. 15(a). Where amendment to the
6 complaint would be futile, the court may order dismissal with prejudice. Dumas v. Kipp, 90 F.3d
7 386, 393 (9th Cir. 1996).

8 B. Discussion

9 Plaintiff’s form complaint contains no facts in support of its claims for relief. The factual
10 statements of other submissions, such as the Notice of Removal or a Case Management Statement
11 are not considered on a 12(b)(6) motion to dismiss. Accordingly, the motion to dismiss must be
12 granted.

13 Defendant requests that the dismissal be with prejudice—that is, without leave to amend. A
14 dismissal with prejudice is inappropriate here for at least three reasons. First, Plaintiff is proceeding
15 pro se, and courts are particularly lenient in allowing pro se litigants to correct mistakes. Second, the
16 case was filed in state court, where a lower pleading standard applies. Third, there are so few facts
17 pled in this complaint that it would be difficult to determine what claims would be barred by a
18 dismissal with prejudice.

19 Plaintiff will be given leave to amend the complaint. At the hearing on the instant motion,
20 Plaintiff requested a court order requiring Walgreens to produce a copy of his employment file.
21 Because the case has not proceeded past the pleading stage, the request was denied. But it is worth
22 noting that the complaint need not be amended with proof of facts giving rise to a claim for relief,
23 but merely with allegations that would give rise to a claim for relief if the allegations were proven
24 true. Section II.A of this order provides guidance on the standard of review on which a complaint is
25 evaluated.

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III. ORDER

Good cause therefor appearing, IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is GRANTED WITH LEAVE TO AMEND. Plaintiff shall file an amended complaint within thirty (30) days of the date of this order.

IT IS SO ORDERED.

Dated: October 21, 2011


EDWARD J. DAVILA
United States District Judge