

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALAN W. WOLCOTT,

Plaintiff,

vs.

ROBERT MEULLER; ERIC HOLDER;
KEITH SLOTTER; THE FEDERAL
BUREAU OF INVESTIGATION; THE
U.S. ATTORNEY GENERAL'S
OFFICE; DOES 1 thru 500,

Defendants.

CASE NO. 12cv1282-GPC-BLM

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS**

[DKT. NO. 29]

On May 25, 2012, Plaintiff Alan W. Wolcott ("Plaintiff") filed an initial complaint in the above-captioned matter. (Dkt. No. 1.) On June 11, 2012, Plaintiff filed an amended complaint, alleging causes of action for "mistake," "fraud," and "bad faith." (Dkt. No. 4.) On September 18, 2012 the Court accepted and docketed Plaintiff's "Second Amended Complaint" *nunc pro tunc* to September 14, 2012. (Dkt. No. 15.) Because the filing lacked proof of service and Plaintiff did not request leave to file a second amended complaint, the Court did not issue summons on the Second Amended Complaint and construed the document as an ex parte supplemental filing. On November 19, 2012, Defendants filed a motion to dismiss Plaintiff's claims for "mistake," "fraud," and "bad faith." (Dkt. No. 18.) On February 25, 2013, the Court: (1) granted Defendants' motion to dismiss Plaintiff's claims for "mistake" and "fraud" with prejudice; and (2) granted Defendants' motion to dismiss Plaintiff's claim for "bad

1 faith” without prejudice. (Dkt. No. 21.)

2 On May 8, 2013, Plaintiff filed a third amended complaint. (Dkt. No. 25.) On
3 July 11, 2013, Defendants moved to dismiss Plaintiff’s third amended complaint. (Dkt.
4 No. 29.) For the reasons below, the Court **GRANTS** Defendants’ motion and
5 **DISMISSES** Plaintiff’s claims.

6 **BACKGROUND**

7 This case involves Plaintiff’s alleged provision of information to the Federal
8 Bureau of Investigation (“FBI”) in response to a request made by Defendant Keith
9 Slotter (“Defendant Slotter”). (Dkt. No. 25, “TAC” ¶ 6.) Plaintiff alleges Defendant
10 Slotter announced a call for help in his capacity as special agent for the FBI and co-
11 host of the television show “The FBI’s Most Wanted List.” (Id. ¶ 2.) Plaintiff
12 alleges responding to Defendant Slotter’s public television offer via telephone to the
13 advertised phone number. (Id. ¶ 6.)

14 In addition, Plaintiff alleges trying to gather information regarding the “James
15 Whitey Bulger case,” (Id. ¶ 9), as well as leaving several messages for the FBI
16 asking for a return telephone call, (Id. ¶ 10). Plaintiff further alleges that an FBI
17 Agent indicated to Plaintiff that FBI Agents, Robert Mueller, and Eric H. Holder
18 knew that Plaintiff was “in fact the person with the original source of
19 information/prime mover of, and is the direct cause of James Whitey Bulger’s
20 capture and successful prosecution thereto.” (Id. ¶ 10.) Plaintiff asserts three causes
21 of action in Plaintiff’s TAC: (1) Errors and Omissions Part I; (2) Errors and
22 Omissions Part II; and (3) Bad Faith. (Id. at 6.) Plaintiff requests compensatory
23 damages in the amount of \$2,100,001.00, interest at the APR of 10% per year or
24 \$547.94 per day until Plaintiff is paid in full; and an award of all costs. Plaintiff
25 further prays for injunctive relief while the above-captioned matter is pending.

26 **LEGAL STANDARDS**

27 “To survive a motion to dismiss, a complaint must contain sufficient factual
28 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”

1 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 547).

2 A claim is facially plausible when the factual allegations permit “the court to draw
3 the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

4 In other words, “the non-conclusory ‘factual content,’ and reasonable inferences
5 from that content, must be plausibly suggestive of a claim entitling the plaintiff to
6 relief.” Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

7 “Determining whether a complaint states a plausible claim for relief will . . . be a
8 context-specific task that requires the reviewing court to draw on its judicial
9 experience and common sense.” Iqbal, 129 S. Ct. at 1950. To determine the
10 adequacy of a complaint, conclusory allegations are disregarded, and a court is to
11 ask whether well-pled factual allegations plausibly suggest that Plaintiff is entitled
12 to relief. Id.

13 DISCUSSION

14 1. Cause of Action 1 and 2 for “Errors and Omissions”

15 Plaintiff’s first cause of action in the Third Amended Complaint (“TAC”)
16 claims “errors and omissions” based on the “Respondent Superior Doctrine of the
17 Government Code § 9.10 and now amended § 911.4,” under which Plaintiff claims
18 “the Court must look to the person higher up.” (TAC at 6, ¶ 1.) Plaintiff’s second
19 cause of action in the Third Amended Complaint alleges “Errors and omissions are
20 described as knowingly and willingly paying the reward money to the wrong
21 person.” These allegations mirror the language used by Plaintiff in claims
22 previously dismissed by this Court with prejudice.¹ (Dkt. No. 4 “First Amended
23

24 ¹ Although the second cause of action in Plaintiff’s TAC includes one additional
25 line not previously included in Plaintiff’s FAC, the Court finds the additional line
26 immaterial. (Dkt. No. 25 at 6, ¶ 2) (“Year to date, Special Agent in charge Slotter has
27 breached his public oral agreement with Plaintiff.”). The Court previously construed
28 Plaintiff’s cause of action as a breach of contract claim and dismissed the claim with
prejudice because the Court lacks jurisdiction over contract claims exceeding \$10,000
or for claims covered by 8(g)(1) and 10(a)(1) of the Contracts Dispute Act, 28 U.S.C.
§ 1346(a)(2). (Dkt. No. 21 at 4.) Although Plaintiff adds now that the allegedly
breached contract is “public” and “oral,” these additions do not change the underlying
breach of contract claim previously dismissed by this Court with prejudice.

1 Complaint” ¶¶ 9-10) (“MISTAKE: Under the Respondent Superior Doctrine of the
2 Government Code Section 9.10 and now amended Code 911.4, the Court must look
3 to the person higher ip (sic). Mistake is clearly defined and describes a cause of
4 action by the DEFENDANT(s), each of them. Mistake is described as knowingly
5 and willingly paying the reward to the wrong person.”) (numbers omitted). To the
6 extent that the first two causes of action alleged in Plaintiff’s TAC were previously
7 considered by the Court and dismissed with prejudice, (Dkt. No. 21 at 5), the claims
8 are barred and again DISMISSED WITH PREJUDICE.

9 **2. Cause of Action 3 for “Bad Faith”**

10 The first half of Plaintiff’s third cause of action, for “bad faith,” also remains
11 unchanged from Plaintiff’s First Amended Complaint. Compare (Dkt. No. 4 ¶ 12)
12 (“Bad faith is defined and described as the rude behavior in the form of Duty Agent
13 repeatedly hanging up the phone when PLAINTIFF tried to gather information on
14 the JAMES WHITEY BULGER case.”) with (Dkt. No. 25 at 6, ¶ 3) (“Bad faith is
15 defined and described as the rude behavior in the form of the Duty Agent; Agent
16 repeatedly hanging up the phone when Plaintiff tried to gather information on the
17 James Whitey Bulger Case.”). Plaintiff adds one additional line in the TAC to
18 support Plaintiff’s claim for bad faith: “Bad faith is defined and described as
19 destroying or hiding the video of James Whitey Bulger and Alan W. Wolcott with
20 James Whitey Bulger at the point of sale on Nov. 20th, 2010 @ 10:40 A.M.”

21 The Court finds again that this claim is neither well-pled nor plausible. To
22 withstand a motion to dismiss, a complaint “must contain something more . . . than .
23 . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right
24 of action.” Armstrong v. Sexson, 2007 WL 2288297 (E.D. Cal. August 8, 2007)
25 (quoting Twombly, 550 U.S. at 55). Rather, a complaint must “plausibly” show a
26

27 Furthermore, to the extent that Plaintiff disagrees with the Court’s interpretation
28 of the Little Tucker Act, 18 U.S.C. § 1346(a)(2), as a basis for re-asserting the Court’s
jurisdiction over claims dismissed with prejudice, (Dkt. No. 25 ¶ 3), Plaintiff may not
challenge the Court’s final judgment with an amended complaint.

1 valid claim. Id. at 557. The Court finds Plaintiff's additional allegation merely sets
2 forth Plaintiff's definition of bad faith. Plaintiff fails to allege sufficient facts,
3 including who completed the acts complained of or what the allegedly destroyed
4 video showed, to support a plausible claim for relief. The Court therefore GRANTS
5 Defendants' motion to dismiss Plaintiff's claim for "bad faith."

6 **3. Leave to Amend**

7 The Court notes that Plaintiff filed a response to Defendants' motion to
8 dismiss that raises new facts not contained in Plaintiff's previous complaints. (Dkt.
9 No. 36.) A motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) is
10 ordinarily "addressed to the four corners of the complaint without consideration of
11 other documents or facts outside of the complaint." Haskell v. Time, Inc., 857 F.
12 Supp. 1392, 1396 (E.D. Cal. 1994). The Court declines to consider the new facts in
13 consideration of Defendants' motion to dismiss Plaintiff's TAC. However, because
14 the Court holds the allegations of a pro se Plaintiff to less stringent standards than
15 formal pleadings drafted by lawyers, Haines v. Kerner, 404 U.S. 519, 520-21
16 (1972), the Court concludes that leave to amend should be GRANTED.

18 **CONCLUSION**

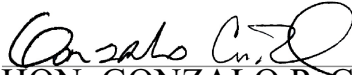
19 For the foregoing reasons, **IT IS HEREBY ORDERED** that:

- 20 1. Defendants' Motion to Dismiss is **GRANTED** as to Plaintiff's claims
21 for breach of contract, labeled as Count 1 and 2 in the Third Amended
22 Complaint, without leave to amend;
- 23 2. Defendants' Motion to Dismiss is **GRANTED** as to Plaintiff's claim
24 for bad faith with leave to amend;
- 25 3. If Plaintiff wishes to file an amended complaint, Plaintiff shall do so on
26 or before **January 30, 2014**; and
- 27 4. The hearing on Defendant's Motion to Dismiss, currently set for
28 January 3, 2014, is **VACATED**.

1 If Plaintiff fails to file an amended complaint on or by January 30, 2014, this case
2 may be terminated with prejudice for failure to prosecute.

3 **SO ORDERED.**

4
5 DATED: December 20, 2013

6 
7 HON. GONZALO P. CURIEL
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28