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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RONALD SATISH EMRIT,
12 Plaintiff,
13 v.
14 WELLS FARGO BANK, INC.,
15 Defendant.

Case No.: 18cv318-MMA (JLB)

**ORDER GRANTING MOTION TO
PROCEED *IN FORMA PAUPERS*
AND DISMISSING CASE WITHOUT
PREJUDICE AND WITH LEAVE TO
AMEND**

[Doc. No. 2]

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18 On February 8, 2018, Plaintiff Ronald Satish Emrit (“Plaintiff”), proceeding *pro*
19 *se*, filed this action against Defendant Wells Fargo Bank, Inc. (“Defendant”, raising
20 various state law causes of action. Doc. No. 1, Complaint (“Compl.”). Currently
21 pending before the Court is his motion to proceed *in forma pauperis* (“IFP”). Doc. No. 2.

22 **BACKGROUND**

23 This action results from “the distinct possibility” that Plaintiff’s checking account
24 at Wells Fargo “had its security measures compromised notwithstanding the fact that . . .
25 Plaintiff had closed his Wells Fargo Account” before the alleged security breach.
26 Compl., ¶ 2. Plaintiff brings this action because he “apparently missed the deadline to
27 join” as a class member in a class action that is “currently progressing” and which may
28 have settled. Compl., ¶ 2-4.

1 According to Plaintiff, Defendant’s “firewall” was breached and its customers’
2 personal and private information were exposed. Compl., ¶ 13. Plaintiff opened a “Wells
3 Fargo account when it was still Wachovia Bank at a branch in Bowie, MD” Compl.,
4 ¶ 14. While there, a branch manager tried to get Plaintiff to “joint a multi-level
5 marketing company ‘doing business as’ . . . Your Travel Business International (YTBI) in
6 which the plaintiff was to become a ‘Referring Travel Agent.’” Compl., ¶ 15. Plaintiff
7 alleges a referring Travel Agent with YTBI is similar to being a “‘team trainer’ with
8 ACN,¹ which the plaintiff joined in 2007 ACN . . . is based on the ‘pyramid sales’
9 or Amway model which the plaintiff describes as he was being defrauded by a Ponzi
10 scheme”² Compl., ¶ 16. Plaintiff ultimately joined YTBI and switched his checking
11 account to “Chase Bank/JP Morgan in the summer of 2015.” Compl., ¶19.

12 Plaintiff alleges he later attended law school in Miami Gardens, Florida, where he
13 started a “fictitious entity” doing business as Alex Garcia Enterprises, Inc., “which was
14 supposed to buy women’s lingerie from wholesale distributors and retail it for a higher
15 price.” Compl., ¶ 20. Accordingly, he set up a business checking account with First
16 Union Bank with a “rollover/private checking account.” Compl., ¶ 21. “Prior to that, the
17 plaintiff’s grandmother . . . gave [him] [\$]2,00[0] to invest in 1998 in which the plaintiff
18 invested in an Individual Retirement Account (IRA), a mutual fund (through John
19 Hancock Financial in Boston, MA), and a certificate of deposit” Compl., ¶ 22.
20 Plaintiff alleges he invested this money through “a certified financial planner (CFP) with
21 Chevy Chase Bank . . . in Silver Spring, MD.” Compl., ¶23.

22 Based on the foregoing facts, Plaintiff alleges the following causes of action
23 against Defendant: (1) breach of contract; (2) negligence; (3) tortious interference with
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26 ¹ Plaintiff does not explain what ACN stands for. *See* Compl.

27 ² Plaintiff explains he attended an ACN convention in Salt Lake City, Utah where he stayed at different
28 military bases in Utah. Compl., ¶ 17. On his way back from the convention, he also stayed in Omaha,
Nebraska and Fort Meade, Maryland. *Id.*

1 business relations/contracts; and (4) intentional infliction of emotional distress. Compl.,
2 ¶ 27-35. Plaintiff prays for \$250,000 in damages. See Compl.

3 **MOTION TO PROCEED IFP**

4 All parties instituting any civil action, suit or proceeding in a district court of the
5 United States, except an application for writ of habeas corpus, must pay a filing fee of
6 \$400.³ See 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to
7 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
8 § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “To proceed *in*
9 *forma pauperis* is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir.
10 1965). A party need not be completely destitute to proceed *in forma pauperis*. *Adkins v.*
11 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948). “But, the same even-
12 handed care must be employed to assure that federal funds are not squandered to
13 underwrite, at public expense, either frivolous claims or the remonstrances of a suitor
14 who is financially able, in whole or in material part, to pull his own oar.” *Temple v.*
15 *Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

16 Plaintiff’s IFP application details his net monthly income and his monthly
17 expenses, with his net monthly expenses exceeding his net monthly income. See Doc.
18 No. 2. Based thereon, the Court concludes that Plaintiff should be allowed to proceed
19 IFP pursuant to 28 U.S.C. § 1915(a) because his submission demonstrates that he lacks
20 the financial resources to pay the costs of commencing this action. See *Rodriguez*, 169
21 F.3d at 1177. Accordingly, the Court **GRANTS** Plaintiff’s motion to proceed IFP. See
22 Doc. No. 2.

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27 ³ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.00.
28 See 28 U.S.C. § 1914(b) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, §
1914(b)). The additional \$50.00 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 found to have its ‘firewall’ breached and its account holders had their personal and
2 private information exposed” Compl., ¶ 13. From there, Plaintiff alleges he began
3 working for an organization and “was being defrauded by a Ponzi scheme” at the behest
4 of a branch manager of Wachovia Bank in Maryland. Compl., ¶¶ 14-16, 19. Plaintiff
5 then goes on a tangent, explaining which air force bases he visited while attending a
6 convention for a different organization and explains that he “believes in the acronym
7 ‘COLE WMA’ which is the plaintiff’s ‘code phrase’ for ‘Concentrate on Leaving Earth
8 With Me Again’ and has the last name of the plaintiff’s cousin . . . who lives in Highland
9 Beach in Annapolis, MD, i.e. a private beach for freed slaves and abolitionists like
10 Harriet Tubman . . . and Frederick Douglass.” Compl., ¶ 18. Plaintiff then alleges he
11 attended law school in Florida and started a fictitious entity that purchased “women’s
12 lingerie from wholesale distributors” and retailed it for a higher price. Compl., ¶ 20. He
13 explains his grandmother gave him money to set up a business account, which his
14 financial planner from “Chevy Chase Bank” assisted him with. Compl., ¶¶ 22-23.
15 Plaintiff concludes that “although [he] is not a conspiracy theorist, he would like to point
16 out that First Union Bank reminds him of the ‘Former Soviet Union’ which has the same
17 acronym as Florida State University” Compl., ¶ 26.

18 Additionally, Plaintiff’s causes of action allegations suffer from several defects.
19 For each cause of action he states Defendant is liable because it allowed millions of its
20 account holders “to have their private account information hacked into and exposed”
21 Compl., ¶¶ 29, 31, 33, 35. Beyond that, Plaintiff merely recites the elements for breach
22 of contract, negligence, tortious interference with business relations/contracts, and
23 intentional infliction of emotional distress. Compl., ¶¶ 27-35. For example, his breach of
24 contract cause of action states in a conclusory fashion that “[i]t is a material breach of
25 contract for the defendant Wells Fargo Bank to allow millions of its account holders . . .
26 to have their private account information hacked into and exposed” Compl., ¶¶ 27-
27 29. However, Plaintiff does not even allege the existence of a contract. *Id.* Even further,
28 each of Plaintiff’s causes of action are state law claims, but the Court has insufficient

1 information to determine which State’s laws apply. *See generally*, Compl. (listing
2 conduct occurring in Maryland, Utah, Nebraska, Ohio, Florida, Massachusetts, and
3 Virginia). Plaintiff’s “obligation to provide the grounds of his entitlement to relief
4 requires more than labels and conclusions, and a formulaic recitation of the elements of a
5 cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
6 (internal quotation marks and citation omitted). Accordingly, the Court finds Plaintiff
7 has failed to state a claim upon which relief may be granted.

8 **CONCLUSION**

9 In light of the foregoing, the Court **GRANTS** Plaintiff’s motion to proceed IFP
10 and **DISMISSES** Plaintiff’s Complaint without prejudice. Plaintiff must file an amended
11 complaint, if any, on or before **April 6, 2018**. Failure to file an amended complaint on or
12 before the deadline may result in this case being dismissed with prejudice.

13 **IT IS SO ORDERED.**

14 Dated: February 14, 2018

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16 Hon. Michael M. Anello
17 United States District Judge
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