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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

WILLIS SANDS,)	Case No.: 2:10-cv-00297-RLH-PAL
)	
Plaintiff,)	ORDER
)	
vs.)	(Partial Motion to Dismiss—#7)
)	
WYNN LAS VEGAS, LLC,)	
)	
Defendants.)	

Before the Court is Defendant Wynn Las Vegas’ **Partial Motion to Dismiss** (#7), filed March 10, 2010. The Court has also considered Plaintiff Willis Sands’ Opposition (#10), filed March 26, 2010, and Wynn’s Reply (#14), filed April 9, 2010.

BACKGROUND

Plaintiff Willis Sands, an African-American, is a former salesman for the Wynn Las Vegas, a Nevada company. Sands alleges Wynn terminated his employment for “receiving a call on his cell phone” at work. (Dkt. #2, Compl. ¶ 7.) According to Sands, “non-African-Americans” were not disciplined when they received calls on their cell phones. (*Id.* ¶ 6.)

On February 2, 2010, Sands filed suit in Nevada state court against Wynn and alleged claims for (1) race discrimination in violation of 42 U.S.C. § 1981; (2) retaliation in violation of 42 U.S.C. § 1981; (3) negligent infliction of emotional distress; and (4) injunctive and declaratory relief. On March 3, Wynn removed the case to this Court based on federal question

1 jurisdiction. Wynn now moves to dismiss Sands’ claims for negligent infliction of emotional
2 distress and injunctive and declaratory relief. For the reasons discussed below, the Court grants
3 Wynn’s motion in part and denies it in part.

4 DISCUSSION

5 I. Legal Standard

6 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which
7 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short
8 and plain statement of the claim showing that the pleader is entitled to relief.” While a pleading
9 generally need not contain detailed allegations, it must allege sufficient facts “to raise a right to
10 relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A
11 complaint does not allege sufficient facts to raise a right to relief above the speculative level if it
12 contains nothing more than “labels and conclusions” or a “formulaic recitation of the elements of a
13 cause of action.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478
14 U.S. 265, 286 (1986)). Instead, in order to survive a motion to dismiss, a complaint must contain
15 sufficient factual matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 129 S. Ct. at
16 1949 (internal citation omitted).

17 In *Ashcroft v. Iqbal*, the Supreme Court provided a two-step approach for district
18 courts to apply when considering motions to dismiss. First, the court must accept as true all
19 factual allegations in the complaint. *Id.* at 1950. A court does not, however, assume the truth of
20 legal conclusions merely because the plaintiff casts them in the form of factual allegations. *Id.* at
21 1950; *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). Mere recitals
22 of the elements of a cause of action, supported only by conclusory statements, also do not suffice.
23 *Iqbal*, 129 S. Ct. at 1949. Second, the court must consider whether the factual allegations in the
24 complaint allege a plausible claim for relief. *Id.* at 1950. “A claim has facial plausibility when the
25 plaintiff pleads factual content that allows the court to draw a reasonable inference that the
26 defendant is liable for the alleged misconduct.” *Id.* at 1949. Thus, where the complaint does not

1 permit the court to infer more than the mere possibility of misconduct, the complaint has
2 “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal quotation marks
3 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,
4 plaintiff’s complaint must be dismissed. *Twombly*, 550 U.S. at 570.

5 **II. Motion to Dismiss**

6 The Court considers Wynn’s motion to dismiss as follows:

7 **A. Negligent Infliction of Emotional Distress**

8 Sands alleges that Wynn’s decision to fire him was “extreme, outrageous, and was
9 at a minimum, negligent.” (Dkt. #2, Compl. ¶ 28.) On this basis, Sands brings a tort claim for
10 negligent infliction of emotional distress. This claim fails because Plaintiff does not allege any
11 facts in his complaint indicating that Sands was negligent in any way. The only concrete factual
12 assertion Sands makes in his complaint indicates that Wynn acted intentionally, not negligently.
13 Sands alleges he suffered emotional distress because Wynn terminated his employment for taking
14 a personal call at work. This assertion, even if true, does not state a claim based on a theory of
15 negligence. Because Sands alleges Wynn intentionally discriminated against him by terminating
16 his employment, his claim for negligent infliction of emotional distress is improper and hereby
17 dismissed.

18 **B. Injunctive and Declaratory Relief**

19 Sands brings a claim for injunctive and declaratory relief seeking that (1) Wynn be
20 enjoined from further violating Sands’ civil rights; and (2) this Court declare that Wynn has
21 violated state and federal law. Wynn asks the Court to dismiss this claim because injunctive relief
22 and declaratory relief are remedies, not causes of action. In support of its assertion, Wynn points
23 to a number of cases (all outside Nevada) in which courts have dismissed injunctive relief claims
24 on these grounds. *Lemieux v. Litton Loan Servicing, LP*, 2009 WL 5206641, *4 (E.D. Cal. 2009);
25 *Aguero v. Mortgageit, Inc.*, 2009 WL 2486311, *8 (E.D. Cal. 2009).

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