UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PATRICK M. HARDY, Plaintiff, vs. GLOBALOPTIONS SERVICES, INC., a Florida corporation, ANTHONY SAROS, individually, KYLE ELWORTH, individually, and ROBERT BILVADO, individually, Defendants.	Case No. 2:13-cv-00514-GMN-CWH **ORDER**

Pending before the Court is the Motion to Dismiss, or in the alternative for a More Definite Statement (ECF Nos. 2-3), filed by Defendant GlobalOptions Services, Inc. ("GlobalOptions"). Pro se Plaintiff Patrick M. Hardy filed a Response (ECF No. 17) and GlobalOptions filed a Reply (ECF No. 19). Also before the Court is Plaintiff's Motion to Extend Time to Respond (ECF No. 14), to which Defendant has filed no opposition.

I. BACKGROUND

Plaintiff, a private investigator (Compl., Ex. 3 to Notice of Removal, ¶ 7, ECF No. 1), was hired by GlobalOptions, a licensed private investigation company (id. at ¶ 2), in December of 2010 (id. at ¶ 6) and subsequently fired in February of 2013 (id. at ¶ 28). This action arises from the circumstances surrounding Plaintiff's termination.

Plaintiff originally filed his Complaint in state court on March 1, 2013, and it was removed to this Court on March 25, 2013. (ECF No. 1.) Plaintiff appears to request relief based on two causes of action: (1) defamation; and (2) intentional infliction of emotional distress. (Compl.) In his Complaint, Plaintiff alleges that GlobalOptions, along with individually named defendants Anthony Saros, Kyle Elworth, and Robert Bilvado, included

false and misleading information in his employment file (id. at ¶ 15), inappropriately conducted investigations related to his internal complaints (id. at ¶ 22), assigned work to others that should have been assigned to Plaintiff (id. at ¶ 27), and inappropriately terminated Plaintiff based on false and misleading information (id. at ¶ 29).

II. LEGAL STANDARD

Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a cause of action that fails to state a claim upon which relief can be granted. *See North Star Int'l* v. Ariz. *Corp. Comm'n,* 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a claim, the Court will take all material allegations as true and construe them in the light most favorable to the plaintiff. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

The Court, however, is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. See Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation is plausible, not just possible. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 555) (emphasis added).

In order to survive a motion to dismiss, a complaint must allege "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b)

for failure to comply with Federal Rule of Civil Procedure 8(a). Hearns v. San Bernardino Police Dept., 530 F.3d 1124, 1129 (9th Cir.2008). Rule 8(a)(2) requires that a plaintiff's complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Prolix, confusing complaints" should be dismissed because "they impose unfair burdens on litigants and judges." McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir.1996). Mindful of the fact that the Supreme Court has "instructed the federal courts to liberally construe the 'inartful pleading' of pro se litigants," Eldridge v. Block, 832 F.2d 1132, 1137 (9th Cir. 1987), the Court will view Plaintiff's pleadings with the appropriate degree of leniency.

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion . . . . However, material which is properly submitted as part of the complaint may be considered on a motion to dismiss." Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for summary judgment. Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule of Evidence 201, a court may take judicial notice of "matters of public record." Mack v. S. Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers materials outside of the pleadings, the motion to dismiss is converted into a motion for summary judgment. See Fed. R. Civ. P. 12(d); Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001).

If the court grants a motion to dismiss, it must then decide whether to grant leave to amend. Pursuant to Rule 15(a), the court should "freely" give leave to amend "when justice so requires," and in the absence of a reason such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,

undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc." Foman v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear that the deficiencies of the complaint cannot be cured by amendment. See DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

III. DISCUSSION

Here, the Court finds adequate basis to dismiss Plaintiff's Complaint pursuant to Rule 8(a)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, but will dismiss the Complaint without prejudice in light of the fact that Plaintiff may be able to cure the deficiencies in his Complaint by offering further factual support.

A. Defamation

In Nevada, the elements for a cause of action for defamation are taken from the Restatement (Second) of Torts, § 558, and include: (1) a false and defamatory statement of fact by the defendant concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. Chowdhry v. NLVH, Inc., 851 P.2d 459, 483 (Nev. 1993) (per curiam); Pope v. Motel 6, 114 P.3d 277, 315 (Nev. 2005). Each element will be addressed in turn.

1. A False and Defamatory Statement of Fact

Plaintiff's Complaint alleges that false or defamatory statements of fact were made in or pertaining to:

(1) The employment file (Compl. at ¶ 15);

(2) Communication by Defendants Anthony Saros, Kyle Elworth, and Robert Bilvado relating to Plaintiff's employment file (Id. at ¶ 18);

(3) Information provided by Defendant Kyle Elworth to Defendant Anthony Saros, other employees, and to clients (Id. at ¶ 19);

(4) A final written warning issued by Defendant Robert Bilvado to Plaintiff on January

14, 2013 (Id. at ¶ 20);

(5) The termination notice (Id. at ¶ 29); and

(6) Communication between Defendant Kyle Elworth and clients (Id. at 32).

Plaintiff alleges that statements included in, or in relation to, each of these items, are either false, misleading, inaccurate, exaggerated, or without key facts.

However, Plaintiff never describes the substance of the statements that were false or misleading, why the statements were false or misleading, or who authored the statements contained in the employment file and the termination notice. Without further details concerning what statements were false and why, the Complaint stops short of the line between possibility and plausibility of entitlement to relief. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 557 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Without further details concerning who authored the statements contained in the employment file and the termination notice, Defendants cannot be given fair notice of which claims are alleged as against which parties, an important policy behind Rules 12(b)(6) and 8(a)(2) of the Federal Rules of Civil Procedure. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Accordingly, for the reasons discussed above, the Court finds that Plaintiff's Complaint lacks sufficient detail to meet the plausibility requirement regarding this element.

2. An Unprivileged Publication to a Third Party

Plaintiff appears to allege that a publication of false or defamatory information to third parties took place where he alleges that Defendant Kyle Elworth "attempted to damage the PLAINTIFF'S rapport and reputation with certain client(s)" (Compl. at ¶ 19). However, Plaintiff alleges nothing more specific than that, and fails to allege that any such statements were unprivileged or to clearly articulate when other parties may have published unprivileged information. Without further details concerning the alleged unprivileged publications, the

Complaint stops short of plausibility and fair notice cannot properly be given to Defendants. Accordingly, the Court finds that Plaintiff's Complaint lacks sufficient detail to meet the plausibility requirement regarding this element.

3. Fault, Amounting to At Least Negligence

Plaintiff alleges fault amounting to at least negligence in the following instances:

(1) Plaintiff believes the issues in the employment file were created to assist Defendants in defending against work-related issues raised by Plaintiff (Id. at ¶ 15);

(2) Defendant Kyle Elworth attempted to damage Plaintiff's rapport and reputation with clients (Id. at ¶ 19);

(3) The Plaintiff believes the false statements in the termination notice were put there intentionally (Id. at ¶ 29);

(4) Defendant Kyle Elworth intentionally "hindered Plaintiff's performance by attempting to obstruct Plaintiff's line of communication with clients and by participating in the defamation" (Id. at ¶ 32); and

(5) The actions of Defendants Anthony Saros, Kyle Elworth, and Robert Bilvado were intentional and deliberate (Id. at ¶ 34).

Plaintiff pleads sufficient factual detail in items (2), (4), and (5) above for this Court to find plausibility in the element requiring fault amounting to at least negligence relating to Defendants Kyle Elworth, Robert Bilvado, and Anthony Saros. However, the remaining items, the employment file (1) and the termination notice (3), lack sufficient detail. Specifically, without further details concerning who authored these documents, Defendants cannot be given fair notice concerning who is at fault. Also, based on these allegations, the Court cannot find that a reasonable inference is that Defendant GlobalOptions was at fault. Therefore, the pleadings lack facial plausibility concerning this element. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

4. Actual or Presumed Damages

Although Plaintiff sufficiently pleads this element by stating that he "suffered irreparable and permanent damage to his reputation in his profession . . ." (Id. at 9:178-79), for the reasons discussed above, the Court cannot find that Plaintiff sufficiently pled a cause of action for defamation. However, the Court will grant Plaintiff leave to amend.

B. Intentional Infliction of Emotional Distress

In Nevada, a claim of intentional infliction of emotional distress requires a plaintiff to show that: (1) a defendant's conduct was extreme and outrageous with either the intent of, or reckless disregard for causing emotional distress; and (2) plaintiff suffered severe or extreme emotional distress as the actual or proximate cause of defendant's conduct. *Dillard Dep't Stores, Inc. v. Beckwith*, 989 P.2d 882, 886 (Nev. 1999) (en banc).

Plaintiff does not allege that the conduct of GlobalOptions was extreme, outrageous, or performed with the intent to cause emotional distress to Plaintiff. Therefore, the Court cannot find that Plaintiff has sufficiently pled a cause of action for intentional infliction of emotional distress. Therefore, the Court will dismiss this cause of action, with leave to amend.

IV. CONCLUSION

IT IS HEREBY ORDERED that the Motion to Extend (ECF No. 14) is **GRANTED**.

IT IS FURTHER ORDERED that the Motion to Dismiss (ECF No. 2) is **GRANTED**. Plaintiff's Complaint is **DISMISSED without prejudice**. Plaintiff shall have until **December 6, 2013**, to file an amended complaint curing the deficiencies identified in this Order. Failure to do so by this deadline will result in **DISMISSAL** of this action **with prejudice**.

DATED this 15th day of November, 2013.

Gloria M. Navarro
United States District Judge