

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT EDWARDS,

Case No. 2:17-CV-645 JCM (CWH)

Plaintiff(s),

ORDER

V.

STATE OF NEVADA, et al.,

Defendant(s).

Presently before the court is defendant State of Nevada's motion to dismiss. (ECF No. 15). Plaintiff filed a response (ECF No. 17). Defendant has not replied, and the time for doing so has since passed.

Also before the court is defendant City of Las Vegas' motion to dismiss. (ECF No. 9). Plaintiff filed a response (ECF No. 17). Defendant has not replied, and the time for doing so has since passed.

Also before the court is defendants Krista Barrie, County of Clark, Sandra Digiocomo, Stephen L. George, and Christopher Pandelis' motion to dismiss. (ECF No. 6). Plaintiff Robert Ambrose Edwards filed a response (ECF No. 17), to which defendants replied (ECF No. 19).

I. Facts

Plaintiff filed the underlying action pro se on March 2, 2017, against the above-named defendants. (ECF No. 1). Plaintiff alleges that he was charged in Henderson Justice Court with working without proper licenses. Id. at 4. On March 23, 2016, plaintiff made a special appearance to challenge the court's jurisdiction. Id. at 5. Following an hour-long recess for lunch, plaintiff asserts that he did not return to court because he was ill. Id. at 6. Subsequently, a bench warrant

1 for plaintiff's arrest was issued and executed. Id. Plaintiff's civil suit stems from the arrest and
2 alleges several causes of action. Id. at 6-12.

3 **II. Legal Standard**

4 i. Process and service of process

5 "A federal court does not have jurisdiction over a defendant unless the defendant has been
6 served properly under [Rule] 4." Direct Mail Specialists v. Eclat Computerized Techs., Inc., 840
7 F.2d 685, 688 (9th Cir. 1988); see also Murphy Bros., Inc. v. Mitchell Pipe Stringing, Inc., 526
8 U.S. 344, 350 (1999) ("Service of process, under longstanding tradition in our system of justice,
9 is fundamental to any procedural imposition on a named defendant."). Where the validity of
10 service is contested, the burden is on the party claiming proper service to establish its validity.
11 Cranford v. United States, 359 F. Supp. 2d 981, 984 (E.D.Cal. 2005) (citing Grand Entm't Grp.,
12 Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 488 (3d Cir. 1993)). Assuming insufficiency of
13 process or insufficiency of service of process, the court has discretion to dismiss an action or
14 simply quash service. See e.g., SHJ v. Issaquah Sch. Dist. No. 411, 470 F.3d 1288, 1293 (9th Cir.
15 2006) citing Stevens v. Security Pac. Nat'l Bank, 538 F.2d 1387, 1389 (9th Cir.1976) ("the choice
16 between dismissal and quashing service of process is in the district court's discretion.").

17 Service on a state government must be made "in the manner prescribed by that state's law."
18 Fed. R. Civ. P. 4(j)(2)(b). In Nevada, any action against the state "must be brought in the name of
19 the State of Nevada on relation of the particular department, commission, board or other agency
20 of the State whose actions are the basis for the suit" and served upon both the Attorney General
21 and "[t]he person serving in the office of administrative head of the named agency." N.R.S.
22 41.031(2).

23 ii. Failure to state a claim

24 A court may dismiss a complaint for "failure to state a claim upon which relief can be
25 granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain
26 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); Bell
27 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual
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1 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
2 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

3 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550
4 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
5 matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (citation
6 omitted).

7 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
8 when considering motions to dismiss. First, the court must accept as true all well-pled factual
9 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
10 *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory
11 statements, do not suffice. *Id.* at 678.

12 Second, the court must consider whether the factual allegations in the complaint allege a
13 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s complaint
14 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the
15 alleged misconduct. *Id.* at 678.

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

20 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d
21 1202, 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

22 First, to be entitled to the presumption of truth, allegations in a complaint or
23 counterclaim may not simply recite the elements of a cause of action, but must
24 contain sufficient allegations of underlying facts to give fair notice and to enable
25 the opposing party to defend itself effectively. Second, the factual allegations that
are taken as true must plausibly suggest an entitlement to relief, such that it is not
unfair to require the opposing party to be subjected to the expense of discovery and
continued litigation.

26 *Id.*

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1 **III. Discussion**

2 i. *Defendant State of Nevada's motion to dismiss*

3 In the State of Nevada's motion, it moves to dismiss plaintiff's claims for failure of proper
4 process and service of process, as provided for in Rules 4 and 5 of the Federal Rules of Civil
5 Procedure. (ECF No. 15).

6 Here, defendant argues for dismissal of plaintiff's claims based on plaintiff's failure to
7 adhere to the requirements of Rule 4 and the applicable Nevada statute. (ECF No. 15 at 2).

8 The court agrees. In his complaint, plaintiff names the State of Nevada as defendant, but
9 fails to relate the defendant to the agency in question—Nevada State Contractors Board
10 ("NSCB")—as required by statute. (ECF No. 1-2 at 1). Additionally, service was not properly
11 effectuated as to the State of Nevada or NSCB. First, regarding the State of Nevada, plaintiff erred
12 in serving the state's administrative office in Carson City, rather than the Attorney General. (ECF
13 No. 2). Second, regarding the NSCB, plaintiff improperly named and served the NSCB
14 investigator rather than the "administrative head" as proscribed by NRS 41.031(2). *Id.* Thus, the
15 court will grant defendant's motion to dismiss based on the provisions of Rules 4 and 5 of the
16 Federal Rules of Civil Procedure.

17 ii. *Defendant City of Las Vegas' motion to dismiss*

18 In its motion, defendant City of Las Vegas moves to dismiss plaintiff's claims against it on
19 the basis of Rule 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 9).

20 Here, defendant argues that plaintiff's claims are solely against its co-defendants, and that
21 the indirect reference to defendant, (ECF No. 1-2 at 6), is not a legally cognizable claim upon
22 which this court can grant relief. (ECF No. 9 at 3).

23 The court agrees. At no point, in the five causes of action alleged in his complaint, does
24 plaintiff make any direct allegation against the defendant. The nexus between plaintiff and
25 defendant is extremely tenuous even under the most liberal of standards. Indeed, defendant's only
26 connection to plaintiff's case is the fact that, upon arrest, plaintiff was taken to a jail within
27 defendant's jurisdiction. All of the named defendants are employees or agents of either the County
28 of Clark or the State of Nevada, not defendant. Plaintiff fails to adequately state a claim against

1 defendant upon which this court can grant relief. Thus, the court will grant defendant's motion to
2 dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Twombly, 550 U.S.
3 at 555.

4 iii. Defendant Barrie's (et al) motion to dismiss

5 Defendants Barrie, County of Clark, Digiocomo, George, and Pandelis move to dismiss
6 under the provisions of Younger v. Harris, 401 U.S. 37 (1971). (ECF No. 6). The court, however,
7 need not address to merits of defendants' argument.

8 The plaintiff's claims against defendants fail to plausibly state a claim upon which relief
9 can be granted. See Iqbal, 556 U.S. at 678. Plaintiff asserts—based upon his views under the
10 Sovereign Citizen ideology—that defendants lacked authority and jurisdiction over his person and
11 actions. As defendants note, plaintiff's complaint does not label its causes of action. Further, the
12 complaint does not articulate cognizable claims upon which relief can be granted. Plaintiff
13 misstates the jurisdictional holding in Cohens v. Virginia, 19 U.S. 264, and uses unfounded
14 conclusory statements in an attempt to apply its holding to defendants. (ECF No. 1-2 at 5).
15 Plaintiff further attempts to use federal and state statutes to argue against the jurisdiction of the
16 state court regarding the state law charges lodged against him. Id. at 7-8. Plaintiff's arguments to
17 this end are legally frivolous. Again, the plaintiff uses conclusory statements that fail to approach
18 the required threshold of stating a claim on which relief can plausibly be granted. Cf. Iqbal, 556
19 U.S. at 681 (holding that the conclusory nature of respondent's assertions barred him from relief).
20 For the forgoing reasons the court will grant defendants' motion to dismiss. See id. at 687.

21 **IV. Conclusion**

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant State of
24 Nevada's motion to dismiss, (ECF No. 15) be, and the same hereby is, GRANTED.

25 IT IS FURTHER ORDERED that defendant City of Las Vegas' motion to dismiss, (ECF
26 No. 9) be, and the same hereby is, GRANTED.

27 IT IS FURTHER ORDERED that defendants Barrie, County of Clark, Digiocomo, George,
28 and Pandelis' motion to dismiss, (ECF No. 6) be, and the same hereby is, GRANTED.

1 Plaintiff's claims against defendants will be dismissed without prejudice.
2 DATED November 30, 2017.

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4 UNITED STATES DISTRICT JUDGE

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