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6 **UNITED STATES DISTRICT COURT**7 **DISTRICT OF NEVADA**

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9 TRONDERRICA JAMES,

10 Plaintiff,

11 vs.

12 LEMONADE INSURANCE AGENCY, LLC, et
al.,13 Defendants.
14

Case No. 2:22-cv-01558-RFB-VCF

ORDERAPPLICATION TO PROCEED *IN FORMA*
PAUPERIS (ECF NO. 1); COMPLAINT (ECF
NO. 1-1)15 Pro se plaintiff Tronderrica James filed an application to proceed in forma pauperis (IFP) and a
16 proposed complaint ECF Nos. 1 and 1-1. I grant James's IFP application. ECF No. 1. I dismiss
17 plaintiff's complaint without prejudice. ECF No. 1-1.18 **DISCUSSION**19
20 Plaintiff's filings present two questions: (1) whether James may proceed in forma pauperis under
21 28 U.S.C. § 1915(e) and (2) whether James's complaint states a plausible claim for relief.22 **I. Whether James May Proceed In Forma Pauperis**23 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or
24 security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to
25 pay such fees or give security therefor." Plaintiff states that she makes \$500 a week as a rideshare

1 driver. ECF No. 1. She states that she has \$90 in her bank account, and she has a little over \$2,000 in
2 expenses. *Id.* I grant plaintiff's IFP application.

3 **II. Whether James's Complaint States a Plausible Claim**

4 **a. Legal Standard**

5 Because I grant James's application to proceed in forma pauperis, I must review James's
6 complaint to determine whether the complaint is frivolous, malicious, or fails to state a plausible claim.
7 28 U.S.C. § 1915(e)(2)(B). Federal Rule of Civil Procedure 8(a)(2) provides that a complaint must
8 contain "a short and plain statement of the claim showing that the [plaintiff] is entitled to relief." The
9 Supreme Court's decision in *Ashcroft v. Iqbal* states that to satisfy Rule 8's requirements, a complaint's
10 allegations must cross "the line from conceivable to plausible." 556 U.S. 662, 680 (2009) (quoting *Bell*
11 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, (2007)). Rule 12(b)(6) of the Federal Rules of Civil
12 Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be
13 granted. A complaint should be dismissed under Rule 12(b)(6), "if it appears beyond a doubt that the
14 plaintiff can prove no set of facts in support of her claims that would entitle him to relief." *Buckey v. Los*
15 *Angeles*, 968 F.2d 791, 794 (9th Cir. 1992).

17 "[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than
18 formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v.*
19 *Gamble*, 429 U.S. 97, 106 (1976)). If I dismiss a complaint under § 1915(e), the plaintiff should be
20 given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from
21 the face of the complaint that the deficiencies could not be cured by amendment. *Cato v. United States*,
22 70 F.3d 1103, 1106 (9th Cir. 1995). Federal courts are courts of limited jurisdiction, having subject-
23 matter jurisdiction only over matters authorized by the Constitution and Congress. U.S. Const. art. III, §
24 2, cl. 1; e.g., *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed.
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1 2d 391 (1994). “The district courts shall have original jurisdiction of all civil actions arising under the
2 Constitution, laws, or treaties of the United States.” 28 U.S.C.S. § 1331. To establish subject matter
3 jurisdiction pursuant to diversity of citizenship under § 1332(a), the party asserting jurisdiction must
4 show: (1) complete diversity of citizenship among opposing parties and (2) an amount in controversy
5 exceeding \$75,000. 28 U.S.C. § 1332(a). *Habacon v. Emerald Grande, LLC*, No. 2:19-cv-00165-MMD-
6 PAL, 2019 U.S. Dist. LEXIS 63163, at 3-4 (D. Nev. Apr. 12, 2019).

7 **b. Complaint**

8 Plaintiff brings claims against the defendants for (1) breach of implied covenant of good faith
9 and fair dealing; (2) unfair claims handling practices; (3) fraud and misrepresentation; and (4) invasion
10 of privacy. ECF No. 1-1. Plaintiff alleges that this Court has diversity jurisdiction over her case. *Id.* She
11 alleges she is a citizen of the State of Nevada and defendants Lemonade Insurance Agency and
12 FIRSTeam has its principal place of business and are incorporated under the laws of the States of New
13 York and California respectively. *Id.* She seeks \$80,000 in damages. *Id.* Plaintiff has plausibly alleged
14 that this Court has jurisdiction over her case.
15

16 **a. Breach of the Implied Covenant of Good Faith and Fair Dealing**

17 Under Nevada law, “[e]very contract imposes upon each party a duty of good faith and fair
18 dealing in its performance and execution.” *A.C. Shaw Constr. v. Washoe Cty.*, 105 Nev. 913, 784 P.2d 9,
19 9 (1989) (quoting Restatement (Second) of Contracts § 205). To establish a claim for breach of the
20 implied covenant of good faith and fair dealing, a plaintiff must prove: (1) the existence of a contract
21 between the parties; (2) that the defendant breached its duty of good faith and fair dealing by acting in a
22 manner unfaithful to the purpose of the contract; and (3) the plaintiff’s justified expectations under the
23 contract were denied. See *Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335, 338 (Nev. 1995) (citing *Hilton*
24 *Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 808 P.2d 919, 922-23 (1991)).
25

1 Plaintiff has not stated a plausible claim that the defendants breached the implied covenant of
2 good faith and fair dealing. ECF No. 1-1 at 2. Plaintiff alleges that she had a contract with Lemonade,
3 but she does not allege that she had a contract with the other defendant. Plaintiff alleges that Lemonade
4 “participated in various unfair and illegal claims handling practices, which includes but is not limited to:
5 fraud, forgery, misrepresentation, identity theft, privacy invasion, oppression, and malice.” *Id.* Plaintiff
6 does not allege any factual information regarding how either of the defendants breached the covenant, so
7 does not comply with Rule 8. Plaintiff does not tie any specific facts to the law. Plaintiff merely recites
8 legal words to support her claim. Plaintiff must allege facts that would reasonably allow each defendant
9 to understand the link between their alleged conduct and the alleged violations of the law. Plaintiff’s
10 amended complaint must be complete in itself, without reference to the previous complaint.

11 **c. Unfair Claims Handling Practices**

12 Under Nevada Revised Statutes § 686A.310, an insurer is liable for damages if it engages in any
13 of the various enumerated acts. Plaintiff alleges that Lemonade “delayed, denied, avoided, and
14 attempted to reduce the size [sic] of claim to be paid to Plaintiff.” ECF No. 1-1 at 2. Plaintiff’s
15 allegations against Lemonade here again do not allege any factual information regarding how either of
16 the defendants violated the law, so does not comply with Rule 8. Plaintiff’s allegations are so vague that
17 it is not clear which subsections of the law plaintiff believes the defendants violated. Plaintiff does not
18 tie any specific facts to the law. Plaintiff merely recites legal words to support her claim. Plaintiff must
19 allege facts that would reasonably allow each defendant to understand the link between their alleged
20 conduct and the alleged violations of the law. Plaintiff’s amended complaint must be complete in itself,
21 without reference to the previous complaint.
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23 **d. Fraud and Misrepresentation**

24 The elements of intentional misrepresentation or common law fraud in Nevada are: (1) A false
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1 representation made by the defendant; (2) defendant's knowledge or belief that the representation is false
2 (or insufficient basis for making the representation); (3) defendant's intention to induce the plaintiff to
3 act or to refrain from acting in reliance upon the misrepresentation; (4) plaintiff's justifiable reliance
4 upon the misrepresentation; and (5) damage to the plaintiff resulting from such reliance. *Bulbman, Inc.*
5 *v. Nev. Bell*, 108 Nev. 105, 825 P.2d 588, 592 (Nev. 1992).

6 Under Rule 9(b), circumstances constituting fraud or mistake must be stated with particularity.
7 Fed. R. Civ. P. 9(b). A plaintiff must plead facts such as "he bought a house from defendant, that the
8 defendant assured him that it was in perfect shape, and that in fact the house turned out to be built on a
9 landfill . . ." *Warshaw v. Xoma Corp.*, 74 F.3d 955, 960 (9th Cir 1996) (quoting *In re GlenFed, Inc. Sec.*
10 *Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1995) (en banc)). Under Rule 9(b), a plaintiff must "state with
11 particularity the circumstances constituting the fraud." Fed. R. Civ. Pro. 9(b). This has been construed to
12 require a plaintiff to "state precisely the time, place and nature of the misleading statements,
13 misrepresentations and specific acts of fraud." *Kaplan v. Rose*, 49 F.3d 1363, 1370 (9th Cir. 1994), cert.
14 denied, 516 U.S. 810, 116 S. Ct. 58, 133 L. Ed. 2d 21 (1995). The plaintiff must also "set forth an
15 explanation as to why the statement or omission complained of was false and misleading." *In re*
16 *GlenFed Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994).

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18 Plaintiff's allegations are generalized claims of fraud, rather than allegations of specific
19 fraudulent representations. Plaintiff alleges that defendant FRSTeam forged a check box on a contract
20 she signed. It is unclear what the dispute is actually about in this case. Plaintiff alleges something about
21 a cleaning fee and tote bags. Plaintiff's allegations are vague and difficult to follow. Plaintiff's
22 allegations do not meet the requirements of Rule 8. Plaintiff's allegations of fraud also do not meet the
23 specificity requirements of Rule 9. These allegations are generalized accusations rather than plausible
24 claims of fraud in this specific case. Plaintiff has failed to state a legally cognizable claim for fraud
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1 under Rule 9, dismissal without prejudice is appropriate.

2 **e. Invasion of Privacy**

3 "A cause of action for invasion of privacy requires: (1) an intentional intrusion by defendant; (2)
4 on the solitude or seclusion of the plaintiff; (3) that would be highly offensive to a reasonable person."
5 *Downs v. River City Grp., LLC*, No. 3:11-CV-0885-LRH-WGC, 2012 U.S. Dist. LEXIS 66860, 2012
6 WL 1684598, at 4 (D. Nev. May 11, 2012). The tort has a public disclosure requirement, which
7 contemplates disclosure to more than individuals or small groups. *Kuhn v. Account Control Tech., Inc.*,
8 865 F. Supp. 1443, 1448 (D. Nev. 1994).

9 Plaintiff's invasion of privacy claim fails for multiple reasons. Plaintiff's claims are difficult to
10 follow, but it appears that she claims that defendant Lemonade exposed her personal information, such
11 as her ID, to third party company Stripe. Plaintiff has not alleged any facts which suggest an intrusion
12 occurred that is "highly offensive to a reasonable person," or facts that suggest an "intentional intrusion"
13 occurred. There are no facts to suggest a plausible claim for relief pursuant to Rule 8. I dismiss this
14 claim without prejudice. Plaintiff must allege facts that would reasonably allow each defendant to
15 understand the link between their alleged conduct and the alleged violations of the law. Plaintiff's
16 amended complaint must be complete in itself, without reference to the previous complaint.

17
18 ACCORDINGLY,

19 I ORDER that James's application to proceed in forma pauperis (ECF No. 1) is GRANTED.

20 I FURTHER ORDER that James's complaint (ECF No. 1-1) is DISMISSED WITHOUT
21 PREJUDICE.

22 I FURTHER ORDERED that James has until Friday, January 6, 2023, to file an amended
23 complaint addressing the issues discussed above. Failure to timely file an amended complaint that
24 addresses the deficiencies noted in this Order may result in a recommendation for dismissal.
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1 I FURTHER ORDER that if plaintiff files an amended complaint, the Clerk of the Court is
2 directed NOT to issue summons on the amended complaint. I will issue a screening order on the
3 amended complaint and address the issuance of summons at that time, if applicable. See 28 U.S.C. §
4 1915(e)(2).


5 **NOTICE**

6 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
7 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
8 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
9 may determine that an appeal has been waived due to the failure to file objections within the specified
10 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

11 This circuit has also held that (1) failure to file objections within the specified time and (2)
12 failure to properly address and brief the objectionable issues waives the right to appeal the District
13 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
14 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
15 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
16 change of address. The notification must include proof of service upon each opposing party's attorney,
17 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
18 result in dismissal of the action.
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20 IT IS SO ORDERED.

21 DATED this 5th day of December 2022.

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23 CAM FERENBACH
24 UNITED STATES MAGISTRATE JUDGE
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