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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 DAVID ANGEL SIFUENTES, III,

11 Plaintiff,

12 v.

13 NAUTILUS, INC.,

14 Defendant.

CASE NO. C21-5613JLR

ORDER DISMISSING ACTION  
UNDER 28 U.S.C. § 1915(e)(2)(B)

15 **I. INTRODUCTION**

16 Before the court are *pro se* Plaintiff David Angel Sifuentes, III's amended  
17 complaint against Defendant Nautilus, Inc. ("Nautilus") (Am. Compl. (Dkt. # 6)) and Mr.  
18 Sifuentes's motion to appoint counsel (Mot. (Dkt. # 5)). Magistrate Judge S. Kate  
19 Vaughan granted Mr. Sifuentes *in forma pauperis* ("IFP") status. (IFP Order (Dkt. # 3) at  
20 1.) Under 28 U.S.C. § 1915(e), district courts have authority to review IFP complaints  
21 and must dismiss them if "at any time" it is determined that a complaint fails to state a  
22 claim on which relief may be granted. 28 U.S.C. § 1915(e)(2); *see also id.*

1 § 1915A(b)(1); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (clarifying that  
2 § 1915(e) applies to all IFP proceedings). As discussed below, Mr. Sifuentes’s amended  
3 complaint falls within the category of pleadings that the court must dismiss.

4 Accordingly, the court DISMISSES Mr. Sifuentes’s amended complaint with leave to  
5 amend and STRIKES the pending motion to appoint counsel (Dkt. # 5).

## 6 II. BACKGROUND

7 Mr. Sifuentes’s claim centers on a Bowflex Treadclimber TC 200  
8 (“Treadclimber”) that he purchased from Nautilus on or around November 8, 2017. (Am.  
9 Compl. at 1.) The Treadclimber came with a three-year warranty. (*Id.*) During these  
10 three years, the Treadclimber “would consistently break down.” (*Id.* at 1-2.) Mr.  
11 Sifuentes filed several claims with Nautilus yet still went weeks without an operational  
12 Treadclimber. (*Id.*) In November 2020, Mr. Sifuentes purchased an “additional extended  
13 warranty ‘protection plan’ that extends [the warranty] for about another 2 years.” (*Id.* at  
14 2.) However, shortly afterwards, the Treadclimber “smoked and crashed th[e]n stopped  
15 working.” (*Id.*) Mr. Sifuentes immediately notified Nautilus, but Nautilus transferred the  
16 matter to a third party. (*Id.*) To date, no entity has repaired the Treadclimber. (*Id.*)

17 Mr. Sifuentes initiated the instant suit on August 25, 2021. (*See* IFP Mot. (Dkt.  
18 # 1).) He brings a breach of warranty claim under the Magnuson-Moss Warranty Act  
19 (“MMWA”). (Am. Compl. at 2-3); *see* 15 U.S.C. §§ 2301-2312. He does not bring any  
20 claims under state warranty law. (*See* Am. Compl.) After being granted IFP status, Mr.  
21 Sifuentes filed a motion to appoint counsel. (*See* Mot.)

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### III. ANALYSIS

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2 Title 28 U.S.C. § 1915(e)(2)(B) authorizes a district court to dismiss a claim filed  
3 IFP “at any time” if it determines: (1) the action is frivolous or malicious; (2) the action  
4 fails to state a claim; or (3) the action seeks relief from a defendant who is immune from  
5 such relief. *See* 28 U.S.C. § 1915(e)(2)(B). Because Mr. Sifuentes is a *pro se* plaintiff,  
6 the court must construe his pleadings liberally. *See McGuckin v. Smith*, 974 F.2d 1050,  
7 1055 (9th Cir. 1992). Nonetheless, he must still plead factual allegations “enough to  
8 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
9 544, 555 (2007). The court need not accept as true a legal conclusion presented as a  
10 factual allegation. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although the pleading  
11 standard announced by Federal Rule of Civil Procedure 8 does not require “detailed  
12 factual allegations,” it demands more than “an unadorned, the-defendant-unlawfully-  
13 harmed-me accusation.” *Id.* (citing *Twombly*, 550 U.S. at 555); *see* Fed. R. Civ. P. 8(a).

14 Mr. Sifuentes brings only an MMWA claim. (*See* Am. Compl. at 2-3.) However,  
15 “[a] viable MMWA claim requires a plaintiff to successfully plead a violation of state  
16 warranty law.” *Tait v. BSH Home Appliances Corp.*, No. SACV 10-711 DOC (ANx),  
17 2011 WL 1832941, at \*5 (C.D. Cal. May 12, 2011); *Clemens v. DaimlerChrysler Corp.*,  
18 534 F.3d 1017, 1022 n.3 (9th Cir. 2008) (“[T]he claims under the [MMWA] stand or fall  
19 with his . . . claims under state law”). “[T]here is no private cause of action for liability  
20 under [the MMWA]”; instead, the MMWA “only helps to determine damages when  
21 liability is already settled.” *Leonard v. The Momentum Grp., Inc.*, No. 1:14-CV-01074-  
22 LMM, 2015 WL 11236547, at \*6 (N.D. Ga. Dec. 16, 2015). Put differently, a plaintiff

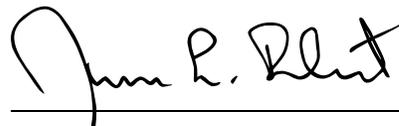
1 must first demonstrate liability under a state law before turning to the MMWA. *See id.* at  
2 \*6. Mr. Sifuentes neither brings a breach of warranty claim under state law, nor does he  
3 plead a violation of any applicable state warranty law. (*See Am. Compl.*) Thus, the court  
4 concludes that Mr. Sifuentes fails to state an MMWA claim and dismisses his amended  
5 complaint.

6 When a court dismisses a *pro se* plaintiff's complaint, the court must give the  
7 plaintiff leave to amend unless it is absolutely clear that amendment could not cure the  
8 defects in the complaint. *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).  
9 Thus, the court grants Mr. Sifuentes fourteen (14) days to file an amended complaint that  
10 corrects the deficiencies identified herein. If Mr. Sifuentes fails to timely comply with  
11 this order or fails to file an amended complaint that remedies the aforementioned  
12 deficiencies, the court will dismiss his complaint without leave to amend.

#### 13 IV. CONCLUSION

14 For the foregoing reasons, the court DISMISSES Mr. Sifuentes's amended  
15 complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) with leave to amend within fourteen  
16 (14) days of this order. The court additionally STRIKES the motion to appoint counsel  
17 (Dkt. # 5). The Clerk is DIRECTED to send a copy of this order to Mr. Sifuentes.

18 Dated this 8th day of September, 2021.

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21 JAMES L. ROBART  
22 United States District Judge