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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN HARPER,

Plaintiff,

v.

DICK HANNAH TOYOTA, and
TOYOTA MOTOR NORTH AMERICA
INC.,¹

Defendants.

CASE NO. C22-5065 BHS

ORDER GRANTING
DEFENDANTS' MOTIONS TO
DISMISS

This matter comes before the Court on Defendant Dick Hannah Toyota's motion to dismiss, Dkt. 2, and Defendant Toyota Motor Sales, U.S.A., Inc.'s ("TMS") motion to dismiss, Dkt. 5. The Court has considered the briefing filed in support of and in opposition to the motions and the remainder of the file and hereby grants the motions for the reasons stated herein.

¹ The complaint erroneously names Defendant Toyota Motor Sales, U.S.A., Inc. as Toyota Motor North America Inc. *See* Dkt. 1 at 1.

I. FACTUAL & PROCEDURAL BACKGROUND

1 Plaintiff John Harper, proceeding pro se, commenced this action in January 2022,
2 asserting claims of fraud. Dkt. 1. Harper alleges that in October 2021 he bought a Toyota
3 from Dick Hannah that he thought was a new vehicle but later discovered that it was
4 used. *Id.* ¶¶ 5, 6. He alleges violations of 18 U.S.C. § 1341 and RCW 46.70.180(4)(b)(i)
5 and requests compensatory and punitive damages. *Id.* ¶¶ 12, 13.
6

7 Defendants move to dismiss Harper’s complaint pursuant to Federal Rules of Civil
8 Procedure 12(b)(1) and 12(b)(6). Dkt. 2 (Dick Hannah’s motion); Dkt. 5 (TMS’s motion).
9 They argue that the federal law under which Harper asserts his fraud claim does not have
10 a private cause of action. Dkt. 2 at 2–6; Dkt. 5 at 5. Dick Hannah additionally argues that
11 Harper’s state law claim fails to meet the requirements for federal jurisdiction, Dkt. 2 at
12 6–8, and TMS argues that Harper’s state law claim has failed to state a claim against it,
13 Dkt. 5 at 5.²

II. DISCUSSION

A. Standards

14 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable
15 legal theory or the absence of sufficient facts alleged under a cognizable legal theory.
16 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff’s
17 complaint must allege facts to state a claim for relief that is plausible on its face. *See*
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21 ² Harper has also filed a motion for summary judgment, Dkt. 14, and Dick Hannah has
22 moved to stay the summary judgment response filing deadline in light of the instant motions to
dismiss, Dkt. 15.

1 *Aschcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A claim has “facial plausibility” when
2 the party seeking relief “pleads factual content that allows the court to draw the
3 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “[A]
4 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more
5 than labels and conclusions, and a formulaic recitation of the elements of a cause of
6 action will not do. Factual allegations must be enough to raise a right to relief above the
7 speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and
8 footnotes omitted). This requires a plaintiff to plead “more than an unadorned, the-
9 defendant-unlawfully-harmed-me-accusation.” *Iqbal*, 129 S. Ct. at 1949 (citing
10 *Twombly*). A pro se plaintiff’s complaint is to be construed liberally, but like any other
11 complaint it must nevertheless contain factual assertions sufficient to support a facially
12 plausible claim for relief. *Id.*

13 Federal courts are presumed to lack jurisdiction, and on a motion to dismiss
14 pursuant to Federal Rule of Civil Procedure 12(b)(1) the burden of proof is on the
15 plaintiff to establish subject matter jurisdiction. *Stock West, Inc. v. Confederated Tribes*,
16 873 F.2d 1221, 1225 (9th Cir. 1989). Motions to dismiss brought under Rule 12(b)(1)
17 may challenge jurisdiction factually by disputing “the truth of the allegations that, by
18 themselves, would otherwise invoke federal jurisdiction,” or facially by asserting that
19 “allegations in the complaint are insufficient on their face to invoke federal jurisdiction.”
20 *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

1 **B. Merits**

2 **1. Federal Claim**

3 Harper asserts a violation of 18 U.S.C. § 1341, which criminalizes mail fraud. *See*
4 *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1399–1400 (9th
5 Cir. 1986). As Defendants note, there is no private right of action under this statute. *See,*
6 *e.g., Ateser v. Bopp*, 29 F.3d 630, 1994 WL 377872, at *3 (9th Cir. 1994) (“Courts have
7 consistently found that the mail and wire fraud statutes do not confer private rights of
8 action.”).

9 As there is no private right of action for Harper’s federal claim, Defendants’
10 motions to dismiss are GRANTED, and this claim is DISMISSED with prejudice.

11 **2. State Claim**

12 Harper additionally asserts a violation of RCW 46.70.180(4)(b)(i), which deems
13 certain actions of automobile dealers and manufacturers unlawful. Among others, the
14 statute makes it unlawful to commit any act of “bushing,”³ which is defined as entering
15 into a written agreement signed by the prospective buyer that:

16 [p]ermits the dealer to renegotiate a dollar amount specified as trade-in
17 allowance on a vehicle delivered or to be delivered by the buyer or lessee as
18 part of the purchase price or lease, for any reason except: (i) Failure to
disclose that the vehicle’s certificate of title has been branded for any
reason

19 RCW 46.70.180(4)(b)(i).

21 ³ “Bushing” occurs when a car dealer obligates a buyer to buy a vehicle but reserves to
22 itself the ability to accept or reject the terms of the deal for a period of more than three days.
RCW 46.70.180(4)(a); *Banuelos v. TSA Wash., Inc.*, 134 Wn. App. 607, 611 (2006).

1 Dick Hannah argues that this claim should be dismissed pursuant to Rule 12(b)(1)
2 because Harper has failed to meet the jurisdictional requirements for the claim. Dkt. 2 at
3 6–8. TMS argues that none of the allegations run to TMS and, rather, that the allegations
4 are “specifically directed at the selling dealership.” Dkt. 5 at 5.

5 The Court agrees with Dick Hannah that it lacks subject matter jurisdiction over
6 Harper’s state law claim. Harper asserts that the Court has diversity jurisdiction over the
7 case. Dkt. 1 at 2. Diversity jurisdiction exists where the parties are diverse in citizenship
8 and the matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Harper demands
9 \$10,271 in compensatory damages and \$7,497,000 in punitive damages. Dkt. 1, ¶¶ 12,
10 13. But, as Dick Hannah highlights, “punitive damages are not recoverable in the absence
11 of a statute expressly authorizing them” *Grays Harbor Cnty. v. Bay City Lumber*
12 *Co.*, 47 Wn.2d 879, 882 (1955). The statute under which Harper asserts his state law
13 claim permits injunctive relief and compensatory damages—it does not permit punitive
14 damages. *See* RCW 46.70.190 (a plaintiff “may bring a civil action in the superior court
15 to enjoin further violations, to recover the actual damages sustained by him or her
16 together with the costs of the suit, including a reasonable attorney’s fee”).

17 Because Harper cannot maintain his punitive damages demand as a matter of state
18 law, the amount in controversy is only \$10,271 and does not meet the jurisdictional
19 threshold. The Court thus lacks subject matter jurisdiction over Harper’s state law claim.
20 Defendants’ motions are therefore GRANTED, and Harper’s state law claim is
21 DISMISSED without prejudice.
22

1 **C. Leave to Amend**

2 In the event the court finds that dismissal is warranted, the court should grant the
3 plaintiff leave to amend unless amendment would be futile. *Eminence Cap., LLC v.*
4 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Amendment in this case would be
5 futile because Harper cannot maintain his federal law claim as a matter of law and
6 because the Court lacks subject matter jurisdiction over his state law claim. The Court
7 therefore DENIES Harper leave to amend.

8 **III. ORDER**

9 Therefore, it is hereby **ORDERED** that Defendant Dick Hannah Toyota's motion
10 to dismiss, Dkt. 2, and Defendant Toyota Motor Sales, U.S.A., Inc.'s motion to dismiss,
11 Dkt. 5, are **GRANTED**. It is hereby further **ORDERED** that Plaintiff John Harper's
12 motion for summary judgment, Dkt. 14, and Defendant Dick Hannah Toyota's motion to
13 stay summary judgment, Dkt. 15, are **DENIED as moot**.

14 The Clerk shall enter a JUDGMENT and close the case.

15 Dated this 18th day of April, 2022.

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BENJAMIN H. SETTLE
United States District Judge