

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:14-cv-08909-SVW-PLA

Date February 10, 2016

Title *Judy Anne Mikovits v. Adam Garcia et al*

JS-6

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: IN CHAMBERS ORDER DISMISSING THE CASE**Introduction**

Plaintiff Judy Anne Mikovits (“Plaintiff” or “Mikovits”) is a well-known molecular virologist. According to her second amended complaint (“SAC”), she was the subject of a conspiracy by a number of defendants in Nevada to cover up her discovery of a dishonest scheme to falsify research findings. But, perhaps because of the convoluted nature of the alleged conspiracy, Plaintiff has failed to articulate a short and plain statement of her claim, establish jurisdiction over out-of-state defendants, or comply with the Court’s orders despite several opportunities to do so.

Procedural Background

On November 17, 2014, Plaintiff filed a *pro se* complaint against twelve named defendants and three unidentified Ventura County Deputy Sheriffs (collectively the “Defendants”). Dkt. 1. The case was initially assigned to Magistrate Judge Abrams, but was reassigned to this Court when Plaintiff retained counsel. Dkt. 76. The Court held a hearing on June 15, 2015, and dismissed the complaint, giving Plaintiff leave to amend. *See* Dkt. 89.

On July 27, 2015, Plaintiff filed her first amended complaint (“FAC”). Dkt. 92. On November 24, 2015, the Court granted summary judgment as to the only named California defendant, Geoff Dean. *See* Dkt. 124. In the same order, the Court dismissed the FAC under Federal Rule of Civil Procedure 8, with leave to file an amended complaint curing deficiencies. *See id.* at 6–7. The

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Court generally instructed to Plaintiff to make the complaint more comprehensible and specifically instructed Plaintiff to organize her claims “so that they include the facts that form the basis of each claim without excessive incorporation by reference.” *Id.* at 7.

On December 22, 2015, Plaintiff filed a second amended complaint (“SAC”), substantially similar to her FAC. *See* Dkt. 146. The remaining Defendants filed motions to dismiss, presently before the Court. *See* Dkts. 148, 150, 153.

Legal Standard

Rule 8

Federal Rule of Civil Procedure 8 requires a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8. These factual allegations, accepted as true and construed in the plaintiff’s favor, must state a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Daniel v. Cnty. of Santa Barbara*, 288 F.3d 375, 380 (9th Cir. 2002). Plausibility requires factual allegations that allow the Court to infer reasonably that the defendant is liable for the alleged misconduct—“labels and conclusions” or “recitation[s] of the . . . cause[s] of action will not do.” *Iqbal*, 556 U.S. at 678.

Moreover, Rule 8(d), which requires “each averment of a pleading to be ‘simple, concise, and direct,’ applies to good claims as well as bad, and is a basis for dismissal independent of Rule 12(b)(6).” *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) (citing *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981)). “Something labeled a complaint but . . . prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint.” *Id.* at 1180. The Court cannot be expected to “waste[] half a day in chambers preparing the ‘short and plain statement’ which Rule 8 obligated plaintiffs to submit.” *Id.*

Rule 12(b)(2)

When a defendant moves to dismiss under Rule 12(b)(2), the plaintiff bears the burden of demonstrating that the court may properly exercise personal jurisdiction over the defendant. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Absent formal discovery or an evidentiary

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hearing, the plaintiff need only make a *prima facie* showing that jurisdiction exists to survive a Rule 12(b)(2) motion to dismiss. *Id.* at 1154. To make a *prima facie* showing, the plaintiff can rely on uncontroverted allegations in the pleadings, or “facts, by affidavit or otherwise,” that support personal jurisdiction. *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). “Conflicts between parties over statements contained in affidavits must be resolved in the plaintiff’s favor.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). However, the Court “may not assume the truth of allegations in a pleading which are contradicted by affidavit.” *Mavrix Photo Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011).

“The general rule is that personal jurisdiction over a defendant is proper if it is permitted by a long-arm statute and if the exercise of that jurisdiction does not violate federal due process.” *Pebble Beach*, 453 F.3d at 1154-55. Because California authorizes jurisdiction to the full extent permitted by the Constitution, the relevant inquiry is whether the exercise of jurisdiction over the Defendants is consistent with due process. Cal. Code Civ. P. § 410.10; *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). To satisfy due process, Defendants must have sufficient “minimum contacts” with the forum state that “maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

There are two recognized bases for exercising jurisdiction over a nonresident defendant: (1) general jurisdiction and (2) specific jurisdiction. General jurisdiction exists where a defendant’s activities in the forum are sufficiently substantial, or continuous and systematic, to justify the exercise of jurisdiction over it. *Int’l Shoe Co.*, 326 U.S. at 316. To determine whether specific jurisdiction exists, the Ninth Circuit applies a three-prong test:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) The claim must be one which arises out of or relates to the defendant’s forum-related activities; and
- (3) The exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must

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be reasonable.

Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987). The plaintiff bears the burden of satisfying the first two prongs. *Schwarzenegger*, 374 F.3d at 802. If it does, the burden then shifts to the defendant to present a compelling case that the exercise of jurisdiction would not be reasonable. *Id.* The question of reasonableness requires the balancing of seven factors:

- 1) the extent of the defendant's purposeful interjection into the forum state's affairs;
- 2) the burden on the defendant;
- 3) conflicts of law between the forum and defendant's home jurisdiction;
- 4) the forum's interest in adjudicating the dispute;
- 5) the most efficient judicial resolution of the dispute;
- 6) the plaintiff's interest in convenient and effective relief; and
- 7) the existence of an alternative forum.

Roth v. Garcia Marquez, 942 F.2d 617, 623 (9th Cir. 1991).

Discussion

Plaintiff has failed to comply with the Court's November 24, 2015 order. In the order, the Court advised Plaintiff as to how she could revise an amended complaint to comply with the requirements of Rule 8 and she has failed to do so. The SAC is largely a recycled version of the FAC. For example, Plaintiff retains twelve paragraphs of allegations specific to Defendant Dean even though the Court granted summary judgment as to those claims. *See* SAC ¶¶ 73–79, 95–99. More importantly, Plaintiff's claims continue to excessively incorporate factual allegations by reference without specifying which facts apply to each claim. *See* SAC ¶¶ 131, 141, 148, 153, 157, 161, 165, 170, 176, 182, 186. Each of these claims purports to incorporate hundreds of prior paragraphs by reference, including the preceding claims.¹ This both prevents the SAC from informing the defendants of the nature of the claims against them and is in utter disregard of the Court's November 24, 2015 order. Accordingly, the Court finds that Plaintiff has failed to meet the requirements of Rule 8 and the Court's November 8, 2015 order and dismisses the case.

¹ In the first paragraph of every claim, Plaintiff states that she "repeats, realleges, reavers and incorporates all statements above, as if specifically set forth herein." SAC ¶¶ 131, 141, 148, 153, 157, 161, 165, 170, 176, 182, 186.

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Further, the Court finds that dismissal under Rule 12(b)(2) is appropriate. Plaintiff has not established that traditional bases of jurisdiction exist or that the exercise of jurisdiction is reasonable.² In her untimely opposition, Plaintiff essentially concedes that there is no present basis for personal jurisdiction over the remaining defendants and requests that the Court forestall the present motions to allow discovery under Federal Rule of Civil Procedure 56(d).³ Dkt. 159, 2. Given the flimsy basis for alleging personal jurisdiction, the Court finds that even assuming, *arguendo*, that the SAC adequately alleges actions by some of the remaining Defendants in the State of California, it would not be reasonable to exercise jurisdiction over them under the facts presently before the Court. Thus, the Court independently dismisses the case under Rule 12(b)(2).

Finally, Plaintiff has failed to comply with local rules. Plaintiff has failed to comply with local rule 7-9. Under this rule an opposing party must file an opposition “not later than twenty-one (21) days before the date designated for the hearing of the motion.” L-R 7-9. The rules also provide that the Court may decline to consider untimely submissions and failure to file within the deadline “may be deemed consent to the granting or denial of the motion,” except in the case of motions for summary judgment. L-R 7-12. When the Plaintiff failed to submit an opposition to Defendant’s motion to transfer at least 21 days before the noticed hearing, she violated local rule 7-9. Thus, the Court also finds that dismissal on this ground is appropriate.

Order

The motions to dismiss [148][150][153] are GRANTED.

Because of the Court finds the exercise of jurisdiction would not be reasonable, Plaintiff may not file an amended complaint in this Court. The dismissal is without prejudice to file a complaint in Nevada, if Plaintiff wishes to pursue the case there.

The motions to strike [147][151] are DENIED AS MOOT.

The hearing scheduled for February 22, 2016 is VACATED and OFF-CALENDAR.

² Plaintiff alleges no facts that would allow the Court to find that general jurisdiction exists.

³ Plaintiff has offered no excuse for filing her opposition over one week after required by local rules.

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IT IS SO ORDERED.

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