IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ahmed Mohammed,

Plaintiff,

v.

Global Linguist Solution LLC,

Defendant.

No. CV-22-909-PHX-DMF

REPORT AND RECOMMENDATION

TO THE HONORABLE STEPHEN M. MCNAMEE, SENIOR UNITED STATES DISTRICT JUDGE:

Plaintiff Ahmed Mohammed filed a *pro se* Complaint (Doc. 1). Plaintiff also filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2), which is a request for leave to proceed in this matter *in forma pauperis*. Plaintiff consented to proceed before a United States Magistrate Judge (Doc. 6).[1]

The Court granted Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs and ordered that the Complaint could not be served unless service was authorized after the Court screened the Complaint pursuant to 28 U.S.C. § 1915 (Doc. 7).

[1] Before appearances and consent of defendants, there is not full consent for a Magistrate Judge to enter dispositive orders. *See Williams v. King*, 875 F.3d 500 (9th Cir. 2017). Thus, the pursuant to General Order 21-25, this Report and Recommendation is made to Senior United States District Judge Stephen M. McNamee.

The Court proceeded to screen the Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), concluding that this Court lacks jurisdiction over the matters raised in Plaintiff's Complaint (Doc. 8). Even though it appeared to the Court that filing a First Amended Complaint in this Court would be futile, the Court gave Plaintiff an opportunity to file a First Amended Complaint addressing and correcting the deficiencies in his Complaint (*Id.*). Plaintiff timely filed a First Amended Complaint (Doc. 9).

As discussed below, it is recommended that the First Amended Complaint and this action be dismissed without prejudice because this Court lacks jurisdiction over the matters raised in the First Amended Complaint.

I. SCREENING/REVIEW PURSUANT TO 28 U.S.C. § 1915

Where a plaintiff is found to be indigent under 28 U.S.C. § 1915(a)(1) and is granted leave to proceed *in forma pauperis*, courts must engage in screening and dismiss any claims which: (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Marks v. Solemn*, 98 F.3d 494, 495 (9th Cir. 1996). *See also Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (28 U.S.C. § 1915(e) "applies to all in forma pauperis complaints," not merely those filed by prisoners). Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 8(a)(2) provides that a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." A complaint that lacks such a statement fails to state a claim and must be dismissed.

In determining whether a plaintiff fails to state a claim, a court assumes that all factual allegations in the complaint are true. *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). However, "the tenet that a court must accept a complaint's allegations as true is inapplicable to legal conclusions [and] mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The pertinent question is whether the factual allegations, assumed to be true, "state a claim to relief that is plausible on its face." *Id.* (*citing Twombly*, 550 U.S. at 570).

Where a complaint contains the factual elements of a cause, but those elements are scattered throughout the complaint without any meaningful organization, the complaint does not set forth a "short and plain statement of the claim" for purposes of Rule 8, Federal Rules of Civil Procedure. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988). Thus, a complaint may be dismissed where it lacks a cognizable legal theory, lacks sufficient facts alleged under a cognizable legal theory, or contains allegations disclosing some absolute defense or bar to recovery. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988); *Weisbuch v. County of L.A.*, 119 F.3d 778, 783, n.1 (9th Cir. 1997).

To survive dismissal, a complaint must give each defendant "fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citation omitted). In the absence of fair notice, a defendant "should not be required to expend legal resources to guess which claims are asserted against her or to defend all claims 'just in case.'" *Gregory v. Ariz. Div. of Child Support Enforcement*, No. CV11-0372-PHX-DGC, 2011 WL 3203097, at *1 (D. Ariz. July 27, 2011).

This Court is a limited jurisdiction court. Fed. R. Civ. P. 8(a)(1) requires that a complaint contain a "short and plain statement of the grounds for the court's jurisdiction." Importantly, the party asserting jurisdiction bears the burden of establishing jurisdiction. *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986). The United States Supreme Court has stated that a federal court must not disregard or evade the limits on its subject matter jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Thus, the Court is obligated to evaluate its subject matter jurisdiction in each case and to dismiss a case when such jurisdiction is lacking. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004); Fed. R. Civ. P. 12(h)(3). Unlike state courts, federal courts only have jurisdiction over a limited number of cases, and those cases often involve either a question of federal law (federal question jurisdiction) or a significant controversy between citizens of different states

(diversity jurisdiction). *See* 28 U.S.C. §§ 1331, 1332.

Where the complaint has been filed by a *pro se* plaintiff, as is the case here, courts must "construe the pleadings liberally ... to afford the petitioner the benefit of any doubt." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). Under the pleading standard set by the Supreme Court's decision in *Iqbal*, however, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Further, "[a] district court should not dismiss a *pro se* complaint without leave to amend unless 'it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.'" *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (*quoting Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir. 1988) (per curiam)).

When the court dismisses the complaint of a *pro se* litigant with leave to amend, the "court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Id.* (*quoting Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). "Without the benefit of a statement of deficiencies, the *pro se* litigant will likely repeat previous errors." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 624 (9th Cir. 1988) (*quoting Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)). The court should not, however, advise the litigant how to cure the defects; this type of advice "would undermine district judges' role as impartial decisionmakers." *Pliler v. Ford*, 542 U.S. 225, 231, 124 S.Ct. 2441, 159 L.Ed.2d 338 (2004).

II. THIS COURT LACKS JURISDICTION OVER THE FIRST AMENDED COMPLAINT

The First Amended Complaint (Doc. 9), like the original Complaint (Doc. 1), alleges that the Court has jurisdiction under the "Defense Base Act" (Doc. 9 at 3; *see also* Doc. 1 at 3). The Defendant, alleged events, and relief sought in the Complaint and First Amended Complaint are also similar (Docs. 1, 9).

In the First Amended Complaint, Plaintiff alleges that he worked for Defendant

Global Linguest Solution LLC[2] as a translator for the American forces in Iraq (*Id.* at 5). During that work, Plaintiff alleges that he was "subjected to attempted murder" and saw horrific things during fighting that caused Plaintiff to suffer from great psychological effects, such as depression and anxiety (Doc. 9 at 5-7). Plaintiff seeks financial compensation for such psychological injuries (*Id.* at 7).

The Defense Base Act, found at 42 U.S.C. §§ 1651–1655, extended the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§ 901–950. "The [Defense Base Act] is a workers' compensation scheme for civilian employees working outside of the continental United States on military bases or for companies under contract with the U.S. government." *Chugach Mgmt. Servs. v. Jetnil*, 863 F.3d 1168, 1170 (9th Cir. 2017). "Rather than draft a new workers' compensation scheme, Congress used the [Defense Base Act] to extend the LHWCA to apply to the newly-covered workers." *Kalama Servs., Inc. v. Dir., Off. of Workers' Comp. Programs*, 354 F.3d 1085, 1090 (9th Cir. 2004) (citations omitted).

The Defense Base Act is administered by the United States Department of Labor, in the administrative Office of Workers' Compensation Programs, subject to hearing and decision in contested cases by the Office of Administrative Law Judges in the United States Department of Labor, and administrative appeal to the Benefits Review Board ("BRB"). 33 U.S.C. §§ 919, 921(b)(3); *see also Chugach Mgmt. Servs. v. Jetnil*, 863 F.3d at 1170. Thus, this Court lacks jurisdiction to determine whether an application for compensation under the Defense Base Act should be granted.

While the Court cannot give Plaintiff legal advice, the Court notes that the United States Department of Labor's website under the Office of Workers' Compensation Programs section has a section for frequently asked questions regarding the filing of an initial Defense Base Act claim for compensation: https://www.dol.gov/agencies/owcp/dlhwc/FAQ/DBAfaqs.

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[2] Defendant's name was spelled Global Linguist Solution LLC in the Complaint (Doc. 1 at 1-2).

In *Pearce v. Director, Office of Workers' Compensation Programs*, 603 F.2d 763 (9th Cir. 1979), the Ninth Circuit "determined that petitions for review of compensation orders arising under the Defense Base Act are to be filed directly in the Court of Appeal." *Glob. Linguist Sols., LLC v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019). Thus, this Court lacks jurisdiction over any petition for review of compensation orders by the BRB arising under the Defense Base Act. Further, the Ninth Circuit has held that the LHWCA, which is incorporated into the Defense Base Act, displaces common-law causes of action. *Sample v. Johnson*, 771 F.2d 1335, 1344-47 (9th Cir. 1985).

Thus, this Court lacks jurisdiction over the First Amended Complaint (Doc. 9).

Accordingly,

IT IS HEREBY RECOMMENDED that the First Amended Complaint (Doc. 9) and this action be dismissed without prejudice for lack of jurisdiction.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of the District Court's judgment. The parties shall have fourteen days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72. The parties shall have fourteen days within which to file responses to any objections. Failure to file timely objections to the Magistrate Judge's Report and Recommendation may result in the acceptance of the Report and Recommendation by the District Court without further review. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

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Failure to file timely objections to any factual determination of the Magistrate Judge may be considered a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation. *See* Fed. R. Civ. P. 72.

Dated this 27th day of June, 2022.

Honorable Deborah M. Fine
United States Magistrate Judge