

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 22 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SHEILA HALOUSEK,

Plaintiff-Appellant,

v.

VERIZON,

Defendant-Appellee.

No. 23-16101

D.C. No. 2:22-cv-01728-TLN-JDP
Eastern District of California,
Sacramento

ORDER

Before: FERNANDEZ, NGUYEN, and OWENS, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On August 22, 2023, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's August 22, 2023 order, we conclude that this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 6) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

No further filings will be entertained in this closed case.

DISMISSED.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

SHEILA HALOUSEK,

CASE NO: 2:22-CV-01728-TLN-JDP

v.

VERIZON,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 8/7/2023**

Keith Holland
Clerk of Court

ENTERED: August 7, 2023

by: /s/ H. Huang _____
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHELIA HALOUSEK,

No. 2:22-cv-01728-TLN-JDP

Plaintiff,

ORDER

VERIZON,

Defendant.

On June 12, 2023, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed objections on February 5, 2020 (ECF No. 7), and they were considered by the undersigned.

The Court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) ("[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court"). Having reviewed the file, the Court finds the findings and recommendations to be supported by the record and by the proper analysis.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The proposed Findings and Recommendations filed June 12, 2023 (ECF No. 6) are

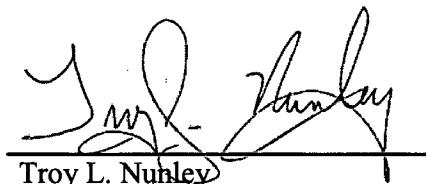
3 ADOPTED IN FULL;

4 2. Plaintiff's first amended complaint (ECF No. 4) is DISMISSED without leave to amend;

5 3. Plaintiff's motion to change venue (ECF No. 8) is DENIED as moot; and

6 4. The Clerk of Court is directed to close this case.

7 Date: August 4, 2023

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12 Troy L. Nunley
13 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHELIA HALOUSEK,

Case No. 2:22-cv-01728-TLN-JDP (PS)

Plaintiff,

FINDINGS AND RECOMMENDATIONS

VERIZON,

Defendant.

Plaintiff has filed an amended complaint that contains essentially the same factual allegations as her previous complaint. Again, the amended complaint fails to state a claim. Since the amended complaint contains the same deficiencies as her previous one, I find that granting leave to amend would be futile and recommend dismissal without leave to amend.

Screening and Pleading Requirements

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,

1 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that
2 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
3 n.2 (9th Cir. 2006) (en banc) (citations omitted).

4 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
5 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it
6 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
7 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
8 However, “a liberal interpretation of a civil rights complaint may not supply essential elements
9 of the claim that were not initially pled.” *Brunsv v. Nat'l Credit Union Admin.*, 122 F.3d 1251,
10 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

11 **Analysis**

12 Plaintiff’s factual allegations remain essentially the same as those in her original
13 complaint: she alleges that a friend gifted her a new cellphone from Verizon, but the phone turned
14 out to be used and did not function properly. ECF No. 4 at 9-10. Plaintiff took the phone to two
15 different Verizon stores in Sacramento, asking for a fix or a replacement. *Id.* at 10-11. Neither
16 store gave plaintiff a new phone or offered a fix. *Id.*

17 As indicated in my prior screening order, plaintiff’s allegations fail to state a federal
18 claim. The statutes that she references have no apparent application in this case. Plaintiff again
19 cites 15 U.S.C § 6103(e), which authorizes the state to bring an action on behalf of its citizens,
20 *see Fed. Trade Comm'n v. All US Mktg. LLC*, No. 6:15-CV-1016-ORL-28KRS, 2017 WL
21 9398643, at *7 (M.D. Fla. Apr. 13, 2017) (“Under [15 U.S.C. § 6103], the State can bring an
22 action for violations of the [Telemarketing Sales Rule] only on behalf of residents of Florida.”),
23 and 47 U.S.C. § 227, which is a provision of the Telephone Consumer Protection Act (“TCPA”)
24 concerning robocalls, *see Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2344
25 (2020), but neither provides plaintiff with a cause of action here. ECF No. 4 at 2-4.

26 Plaintiff also alleges state law claims for violations of the of the Consumers Legal
27 Remedies Act, California Civil Code §§ 1770(a) & 1780(a). ECF No. 4 at 4-5. But plaintiff has
28 yet to assert a properly pleaded federal cause of action that would permit supplemental

1 jurisdiction to extend to her state law claims. *See* 28 U.S.C. §§ 1331 (“The district courts shall
2 have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the
3 United States), 1367(a) (where the district court has original jurisdiction, it “shall have
4 supplemental jurisdiction over all other claims that are so related to claims in the action within
5 such original jurisdiction . . .”). Supplemental jurisdiction may be exercised if there is a federal
6 claim to which to tether a state law claim, but a federal claim is lacking here. The court should
7 not exercise supplemental jurisdiction.

8 In addition, plaintiff claims that I am acting on behalf and in the interest of defendants and
9 argues that she “should have been appointed her own Magistrate Judge to argue and present on
10 her behalf.” ECF No. 4 at 6. Plaintiff also appears to argue that she is being treated unequally
11 under the Fifth and Fourteenth Amendments. *Id.*

12 Plaintiff has not alleged facts suggesting that she has been treated inequitably. To the
13 extent she asks me to recuse myself from this case, that request is denied. Section 455(a)
14 provides that a judge should recuse him or herself “in any proceeding in which his [or her]
15 impartiality might reasonably be questioned.” The judge should also disqualify him or herself if
16 the judge “has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455(b)(1). Plaintiff
17 has not alleged facts suggesting that my impartiality might reasonably be questioned, and so
18 recusal is not appropriate.

19 Accordingly, it is hereby RECOMMENDED that:

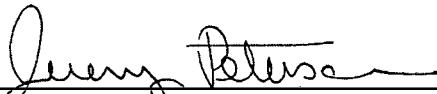
20 1. Plaintiff’s first amended complaint, ECF No. 4, be dismissed without leave to amend.
21 2. The Clerk of Court be directed to close the case.

22 These findings and recommendations are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
24 after being served with these findings and recommendations, any party may file written
25 objections with the court and serve a copy on all parties. Such a document should be captioned
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
27 objections shall be served and filed within fourteen days after service of the objections. The
28 parties are advised that failure to file objections within the specified time may waive the right to

1 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
2 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: June 10, 2023


6 JEREMY D. PETERSON
7 UNITED STATES MAGISTRATE JUDGE

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Hi,

Merry Christmas!   and
Happy New Year!! 

I got a new job and I
brought this phone for you.

I also got some money

to buyerry packs to

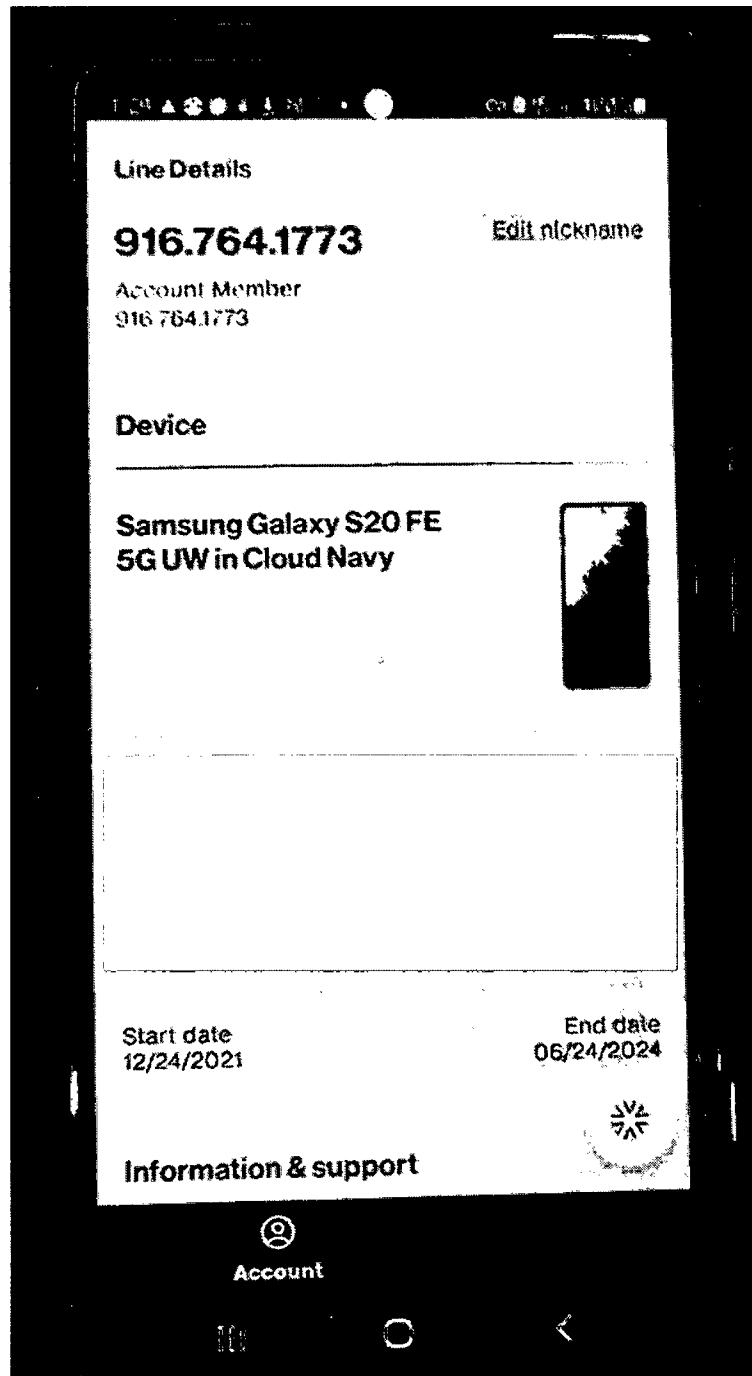
I will bring this phone for

you.

See

you.

Note Explaining Gift of New Phone - EXHIBIT 1



New Phone Purchase Date of 12/24/2021 - EXHIBIT 2

Charls 9-6

verizon[®]

We want to take a moment to:

THANK YOU FOR YOUR BUSINESS!

Dear Valued Customer,

We value your business here and aim to make your visit unique, memorable and efficient. We always strive to answer all questions during your visit.

If you are in need of any future assistance, please feel free to stop by to see if an appointment is available or wait shortly for help from our dedicated team. Thank you and have a great day!

Auto Pay: (866) 868-3882

Port: (888) 844-7095

Financial Service: (866) 266-1445

International Services: (800) 711-8300

Number Change / Port-in #: (866) 465-5415

Insurance Claim (Asurion): (888) 881-2622 or PhoneClaim.com/Verizon

AOL/ Transfer Your Service: (888) 832-4540

Loyalty/ Disconnect: (800) 392-0717

Customer Service: (800) 922-0204

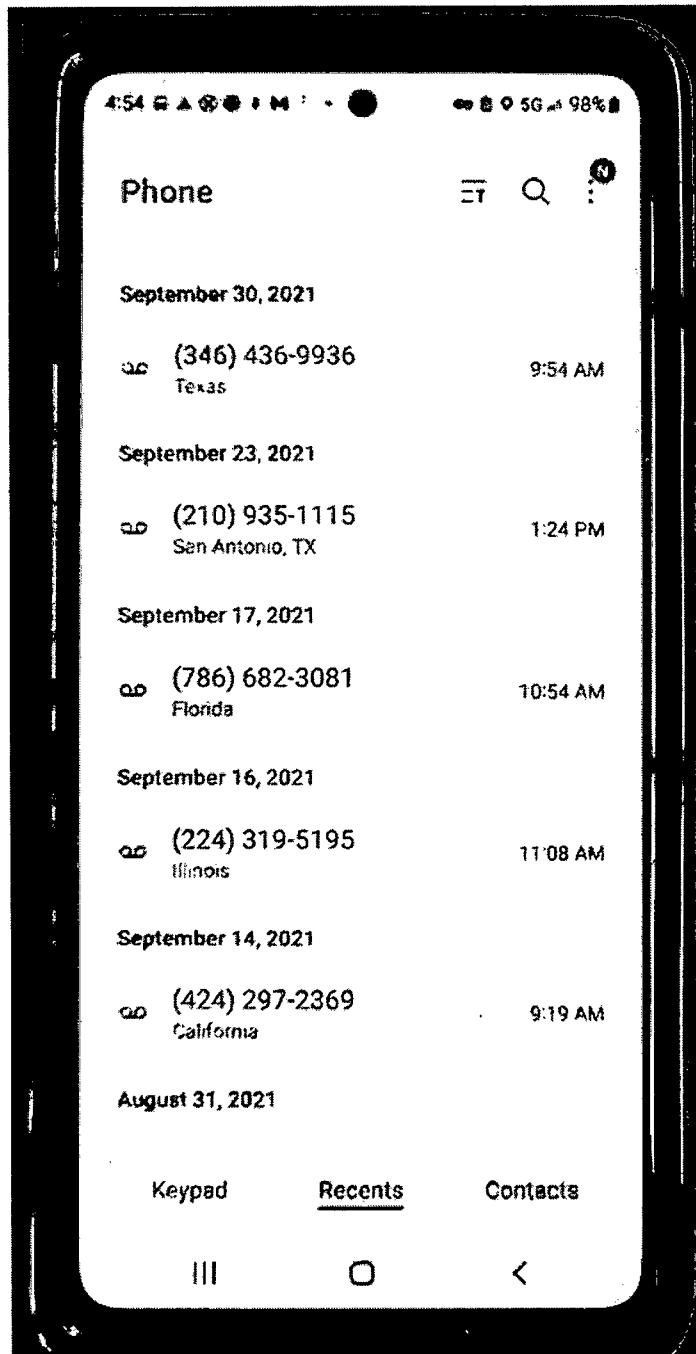
Winback: (800) 896-9689 / Telesales (800) 256-4646

Activation Assistance: (877) 807-4646 Account Pin #

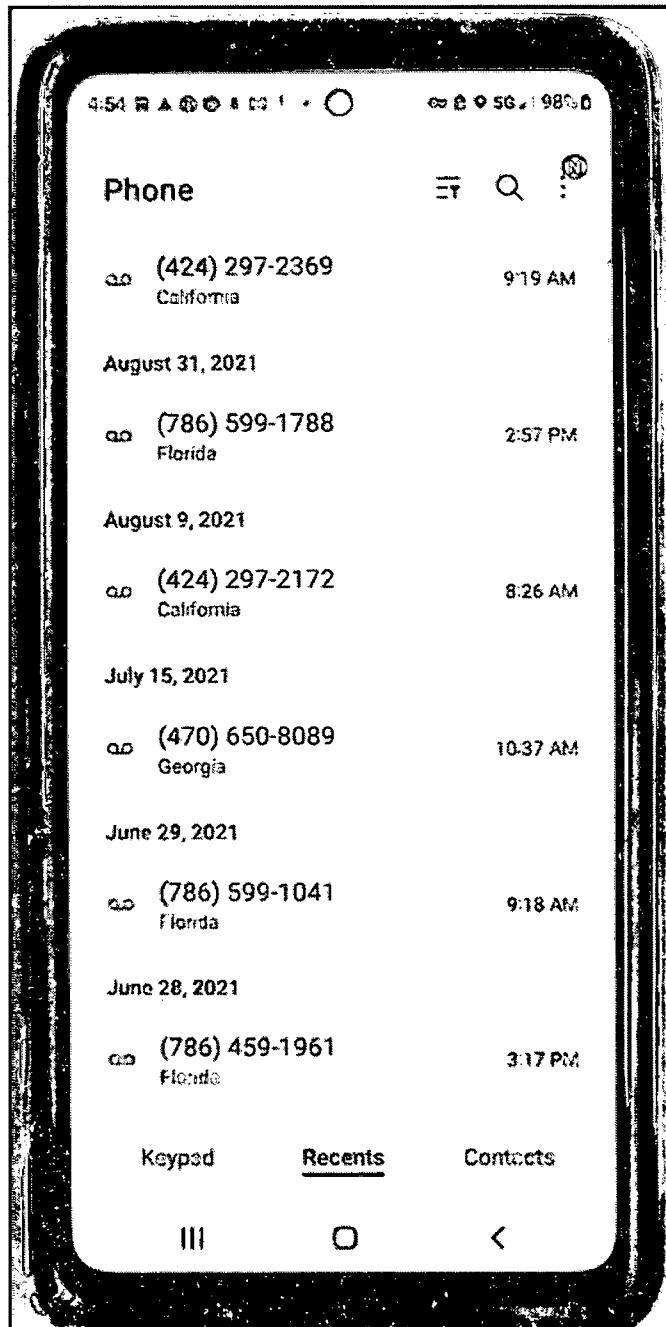
Set Up Phone : Text (Set Up) to 867867

verizon[®]

Verizon's Assistance on 9/6/2022 - **EXHIBIT 3**



Prior Use of New Cell Phone - EXHIBIT 4 Page 1 of 2



Prior Use of New Cell Phone - EXHIBIT 4 Page 2 of 2