

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Wilt v. Pfizer, Inc.

Wilt · No. 2:24-cv-2058-DJC-JDP (PS) · Decided April 23, 2025

SUMMARY

The court grants plaintiff leave to proceed in forma pauperis but dismisses his complaint against Pfizer, Inc. with leave to amend. The order concludes that plaintiff cannot sue on behalf of the public, lacks a private right of action under the FTC Act, fails to establish federal-question jurisdiction or state-law claims, and must file an amended complaint or notice of voluntary dismissal within thirty days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 23, 2025
DOCKET	2:24-cv-2058-DJC-JDP (PS)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se plaintiff brought a civil rights and state-law consumer-protection action against Pfizer, Inc. and moved to proceed in forma pauperis. The court screened the complaint under 28 U.S.C. § 1915(e), granted in forma pauperis status, dismissed the complaint with leave to amend, and gave plaintiff thirty days to amend or voluntarily dismiss.
STANDARD OF REVIEW	The court screened the in forma pauperis complaint under 28 U.S.C. § 1915(e), accepting well-pleaded allegations for purposes of assessing plausibility and applying the pleading standards under Federal Rules of Civil Procedure 8(a)(2) and 9(b).
PRECEDENTIAL VALUE	unpublished
PARTIES	David Wilt v. Pfizer, Inc.

TOPICS

- subject matter jurisdiction
- section 1983
- consumer protection
- pleadings
- civil procedure

PRACTICE AREAS

civil procedure

consumer protection

civil rights

constitutional law

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable claim under 42 U.S.C. § 1983 against Pfizer, a private corporation, and plausibly alleged a violation of federal or constitutional rights.
2. Whether the Federal Trade Commission Act provides plaintiff with a private right of action.
3. Whether plaintiff adequately pleaded claims under the California Consumer Legal Remedies Act, California false-advertising law, and California Business and Professions Code § 17500.5.
4. Whether the complaint adequately invoked federal subject matter jurisdiction.

HOLDINGS

1. The complaint failed to state a § 1983 claim because plaintiff did not allege that Pfizer acted under color of state law and did not plausibly allege a violation of constitutional or other federal rights.
2. The Federal Trade Commission Act does not provide a private right of action; only the Federal Trade Commission has standing to enforce the Act.
3. Plaintiff failed to state a CLRA claim because he did not allege reliance on Pfizer's misrepresentations in purchasing goods or services or economic injury resulting from such a purchase.
4. Plaintiff failed to state a claim under California's false-advertising law because he did not allege that he entered into a transaction, relied on the advertisements, or lost money or property as a result.
5. Section 17500.5 did not apply because plaintiff did not allege an unadvertised restriction on the quantity of an article advertised for sale or a refusal to sell at the advertised price.

KEY QUOTATIONS

“Since Pfizer is not a proper defendant and plaintiff’s state law claims are insufficiently alleged, I will dismiss plaintiff’s complaint with leave to amend.” (at 1)

“Plaintiff cannot bring claims on behalf of the public.” (at 3)

“In addition, plaintiff cannot state a claim under the Federal Trade Commission Act because there exists no private right of action.” (at 3)

“The complaint is dismissed for the reasons stated above. I will allow plaintiff a chance to amend his complaint before recommending that this action be dismissed.” (at 4)

FACTUAL BACKGROUND

Plaintiff alleged that Pfizer publicly represented that its COVID-19 vaccine was 95% effective against infection and disseminated other allegedly misleading information concerning durability, transmission, and protection against variants. He claimed that these representations distorted his and the public's vaccination risk-benefit analysis and alleged that he or others might have chosen an alternative vaccine or no vaccination had the truth

been known. The complaint did not allege that plaintiff relied on the representations in purchasing goods or services, lost money or property, or that Pfizer acted under color of state law.

PROCEDURAL HISTORY

Plaintiff filed an original complaint alleging that Pfizer misrepresented the efficacy and performance of its COVID-19 vaccine and asserted claims under 42 U.S.C. § 1983, the Federal Trade Commission Act, and several California statutes. On screening, the court concluded that Pfizer was not a proper § 1983 defendant, that the complaint did not plausibly allege a federal constitutional or other federal-rights violation, that the FTC Act provides no private right of action, and that the California claims were inadequately pleaded. The complaint was dismissed with leave to amend; no final dismissal of the action was entered.

DISPOSITION

dismissed

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Kobold v. Good Samaritan Reg'l Med. Ctr., 832 F.3d 1024, 1038 (9th Cir. 2016)
- Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)
- Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam)
- Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 1208 (9th Cir. 2017)
- Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)
- Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008)
- Dreisbach v. Murphy, 658 F.2d 720, 730 (9th Cir. 1981)
- Kerr v. Am. Home Mortg. Serv'g, Inc., No. 10-cv-1612-BEN-AJB, 2010 WL 3743879, at *3 (S.D. Cal. Sept. 22, 2010)
- Herron v. Best Buy Co. Inc., 924 F. Supp. 2d 1161, 1170 (E.D. Cal. 2013)
- Sateriale v. R.J. Reynolds Tobacco Co., 697 F.3d 777, 793 (9th Cir. 2012)
- Laster v. T-Mobile USA, Inc., 407 F. Supp. 2d 1181, 1194 (S.D. Cal. 2005), aff'd, 252 F. App'x 777 (9th Cir. 2007)
- Lacey v. Maricopa Cnty., 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
10 11 DAVID WILT, Case No. 2:24-cv-2058-DJC-JDP (PS) 12 Plaintiff, 13 v.
ORDER 14 PFIZER, INC., 15 Defendant. 16 17 Plaintiff David Wild brings this civil rights action

against defendant Pfizer, Inc. for 18 misrepresentations the company allegedly made during the COVID-19 Pandemic about its 19 vaccines.

Since Pfizer is not a proper defendant and plaintiff's state law claims are insufficiently 20 alleged, I will dismiss plaintiff's complaint with leave to amend. Plaintiff's application to 21 proceed in forma pauperis makes the required showing and will be granted. 22 Screening and Pleading Requirements 23 A federal court must screen the complaint of any claimant seeking permission to proceed 24 in forma pauperis.

See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and 25 dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon 26 which relief may be granted, or seeks monetary relief from a defendant who is immune from such 27 relief. *Id.* 28 A complaint must contain a short and plain statement that plaintiff is entitled to relief, 1 Fed.

R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its 2 face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not 3 require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 4 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere 5 possibility of misconduct," the complaint states no claim.

Id. at 679. The complaint need not 6 identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 7 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that 8 give rise to an enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 9 n.2 (9th Cir. 2006) (en banc) (citations omitted).

10 The court must construe a pro se litigant's complaint liberally. See *Haines v. Kerner*, 404 11 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it 12 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which 13 would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir.

2017). 14 However, "a liberal interpretation of a civil rights complaint may not supply essential elements 15 of the claim that were not initially pled." *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 16 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 17 Allegations 18 The complaint alleges that defendant deceived the public by widely disseminating the 19 misrepresentation that its vaccine achieved 95% efficacy against COVID-19 infections, and also 20 by sharing other misleading information.

ECF No. 1. Plaintiff alleges harm in that defendant's 21 conduct allegedly impacted "[p]laintiff and the public's decision-making process concerning 22 vaccination status to his/their detriment" based on a distorted risk-benefit analysis caused by 23 defendant's misrepresentations. *Id.* at 55. Additionally, plaintiff alleges that, had he and the 24 public "known the truth about the efficacy of

Pfizer's COVID-19 vaccine, [p]laintiff and a 25 substantial portion [of the public] would likely have opted for an alternative or foregone 26 inoculation altogether." Id. at 55-56.

27 Plaintiff brings this action under "California's Deceptive Trade Practice Act ('CDTPA') 28 id. at 6, the Federal Trade Commission ("FTC") Act, id. at 58, California Business and 1 Professional Code §§ 17500, 17500.5, California Civil Code 1770, as well as the Eighth and 2 Fourteenth Amendment to the United States Constitution, id. at 1, 6. 3 The complaint asserts five causes of action as follows: "misrepresentations concerning 4 relative risk reduction;" "misrepresentations concerning durability of protection;" 5 "misrepresentations concerning transmission;" "misrepresentations concerning protection against 6 variants;" and "scheme to conceal vaccine underperformance." ECF No. 1 at 58-60.

Plaintiff 7 seeks damages and injunctive relief. Id. at 61-62. 8 Analysis 9 Plaintiff, proceeding pro se, can only bring and prosecute claims on behalf of himself. See 10 *Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008). Plaintiff cannot bring claims on 11 behalf of the public. 12 In addition, plaintiff cannot state a claim under the Federal Trade Commission Act 13 because there exists no private right of action.

See *Dreisbach v. Murphy*, 658 F.2d 720, 730 (9th 14 Cir. 1981); *Kerr v. Am. Home Mortg. Serv'g, Inc.*, No. 10-cv-1612-BEN-AJB, 2010 WL 15 3743879, at *3 (S.D. Cal. Sep. 22, 2010) (explaining that only the Federal Trade Commission has 16 standing to enforce the Act). While some of the California statutes cited by plaintiff allow 17 individuals to bring lawsuits, plaintiff fails to establish the court's subject matter jurisdiction to 18 sue and fails to state a claim.

19 The complaint asserts that this court has subject matter jurisdiction on the basis of a 20 federal question, "specifically 28 U.S.C. § 2241 U.S.C. § 1983." ECF No. 1 at 6. Section 2241 21 grants federal courts power to grant writs of habeas corpus and has no application here. Section 22 1983 exists to redress violations of rights, privileges, or immunities secured by the Constitution 23 and federal laws by a person or entity acting under the color of state law.

See 42 U.S.C. § 1983. 24 Plaintiff does not allege that defendant acted under color of state law. Plaintiff also does not 25 plausibly allege a violation of his constitutional or other federal rights. A conclusory assertion 26 that defendant "violated the Eighth and Fourteenth Amendment to the United States Constitution" 27 does not suffice. See *Bell Atl. Corp.*, 550 U.S. 544, 555 (2007) ("labels and conclusions" do not 28 suffice to state a claim).

As such, the complaint fails to invoke the court's subject matter 1 jurisdiction. And plaintiff fails to state a claim under any of the California statutes under which 2 he brings his claims. 3 California's Consumer Legal Remedies Act ("CLRA") makes illegal "unfair methods of 4 competition and unfair or deceptive acts or practices undertaken by any person in a transaction 5

intended to result or which results in the sale or lease of goods or services to any consumer.” Cal. 6 Civ.

Code § 1770 (emphasis added). A CLRA claim must satisfy the heightened pleading 7 standard for fraud. See Fed. R. Civ. P. 9(b); *Herron v. Best Buy Co. Inc.*, 924 F. Supp. 2d 1161, 8 1170 (E.D. Cal. 2013). Plaintiff does not allege that he relied on defendant’s misrepresentations 9 in deciding to make a purchase of any goods or services, or that he suffered economic injury 10 resulting from any such purchase.

He therefore has no claim under the CLRA. See *Sateriale v. 11 R.J. Reynolds Tobacco Co.*, 697 F.3d 777, 793 (9th Cir. 2012) (affirming dismissal of CLRA 12 claim because the plaintiff did not allege economic injury, reliance, or causation). 13 California’s false advertising law (“FAL”) prohibits any “unfair, deceptive, untrue, or 14 misleading advertising.” Cal. Bus. and Prof.

Code § 17500. A private cause of action exists for 15 “[a]ny person who has suffered injury in fact and has lost money or property as a result of a 16 violation[.]” Cal. Bus. & Prof. Code § 17535; see also *Laster v. T-Mobile USA, Inc.*, 407 F. 17 Supp. 2d 1181, 1194 (S.D. Cal. 2005), *aff’d*, 252 F. App’x 777 (9th Cir. 2007) (dismissing FAL 18 claim where the plaintiffs did not allege reliance on the defendants’ advertisements in entering 19 into transactions for sale).

Plaintiff does not allege that he entered into any transactions for sale 20 or that he lost money or property as a result of entering into transactions for sale because of 21 defendant’s alleged misrepresentations. Plaintiff’s California FAL claim fails. See Cal. Bus. & 22 Prof. Code § 17535. 23 Plaintiff also cites California Business and Professional Code § 17500.5.

This section 24 prohibits “[u]nadvertised restrictions as to limitations on quantity of articles advertised[.]” Cal. 25 Bus. & Prof. Code § 17500.5. Plaintiff does not allege that defendant restricted the quantity of an 26 article advertised for sale or refused to sell an article at the advertised price. See *id.* Accordingly, 27 this section has no bearing on any of defendant’s alleged conduct.

28 The complaint is dismissed for the reasons stated above. I will allow plaintiff a chance to 1 | amend his complaint before recommending that this action be dismissed. If plaintiff decides to 2 | file an amended complaint, the amended complaint will supersede the current one. See *Lacey v. 3 | Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (*en banc*).

This means that the amended 4 | complaint will need to be complete on its face without reference to the prior pleading. See E.D. 5 | Cal. Local Rule 220. Once an amended complaint is filed, the current one no longer serves any 6 | function.

Therefore, in an amended complaint, as in the original, plaintiff will need to assert each 7 | claim and allege each defendant’s involvement in sufficient detail. The amended complaint 8 | should be

titled "First Amended Complaint" and refer to the appropriate case number. If plaintiff 9 | does not file an amended complaint, I will recommend that this action be dismissed.

10 Accordingly, it is hereby ORDERED that: 11 1. Plaintiff's motion to proceed in forma pauperis, ECF No. 2, is GRANTED. 12 2. Plaintiffs complaint, ECF No. 1, is DISMISSED with leave to amend. 13 3. Within thirty days from service of this order, plaintiff shall file either (1) an amended 14 | complaint or (2) notice of voluntary dismissal of this action without prejudice.

15 4. Failure to timely file either an amended complaint or notice of voluntary dismissal may 16 result in the imposition of sanctions, including a recommendation that this action be dismissed 17 || with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 18 5.

The Clerk of Court shall send plaintiff a complaint form with this order. 19 20 IT IS SO ORDERED. 21 (q Sty - Dated: _ April 22, 2025 q—— 22 JEREMY D. PETERSON 54 UNITED STATES MAGISTRATE JUDGE 24 25 26 27 28