

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Murrey Life Insurance & Endowment Trust v. Kohl's, Inc.

No. 3:25-cv-2134-CAB-JLB, United States District Court for the Southern District of California (August 20,
2025)

SUMMARY

The United States District Court for the Southern District of California denied the plaintiff's application to proceed in forma pauperis and dismissed the complaint and motion for a temporary restraining order. The court held that a trustee may not represent a trust pro se and that the complaint did not establish federal-question or diversity jurisdiction. The dismissal under Federal Rule of Civil Procedure 12(b)(1) was without prejudice, and the court permitted refiling of an amended complaint by September 3, 2025.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 MURREY LIFE INS. & ENDOWMENT Case No.: 3:25-cv-2134-CAB-JLB
TRUST, 12 ORDER Plaintiff, 13 v. (1) DENYING IFP APPLICATION; 14 and KOHL'S, INC. 15
Defendant.

(2) DISMISSING COMPLAINT 16 17 [Doc. Nos. 1–2, 4.] 18 19 On August 19, 2025, Plaintiff
Murrey Life Insurance and Endowment Trust filed a 20 complaint against Defendant Kohl's Inc.
[Doc. No. 1.] Plaintiff also filed a motion for a 21 temporary restraining order against Defendant.
[Doc. No. 4.] At the time of filing, Plaintiff 22 did not prepay the civil filing fees 28 U.S.C. §
1914(a) requires.

Instead, Plaintiff filed a 23 motion to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. §
1915(a). [Doc. No. 24 2.] For the reasons discussed below, the Court DENIES the Plaintiff's
motion to proceed 25 IFP and DISMISSES this complaint. 26 /// 27 /// 28 1 I. Motion to Proceed
IFP 2 Generally, all parties instituting a civil action in this Court must pay a filing fee.

See 3 28 U.S.C. § 1914(a); CivLR 4.5(a). But under 28 U.S.C. § 1915(a), the Court may 4
authorize any suit's commencement, prosecution, or defense without payment of fees if the 5
plaintiff submits an affidavit, including a statement of all his or her assets, showing he or 6 she is
unable to pay filing fees or costs. 7 Mr. Murrey claims that he is the authorized representative of
the Murrey Life 8 Insurance and Endowment Trust.

[Doc. No. 1 at 1.] The Ninth Circuit has ruled that a trustee may not proceed pro se on behalf of the trust. *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). If Mr. Murrey is representing the interests of the trust, he must obtain counsel to represent the trust. See *Maisano v. Welcher*, 940 F.2d 499, 501 (9th Cir. 1991) (finding that the plaintiffs, who were both trustees and beneficiaries of the trust, lacked standing to maintain an action on behalf of the trust as pro se litigants).

Plaintiff's IFP motion is DENIED as moot. II. Dismissal Pursuant to Fed. R. Civ. P. 12(b)(1) Federal courts are courts of limited jurisdiction. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005).

As it relates to Fed. R. Civ. P. 12(b)(1), "subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 630 (2002).

As such, the Court can dismiss a case on subject matter jurisdiction grounds sua sponte. *Snell v. Cleveland, Inc.*, 213 F.3d 822, 826 (9th Cir. 2002). Although Plaintiff claims that the Court's exercise of jurisdiction is based on a federal question, [Doc. No. 1-1], Plaintiff does not assert a federal cause of action.

The only claim that appears alleged, one arising under the Uniform Commercial Code, does not raise a question of federal law. See, e.g., *Maxwell v. Kaylor*, No. 19-CV-07832-LHK, 2020 WL 4732340, at *6 (N.D. Cal. Aug. 14, 2020) (explaining that claims relating to the UCC are based on state law). The Court construes Plaintiff's complaint liberally.

See *Hebbe v. Pliler*, 627 F.3d 342 (9th Cir. 2010). Looking to diversity jurisdiction as an alternate basis to maintain this lawsuit, 28 U.S.C. § 1332(a), Plaintiff fails to meet the amount in controversy requirement. Diversity jurisdiction "requires complete diversity of citizenship and an amount in controversy greater than \$75,000." *Canela v. Costco Wholesale Corp.*, 971 F.3d 849 (9th Cir.

2020). Plaintiff fails to identify any damages in his complaint. In the materials attached to his complaint, Plaintiff indicates the Defendant is responsible for only \$10,000 in damages. [Doc. No. 1-3.] Plaintiff's complaint is sparse, and the voluminous materials attached to his filing do not clarify his allegations. See *Jackson v. Ariz.*, 885 F.2d 639, 640-41 (9th Cir.

1989) (a complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact), superseded by statute on other grounds as stated in *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

As pleaded, Plaintiff has not established subject matter jurisdiction based on either diversity or a proper federal question. The Court dismisses this entire action under Fed. R. Civ. P. 12(b)

(1) without prejudice. 16 iI. Conclusion 17 Plaintiffs' IFP application is DENIED, and the complaint and motion for temporary 18 restraining order are DISMISSED.

Plaintiff may refile any amended complaint by 19 ||September 3, 2025. As explained, Mr. Murrey may not proceed pro se in a legal action 20 behalf of the trust he represents. 21 It is SO ORDERED. 22 23 Dated: August 20, 2025 € ZL 24 Hon. Cathy Ann Bencivengo 25 United States District Judge 26 27 28