

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

Brar v. Microsoft Corporation

No. 1:25-cv-00527-CDB (E.D. Cal. June 5, 2025) · No. 1:25-cv-00527-CDB · Decided June 6, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 TANBEER SINGH BRAR, Case No. 1:25-cv-00527-CDB 12 Plaintiff,
ORDER GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS 13 v. (Doc. 2) 14
MICROSOFT CORPORATION, ORDER DENYING MOTION FOR 15 Defendant.
PROTECTION OF RIGHTS 16 (Doc. 5) 17 FIRST SCREENING ORDER REQUIRING
RESPONSE FROM PLAINTIFF 18 (Doc.

1) 19 21-DAY DEADLINE 20 21 Plaintiff Tanbeer Singh Brar, proceeding pro se, initiated this
action with the filing of a 22 complaint against Defendant Microsoft Corporation on May 5, 2025.
(Doc. 1). This matter is 23 before the court on a screening of the complaint. Plaintiff did not pay
the filing fee and instead 24 filed an application to proceed in forma pauperis pursuant to 28
U.S.C. § 1915.

(Doc. 2). 25 Plaintiff asserts the Court may exercise diversity jurisdiction over the action under 28
U.S.C. § 26 1332. (Doc. 1 at 3). 27 Upon screening, the Court finds that Plaintiff has not pled
sufficient facts to state a cognizable claim upon which relief may be granted.

For the reasons set forth below, Plaintiff is 1 ordered to file a first amended complaint or, if he is
unable to correct the deficiencies outlined 2 below, voluntarily dismiss this action. 3 I. Motion to
Proceed In Forma Pauperis 4 Plaintiff has filed a motion to proceed in forma pauperis without
prepaying fees or costs 5 pursuant to 28 U.S.C. § 1915. (Doc.

2). The Court finds Plaintiff has made the showing required 6 by § 1915, and the request to
proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a) 7 (authorizing the
commencement of an action “without prepayment of fees or security” by a 8 person who is unable
to pay such fees). 9 II. Motion for Protection of Rights 10 On May 15, 2025, Plaintiff filed a
document titled “motion for protection rights [sic] 11 pursuant to the First Amendment.” (Doc.

5). It is unclear what Plaintiff is requesting in his 12 filing. Plaintiff asks that the Court should
have “orally statement by obtaining my physical 13 presence this Court to which the Court have to
scheduling court hearing.” (Id. at 8). He requests 14 the Court to “not take anymore decision and
to not make any order for findings, recommendation 15 and any order to show cause in written.”
(Id.).

Though Plaintiff's filing is unclear, insofar as its 16 contents can be understood, it appears that Plaintiff seeks a hearing in this Court where he may 17 appear in person and for the Court to cease issuing certain orders and recommendations. Plaintiff 18 asserts, among other things, that Defendant's "computer scientist" removed his "identification 19 from profile at Azure Portal due to matter was raised by [Plaintiff] about their online security and 20 safety." (Id. at 1).

21 Plaintiff's complaint is before the Court for screening and, as such, any hearing regarding 22 the substance of the complaint is premature. As to the Court ceasing certain decisions, such as 23 orders to show cause and findings and recommendations, Plaintiff offers no comprehensible 24 reasoning or citations supporting such an expansive request.

Accordingly, Plaintiff's motion 25 (Doc. 5) will be denied. 26 III. Screening Requirement 27 Pursuant to 28 U.S.C. § 1915(e)(2)(B), federal courts must screen in forma pauperis 1 relief may be granted" or seeks monetary relief against an immune defendant. See *Lopez v. 2 Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) ("[S]ection 1915(e) not only permits but 3 requires a district court to dismiss an [IFP] complaint that fails to state a claim."); see also id. at 4 1129) ("section 1915(e) applies to all in forma pauperis complaints, not just those filed by 5 prisoners.").

6 A complaint must contain "a short and plain statement of the claim showing that the 7 pleader is entitled to relief..." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 8 required but "[t]hreadbare recitals of the elements of a cause of action, supported by mere 9 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 10 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

A complaint may be dismissed as a matter 11 of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) 12 insufficient facts under a cognizable legal theory. See *Balisteri v. Pacifica Police Dep't*, 901 F.2d 13 696, 699 (9th Cir. 1990). 14 Pleadings by self-represented litigants are to be liberally construed. See *Haines v. Kerner*, 15 404 U.S. 519, 520-21 (1972).

However, "the liberal pleading standard... applies only to a 16 plaintiff's factual allegations," not his legal theories. *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 17 (1989). Furthermore, "a liberal interpretation of a civil rights complaint may not supply essential 18 elements of the claim that were not initially pled,"¹ and courts "are not required to indulge 19 unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir.

2009) 20 (internal quotation marks & citation omitted). 21 IV. Discussion 22 a. Jurisdiction 23 On May 8, 2025, the Court ordered Plaintiff to show cause why this action should not be 24 dismissed for lack of subject matter jurisdiction. (Doc. 3).

In his response, Plaintiff asserted that 25 the Court possessed jurisdiction due to complete diversity between the parties, as Plaintiff is a 26 citizen of California and Defendant is a citizen of

both Delaware and Washington, with the 27 1 *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (internal quotation 1 amount in controversy being either \$44,000,000.00 or \$25,000,000.00).

(Doc. 4 at 1-2). 2 For a federal court to exercise diversity jurisdiction, the citizens must be of different states 3 and the amount in controversy must exceed \$75,000. 28 U.S.C. § 1332(a). The amount in 4 controversy is generally determined from the face of the pleadings. See *Crum v. Circus Circus 5 Enterprises*, 231 F.3d 1129, 1131 (9th Cir. 2000).

The party asserting diversity jurisdiction must 6 prove that the amount in controversy exceeds \$75,000, bearing in mind that “[c]onclusory 7 allegations as to the amount in controversy are insufficient.” *Matheson v. Progressive Specialty 8 Ins. Co.*, 319 F.3d 1089, 1090–91 (9th Cir. 2003) (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566– 9 67 (9th Cir. 1992)).

10 Here, Plaintiff has not plausibly alleged that the amount in controversy is and/or exceeds 11 \$75,000. As set forth below, Plaintiff’s claims sound in breach of contract or breach of warranty, 12 and there are no facts alleged from which the Court reasonably may infer that any such violations 13 caused Plaintiff to suffer damages in the amount of \$25,000,000.00.

E.g., *Malik v. Malik*, No. 14 2:23-cv-01344 TLN CKD (PS), 2024 WL 2259154, at *4 (E.D. Cal. May 17, 2024) (“as plaintiff 15 has alleged no legal or factual basis for the claimed damages of \$50 million, the amount in 16 controversy requirement is not met”); *Parker v. U.S. Bank Trust, N.A.*, No. CV 20-9697-ODW- 17 RAOx, 2020 WL 7479633, at *2 (C.D. Cal. Dec. 18, 2020) (noting that a “facially implausible 18 figure does not satisfy the amount in controversy requirement.”).

19 However, Plaintiff may be able to remedy the deficiency in his pleading of amount in 20 controversy, and as such, will be granted leave to amend to the extent he can, in good faith, 21 plausibly allege an amount in controversy in excess of \$75,000. 22 b. Allegations in the Complaint 23 As a preliminary matter, Plaintiff’s complaint is not properly signed pursuant to Local 24 Rules 101 and 131, but rather, bears Plaintiff’s typewritten name on the signature line (Doc.

1 at 25 5). Plaintiff’s complaint must bear a handwritten signature. See E.D. Cal. Local Rule 101, 131 26 (permitting electronic/typeface signatures only upon documents filed electronically). 27 The allegations in Plaintiff’s complaint are difficult to follow but he appears to assert that, 1 Plaintiff from proceeding in Court regarding “modifications in the softwares [sic] and products” 2 and violated the Fifth Amendment by “promoting and involving in the crime and making editing 3 and modifications of the products ...” (Doc.

1 at 4). 4 Here, Plaintiff’s complaint is unclear as to his precise allegations and does not provide 5 discrete claims or causes of action. Plaintiff fails to articulate how either the First Amendment or 6 Fifth Amendment constitutes cognizable grounds for relief.

Moreover, to prevail on a claim 7 under the First or Fifth Amendment, Plaintiff must plead that Defendant acted under color of state 8 law or was a federal government actor, respectively. See *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019) (“The Free Speech Clause does not prohibit private 10 abridgment of speech”) (emphasis in original) (citing cases); *Florer v. Congregation Pidyon 11 Shevuyim, N.A.*, 639 F.3d 916, 922 (9th Cir.

2011) (noting that private actor may not violate the 12 First Amendment unless its conduct is “fairly attributable to the state”); see also *Morrow v. 13 Target Dept. Stores*, No. 2:11-cv-00785-JCM-CWH, 2012 WL 1931236, at *2 (D. Nev. May 14 29, 2012) (noting that the due process clause of the Fifth Amendment applies only to actors in the 15 federal government).

Plaintiff’s complaint does not cognizably plead that Microsoft Corporation 16 is either a state or federal actor or exercised some right created by state law constituting any 17 alleged deprivation of Plaintiff’s constitutional rights. 18 Accordingly, Plaintiff’s claims brought pursuant to the First and Fifth Amendments to the 19 U.S. Constitution are not cognizable.

20 c. Allegations in Plaintiff’s Response 21 In his response to the Court’s order to show cause (Doc. 4), Plaintiff elaborates that he 22 seeks relief for Microsoft’s “unlawful involvement in my legal personal obligation by changing 23 functionality of product” by, among other things, “proceed[ing] to put and add filters and change 24 sorting system of produce Azure Portal and Office 365.” Plaintiff asserts Defendants undertook 25 such action “with purpose to threaten me” by “block my all these services and products which was 26 required.” Plaintiff also refers to a “separate action [that] is already filed against Google Inc. 27 about my issues,” among other assertions that are difficult to follow.

(See Doc. 4). 1 controversy to be \$44,000,000.00 (id. at 1) but later reiterates the amount in controversy to be 2 \$25,000,000.00 (id. at 2). 3 Accordingly, Plaintiff fails to plead any cognizable claims. Though it is not entirely clear 4 to the Court due to the difficulty of discerning Plaintiff’s assertions, Plaintiff’s claims appear to 5 sound in breach of warranty or breach of contract.

The Court will provide the standard of law for 6 each below and grant Plaintiff leave to amend his complaint to correct the deficiencies, assuming 7 he can do so in good faith. 8 i. Breach of Express Warranty 9 California law states: 10 (1) Express warranties by the seller are created as follows: (a) Any affirmation of fact or promise made by the seller to 11 the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall 12 conform to the affirmation or promise. (b) Any description of the goods which is made part of the 13 basis of the bargain creates an express warranty that the goods shall 14 conform to the description. (c) Any sample or model which is made part of the basis of 15 the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

16 (2) It is not necessary to the creation of an express warranty that the 17 seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation 18 merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not 19 create a warranty.

20 Cal. Com. Code § 2313. 21 To assert a cognizable claim of breach of express warranty under California law, a 22 “plaintiff must prove (1) the seller’s statements constitute an ‘affirmation of fact or promise’ or a 23 ‘description of the goods’; (2) the statement was ‘part of the basis of the bargain’; and (3) the 24 warranty was breached.” *Weinstat v. Dentsply Int’l, Inc.*, 180 Cal. App.

4th 1213, 1227 (2010) 25 (quoting *Keith v. Buchanan*, 173 Cal.App.3d 13, 20 (1985)). “Statements constituting ‘mere 26 puffery’ cannot support liability under a claim for breach of warranty.” *Sanders v. Apple, Inc.*, 27 672 F. Supp. 2d 978, 987 (N.D. Cal. 2009). “The distinguishing characteristics of puffery are 1 omitted).

The core substance of an express warranty is composed of the seller’s representations 2 regarding “a particular product’s performance specification based on its design.” *Bros. v. 3 Hewlett-Packard Co.*, No. C-06-02254RMW, 2007 WL 485979, at *7 (N.D. Cal. Feb. 12, 2007). 4 ii. Breach of Implied Warranty 5 To assert a cognizable claim for breach of implied warranty of merchantability under 6 California law, a plaintiff must allege a “fundamental defect that renders the product unfit for its 7 ordinary purpose.” *Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1142 (N.D.

Cal. 2010). The 8 implied warranty of merchantability does not establish “a general requirement that goods 9 precisely fulfill the expectation of the buyer. Instead, it provides for a minimum level of quality.” 10 *Am. Suzuki Motor Corp. v. Super. Ct.*, 37 Cal. App. 4th 1291, 1296 (1995), as modified on denial 11 of reh’g (Sept. 21, 1995). 12 An implied warranty can be disclaimed by use of language that, in common 13 understanding, would call to the buyer’s attention the exclusion of warranties and make “plain 14 that there is no implied warranty.” *Minkler v. Apple, Inc.*, 65 F. Supp. 3d 810, 819 (N.D.

Cal. 15 2014) (citing Cal. Com. Code § 2316(3)(a)). Examples of such exclusionary language are 16 expressions like “as is” or “with all faults.” *Id.* 17 iii. Breach of Contract 18 To assert a cognizable breach of contract claim under California law, a plaintiff must 19 establish that “a contract exists between the parties, that the plaintiff performed his contractual 20 duties or was excused from nonperformance, that the defendant breached those contractual duties, 21 and that plaintiff’s damages were a result of the breach.” *Boland, Inc. v. Rolf C. Hagen (USA) 22 Corp.*, 685 F. Supp. 2d 1094, 1101 (E.D.

Cal. 2010) (citations omitted). Plaintiff must show that 23 “in essence, [] defendant deprived the plaintiff of a benefit conferred by the contract in violation 24 of the parties’ expectations at the time of contracting.” *Id.* 25 V. Conclusion and Order 26 For the reasons set forth above, the Court

finds the complaint fails to plausibly allege that 27 the amount in controversy requirement is met such that the Court may exercise diversity jurisdiction 1 Defendant.

Because he may be able to cure the deficiencies in his pleading, Plaintiff will be granted 2 leave to amend his complaint to cure the identified deficiencies to the extent he is able to do so in 3 good faith. Lopez, 203 F.3d at 1130. 4 If Plaintiff wishes to file a first amended complaint, any such amended complaint should be 5 brief (Fed. R. Civ. P. 8(a)) but it must state what each named defendant did that led to the alleged 6 harm or deprivation of Plaintiff's constitutional rights (Iqbal, 556 U.S. at 678-79).

Although 7 accepted as true, the "[f]actual allegation must be [sufficient] to raise a right to relief above the 8 speculative level[.]" Twombly, 550 U.S. at 555 (citations omitted). Additionally, Plaintiff may 9 not change the nature of this suit by adding new, unrelated claims in his amended complaint. 10 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (explaining no "buckshot" complaints 11 permitted).

12 As noted above, Plaintiff's complaint is not properly signed pursuant to Local Rules 101 13 and 131, but rather, bears Plaintiff's typewritten name on the signature line. Accordingly, Plaintiff 14 must review and comply with the Local Rules, including these rules that require he affix his actual 15 or a facsimile copy of his signature on any amended complaint.

16 Finally, an amended complaint supersedes the original complaint. Lacey v. Maricopa 17 Cnty., 693 F.3d 896, 907 n.2 (9th Cir. 2012). If Plaintiff elects to proceed with this action by 18 filing an amended complaint, the Court cannot refer to a prior pleading in order to make an 19 amended complaint complete. See E. D. Cal. Local Rule 220.

The amended complaint must be 20 complete in itself without reference to the prior or superseded pleading. Once the amended 21 complaint is filed, the original pleading no longer serves any function in the case. Thus, in the 22 amended complaint, Plaintiff must re-plead all elements of his claims, including all relevant 23 facts, even the ones not addressed by this screening order.

24 Accordingly, IT IS HEREBY ORDERED: 25 1. Plaintiff's application to proceed in forma pauperis (Doc. 2) is GRANTED; 26 2. Plaintiff's motion for protection of rights (Doc. 5) is DENIED; and 27 3. Within 21 days from the date of service of this order, Plaintiff must either: 1 this order; or 2 b. File a notice of voluntary dismissal. See Fed. R. Civ. P. 41(a)(1)(A)@).

3 If Plaintiff fails to timely comply with this order, the Court will recommend that this 4 | action be dismissed for lack of subject matter jurisdiction and for failure to state a claim, 5 | failure to obey a court order, and/or failure to prosecute. 6 | IT IS SO ORDERED. 7) Dated: _ June 5, 2025 | nnd Rr 8 UNITED STATES MAGISTRATE JUDGE 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

