

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

Smith v. Spicy Mayo Restaurant

No. 1:25-cv-00159-KES-HBK (E.D. Cal. Feb. 21, 2025) · No. 1:25-cv-00159-KES-HBK · Decided February
21, 2025

OPINION

Smith v. Spicy Mayo Restaurant

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 CANDACE SMITH, Case No. 1:25-cv-00159-KES-HBK 12 Plaintiff, SCREENING
ORDER

13 v. MARCH 21, 2025 DEADLINE

14 SPICY MAYO RESTAURANT, et al., 15 Defendants. 16 17 Plaintiff commenced this action
on February 7, 2025, by filing a form “Complaint for 18 Civil Case.” (Doc. No. 1, “Complaint”).
The Court granted Plaintiff’s application to proceed in 19 forma pauperis. (Doc. No. 3). Plaintiff’s
Complaint is currently before the Court for screening 20 pursuant to 28 U.S.C. § 1915(e)(2)(B).
Upon review, the Court finds the Complaint does not set 21 forth a basis for federal subject matter
jurisdiction and otherwise fails to state a cognizable claim 22 for relief. The Court will afford
Plaintiff an opportunity to file an amended complaint before 23 recommending this case be
dismissed for lack of subject matter jurisdiction.

24 SCREENING REQUIREMENT AND STANDARD

25 Because Plaintiff is proceeding in forma pauperis, the Court may dismiss a case “at any 26
time” if the Court determines, inter alia, the action is frivolous or malicious, fails to state claim 27
on which relief can be granted, or seeks monetary relief against a defendant who is immune from
28 such relief. 28 U.S.C § 1915(e)(2)(B)(ii)-(iii); see also *Lopez v. Smith*, 203 F. 3d 1122, 1129
(9th

1 Cir. 2000) (section 1915(e) applies to all litigants proceeding in form pauperis). A complaint,
2 however, should not be dismissed unless it appears beyond doubt that the plaintiff can prove no
3 set of facts in support of his or her claim that would entitle him to relief. *Johnson v. Knowles*, 4
113 F.3d 1114, 1117 (9th Cir.), cert. denied, 552 U.S. 996 (1997). A complaint must include a 5
short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. 6
P. 8(a). Dismissal for failure to state a claim in this context is governed by the same standard as 7
dismissal under Federal Rule of Civil Procedure 12(b)(6). *Barren v. Harrington*, 152 F. 3d 1193, 8
1194 (9th Cir. 1998). As such, a complaint must contain sufficient factual matter to state a claim 9

to relief that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A complaint is plausible on its face when it contains sufficient facts to support a reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* At this stage, the court accepts the facts stated in the complaint as true. *Hosp. Bldg. Co. v. Rex Hosp. Tr.*, 425 U.S. 738, 740 (1976). The Court does not accept as true allegations that are merely conclusory, unreasonable inferences, or unwarranted deductions. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Nor are legal conclusions considered facts. *Iqbal*, 556 U.S. at 678. Due to Plaintiff’s pro se status, the Court must liberally construe the Complaint in the light most favorable to the Plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt v. L.A. County*, 339 F.3d 920, 925 (9th Cir. 2003). If a pleading could be cured by the allegation of other facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal of the action. See *Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). However, it is not the role of the Court to advise a litigant on how to cure the defects. Such advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); see also *Lopez*, 203 F.3d 24 at 1131 n.13.

25 SUMMARY OF OPERATIVE COMPLAINT

26 Plaintiff names the following as defendants in her Complaint: (1) Spicy Mayo Restaurant; (2) Kong Manager; (3) Farmers Insurance; and (4) Joshua Fowler. (Doc. No. 1 at 1-3). Under the “Parties” section of the Complaint, Plaintiff provides her address and states she resides in Fresno, California. (Id. at 2). Other than identifying the names of each defendant, Plaintiff does not provide any other identifying information for any defendant. (Id.). Under the “Basis of Jurisdiction” section of the Complaint, Plaintiff checks “diversity of citizenship.” (Id. 4 at 3). Plaintiff then lists the four defendants to the left of the section of the complaint where Plaintiff is required to provide information if a defendant is a corporation and draws a line from the names and prints “California.” (Id. at 4). Plaintiff leaves the amount in controversy blank. (Id. at 5). Despite checking “diversity of citizenship” as the basis of jurisdiction, in response to whether the basis of jurisdiction is a federal question, Plaintiff responds, “Insurance claim for raw shrimp.” (Id. at 4). Due to its brevity, the Court cites in full Plaintiff’s statement of claim: 11 Ongoing posed harassment purposely. Manipulation for business purposes. Medical issue of food poison by means of uncooked raw 12 shrimp. Inadequate reporting & documentation from Saint Agnes doctors. Farmers Insurance claims manipulation of information w/o 13 intent of withholding proper or suitable payout & steady money under insurance claims. False actor insurance adjuster. 14 15 (Id. at 5, unedited). As relief, Plaintiff seeks “doctors [sic] bills & pain suffering, loss of wages & 16 hire [sic] proper reports.” (Id. at 6). Liberally construed, the Complaint appears to seek 17 unspecified monetary damages relating to Smith consuming raw shrimp and presumably 18 becoming sick.

19 DISCUSSION

20 A. Subject Matter Jurisdiction 21 “Federal courts are courts of limited jurisdiction.” Kokkonen v. Guardian Life Ins. Co. of 22 Am., 511 U.S. 375, 377 (1994). “[S]ubject matter jurisdiction of the district court is not a 23 waivable matter and may be raised at any time by one of the parties, by motion or in the 24 responsive pleadings, or sua sponte by the trial or reviewing court.” Emrich v. Touche Ross & 25 Co., 846 F.2d 1190, 1194 n.2 (9th Cir. 1988). A federal court is presumed to lack subject matter 26 jurisdiction, and a plaintiff bears the burden of establishing that subject matter jurisdiction is 27 proper. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). The “presence or 28 absence of federal question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which 1 provides that federal jurisdiction exists only when a federal question is presented on the face of 2 the plaintiff's properly pleaded complaint.” Caterpillar, Inc. v. Williams, 482 U.S. 386 (1987). If 3 a federal court lacks subject matter jurisdiction, the action must be dismissed. Fed. R. Civ. P. 4 12(h)(3). 5 Jurisdiction founded on 28 U.S.C. § 1332 requires the parties be in complete diversity and 6 the amount in controversy exceed \$75,000. To establish citizenship for diversity purposes, a 7 natural person must be a citizen of the United States and be domiciled in a particular state. 8 Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). A person is considered 9 domiciled in the place they reside if they intent to remain there or intend to return there. Kanter 10 v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). A corporation is a citizen of any state 11 where it is incorporated and of the state where it has its principal place of business. 28 U.S.C. § 12 1332(c); see also Indus. Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090, 1092 (9th Cir. 1990). 13 At the outset, the Complaint is devoid of an amount in controversy. Further, with regards 14 to the diversity of citizenship prong, Plaintiff acknowledges she is a citizen of California and 15 states that each of the four defendants are citizens of California. Thus, as alleged the Complaint 16 facially fails to meet the requirement to establish diversity jurisdiction under §1332. Further, the 17 Court takes judicial notice that according to the California Business Search website administered 18 by the Secretary of the State of California, Spicy Mayo Hibachi LLC¹ is a California Corporation 19 with its principal place of business in Fresno, California.² Where at least some of the defendants 20 are citizens of the same state, complete diversity is lacking, and Plaintiff cannot proceed in 21 federal court based on diversity jurisdiction under 28 U.S.C. § 1332. Garcia-Cardenas v. 22 Immigration Legal Servs., APC, No. 1:13-CV-01065-AWI, 2013 WL 4542223, at *2 (E.D. Cal.

23 Aug. 27, 2013) (citing Strawbridge v. Curtiss, 7 U.S. 267 (1806) (no plaintiff can be a citizen of

24 the same state as any of the defendants)). 25 Because the Complaint fails to establish a basis for federal subject matter jurisdiction, the 26 Court lacks authority to adjudicate Plaintiff’s claims but will afford Plaintiff an opportunity to file 27 1 The Secretary of State has no listing of a business operating under the name “Spicy Mayo Restaurant.” 2 <https://bizfileonline.sos.ca.gov/search/business>. 28 1 an amended complaint if she can cure this defect. 2 In addition to failing to provide a basis for subject matter jurisdiction, Plaintiff’s 3

Complaint does not provide a plain statement of her claims, fails to allege a causal connection between any named defendant and any act of wrongdoing. In preparing an amended complaint, the Court advises Plaintiff of some basic procedural and legal tenets. Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed factual allegations are not required, but “[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 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. 13 at 570, 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–557. Here, the Complaint does not provide clear, concise allegations against each individually named defendant sufficient to state a claim that is plausible on its face.

17 CONCLUSION AND OPTIONS

18 Plaintiff’s Complaint fails to establish federal subject matter jurisdiction, fails to comply with Federal Rule of Civil Procedure 8, and fails to state a cognizable claim upon which relief 20 may be granted. To continue the prosecution of this action, Plaintiff must take one of the 21 following three options no later than March 21, 2025. 22 First Option: Because the Court cannot determine that the filing of an amended 23 complaint cannot cure the deficiencies identified above, the Court will afford Plaintiff an 24 opportunity to file an amended complaint if she chooses. Fed. R. Civ. P. 15(a)(2); *Lopez v. Smith*, 25 203 F.3d 1122, 1126-30 (9th Cir. 2000). An amended complaint supersedes (replaces) the 26 original complaint and, thus, the amended complaint must be free-standing and complete. *Lacey v. Maricopa County*, 693 F.3d. 896, 907 n.1 (9th Cir. 2012) (en banc); E.D. Cal. Local Rule 220. 28 Each claim and the involvement of each defendant must be sufficiently alleged. The amended 1 | complaint should title “First Amended Complaint,” include the above case number, and be an 2 | original signed and dated under penalty of perjury. Plaintiff may not change the nature of this 3 | suit or adding unrelated claims in her amended complaint. *George v. Smith*, 507 F.3d 605, 607 4 (7th Cir. 2007) (no “buckshot” complaints). 5 Second Option: Plaintiff may file a Notice stating she intends to stand on her current 6 | Complaint subject to the undersigned recommending the district court dismiss the Complaint for 7 | the reasons stated in this Order. 8 Third Option: Because no defendant has yet been served, Plaintiff may file a Notice of 9 | Voluntary Dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1). The 10 | Court will then dismiss this case without prejudice as a matter of law. 11 Alternatively, if Plaintiff fails to timely respond to this Court Order, i.e., fails to perform 12 | any of the three options, the undersigned will instead recommend that the district court dismiss 13 | this case as a sanction for Plaintiff’s failure to comply with a court order under Local Rule 110 14 | and/or for failing to prosecute this action under Federal Rule of Civil Procedure 41(b). 15 Accordingly, it is ORDERED: 16 1. No later than March 21,

2025, Plaintiff shall take one of the following actions: 17 | (a) file a First Amended Complaint; (b); file a Notice that she intends to stand on the Complaint 18 | as screened subject to the undersigned recommending the district court dismiss the Complaint for 19 | the reasons stated in this Order; (c) file a Notice of Voluntary Dismissal under Fed. R. Civ. P. 41. 20 2. If Plaintiff fails to timely comply with this Court Order or seek an extension of 21 | time to comply, the Court will recommend the district court dismiss this action for Plaintiff's 22 | failure to comply with this Court Order and prosecute this action. 23 3. The Clerk of Court shall include a blank non-prisoner civil rights complaint form 24 | for Plaintiffs use as appropriate. | Dated: _ February 21,2025
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26 HELENA M. BARCH-KUCHTA

4 UNITED STATES MAGISTRATE JUDGE

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