

FILED

MAR 14 2023

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ATM SHAFIQL KHALID, Esquire, an
individual and on behalf of similarly
situated,

Plaintiff-Appellant,

v.

MICROSOFT CORPORATION, a
Washington corporation; JOHN DOE, 1 -
n,

Defendants-Appellees.

No. 20-35921

D.C. No. 2:19-cv-00130-RSM

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Submitted March 10, 2023**
San Francisco, California

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

ATM Shafiqul Khalid appeals pro se the district court's dismissal of his action against Microsoft Corporation. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Curry v. Yelp, Inc.*, 875 F.3d 1219, 1224 (9th Cir. 2017). We affirm the district court's judgment.

The district court properly concluded that the second amended complaint failed to state an antitrust claim under § 1 of the Sherman Act because it failed to allege an actionable conspiracy or agreement. *See Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 479 (9th Cir. 2021) (elements of an antitrust claim under § 1). Khalid's allegations regarding an employee agreement concerned only Microsoft's unilateral conduct. *See Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984) (“[O]fficers or employees of the same firm do not provide the plurality of actors imperative for a § 1 conspiracy.”). As to any conspiracy between Microsoft and Citrix Systems, Inc., Khalid did not allege antitrust injury as required under a rule of reason analysis and did not allege sufficient facts to support application of a per se or quick look analysis. *See FTC v. Qualcomm, Inc.*, 969 F.3d 974, 989 (9th Cir. 2020) (rule of reason analysis); *California ex rel. Harris v. Safeway, Inc.*, 651 F.3d 1118, 1133–34 (9th Cir. 2011) (en banc) (per se and quick look analysis). The second amended complaint also failed to state an

attempted monopolization claim under Sherman Act § 2. *See Optronix Techs., Inc.*, 20 F.4th at 481–82 (elements of claim).

The second amended complaint failed to state a RICO claim under 18 U.S.C. § 1962(c) because it failed to sufficiently allege an enterprise or predicate acts of extortion or wire fraud. *See United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep't, AFL-CIO*, 770 F.3d 834, 837 (9th Cir. 2014) (elements of a civil RICO claim); *United States v. McFall*, 558 F.3d 951, 956 (9th Cir. 2009) (extortion under Hobbs Act, 18 U.S.C. § 1951(b)(2)); *Wilkie v. Robbins*, 551 U.S. 537, 566–67 (2007) (extortion generally); *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014) (wire fraud under 18 U.S.C. § 1343). Because Khalid failed to state a RICO claim under § 1962(c), he also failed to state a RICO conspiracy claim under § 1962(d). *See Howard v. Am. Online, Inc.*, 208 F.3d 741, 751 (9th Cir. 2000).

Khalid failed to state a forced labor claim under the Trafficking Victims Protection Act because he did not plausibly allege Microsoft attempted to coerce him into providing labor. 18 U.S.C. § 1589.

Khalid failed to state a civil rights claim under 42 U.S.C. § 1983 because he did not sufficiently allege state action. *See Ballinger v. City of Oakland*, 24 F.4th 1287, 1300–01 (9th Cir. 2022). He failed to state a claim under 42 U.S.C.

§ 1985(3) because he failed to allege that racial or class-based discriminatory animus motivated Microsoft's actions. *See Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268–69 (1993). Khalid did not state a claim under § 1985(2) as he did not allege witness intimidation. *See Kush v. Rutledge*, 460 U.S. 719, 723 (1983).

The district court properly dismissed Khalid's claim for declaratory relief for lack of an "actual controversy" under the Declaratory Judgment Act, 28 U.S.C. § 2201(a), and failure to clearly explain the claim. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 & n.3 (2007) (to survive a Rule 12(b)(6) dismissal, a complaint must allege enough facts to provide both "fair notice" of the particular claim being asserted and "the grounds upon which it rests").

AFFIRMED.