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

LANA WILLIAMS,  
Plaintiff,  
v.  
TACO BELL,  
Defendant.

Case No. 1:18-cv-01473-AWI-SAB  
SCREENING ORDER GRANTING  
PLAINTIFF LEAVE TO FILE SECOND  
AMENDED COMPLAINT  
(ECF No. 6)  
THIRTY DAY DEADLINE

**I.**

**BACKGROUND**

On November 8, 2017, Lana Williams (“Plaintiff”), slipped and fell on an entry rug at Taco Bell. (Screening Order Granting Pl. Leave to File an Am. Compl. 1, ECF 1.) Plaintiff’s claim is being handled by Lisa Day from PMA Insurance. (Id.)

Plaintiff, proceeding pro se and in forma pauperis, filed this personal injury action on October 25, 2018. (ECF No. 1.) On October 30, 2018, Plaintiff’s complaint was screened pursuant to 28 U.S.C. § 1915(e)(2), and was it was determined that Plaintiff failed to plead subject matter jurisdiction over the matter. (ECF No. 5.) Plaintiff was provided with the legal standards that would appear to apply to her claim and was given thirty days in which to file an amended complaint. (Id.) On November 27, 2018, Plaintiff filed a first amended complaint. (ECF No. 6.)

1 **II.**

2 **SCREENING REQUIREMENT**

3 Notwithstanding any filing fee, the court shall dismiss a case if at any time the Court  
4 determines that the complaint “(i) is frivolous or malicious; (ii) fails to state a claim on which  
5 relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from  
6 such relief.” 28 U.S.C. § 1915(e)(2); see Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000)  
7 (section 1915(e) applies to all in forma pauperis complaints, not just those filed by prisoners);  
8 Calhoun v. Stahl, 254 F.3d 845 (9th Cir. 2001) (dismissal required of in forma pauperis  
9 proceedings which seek monetary relief from immune defendants); Cato v. United States, 70  
10 F.3d 1103, 1106 (9th Cir. 1995) (district court has discretion to dismiss in forma pauperis  
11 complaint under 28 U.S.C. § 1915(e)); Barren v. Harrington, 152 F.3d 1193 (9th Cir. 1998)  
12 (affirming sua sponte dismissal for failure to state a claim). The Court exercises its discretion to  
13 screen the plaintiff’s complaint in this action to determine if it “(i) is frivolous or malicious; (ii)  
14 fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a  
15 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2).

16 In determining whether a complaint fails to state a claim, the Court uses the same  
17 pleading standard used under Federal Rule of Civil Procedure 8(a). A complaint must contain “a  
18 short and plain statement of the claim showing that the pleader is entitled to relief. . .” Fed. R.  
19 Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the  
20 elements of a cause of action, supported by mere conclusory statements, do not suffice.”  
21 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S.  
22 544, 555 (2007)).

23 **III.**

24 **DISCUSSION**

25 As Plaintiff advised in the October 30, 2018 screening order, federal courts are courts of  
26 limited jurisdiction and their power to adjudicate is limited to that granted by Congress. U.S. v.  
27 Sumner, 226 F.3d 1005, 1009 (9th Cir. 2000). Plaintiff’s amended complaint is devoid of any  
28 allegations that would support federal jurisdiction in this matter.

1           **A. Federal Question Jurisdiction**

2           Pursuant to 28 U.S. C. § 1331, federal courts have original jurisdiction over “all civil  
3 actions arising under the Constitution, laws, or treaties of the United States. “A case ‘arises  
4 under’ federal law either where federal law creates the cause of action or where the vindication  
5 of a right under state law necessarily turns on some construction of federal law.” Dennis v. Hart,  
6 724 F.3d 1249, 1252 (9th Cir. 2013) (quoting Caterpillar, Inc. v. Williams, 482 U.S. 386, 392  
7 (1987)); Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088 (9th Cir. 2002) (citations  
8 omitted). “[T]he presence or absence of federal-question jurisdiction is governed by the ‘well-  
9 pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal  
10 question is presented on the face of the plaintiff’s properly pleaded complaint.” Republican  
11 Party of Guam, 277 F.3d at 1089 (citations omitted).

12           In her first amended complaint, Plaintiff contends that jurisdiction is based on a federal  
13 question. Plaintiff states that Taco Bell is a corporation over national franchises and that she is  
14 bringing this action for “fraud-disception [sic]-non-disclosure” and asks, “why is a national chain  
15 allowed to operate with no inspection no insurance liability[?]” (Am. Compl. 1.) Plaintiff also  
16 asks, “why was my accident of November 8, 2017, between 10 and 11 a.m. not corporate  
17 notified.” (Id.)

18           For this action to arise under federal law, Plaintiff must establish that “federal law creates  
19 the cause of action” or her “asserted right to relief depends on the resolution of a substantial  
20 question of federal law.” K2 America Corp. v. Roland Oil & Gas, LLC, 653 F.3d 1024, 1029  
21 (9th Cir. 2011). Plaintiff brings this action alleging fraud based on access violations, problems  
22 with the rug (holes, non-gripping, water), one entry door, food tampering, no inspections, and no  
23 medical doctors. (Am. Comp. 1.) Plaintiff alleges corporation misrepresentation of franchise  
24 and patrons. (Id. 2.) However, even if Plaintiff could state a claim for fraud, as Plaintiff was  
25 advised in the October 30, 2018 screening order, fraud is a state law claim. (ECF No. 5 at 5.)

26           Plaintiff also alleges a failure to respond. (Am. Compl. 2.) The complaint alleges that  
27 Lisa Day sent a letter on June 29, 2018, threatening Plaintiff if Plaintiff did not contact her. (Id.)  
28 Plaintiff left a message for Day on July 11, 2018, at 5:41 p.m. (Id.) Fernando, manager,

1 completed an accident report in February 2018. (Id.) Franchesca, assistant manager, gave a  
2 verbal accident report on November 8, 2017. (Id.) Plaintiff states it appears that this accident  
3 case has been stalled by the defendants. (Id.) None of these allegations plausibly raise a federal  
4 question. Based on the allegations in the original and first amended complaint, the basis of  
5 Plaintiff's complaint is that she was injured in a slip and fall and and is unhappy about the  
6 manner in which the franchise and the insurance company have handled her claim. Plaintiff's  
7 amended complaint does not establish that her claims arise under federal law nor does it  
8 implicate any significant federal issue. Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.,  
9 545 U.S. 308, 312 (2005). For these reasons, federal question jurisdiction does not exist in this  
10 action.

#### 11 **B. Diversity Jurisdiction**

12 District courts also have original jurisdiction of all civil actions between citizens of  
13 different States in which “the matter in controversy exceeds the sum or value of \$75,000,  
14 exclusive of interest and costs.” 28 U.S.C. § 1332(a). This requires complete diversity of  
15 citizenship and the presence “of a single plaintiff from the same State as a single defendant  
16 deprives the district court of original diversity jurisdiction over the entire action.” Abrego  
17 Abrego v. The Dow Chemical Co., 443 F.3d 676, 679 (9th Cir. 2006) (citations omitted). In  
18 order to plead a claim by virtue of diversity of citizenship, Plaintiff is required to plead the  
19 essential elements of diversity jurisdiction. Bautista v. Pan American World Airlines, Inc., 828  
20 F.2d 546, 552 (9th Cir. 1987).

21 The amended complaint states that Taco Bell is Hispanic and Plaintiff is a Caucasian and  
22 an American citizen. Diversity is based on the state of citizenship. 28 U.S.C. § 1332(a). “[T]he  
23 diversity jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency.” Kanter  
24 v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). For the purpose of determining  
25 diversity of citizenship, an individual is deemed to be a citizen of the state in which he or she is  
26 domiciled. Lew v. Moss, 797 F.2d 747, 749 (9th Cir. 1986). “A person residing in a given state  
27 is not necessarily domiciled there, and thus is not necessarily a citizen of that state.” Kanter, 265  
28 F.3d at 857. An individual's domicile is determined by “physical presence at a given location

1 and an intent to remain there indefinitely.” Lew, 797 F.2d at 752. Plaintiff’s allegation that she  
2 is an American citizen is insufficient to establish her citizenship for purposes of the diversity  
3 statute.

4 Where an action is brought against an entity, citizenship depends on the form of the  
5 entity. Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006).  
6 Here, Plaintiff alleges that Taco Bell is a corporation. A corporation is deemed to be a citizen of  
7 any State by which it has been incorporated and of the State where it has its principal place of  
8 business. Lincoln Prop. Co. v. Roche, 546 U.S. 81, 94 (2005) (quoting 28 U.S.C. § 1332(c)(1));  
9 Johnson, 437 F.3d at 899. Plaintiff’s complaint does not contain any factual allegations as to the  
10 citizenship of Taco Bell. To the extent that Plaintiff may be attempting to allege that Taco Bell  
11 is a citizen of a different country by stating it is “Hispanic”, this is insufficient to allege  
12 citizenship. To be accepted as true, the allegations in the complaint must be plausible. Iqbal,  
13 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). Plaintiff has failed to allege facts to  
14 demonstrate that diversity of citizenship exists in this action.

15 Where a plaintiff invokes federal court jurisdiction, an amount-in-controversy allegation  
16 is accepted as true where it appears to have been made in good faith. Dart Cherokee Basin  
17 Operating Co., LLC v. Owens, 135 S. Ct. 547, 553 (2014). In the Ninth Circuit, where it would  
18 appear that the sum claim is made in good faith, it must appear to a legal certainty that the claim  
19 is really for less than the jurisdictional amount to justify dismissal. Naffe v. Frey, 789 F.3d  
20 1030, 1040 (9th Cir. 2015); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). As in her  
21 original complaint, Plaintiff is seeking five million dollars, plus pain and suffering, and punitive  
22 damages in this action. (Am. Compl. 2.) As the Court previously found, Plaintiff’s original  
23 complaint alleged that she had incurred expenses for her doctor, x-rays, and physical therapy,  
24 finding her request for damages was “not a good faith allegation regarding the amount in  
25 controversy in this matter, and it is questionable whether the amount in controversy would be  
26 met considering that Plaintiff has only alleged that she has incurred limited medical bills due to  
27 her injury.” (ECF No. 5 at 4.) Plaintiff’s amended complaint does not contain any factual  
28 allegations regarding the injury that she sustained or the treatment that she received after her fall.

1 Plaintiff has failed to correct the deficiencies in her complaint. As Plaintiff has not alleged that  
2 she incurred more than limited medical expenses due to her injury, the Court finds that the  
3 amount in controversy has not been met.

4 Plaintiff has failed to demonstrate that the Court has diversity jurisdiction over the claims  
5 in this action.

### 6 **C. State Law Claims**

7 As Plaintiff was advised in the October 30, 2018 screening order, Rule 9 of the Federal  
8 Rules of Civil Procedure provides that “[i]n alleging fraud or mistake, a party must state with  
9 particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). The  
10 elements of a fraud claim under California law are “(a) misrepresentation (false representation,  
11 concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e.,  
12 to induce reliance; (d) justifiable reliance; and (e) resulting damage.” Kearns v. Ford Motor Co.,  
13 567 F.3d 1120, 1126 (9th Cir. 2009); Lazar v. Superior Court, 12 Cal. 4th 631, 638 (1996).

14 Plaintiff has failed to allege any facts that any defendant made a misrepresentation with  
15 the intent to defraud or that she justifiably relied on such representation and damage resulted. In  
16 order to meet the pleading requirement of Rule 9, Plaintiff is required to plead with specificity  
17 the time, place, and specific content of the false representations as well as the identities of the  
18 parties to the misrepresentations.” Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007)  
19 (internal punctuation and citations omitted). Here, Plaintiff has alleged an unspecified  
20 misrepresentation. (Am. Compl. 1.) The complaint is devoid of any factual allegations as to  
21 who made the representation, when it was made, what the representation was, how Plaintiff  
22 relied on it, or what damage was sustained due to the misrepresentation. The amended complaint  
23 does not contain any factual allegations to meet the pleading standard of Rule 9.

24 Plaintiff also appears to be attempting to bring a claim for failure to respond. (Am.  
25 Compl. 2.) Plaintiff alleges that Lisa Day of PMA Insurance sent her a letter threatening  
26 Plaintiff if she did not contact her and Plaintiff left a message on July 11, 2018. Plaintiff  
27 includes a phone number for Nancy and there was a written accident report by the manager  
28 Fernando in February 2018. (Id.) The complaint also alleges that assistant manager Franchesca

1 made a verbal accident report on November 2017. (Id.) The Madera Health Department and  
2 City of Madera Administration are also listed in the complaint, but there are no factual  
3 allegations as to these entities. (Id.) It is unclear from the complaint what the basis of Plaintiff's  
4 failure to respond claim would be. The amended complaint does not contain any factual  
5 allegations by which the Court can reasonably infer that there was a failure to respond. Plaintiff  
6 must plead sufficient facts to "give the defendant fair notice of what the . . . claim is and the  
7 grounds upon which it rests[.]" Twombly, 550 U.S. at 555 (quoting Conley v. Gibson, 355 U.S.  
8 41, 47 (1957)).

9 Finally, Plaintiff has set forth no legal basis for a claim based on any failure to respond  
10 and it is unclear what cause of action Plaintiff is attempting to assert. The failure to respond by  
11 and of itself is not a cause of action.

### 12 III.

### 13 CONCLUSION AND ORDER

14 For the reasons discussed, Plaintiff has failed to allege facts to demonstrate that federal  
15 jurisdiction exists in this action. Plaintiff shall be granted **one final opportunity** to file an  
16 amended complaint to cure the deficiencies identified in this order. See Lopez, 203 F.3d at 1127.

17 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
18 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, Iqbal,  
19 556 U.S. at 678-79. Although accepted as true, the "[f]actual allegations must be [sufficient] to  
20 raise a right to relief above the speculative level . . . ." Twombly, 550 U.S. at 555 (citations  
21 omitted). Further, Plaintiff may not change the nature of this suit by adding new, unrelated  
22 claims in her amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no  
23 "buckshot" complaints).

24 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.  
25 Lacey v. Maricopa Cnty., 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff's amended  
26 complaint must be "complete in itself without reference to the prior or superseded pleading."  
27 Local Rule 220.

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1 Based on the foregoing, it is HEREBY ORDERED that:

- 2 1. Within thirty (30) days from the date of service of this order, Plaintiff shall file a  
3 second amended complaint; and
- 4 2. If Plaintiff fails to file a second amended complaint in compliance with this order,  
5 the Court will recommend to the district judge that this action be dismissed  
6 consistent with the reasons stated in this order.

7  
8 IT IS SO ORDERED.

9 Dated: November 29, 2018

  
UNITED STATES MAGISTRATE JUDGE