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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 TANBEER SINGH BRAR,  
12 Plaintiff,  
13 v.  
14 APPLE, INC.,  
15 Defendant.  
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Case No. 1:25-cv-00503-JLT-CDB

FINDINGS AND RECOMMENDATION TO  
DISMISS COMPLAINT FOR LACK OF  
SUBJECT MATTER JURISDICTION

(Docs. 1, 5)

ORDER DENYING REQUEST FOR  
HEARING

(Docs. 4, 5)

**14-DAY DEADLINE**

19 Plaintiff Tanbeer Singh Brar initiated this action with the filing of a complaint against  
20 Defendant Apple, Inc., on April 30, 2025. (Doc. 1). Plaintiff, who is proceeding pro se, did not  
21 pay the filing fee and instead filed an application to proceed *in forma pauperis* (“IFP”) pursuant to  
22 28 U.S.C. § 1915. (Doc. 2). The Court has a duty to consider its own subject matter jurisdiction,  
23 regardless of whether the issue is raised by the parties and is required to dismiss an action over  
24 which it lacks jurisdiction. *See Morongo Bank of Mission Indians v. Cal. State Bd. of Equalization*,  
25 858 F.2d 1376, 1380 (9th Cir. 1988); Fed. R. Civ. P. 12(h)(3).

26 **I. Factual Allegations and Background**

27 Plaintiff’s allegations are difficult to follow but he appears to assert “conversion,  
28 modifications and changing in functionality of computer language programming of the products of

1 [Defendant].” (Doc. 1 at 4). He appears to allege that this was done only on his iPhone, starting  
2 in 2024, to not let him “proceed ... in [his] judicial federal proceeding for multiple purposes,”  
3 providing the purpose of Defendant’s actions was to coverup infringement and data breaches,  
4 among other reasons which are difficult to parse, relating to Plaintiff’s involvement in “US  
5 government projects.” Besides these allegations, Plaintiff writes “violation of the First Amendment  
6 to not let me proceed to file complaint” and “violation of Fifth Amendment by editing data trying  
7 to obtain evidence against me.” (Doc. 1 at 4). The complaint further alleges that Plaintiff is a  
8 citizen of California (*id.* at 3) and Defendant is incorporated in, and has its principal place of  
9 business in, California (*id.* at 4).

10 Although Plaintiff does not expressly plead the basis for which this Court properly has  
11 jurisdiction, on page 3 of the form complaint where a plaintiff is required to indicate the basis for  
12 jurisdiction, Plaintiff checked “[d]iversity of citizenship.” (*Id.* at 3). After a preliminary review of  
13 the complaint, on May 2, 2025, the Court ordered Plaintiff to show cause why this action should  
14 not be dismissed for lack of subject matter jurisdiction, noting that the allegations of the complaint  
15 did not demonstrate a proper jurisdictional basis either under diversity jurisdiction or federal  
16 question jurisdiction. (Doc. 3). Also on May 2, 2025, Plaintiff filed a request for a hearing on May  
17 5, 2025, to present evidence of a “data breach and evidence of conversion in the software  
18 application of [Defendant] which was download[ed] in my iPhone ...” (Doc. 4). On May 5, 2025,  
19 Plaintiff timely filed his response to the Court’s order to show cause, as well as an amended case  
20 cover sheet. (Docs. 5, 6).

21 Plaintiff’s response is difficult to follow, but he appears to request the Court to set a hearing  
22 for him to present evidence that he “can only show in person,” related to, among other things,  
23 removal of his accounts and emails by Defendant. Plaintiff states this was not done by any official  
24 government entity. (*See* Doc. 5). Plaintiff does not otherwise address the Court’s order (Doc. 3)  
25 regarding why this action should not be dismissed for lack of subject matter jurisdiction.

## 26 **II. Discussion**

27 Federal courts have limited jurisdiction and can adjudicate only those cases which the  
28 United States Constitution and Congress authorize them to adjudicate. *Kokkonen v. Guardian Life*

1 *Ins. Co.*, 551 U.S. 375 (1994). “To proceed in federal court, a plaintiff’s pleading must establish  
2 the existence of subject matter jurisdiction. Generally, there are two potential bases for the federal  
3 subject matter jurisdiction: (1) federal question jurisdiction, or (2) diversity jurisdiction.” *Martinez*  
4 *v. Hoff*, No. 1:19-cv-00923-LJO-SKO, 2019 WL 3564178, at \*1 (E.D. Cal. Aug. 6, 2019). A  
5 review of the complaint reveals that it should be dismissed because it lacks any basis for subject  
6 matter jurisdiction.

7 **A. Diversity Jurisdiction**

8 28 U.S.C. § 1332(a) vests district courts with original jurisdiction over all civil actions  
9 where the amount in controversy exceeds \$75,000 and is between citizens of different states.  
10 Section 1332 requires complete diversity, i.e., that “the citizenship of each plaintiff is diverse from  
11 the citizenship of each defendant.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67-68 (1996). A  
12 corporation is deemed to be a citizen of any State by which it has been incorporated and of the State  
13 where it has its principal place of business. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 94 (2005)  
14 (citing 28 U.S.C. § 1332(c)(1)). “Subject-matter jurisdiction can never be waived or forfeited,”  
15 and “courts are obligated to consider *sua sponte*” subject matter jurisdiction even when not raised  
16 by the parties. *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012).

17 Here, in an attempt to establish subject matter jurisdiction, Plaintiff alleges diversity of  
18 citizenship. (Doc. 1 at 3). Plaintiff alleges that he is a citizen of California. (*Id.*). However, he  
19 alleges that Defendant is a California corporation with its principal place of business in California.  
20 (*Id.* at 4). Thus, Defendant also is deemed to be a California citizen. In support of the amount in  
21 controversy requirement, he alleges the amount at stake is \$50,000,000.00. (*Id.*). Plaintiff does not  
22 address diversity jurisdiction in his response to the Court’s order to show cause. (Doc. 5). In his  
23 amended cover sheet (Doc. 6) filed after the Court ordered Plaintiff to show cause, Plaintiff again  
24 alleges diversity as the basis of jurisdiction, but further alleges that he and Defendant are both  
25 citizens of California. (Doc. 6).

26 Although the amount in controversy alleged exceeds the statutory requirement, because  
27 Plaintiff and Defendant both are California citizens, Plaintiff fails to establish complete diversity  
28 and this Court lacks jurisdiction under 28 U.S.C. § 1332(a).

## B. Federal Question Jurisdiction

A case “arises” under federal law either where federal law itself creates the cause of action or where the vindication of a state law right would “necessarily [turn] on some construction of federal law.” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). Stated otherwise, a claim arises under federal law if the complaint cognizably pleads that federal law created the claim asserted or the plaintiff’s right to relief necessarily depends on resolving a substantial question of federal law. *Franchise Tax Bd.*, 463 U.S. at 27-28. Courts determine whether they have federal question jurisdiction by applying the “well-pleaded complaint rule.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). “[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” (*Id.*). Federal question jurisdiction does not arise from the “mere presence of a federal issue in a state cause of action.” *Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 813 (1986); see *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005) (holding that passing references to federal issues are not a “password opening federal courts to any state action embracing a point of federal law”).

Here, Plaintiff’s complaint is unclear as to his precise allegations and does not provide discrete claims or causes of action. While Plaintiff’s complaint references in passing the First and Fifth Amendments and “violation of Constitutional [r]ights and infringement” (Doc. 1 at 4), mere references to federal statutes are not enough to establish federal jurisdiction. See, e.g., *Alan v. Equifax*, No. CV 19-6588-DMG (ASX), 2019 WL 5801891, at \*2 (C.D. Cal. Nov. 6, 2019). In the complaint, Plaintiff fails to articulate how either the First Amendment or Fifth Amendment constitutes cognizable grounds for relief.

Moreover, to prevail on a claim under the First or Fifth Amendment, Plaintiff must plead that Defendant acted under color of state law or was a federal government actor, respectively. See *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 922 (9th Cir. 2011); see also *Morrow v. Target Dept. Stores*, No. 2:11-cv-00785-JCM-CWH, 2012 WL 1931236, at \*2 (D. Nev. May 29, 2012) (noting that the due process clause of the Fifth Amendment applies only to actors in the

1 federal government) (citing *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008). Plaintiff's  
2 complaint does not cognizably plead that Apple, Inc., either is a state or federal actor or exercised  
3 some right created by state law constituting any alleged deprivation of Plaintiff's constitutional  
4 rights.

5 Plaintiff does not address these deficiencies identified in the Court's show cause order  
6 regarding subject matter jurisdiction. (Doc. 5). Plaintiff merely states therein that removal of his  
7 accounts and emails by Defendant, among other allegations difficult to parse, were not done by any  
8 official government entity. (*See id.*).

9 Thus, this Court lacks subject matter jurisdiction as no federal question is presented in the  
10 face of the complaint.

11 As the Court lacks subject matter jurisdiction, Plaintiff's request for a hearing to present  
12 evidence (Docs. 4, 5) will be denied.

### 13 **III. Order and Recommendation**

14 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for a hearing to present  
15 evidence (Docs. 4, 5) is DENIED.

16 And IT IS HEREBY RECOMMENDED that this action be dismissed, with prejudice, for  
17 failure to establish this Court's subject matter jurisdiction.

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1           These Findings and Recommendations will be submitted to the United States District Judge  
2 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days** after  
3 being served with a copy of these Findings and Recommendations, a party may file written  
4 objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to  
5 Magistrate Judge’s Findings and Recommendations” and **shall not exceed 15 pages** without leave  
6 of Court and good cause shown. The Court will not consider exhibits attached to the Objections,  
7 but a party may refer to exhibits in the record by CM/ECF document and page number. Any pages  
8 filed in excess of the 15-page limitation may be disregarded by the District Judge when reviewing  
9 these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party’s failure to file any  
10 objections within the specified time may result in the waiver of certain rights on appeal. *Wilkerson*  
11 *v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

12 IT IS SO ORDERED.

13 Dated: **May 7, 2025**

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16 UNITED STATES MAGISTRATE JUDGE  
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