

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 24 2021

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

DONNELL BLEDSOE,

Plaintiff-Appellant,

v.

CBS TELEVISION NETWORK; et al.,

Defendants-Appellees.

No. 20-16649

D.C. No. 2:18-cv-03043-JAM-EFB
Eastern District of California,
Sacramento

ORDER

Before: SILVERMAN, WATFORD, and BENNETT, Circuit Judges.

The district court has certified that this appeal is frivolous and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On September 2, 2020, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the response to the court's September 2, 2020 order, and the opening brief received on October 7, 2020, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 10) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

UNITED STATES COURT OF APPEALS
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U.S. COURT OF APPEALS

DONNELL BLEDSOE,

No. 20-16649

Plaintiff - Appellant,

D.C. No. 2:18-cv-03043-JAM-EFB
U.S. District Court for Eastern
California, Sacramento

v.

CBS TELEVISION NETWORK; et al.,

MANDATE

Defendants - Appellees.

The judgment of this Court, entered June 24, 2021, takes effect this date.
This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Jessica Flores
Deputy Clerk
Ninth Circuit Rule 27-7

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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DONNELL BLEDSOE, No. 2:18-cv-3043-JAM-EFB PS

Plaintiff,

v.

CBS TELEVISION NETWORK, et al.,

Defendants.

ORDER

On July 6, 2020, the undersigned recommended plaintiff's second amended complaint be dismissed without leave to amend. ECF No. 10. Shortly thereafter, plaintiff filed objections to the findings and recommendations (ECF No. 14) and a third amended complaint (ECF No. 13). On August 11, 2020, the assigned district judge adopted the findings and recommendations and dismissed plaintiff's second amended complaint without leave to amend. ECF No. 15. The court specifically held that there was no basis for permitting plaintiff to proceed on his third amended complaint since it failed to remedy the deficiencies of the second amended complaint. *Id.* at 2 n.1. Accordingly, the case was closed and judgment entered accordingly. ECF Nos. 15 & 16.

Notwithstanding that judgment, plaintiff subsequently filed a motion to amend his complaint. ECF No. 17. Plaintiff's recent filing does not constitute a proper request for reconsideration or appeal of the August 11, 2020 order and judgment. Therefore, the documents will be disregarded. Plaintiff is advised that the court will disregard and issue no response to any future filings in this closed case.

1 Accordingly, it is hereby ORDERED that plaintiff's post-judgment filing (ECF No. 17) is
2 disregarded and the Clerk is directed to terminate it.

3 SO ORDERED

4 DATED: August 20, 2020.

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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNELL BLEDSOE.

No. 2:18-cv-3043-JAM-EFB PS

Plaintiff,

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FINDINGS AND RECOMMENDATIONS

CBS TELEVISION NETWORK, et al.,

Defendants.

17 The court previously dismissed plaintiff's first amended complaint for failure to state a
18 claim pursuant to 28 U.S.C. § 1915(e)(2). ECF No. 5. Plaintiff was granted leave to
19 file an amended complaint, and he has since filed a second amended complaint. ECF No. 6. As
20 discussed below, the second amended complaint must also be dismissed for failure to state a
21 claim.

22 As previously explained to plaintiff, although pro se pleadings are liberally construed, see
23 *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be
24 dismissed for failure to state a claim if it fails to set forth “enough facts to state a claim to relief
25 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007)
26 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)); see also Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s
27 obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
28 conclusions, and a formulaic recitation of a cause of action’s elements will not do. Factual

1 allegations must be enough to raise a right to relief above the speculative level on the assumption
2 that all of the complaint's allegations are true." *Id.* (citations omitted). Dismissal is appropriate
3 based either on the lack of cognizable legal theories or the lack of pleading sufficient facts to
4 support cognizable legal theories. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
5 1990).

6 Under this standard, the court must accept as true the allegations of the complaint in
7 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the
8 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
9 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading
10 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) requires a
11 complaint to include "a short and plain statement of the claim showing that the pleader is entitled
12 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon
13 which it rests." *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

14 As a threshold matter, the first 8 pages of the second amended complaint are identical to
15 allegations contained in an amended complaint plaintiff filed in a different action pending before
16 this court. Compare ECF No. 6 with *Bledsoe v. Zuckerberg*, 2:18-cv-2756 (E.D. Cal.), ECF No.
17 7. The crux of those allegations is that defendants Facebook, Inc. and its CEO, Mark Zuckerberg
18 violated the Racketeer Influenced and Corrupt Organizations Act ("RICO") and breached a
19 contract by permitting plaintiff's Facebook account to be hacked. In that respect, plaintiff claims
20 that someone in Russia hacked his Facebook account and deleted posts he made over the course
21 of four months. ECF No. 6 at 2-5. He also claims that Facebook sold his personal information
22 "to the highest bidder on the black market," which is how his "story got sold to CBS Television
23 Network." *Id.* at 2-3. He further claims Facebook "transmitted by wiretap" a picture of plaintiff,
24 which was subsequently used on a television show. *Id.* at 4.

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1 However, the operative complaint in the instant action includes additional allegations
2 concerning the infringement of plaintiff's intellectual property. *Id.* at 9-13. As far as the court
3 can discern¹, plaintiff claims that he created multiple copyrighted works, included a documentary
4 and several songs. *Id.* at 11-12. He appears to allege that after he posted these works on
5 Facebook, defendant CBS Television Broadcast Company used the works in its production of the
6 television show "God Friended Me." *Id.* Plaintiff purports to allege claims under 42 U.S.C.
7 § 1983, 28 U.S.C. § 1361, RICO, and for copyright infringement, as well as several state law
8 claims.

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege: (1) that a right secured by
10 the Constitution or laws of the United States was violated, and (2) that the alleged violation was
11 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48
12 (1988). Plaintiff does not allege that any of the defendants are state actors, nor does he claim
13 defendants violated a right secured by the US Constitution. Plaintiff also fails to state a claim
14 under 28 U.S.C. § 1361. That statute—which authorizes the court to issue writs of mandamus to
15 "compel an officer or employee of the United States or any agency thereof to perform a duty"—
16 does not appear to have any relevancy to plaintiff's allegations. *See* 28 U.S.C. § 1361.

17 Plaintiff also fails to state a civil RICO claim. "To prevail on a civil RICO claim, a
18 plaintiff must prove that the defendant engaged in (1) conduct (2) of an enterprise (3) through a
19 pattern (4) of racketeering activity and, additionally, must establish that (5) the defendant caused
20 injury to plaintiff's business or property." *Chaset v. Fleer/Skybox Intern., LP*, 300 F.3d 1083,
21 1086 (9th Cir. 2002). A "pattern of racketeering activity" means at least two criminal acts
22 enumerated by statute. 18 U.S.C. § 1961(1), (5) (including, among many others, mail fraud, wire
23 fraud, and financial institution fraud). Plaintiff does state allegations demonstrating that he
24 sustained an injury to his business or property as a result of defendants' conduct. Nor has he

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26 ¹ The second amended complaint is filled with fanciful allegations, making it difficult to
27 discern the factual basis for plaintiff's purported claims. For example, plaintiff claims that in a
28 Facebook post from October 2018, he stated that he "witnessed the Black Hawk Satellite or
Starship and it moved from the 11 o'clock position which is the Eastern Southern skies to the
Dirty South where slavery took place." ECF No. 6 at 12.

1 adequately alleged that defendants engaged in a pattern of racketeering activity by performing at
2 least two specific predicate acts. *Pineda v. Saxon Mortgage Services*, 2008 WL 5187813, at *4
3 (C.D. Cal. Dec. 10, 2008) (“It is not enough for [plaintiff] to rely on mere labels and conclusions”
4 to establish a RICO claim but rather, plaintiff must give each defendant notice of the particular
5 predicate act it participated in and must allege each predicate act with specificity).

6 The second amended complaint also fails to adequately allege a claim for copyright
7 infringement. To state such a claim, plaintiff must allege facts plausibly showing “(1) that he
8 owns a valid copyright in his work, and (2) that the defendants copied protected aspects of the
9 work’s expression.” *Skidmore for Randy Craig Wolfe Trust v. Led Zeppelin*, 905 F.3d 1116, 1125
10 (9th Cir. 2018). To establish the second element, a plaintiff must allege facts showing the two
11 works at issue are “strikingly similar,” or “that the defendant had ‘access’ to the plaintiff’s work
12 and that the two works are ‘substantially similar.’” *Three Boys Music Corp. v. Bolton*, 212 F.3d
13 477, 481, 485 (9th Cir. 2000). Although plaintiff claims defendant CBS used his copyrighted
14 work in one of its television shows, he fails to provide allegations that, if accepted as true, would
15 demonstrate that his copyrighted works were substantially similar to CBS’s show.

16 Lastly, plaintiff purports to allege several state law claims, including claims for breach of
17 contract and negligence. ECF No. 6 at 1, 3. But plaintiff has yet to assert a properly-pleaded
18 federal cause of action, which precludes supplemental jurisdiction over the state law claims. See
19 28 U.S.C. §§ 1331 (“The district courts shall have original jurisdiction of all civil actions arising
20 under the Constitution, laws, or treaties of the United States), 1337(a) (where the district court has
21 original jurisdiction, it “shall have supplemental jurisdiction over all other claims that are so
22 related to claims in the action within such original jurisdiction”). Further, plaintiff fails to
23 establish diversity of citizenship that could support diversity jurisdiction over the state law claim.
24 See 28 U.S.C. § 1332; *Bautista v. Pan American World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir.
25 1987) (to establish diversity jurisdiction, a plaintiff must specifically allege the diverse citizenship
26 of all parties, and that the matter in controversy exceeds \$75,000.). Instead, the complaint
27 indicates plaintiff resides in Stockton, California, defendant Zuckerberg is a California citizen,
28 and that Facebook’s principal place of business is in California. See 28 U.S.C. § 1332(c)(1) (“a

1 corporation shall be deemed to be a citizen of every State and foreign state by which it has been
2 incorporated and of the State or foreign state where it has its principal place of business").

3 Accordingly, plaintiff's second amended complaint must be dismissed for failure to state a
4 claim. Further, the court finds that granting further leave to amend would be futile. Plaintiff has
5 already been afforded an opportunity to amend, and his allegations continue to fall far short of
6 stating a cognizable claim. Consequently, it is recommended that the dismissal be without further
7 leave to amend. *See Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) (while the court
8 ordinarily would permit a pro se plaintiff to amend, leave to amend should not be granted where it
9 appears amendment would be futile).

10 Accordingly, it is hereby RECOMMENDED that plaintiff's second amended complaint
11 (ECF No. 6) be dismissed without leave to amend, and the Clerk be directed to close the case.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
17 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
18 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: July 6, 2020.

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21 EDMUND F. BRENNAN
22 UNITED STATES MAGISTRATE JUDGE
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