

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.

FACEBOOK; MARK ZUCKERBERG,
CEO of Facebook,

Defendants-Appellees.

No. 20-16709

D.C. No. 2:18-cv-02756-JAM-EFB
Eastern District of California,
Sacramento

ORDER

Appendix
"D"

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 9, 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 responses to the court's September 9, 2020 order, and the opening brief received on October 23, 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.

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No further filings will be entertained in this closed case.

DISMISSED.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNELL BLEDSOE,

Plaintiff,

v.

FACEBOOK; MARK ZUCKERBERG,

Defendants.

No. 2:18-cv-2756-JAM-EFB PS

FINDINGS AND RECOMMENDATIONS

The court previously granted plaintiff's application to proceed *in forma pauperis*, but dismissed his complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2). ECF No. 5. Plaintiff was granted leave to file an amended complaint. Shortly after filing a first amended complaint, plaintiff filed a second amended complaint which is screened herein. ECF No. 7. As discussed below, the second amended complaint fails to state a claim and must also be dismissed.

As previously explained to plaintiff, although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it fails to set forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and 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 Plaintiff brings this action against Facebook, Inc. and its CEO, Mark Zuckerberg, but the
15 second amended complaint is filled with fanciful allegations that have little relation to plaintiff's
16 dispute with defendants.¹ Setting aside those allegations, the crux of the operative complaint is
17 that plaintiff's Facebook account was hacked, resulting in four months of his posts being deleted.
18 ECF No. 7 at 3. Plaintiff allegedly contacted Facebook about the issue and was notified that his
19 account was hacked by someone in Russia. *Id.* He also claims that Facebook sold his personal
20 information "to the highest bidder on the black market," which is how his "story got sold to CBS
21 Television Network." *Id.* at 2-3. He further claims Facebook "transmitted by wiretap" a picture
22 of him, which was subsequently used on a television show. *Id.* at 4. Plaintiff claims that
23 Facebook breached its agreement to keep his data secure, and he requests defendants be ordered
24 to give him the four months of data that was deleted. *Id.* at 3-4. The second amended complaint
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26 ¹ For instance, plaintiff alleges he is "currently a master (angel) 22 a spiritual level
27 because of wisdom (spiritual awaken) highest level on charts and on the Pyramid." ECF No. 7 at
28 2. As another example, plaintiff alleges he "inherited the King of the South through Bloodline,"
that he is "a prophet," and that his name "stands for the number eleven [which] also stands for
Egypt." *Id.* at 6.

purports to assert claims under the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and for breach of contract.

“To prevail on a civil RICO claim, a plaintiff must prove that the defendant engaged in (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity and, additionally, must establish that (5) the defendant caused injury to plaintiff’s business or property.” *Chaset v. Flee/Skybox Intern., LP*, 300 F.3d 1083, 1086 (9th Cir. 2002). A “pattern of racketeering activity” means at least two criminal acts enumerated by statute. 18 U.S.C. § 1961(1), (5) (including, among many others, mail fraud, wire fraud, and financial institution fraud). Plaintiff has not sufficiently alleged that he sustained an injury to his business or property as a result of defendants’ conduct. Nor has he adequately alleged that defendants engaged in a pattern of racketeering activity by performing at least two specific predicate acts. *Pineda v. Saxon Mortgage Services*, 2008 WL 5187813, at *4 (C.D. Cal. Dec. 10, 2008) (“It is not enough for [plaintiff] to rely on mere labels and conclusions” to establish a RICO claim but rather, plaintiff must give each defendant notice of the particular predicate act it participated in and must allege each predicate act with specificity). Accordingly, plaintiff fails to state a civil RICO claim.

Plaintiff’s remaining cause of action is a state law claim for breach of contract. But plaintiff has yet to assert a properly pleaded federal cause of action which precludes supplemental jurisdiction over the state law claims. See 28 U.S.C. §§ 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States), 1367(a) (where the district court has original jurisdiction, it “shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction....”). Further, plaintiff fails to establish diversity of citizenship that could support diversity jurisdiction over the state law claim. See 28 U.S.C. § 1332; *Bautista v. Pan American World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987) (to establish diversity jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the matter in controversy exceeds \$75,000.). In fact, the second amended complaint indicates plaintiff resides in Stockton, California, defendant Zuckerberg is a citizen of California, and that defendant Facebook’s principal place of business is in California. ECF No. 7 at 1; see 28 U.S.C.

1 § 1332(c)(1) (“a corporation shall be deemed to be a citizen of every State and foreign state by
2 which it has been incorporated and of the State or foreign state where it has its principal place of
3 business”).

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

11 Accordingly, it is hereby RECOMMENDED that plaintiff’s second amended complaint
12 (ECF No. 7) be dismissed without leave to amend, and the Clerk be directed to close the case.

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

20 DATED: July 6, 2020.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNELL BLEDSOE,

Plaintiff,

v.

FACEBOOK; MARK ZUCKERBERG,

Defendants.

No. 2:18-cv-2756-JAM-EFB PS

ORDER

On July 6, 2020, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed objections on July 20, 2020, and they were considered by the undersigned.

This court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the court assumes its correctness and decides the motions on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

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1 The court has reviewed the applicable legal standards and, good cause appearing,
2 concludes that it is appropriate to adopt the proposed Findings and Recommendations in full.

3 Accordingly, IT IS ORDERED that:

- 4 1. The proposed Findings and Recommendations filed July 6, 2020, are adopted;
5 2. Plaintiff's second amended complaint¹ (ECF No. 7) is dismissed without leave to
6 amend; and
7 3. The Clerk is directed to close the case.

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9 DATED: August 10, 2020

10 /s/ John A. Mendez

11 UNITED STATES DISTRICT COURT JUDGE
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26 ¹ After the magistrate judge's findings and recommendations issued, plaintiff filed a third
27 amended complaint. ECF No. 10. That complaint fails to remedy the second amended
28 complaint's deficiencies, as set forth in the July 6, 2020 findings and recommendations, and does
not state a state a claim for relief. Accordingly, there is no basis for allowing plaintiff to proceed
on his third amended complaint.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Donnell Bledsoe 9th Cir. Case No. 20-16709
Appellant(s),

v.

MARK ZUCKERBERG
Appellee(s).

STATEMENT THAT APPEAL SHOULD GO FORWARD
(attach additional sheets as necessary)

1. Date(s) of entry of judgment or order(s) you are challenging in this appeal:

Grounds for entitlement of Relief

2. What claims did you raise to the court below? I was entitled to Relief
FOR BREACH OF CONTRACT AND ENTITLED TO STATUTORY
DAMAGES. Breach of contract - is a legal cause of
action and a type of civil wrong, in which a binding
agreement or bargained for exchange is not honored
by one or more of the parties to the contract by
non-performance or interference with the other
party's performances. By Facebook illegally taking
my 10 year documentary copyright it brought me
production to a halt. No bargaining or fair exchange occurred
BECAUSE defendant's committed that and they thought
that they would not be caught. On 11/18/17 I formally got
my Facebook Account back. I noticed that 4 months
of information/data was missing from July 2016
Plaintiff's stolen data

3. What do you think the court below did wrong? (You may, but need not, refer to cases and statutes.) The lower court did not award me statutory damages. Statutory damages are damages; the person alleging an injury pain and suffering and does not have to prove that they are entitled to a certain amount of damages, but only that the other party has violated the law. Statutory damages may be awarded anytime there has been such a violation.

BREACH OF CONTRACT

BREACH OF CONTRACT IS A LEGAL CAUSE OF ACTION and a BINDING agreement or BARGAINED FOR EXCHANGE is NOT HONORED BY FACEBOOK OR OTHER PARTIES TO THE CONTRACT BY NON-PERFORMANCE or INTERFERENCE with the other party's PERFORMANCES. By Facebook Hacking my page IT brought my performance to a halt for almost a month I reach out to Facebook and was ignored until I filed a complaint with F.C.C. NO BARGAIN FOR EXCHANGE WAS HONORED.

4. Why are these errors serious enough that this appeal should go forward? BECAUSE
YOUR HONOR I THE PLAINTIFF DONNELL BLEDSOE PUT
10 YEARS OF HARD WORK ON A MP3 FLASH
drive and ALL MY WORK FROM 2011- TO
PRESENT IS ON THIS DRIVE. THE DEFENDANTS
COMMITTED THEFT. I THE PLAINTIFF DESERVES AND
MUCH WORTH OF RELIEF UNDER BREACH OF CONTRACT
SEE EXHIBIT "D" — MP3 FLASH DRIVE OF
10 YEARS OF DOCUMENTARY COVERED UNDER
MY 2 REGISTERED COPYRIGHTS THAT I
HAVE PROVIDED EXHIBIT # "A" AND EXHIBIT
"B" ~~STANDARD DAMAGES MAY BE AWARDED~~
AT ANY TIME ~~SETTLING FOR A LOWER AMOUNT~~
~~\$400,000.00~~

5. Additional Information: UPDATED 10 YEAR DOCUMENTARY
COPYRIGHT FROM 2011 TO 2020 HAS BEEN PROVIDED
AS EXHIBIT # "D" IT HAS A RE
DATE FROM 2016 OF JULY TO NOVEMBER 2016
WHERE THERE IS JUST AN INTERMEDIATE COMP.
I HAVE ASK THE COURTS PERMISSION TO ENTER
PHYSICAL EVIDENCE ON MP3 FLASH DRIVE
ENTERED AS EXHIBIT # "D". THE OTHER PARTY
CLEARLY BREACH CONTRACT AND FIN ENTITLED TO
STANDARD DAMAGES AT COURTS DISCRETION, WILL
SETTLE FOR A LESSER AMOUNT COURT DEEM
REASONABLE

Dated: 10/17/2020 Donnell Bledsoe SR.

Print Name(s)

Donnell Bledsoe SR.

Signature(s)

Appellant(s) in Pro Se

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Kary A. Lush

United States Register of Copyrights and Director

Registration Number

PAu 3-999-652

Effective Date of Registration:

November 06, 2019

Registration Decision Date:

December 13, 2019

Title

Title of Work: "THE EASTERN STAR FEDERATION WARSHIP FW7-477"

Completion/Publication

Year of Completion: 2019

Author

• Author: Donnell Bledsoe
Author Created: entire motion picture
Citizen of: United States
Domiciled in: United States
Year Born: 1966

Copyright Claimant

Copyright Claimant: Donnell Bledsoe
2038 E. Church St., Stockton, CA, 95205

Certification

Name: Donnell Bledsoe
Date: November 04, 2019

EXHIBIT # A