

SUPREME COURT OF THE UNITED STATES

No.

RIAN G. WATERS,

Plaintiff - Applicant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Respondents,

**KATHERINE PETER; JEREMY HALEY; MARTHA SMITH-
BLACKMORE; WILLIAM HIGGINS; JIM DALTON; MAURA
TRACY HEALEY; JOHN DOES (1-10),**

Defendants.

**To The Honorable Stephen G. Breyer, Associate Justice of the
United States Supreme Court, and Circuit Justice for the First
Circuit**

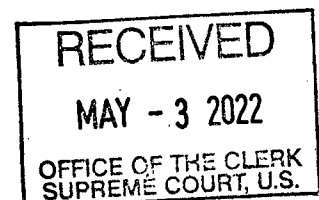
**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR WRIT OF
CERTIORARI**

Respectfully submitted,

Pro se /S/ Rian Waters dated April 27, 2022

199 Allen St E. Longmeadow MA 01028

(530)739-8951 Watersrian@gmail.com



To the Honorable Stephen G. Breyer, Associate Justice of the United States Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the First Circuit: Pursuant to Supreme Court Rule 13.5, Applicant Rian Waters respectfully requests that the time to file a petition for a writ of certiorari in this matter be extended by 60 days, up to and including July 14, 2022. In support thereof, Applicant states as follows:

1. The judgement from which review is sought is *Waters v. Facebook, Inc.*, Case No. 21-1582, 2021 (1st. Cir. Dec. 23, 2021), which was decided by the First Circuit on Dec. 23, 2021. A copy of that decision is attached. Applicant sought rehearing by the First Circuit, which was denied on February 14th 2022. A copy of the First Circuit's order denying rehearing is attached.

2. The current deadline for filing a petition for writ of certiorari is May 16th 2022. (15th is a Sunday) This Application has been filed at least 10 days prior to that date pursuant to Supreme Court Rule 13.5. Applicant has not previously sought an extension of time.

3. The jurisdiction of this Court is based on 28 U.S.C. §1254(1)

Background:

4. The District Court sua sponte ignored half my complaint when he dismissed the case. I tried to explain the arguments for reconsideration, the District court said I could not raise new arguments (that are in my complaint), even though it was my first opportunity to explain them.

5. The First Circuit erred by sua sponte raising issue preclusion for the claims I never got an opportunity to argue for a defaulted Appellee after briefing was closed. This is extra erroneous as the First Circuit was supposed to “uphold a sua sponte order of dismissal only if the allegations contained in the complaint, taken in the light most favorable to the plaintiff, are patently meritless and beyond all hope of redemption.”

6. The First Circuit did not consider the aggregate of my state action theories, and the theories should not be dismissed with prejudice, and without any explanation. I am going to file a new complaint as soon as Kearney is dead or in jail, as Kearney says he would not commit such violent crimes if he did not know that “99% of police officers and 90% of court clerks” are loyal to him.

7. The First Circuit’s endorsement of these errors through its summary

affirmance warrants review, as will be further set forth in Applicant's petition.

REASONS FOR GRANTING THE REQUESTED EXTENSION OF TIME

8. An extension of time will help to ensure that these vitally important and complicated issues are presented to the Court clearly and thoroughly.

9. Defendant Aidan Kearney and I have a criminal show cause hearing on May 25th 2022 at Springfield Massachusetts District Court, case no. 2223A000803, to decide if a criminal complaint should issue over the rape and death threats that Kearney sent in my name on Facebook to obstruct this court case. Kearney's crimes have caused me to have an adjustment disorder, which causes preoccupation with the stressor and its consequences. It is extremely difficult for me to think about most of the merits until an injunction issues, or until Kearney goes to jail.

10. The lack of sleep and lack of nutrition that comes from judges approving of Aidan Kearney's rape and murder threats has caused severe nerve damage, I now have frequent carpal tunnel and a stiff neck, making this document hard to finish even with speak to text.

11. More evidence has come forward since I filed the extraordinary writ, proving indisputably two things, that Appellee/Defendant Aidan Kearney tried to frame me for sending threats to rape and murder his children on the same day that the First Circuit defaulted him. 2) that the goal of the conspiracy was to obstruct my court cases. As well as evidence indicating that Kearney's attorney Ryan P. McLane knew about Kearney's crimes.

Conclusion

For the foregoing reasons, Applicants respectfully request that an order be entered extending the time for filing a petition for writ of certiorari to and including July 14th, 2022.

Dated: April 27, 2022

A handwritten signature in black ink, appearing to read "Ryan P. McLane", with a stylized flourish at the end.

Certificate Of Service

I, Rian Waters, hereby certify that on April 27th, 2022, I served the attached ~~referred~~ ^{Addendum} Motion/Application, on Facebook, Google, Aidan Kearney, and Katherine Peter by first class mail at (I am not listing Katherine Peter's address for her safety, as Kearney is attacking hard.)

Erica Miranda and Matan Shacham at Keker, Van Nest & Peters LLP 633 Battery St

San Francisco, CA 94111-1809, 415-391-5400,

Eric Shumsky at Orrick Herrington & Sutcliffe LLP 1152 15th St NW Washington, DC 20005-1706

Jason B. Mollick, Laura B. Kirshenbaum, Alan D. Rose Sr., at Rose Law Partners LLP 1 Beacon St 23rd Flr
Boston, MA 02108, 617-536-0040

Ryan P. McLane, at McLane & McLane LLC 269 S Westfield St PO Box 105 Feeding Hills, MA 01030413-789-7771, (curtesy copy to Turtleboysports@gmail.com)

I served Maura Healey and Jim Dalton emailing, andrew.batchelor@state.ma.us

Subscribed under the penalties of perjury.

/s/ Rian Waters



Dated April 27th 2022

watersrian@gmail.com

SUPREME COURT OF THE UNITED STATES

No.

RIAN G. WATERS,

Plaintiff - Applicant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Respondents,

**KATHERINE PETER; JEREMY HALEY; MARTHA SMITH-
BLACKMORE; WILLIAM HIGGINS; JIM DALTON; MAURA
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Defendants.

Addendum

District court sua sponte dismissal 5/11/21

pgs 1-5

First Circuit sua sponte dismissal 12/23/21

pgs 6-7

First Circuit order denying second

injunction pending appeal. 2/14/22

pgs 8-9

First Circuit denying rehearing en banc 2/14/22

pgs 10-11

Respectfully submitted,

Pro se /S/ Rian Waters dated April 27, 2022

(530)739-8951 Watersrian@gmail.com



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RIAN G. WATERS,

Plaintiff,

v.

FACEBOOK, INC., GOOGLE LLC, AIDAN
KEARNEY, KATHERINE PETER,
JEREMY HALEY, MARTHA SMITH-
BLACKMORE, WILLIAM HIGGINS, JIM
DALTON, MAURA HEALY, and JOHN
DOES 1-10,

Defendants.

Civil Action No. 20-30168-MGM

ORDER

May 11, 2021

MASTROIANNI, U.S.D.J.

This Order addresses several motions pending before the court. First, [81] Plaintiff's Third Motion to Amend his First Motion to File a Second Amended Complaint is GRANTED. *See* Fed. R. Civ. P. 15(a)(2). Plaintiff's Proposed Second Amended Complaint filed at Docket Number 81-1 is the operative complaint in this case. This court granted the *pro se* Plaintiff's motion to proceed *in forma pauperis* on November 16, 2020. *See* 28 U.S.C. § 1915(a). Pursuant to that same statute, the Second Amended Complaint is hereby DISMISSED WITH PREJUDICE. *See id.* at §1915(e)(2)(B). The remaining motions are DENIED AS MOOT.¹

¹ Specifically, the following motions are denied as moot: [17] Plaintiff's Emergency Ex Parte Motion for Temporary Restraining Order; [36, 37] Defendants' Motions to Dismiss the Complaint; [40] Assented-to Motion for Extension of Time to Answer the Complaint; [42] Plaintiff's Motion to Partially Stay Proceedings; [47, 49, 52, 62] Defendants' Motions to Dismiss the First Amended Complaint; [61] Plaintiff's Motion to File an Oversized Brief; [67] Plaintiff's Second Motion for Extension of Time to Oppose Motion to Dismiss; [69] Plaintiff's Motion for Extra Time to Oppose

“[T]he court shall dismiss the case at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *see Truman v. Armstrong*, No. 18-1095, 2018 WL 11241356, at *1 (1st Cir. Aug. 7, 2018) (affirming sua sponte dismissal pursuant to 28 U.S.C. § 1915).

The court accepts as true all well-plead allegations in the Second Amended Complaint, drawing reasonable inferences in Plaintiff's favor. *See Evergreen Partnering Grp., Inc. v. Pactiv Corp.*, 720 F.3d 33, 36 (1st Cir. 2013). Because Plaintiff proceeds *pro se*, the court interprets his allegations liberally. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).²

The Second Amended Complaint does not “contain sufficient factual matter, accepted as true to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Plaintiff alleges civil RICO, federal civil rights, and pendant state law claims against Defendants Facebook Inc., Google LLC, Aidan Kearney, and Katherine Peter. (*See* Dkt. No. 81-1, Second Amended Complaint (“SAC”).) Plaintiff's claims pursuant to 42 U.S.C. § 1983 (for violations of his First, Fourteenth, and Eighth Amendment rights) fail because Defendants are not state actors and Plaintiff does not allege that their conduct is “fairly attributable” to the state. *See Klos v. Klos*, No. 20-10757, 2020 WL 6291476, at *4 (D. Mass. Oct. 27,

Motion to Dismiss; [71] Plaintiff's Second Motion for Injunctive Relief; [75] Plaintiff's First Motion for Declaratory Judgment; and [85] Plaintiff's Motion for Discovery Subpoena. Plaintiff voluntarily withdrew [64] Plaintiff's First Motion to file a Second Amended Complaint and [72] Plaintiff's Second Motion to Amend his Motion to file a Second Amended Complaint. (*See* Dkt. No. 81 at 3.)

² The court notes that Plaintiff filed a defamation and libel suit against Aidan Kearney and his corporations in Hampden County Superior Court. Plaintiff is presently appealing that court's decision granting defendants summary judgment. *See Waters v. Kearney*, No. 2020-P-0088 (Mass. App. Ct.). To the extent that Plaintiff's Second Amended Complaint seeks relief from a state court judgment, such claim would be barred by the *Rooker-Feldman* doctrine. *See Linardon v. Wolohojian*, No. 20-10969, 2020 WL 6586629, at *2 (D. Mass. Nov. 10, 2020) (dismissing *pro se* action under *Rooker-Feldman* and *Younger* abstention doctrines).

2020) (quoting *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 (1982)) (dismissing Section 1983 claims).

Plaintiff's claim for a conspiracy in violation of 42 U.S.C. § 1985 fails because he does not allege any facts supporting an agreement by the parties to deprive him of equal protection of the law based on his membership in a protected class. See *Perez-Sanchez v. Pub. Building Auth.*, 531 F.3d 104, 107 (1st Cir. 2008) (holding that "a claim under § 1985(3) requires some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action") (internal quotation marks omitted). The Second Amended Complaint alleges that Defendants Google LLC and Facebook Inc. were motivated by profit and turned a blind eye to Defendants Kearney's and Peter's negative posts about Plaintiff. (See SAC at ¶ 126 ("Conspiratorial agreement can be inferred or implied from the circumstances that Google and Facebook share the common purpose with Aidan Kearney of continuing to profit from public shaming advertising revenue").) These allegations do not amount to a conspiracy under Section 1985. Nor does Plaintiff adequately allege a claim against Defendants Facebook Inc. and Google LLC for knowing about a Section 1985 conspiracy and refusing to prevent it. See 42 U.S.C. § 1986.

The Second Amended Complaint also fails to state a plausible basis for relief under the civil RICO statute. To plead a civil RICO action, a plaintiff must allege non-conclusory facts supporting the following elements: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." See *DeMauro v. DeMauro*, 215 F.3d 1311, 2000 WL 231255 at *2 (1st Cir. Feb. 16, 2000) (affirming dismissal of civil RICO claims) (internal quotation marks omitted). "A pattern of racketeering activity requires at least two predicate acts" as defined by 18 U.S.C. § 1961. *Id.* As predicate acts, Plaintiff alleges the following: unidentified commenters on Defendant Kearney's blog posted death threats against him (SAC at ¶¶ 106-107); Defendant Kearney tried to "delay an official proceeding against the Ludlow jail" involving Plaintiff's request for gluten-free meals by making fun

of Plaintiff in a blog post (SAC ¶ 109); Defendant Kearney, through negative blog posts, “knowingly used intimidation . . . to influence or delay” Plaintiff’s submission of court filings (SAC at ¶ 111); Defendant Google LLC tried to persuade him to drop the instant lawsuit (SAC ¶¶ 80, 112); Defendant Kearney “harassed party and witness Katherine Peter several times” (SAC ¶ 113); Defendant Facebook Inc. did not remove objectionable content about Plaintiff (SAC ¶ 114); and Defendant Kearney used his blog to “harass and retaliate” against three individuals in unrelated matters (SAC ¶¶ 116-18). None of these allegations constitute predicate acts under RICO let alone a pattern of racketeering. *See* 18 U.S.C. § 1961. Plaintiff’s allegations of a civil RICO conspiracy also fail because he does not allege any agreement among Defendants.

Having dismissed Plaintiff’s federal claims, the court declines to exercise supplemental jurisdiction over Plaintiff’s state law claims against Defendants Google LLC and Facebook Inc. for violation of the implied warranty of merchantability and gross negligence. *See* 28 U.S.C. § 1367(c).³

The Second Amended Complaint does not allege any claims against Defendants Jeremy Haley, Martha Smith-Blackmore, William Higgins, Jim Dalton, Maura Healy, or the John Does, and they are dismissed.

For the reasons set forth above, Plaintiff’s Third Motion to Amend his First Motion to File a Second Amended Complaint is GRANTED; the Second Amended Complaint is DISMISSED WITH PREJUDICE; and the remaining motions are DENIED AS MOOT. The court certifies that an *in forma pauperis* appeal by Plaintiff from this dismissal would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); *see also Kersey v. Trump*, No. 18-1056, 2018 WL 11303565, at *1 (1st Cir. Sept. 4, 2018) (affirming certification and denying IFP status for appeal).

The Clerk of Court is ordered to close this case.

³ The court lacks diversity jurisdiction pursuant to 28 U.S.C. § 1332.

It is So Ordered.

/s/ Mark G. Mastroianni
MARK G. MASTROIANNI
United States District Judge

United States Court of Appeals For the First Circuit

No. 21-1582

RIAN G. WATERS,

Plaintiff - Appellant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Appellees,

KATHERINE PETER; JEREMY HALEY; MARTHA SMITH-BLACKMORE; WILLIAM
HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES (1-10),

Defendants.

Before

Howard, Chief Judge,
Thompson and Gelpí, Circuit Judges.

JUDGMENT

Entered: December 23, 2021

Pro se plaintiff-appellant Rian G. Waters appeals from the dismissal of his fourth amended complaint. We have conducted a careful de novo review of relevant portions of the record, including the operative complaint, and the arguments sufficiently developed by Waters with his submissions to this court. See Gonzalez-Gonzalez v. United States, 257 F.3d 31, 37 (1st Cir. 2001) (standard of review); Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 30 (1st Cir. 2015) (this court "do[es] not consider arguments for reversing a decision of a district court when the argument is not raised in a party's opening brief," particularly where "the opening brief presents no argument at all challenging [the] express grounds upon which the district court prominently relied in entering judgment"); United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

We affirm the dismissal of the operative complaint, substantially for the reasons set forth by the district court in its May 11, 2021, order. See 1st Cir. R. 27.0(c) (court may summarily affirm

if no "substantial question" presented). We note that, on appeal, Waters complains that he was entitled to additional opportunities to amend his complaint, but he has not identified any potential amendment to the operative complaint that might have been capable of curing the multiple deficiencies identified by the district court. See Gonzalez-Gonzalez, 257 F.3d at 36-37.

Additionally, Waters has failed to elucidate an abuse of discretion as to the district court's denial of his Federal Rule of Civil Procedure 59 motion for relief from judgment. See Markel Am. Ins. Co. v. Díaz-Santiago, 674 F.3d 21, 32 (1st Cir. 2012) (Fed. R. Civ. P. 59(e) standard of review). Any challenge to the district court's ruling on Waters's motion invoking Federal Rule of Civil Procedure 60 is not properly before the court. See Fed. R. App. P. 3 & 4(a)(4)(B)(ii). Waters's motion to strike is denied. As for Waters's "Petition for En Banc Hearing," Waters is free to pursue a post-judgment petition for rehearing en banc that complies with relevant rules and deadlines. Finally, Waters's motions seeking injunctive and other relief, to the extent not mooted by the foregoing, are denied.

Affirmed. See 1st Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Rian G. Waters
Joseph H. Aronson
Matan Shacham
Erica Symone Miranda
Alan D. Rose Sr.
Jason B. Mollick
Laura B. Kirshenbaum
Ryan P. McLane
Andrew Martin Batchelor

United States Court of Appeals For the First Circuit

No. 21-1582

RIAN G. WATERS,

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Defendants - Appellees,

KATHERINE PETER; JEREMY HALEY; MARTHA SMITH-BLACKMORE; WILLIAM
HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES (1-10),

Defendants.

Before

Howard, Chief Judge,
Thompson and Gelpi, Circuit Judges.

ORDER OF COURT

Entered: February 14, 2022

The court has carefully reviewed plaintiff-appellant Rian G. Waters's three pending motions and resolves the requests set out therein as follows:

The "motion for leave to file affidavit in support of the injunction" is granted, and the tendered documents are accepted for filing.

The "second motion to supplement the motion for an injunction pending appeal" is granted, and the tendered documents are accepted for filing.

The "second emergency motion for an injunction pending appeal" is denied. Waters has not met his burden to show that an injunction is warranted. See Respect Maine PAC v. McKee, 622 F.3d 13, 15 (1st Cir. 2010) (standard for obtaining injunctive relief pending appeal).

Waters's petition for rehearing en banc remains pending before the court and will be resolved in due course.

By the Court:

Maria R. Hamilton, Clerk

cc:

Rian G. Waters

Joseph H. Aronson

Matan Shacham

Erica Symone Miranda

Eric Shumsky

Alan D. Rose Sr.

Jason B. Mollick

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HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES (1-10),

Defendants.

Before

Howard, Chief Judge,
Lynch*, Thompson, Kayatta
Barron and Gelpi, Circuit Judges.

ORDER OF COURT

Entered: February 14, 2022

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc also has been treated as a petition for rehearing before the original panel. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be **DENIED**.

By the Court:

Maria R. Hamilton, Clerk

* Judge Lynch is recused and did not participate in the determination of this matter.

cc:

Rian G. Waters

Joseph H. Aronson

Matan Shacham

Erica Symone Miranda

Eric Shumsky

Alan D. Rose Sr.

Jason B. Mollick

Laura B. Kirshenbaum

Ryan P. McLane

Andrew Martin Batchelor

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