

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 24 2023

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

DONNELL BLEDSOE,

Plaintiff-Appellant,

v.

MARK ZUCKERBERG; FACEBOOK,
INC.,

Defendants-Appellees.

No. 22-15984

D.C. No.

2:22-cv-00394-KJM-KJN

Eastern District of California,
Sacramento

ORDER

Before: M. SMITH, BRESS, and VANDYKE, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 10) is denied. *See*
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

SEP 21 2022

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

DONNELL BLEDSOE,

Plaintiff-Appellant,

v.

MARK ZUCKERBERG; FACEBOOK,
INC.,

Defendants-Appellees.

No. 22-15984

D.C. No.

2:22-cv-00394-KJM-KJN

Eastern District of California,
Sacramento

ORDER

Before: M. SMITH, BRESS, and VANDYKE, Circuit Judges.

Upon a review of the record, the response to the order to show cause, and the opening brief filed on August 29, 2022, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 9 2022

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

DONNELL BLEDSOE,

Plaintiff-Appellant,

v.

MARK ZUCKERBERG; FACEBOOK,
INC.,

Defendants-Appellees.

No. 22-15984

D.C. No.

2:22-cv-00394-KJM-KJN

Eastern District of California,
Sacramento

ORDER

A review of the record reflects that this appeal may be frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), OR
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to

Appendix "D"

General Docket United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 22-15984
Nature of Suit: 3440 Other Civil Rights
Donnell Bledsoe v. Mark Zuckerberg, et al
Appeal From: U.S. District Court for Eastern California, Sacramento
Fee Status: Due

Docketed: 07/05/2022
Termed: 09/21/2022

Case Type Information:

- 1) civil
- 2) private
- 3) null

Originating Court Information:

District: 0972-2 : 2:22-cv-00394-KJM-KJN

Trial Judge: Kimberly J. Mueller, Chief District Judge

Date Filed: 03/02/2022

Date Order/Judgment:
06/28/2022

Date Order/Judgment EOD:
06/28/2022

Date NOA Filed:
07/05/2022

Date Rec'd COA:
07/05/2022

Prior Cases:

<u>20-16649</u>	Date Filed: 08/26/2020	Date Disposed: 06/24/2021	Disposition: Dismissed - Judge Order
<u>20-16650</u>	Date Filed: 08/26/2020	Date Disposed: 06/29/2021	Disposition: Affirmed - Memorandum
<u>20-16709</u>	Date Filed: 09/03/2020	Date Disposed: 06/24/2021	Disposition: Dismissed - Judge Order
<u>20-16972</u>	Date Filed: 10/09/2020	Date Disposed: 04/13/2021	Disposition: Dismissed - Judge Order
<u>20-17103</u> Judge Order	Date Filed: 10/23/2020	Date Disposed: 12/15/2020	Disposition: Jurisdictional Defects -
<u>20-17360</u> Judge Order	Date Filed: 12/03/2020	Date Disposed: 12/15/2020	Disposition: Jurisdictional Defects -
<u>20-17476</u> Judge Order	Date Filed: 12/23/2020	Date Disposed: 01/27/2021	Disposition: Jurisdictional Defects -
<u>21-15280</u> Judge Order	Date Filed: 02/18/2021	Date Disposed: 03/10/2021	Disposition: Jurisdictional Defects -
<u>21-16896</u> Judge Order	Date Filed: 11/09/2021	Date Disposed: 12/07/2021	Disposition: Jurisdictional Defects -

Current Cases:

	Lead	Member	Start	End
Related	<u>22-15046</u>	22-15984	07/05/2022	07/19/2022

DONNELL BLEDSOE
 Plaintiff - Appellant,

Donnell Bledsoe
 Direct: 916-370-7932

APPENDIX "E"

FILED

AUG 29 2022

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

John C. Dwyer, Clerk U.S. Court Of Appeals

DOMMELL BLEDSOE SR. 9th Cir. Case No. 22-15984
Appellant(s),

vs.

District Court or
BAP Case No. 2:22-cv-0039-KD
KD

MARK ZUCKERBERG & FACEBOOK
Appellee(s).

APPELLANT'S INFORMAL OPENING BRIEF

(attach additional sheets as necessary, up to a total of 50 pages including this form)

JURISDICTION. This information helps the court determine if it can review your case.

1. Timeliness of Appeal:

- a. What is the date of the judgment or order that you want this court to review? June 28, 2022
- b. Did you file any motion, other than for fees and costs, after the judgment was entered? Answer yes or no: YES
 - If you did, on what date did you file the motion? MAY 9, 2022
 - For prisoners or detainees, what date did you give the motion to prison authorities for mailing? _____
 - What date did the district court or bankruptcy appellate panel (BAP), decide the motion that you filed after judgment? _____
- c. What date did you file your notice of appeal? July 1, 2022
 - For prisoners or detainees, what date did you give your notice of appeal to prison authorities for mailing? _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNELL BLEDSOE,

Plaintiff,

v.

MARK ZUCKERBERG; FACEBOOK,

Defendants.

No. 2:22-cv-0394-KJM-KJN PS

ORDER

(ECF Nos. 2, 5)

On April 28, 2022, the magistrate judge filed findings and recommendations (ECF No. 5), which were served on the plaintiff and which contained notice that any objections to the findings and recommendations were to be filed within fourteen (14) days. On May 9, 2022, plaintiff filed objections to the findings and recommendations (ECF No. 6), which have been considered by the court.


In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court adopts the magistrate judge's findings and recommendations that to the extent this court has subject matter jurisdiction over this action, the complaint does not state a claim on which relief can be granted, and amendment would be futile.

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1 Accordingly, the action is DISMISSED with prejudice for failure to state a claim,
2 pursuant to 28 U.S.C. § 1915(e)(2), and plaintiff's motion to proceed in forma pauperis (ECF
3 No. 2) is DENIED AS MOOT. The Clerk of Court is directed to CLOSE this case.

4 DATED: June 28, 2022.

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7 CHIEF UNITED STATES DISTRICT JUDGE
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

DONNELL BLEDSOE,

CASE NO: 2:22-CV-00394-KJM-KJN

v.

MARK ZUCKERBERG, ET AL.,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 6/28/2022**

Keith Holland
Clerk of Court

ENTERED: June 28, 2022

by: /s/ L. Reader
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNELL BLEDSOE,

Plaintiff,

v.

MARK ZUCKERBERG; FACEBOOK,

Defendants.

No. 2:22-cv-0394-KJM-KJN PS

FINDINGS AND RECOMMENDATIONS TO
DISMISS AND ORDER

(ECF Nos. 1, 2)

Plaintiff, who is proceeding without counsel in this action, requests leave to proceed in forma pauperis (“IFP”).¹ (ECF No. 2.) See 28 U.S.C. § 1915 (authorizing the commencement of an action “without prepayment of fees or security” by a person who is unable to pay such fees).

Under the IFP statute, the court must screen the complaint and dismiss any claims that are “frivolous or malicious,” fail to state a claim on which relief may be granted, or seek monetary relief against an immune defendant. 28 U.S.C. § 1915(e)(2). Further, the court has an independent duty to ensure it has subject matter jurisdiction in the case. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004).

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¹ Actions where a party proceeds without counsel are referred to a magistrate judge pursuant to E.D. Cal. L.R. 302(c)(21). See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72.

1 Because the complaint fails to state a claim and its defects cannot be cured through
2 amendment, the court recommends that the action be dismissed, and that plaintiff's application to
3 proceed in forma pauperis be denied as moot.

4 **Legal Standards**

5 Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & fn. 7
6 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is
7 to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it
8 appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31
9 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be
10 given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

11 Rule 8(a)² requires that a pleading be “(1) a short and plain statement of the grounds for
12 the court’s jurisdiction . . . ; (2) a short and plain statement of the claim showing that the pleader
13 is entitled to relief; and (3) a demand for the relief sought, which may include relief in the
14 alternative or different types of relief.” Each allegation must be simple, concise, and direct. Rule
15 8(d)(1); see Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) (overruled on other grounds)
16 (“Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus
17 litigation on the merits of a claim.”).

18 A claim may be dismissed because of the plaintiff’s “failure to state a claim upon which
19 relief can be granted.” Rule 12(b)(6). A complaint fails to state a claim if it either lacks a
20 cognizable legal theory or sufficient facts to allege a cognizable legal theory. Mollett v. Netflix,
21 Inc., 795 F.3d 1062, 1065 (9th Cir. 2015). To avoid dismissal for failure to state a claim, a
22 complaint must contain more than “naked assertions,” “labels and conclusions,” or “a formulaic
23 recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
24 555-57 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action,
25 supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678
26 (2009). Thus, a complaint “must contain sufficient factual matter, accepted as true, to state a
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28 ² Citation to the “Rule(s)” are to the Federal Rules of Civil Procedure, unless otherwise noted.

claim to relief that is plausible on its face.” Id. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

When considering whether a complaint states a claim upon which relief can be granted, the court must accept the well-pled factual allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Papasan v. Allain, 478 U.S. 265, 283 (1986). The court is not, however, required to accept as true “conclusory [factual] allegations that are contradicted by documents referred to in the complaint,” or “legal conclusions merely because they are cast in the form of factual allegations.” Paulsen v. CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009).

Analysis

Plaintiff’s complaint should be dismissed because it fails to state a claim for which relief can be granted. See 28 U.S.C. § 1915(e)(2). This is at least the second time plaintiff has sued Facebook and its CEO, Mark Zuckerberg, in this court regarding the alleged deletion of plaintiff’s Facebook posts. See Bledsoe v. Facebook, No. 2:18-CV-2756-JAM-EFB-PS, 2020 WL 3642164 (E.D. Cal. July 6, 2020), report and recommendation adopted, 2020 WL 4605124 (E.D. Cal. Aug. 11, 2020). The prior suit, which asserted breach-of-contract and RICO claims based on the supposed hacking of plaintiff’s Facebook account by someone in Russia, was dismissed for failure to state a claim and failure to establish the court’s subject matter jurisdiction. Id. at *2.

This time, plaintiff is suing Facebook and Zuckerberg for themselves “hack[ing]” plaintiff’s Facebook account and regularly deleting the religious photos, videos, and messages plaintiff posts—going back to 2010. (ECF No. 1 at 6-18.) Plaintiff asserts federal question jurisdiction based on the “Civil Rights Act” prohibition of religious discrimination under the First Amendment. (Id. at 3-4.) He also suggests that defendants’ alleged conduct amounts to a federal criminal offense of internet stalking. (Id. at 5.) Plaintiff seeks \$100 million in damages and an injunction to stop defendants from deleting his religious posts. (Id. at 5, 18.)

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1 As plaintiff was advised in his prior suit, a federal district court is a court of limited
2 jurisdiction. It only has jurisdiction over a civil suit when: (1) a federal question is presented in
3 an action “arising under the Constitution, laws, or treaties of the United States” or (2) there is
4 complete diversity of citizenship across the parties and the amount in controversy exceeds
5 \$75,000. See 28 U.S.C. §§ 1331, 1332(a). The court concludes that plaintiff fails to state a
6 federal cause of action, and that the court lacks diversity jurisdiction over any state-law claims.

7 ***1. Failure to State a Viable Federal Cause of Action***

8 The court understands plaintiff to be asserting a single cause of action under 42 U.S.C.
9 § 1983 for violation of his First Amendment religious exercise and free speech rights.
10 Section 1983 “creates a private right of action against individuals who, acting under color of state
11 law, violate federal constitutional or statutory rights.” Devereaux v. Abbey, 263 F.3d 1070, 1074
12 (9th Cir. 2001). Section 1983 is the proper vehicle for First Amendment claims like those
13 asserted here; however, plaintiff does not name any defendant who can be sued under this statute.

14 To state a claim under section 1983, a plaintiff must allege (1) that a right secured by the
15 Constitution or laws of the United States was violated, and (2) that the alleged violation was
16 committed by a person acting under color of state law. See West v. Atkins, 487 U.S. 42, 48
17 (1988). While plaintiff asserts a violation of his constitutional First Amendment rights, neither
18 defendant Zuckerberg nor Facebook is a state actor.

19 Conduct by private individuals or entities is generally not actionable under section 1983.
20 See Gomez v. Toledo, 446 U.S. 635, 640 (1980) (a private individual generally does not act under
21 color of state law). Conduct by private individuals or entities is only actionable under
22 section 1983 if there is “such a close nexus between the State and the challenged action that
23 seemingly private behavior may be fairly treated as that of the State itself.” Brentwood Academy
24 v. Tennessee Secondary Sch. Athletic Ass’n, 531 U.S. 288, 295 (2001) (cleaned up). Plaintiff’s
25 allegations against Zuckerberg, a private (if well known) citizen, and Facebook, a for-profit
26 corporation, do not in any way suggest that these actors’ alleged deletion of plaintiffs’ posts on
27 their platform was conduct by or for a state government. See Franklin v. Fox, 312 F.3d 423, 445
28 (9th Cir. 2002) (outlining four potential circumstances in which private action can amount to state

1 action for purposes of § 1983). Accordingly, plaintiff does not and cannot make out a
2 section 1983 claim against defendants.

3 The only other federal claim the complaint suggests is that plaintiff wishes to hold
4 defendants liable for supposed federal criminal offenses. (See ECF No. 1 at 5.) However,
5 plaintiff, as a private citizen, has no authority to bring a civil claim under criminal statutes. See
6 Allen v. Gold Country Casino, 464 F.3d 1044, 1048 (9th Cir. 2006) (no private right of action for
7 violation of criminal statutes).

8 Thus, the complaint fails to state any viable federal cause of action.

9 ***2. No Diversity or Supplemental Jurisdiction over any State Law Claims***

10 The court sees no additional state-law cause of action in the complaint. However, to the
11 extent plaintiff seeks to assert a state-law claim, he cannot do so in federal court because neither
12 diversity nor supplemental jurisdiction exists for this case.

13 To invoke the court's diversity jurisdiction, a plaintiff must specifically allege the diverse
14 citizenship of all parties, and that the matter in controversy exceeds \$75,000. 28 U.S.C.
15 § 1332(a); Bautista v. Pan American World Airlines, Inc., 828 F.2d 546, 552 (9th Cir. 1987).
16 According to the complaint, plaintiff resides in California, as does defendant Zuckerberg; and
17 plaintiff gives a California address for defendant Facebook, which courts frequently find to be a
18 citizen of California. (ECF No. 1 at 2, 4-6.) See, e.g., Dennis v. Zuckerberg, 2017 WL 3873761,
19 at *1 n.1 (N.D. Ohio Sept. 5, 2017) ("Facebook is a Delaware corporation with its principle place
20 of business in California, and Mr. Zuckerberg is a citizen of California."). Because plaintiff
21 shares a common state of citizenship with defendants, the court would lack diversity jurisdiction
22 over any state-law claim.

23 Finally, without a valid federal claim, there also can be no supplemental jurisdiction over
24 any state-law claim plaintiff might attempt to assert in this action. See 28 U.S.C. § 1367(a);
25 Bahrapour v. Lampert, 356 F.3d 969, 978 (9th Cir. 2004) (supplemental jurisdiction requires
26 that a state law claim share a "common nucleus of operative fact" with federal claims).

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No Leave to Amend

Ordinarily, the court liberally grants a pro se plaintiff leave to amend. However, because plaintiff would be unable to cure the above-mentioned legal deficiencies through further amendment of the complaint, the court concludes that granting leave to amend would be futile, and recommends that this action be dismissed with prejudice. See Cahill, 80 F.3d at 339; see also Morse v. N. Coast Opportunities, Inc., 1995 WL 779119, at *1-2 (N.D. Cal. Dec. 5, 1995) (discussing Ninth Circuit precedent and holding that claims failing to allege the state action element of § 1983 should be dismissed for failure to state a claim, not lack of subject matter jurisdiction).

RECOMMENDATIONS

Accordingly, IT IS HEREBY RECOMMENDED that:

1. The action be DISMISSED with prejudice for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2);
2. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED AS MOOT; and
3. The Clerk of Court be directed to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

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ORDER

In light of these recommendations, IT IS ALSO HEREBY ORDERED that all pleading, discovery, and motion practice in this action are stayed pending resolution of these findings and recommendations. Other than objections to the findings and recommendations or non-frivolous motions for emergency relief, the court will not entertain or respond to any pleadings or motions until the findings and recommendations are resolved.

Dated: April 27, 2022


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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