

APPENDIX

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Respectfully submitted,

Pro se /S/ Rian Waters dated July 14, 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

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“[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. Wolhoyjian*, 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. § 1337(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

05/04/2021	<u>86</u>	Opposition re <u>72</u> Second MOTION to Amend <u>64</u> First MOTION for Leave to File <i>Second Amended Complaint</i> , <u>64</u> First MOTION for Leave to File <i>Second Amended Complaint</i> , <u>81</u> Third MOTION to Amend <u>64</u> First MOTION for Leave to File <i>Second Amended Complaint</i> filed by Aidan Kearney. (McLane, Ryan) (Entered: 05/04/2021)
05/04/2021	<u>87</u>	Opposition re <u>85</u> First MOTION for Discovery <i>Subpoena</i> filed by Aidan Kearney. (McLane, Ryan) (Entered: 05/04/2021)
05/04/2021	<u>88</u>	First REPLY to Response to <u>85</u> First MOTION for Discovery <i>Subpoena</i> , <u>81</u> Third MOTION to Amend <u>64</u> First MOTION for Leave to File <i>Second Amended Complaint to Kearney's oppositions</i> filed by Rian G. Waters. (Attachments: # <u>1</u> Reply to Kearney's oppositions)(Waters, Rian) (Entered: 05/04/2021)
05/11/2021	<u>89</u>	Judge Mark G. Mastroianni: ORDER entered as follows: For the reasons stated, Plaintiffs 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. See the attached order for complete details. (Lindsay, Maurice) (Entered: 05/11/2021)
05/11/2021	<u>90</u>	Judge Mark G. Mastroianni: ORDER entered. Order of Dismissal. (Lindsay, Maurice) (Entered: 05/11/2021)
05/13/2021	<u>91</u>	First MOTION to Set Aside Judgment <i>Rule 59e Alter or Amend</i> by Rian G. Waters. (Attachments: # <u>1</u> Memorandum)(Waters, Rian) (Entered: 05/13/2021)
05/27/2021	<u>92</u>	Opposition re <u>91</u> First MOTION to Set Aside Judgment <i>Rule 59e Alter or Amend</i> filed by Facebook Inc.. (Miranda, Erica) (Entered: 05/27/2021)
07/22/2021	<u>93</u>	<p>Judge Mark G. Mastroianni: ELECTRONIC ORDER entered denying <u>91</u> Plaintiff's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e).</p> <p>A motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) is "an extraordinary remedy which should be used sparingly." See Charles Alan Wright, et al., 11 Federal Practice and Procedure § 2810.1 (3d ed. Apr. 2021). "To obtain relief, the movant must demonstrate that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law." <i>Palmer v. Champion Mortgage</i>, 465 F.3d 24, 30 (1st Cir. 2006) (denying motion). A Rule 59(e) motion "may not be used to relitigate old matters, [or] to raise arguments." Federal Practice and Procedure § 2810.1 (internal citations omitted). Plaintiff attempts to do both in his Rule 59(e) motion. After reviewing its May 11, 2021 order (Dkt. No. 89), Plaintiff's memorandum (Dkt. No. 91-1), and Defendant Facebook's opposition (Dkt. No. 92), the court does not find any basis to alter or amend the judgment in this case.</p> <p>The clerk of court is ordered to close this case. (Lindsay, Maurice) (Entered: 07/23/2021)</p>
07/29/2021	<u>94</u>	NOTICE OF APPEAL as to <u>90</u> Order Dismissing Case, <u>93</u> Order on Motion to Set Aside Judgment,,, <u>89</u> Order on Motion to Dismiss for Failure to State a Claim,,,,, Order on Motion for Extension of Time to Answer,,, Order on Motion to Stay,,,,,,,,,, Order on Motion to Dismiss/Lack of Jurisdiction,,, Order on Motion for Leave to File,,,,,,,,,, Order on Motion for Injunctive Relief,,, Order on Motion to Amend,,,,, Order on Motion for Declaratory Judgment,,, Order on Motion for Discovery,,, Order on Motion for TRO,, by Rian G. Waters NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at

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

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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. Diáz-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

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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.

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).

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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
Laura B. Kirshenbaum
Ryan P. McLane
Andrew Martin Batchelor

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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,
Lynch*, Thompson, Kayatta
Barron and Gelpí, 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.

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		(Warnock, Douglas) (Entered: 01/20/2022)
01/24/2022	118	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered DENYING <u>113</u> Plaintiff's Emergency Motion for Defendants to Preserve Evidence. This case was dismissed on May 11, 2021. Plaintiff is not entitled to seek discovery pursuant to the Federal Rules of Civil Procedure in a closed case. His motion, therefore, is denied. (Zamorski, Michael) (Entered: 01/24/2022)
02/14/2022	<u>119</u>	USCA Judgment as to <u>115</u> Notice of Appeal, filed by Rian G. Waters (Paine, Matthew) (Entered: 02/15/2022)
02/14/2022	<u>120</u>	MANDATE of USCA as to <u>115</u> Notice of Appeal, filed by Rian G. Waters. Appeal <u>115</u> Terminated (Paine, Matthew) (Entered: 02/15/2022)
02/22/2022	<u>121</u>	MANDATE of USCA as to <u>94</u> Notice of Appeal filed by Rian G. Waters. Appeal <u>94</u> Terminated. (Dore, Samantha) (Entered: 02/23/2022)
03/03/2022	<u>122</u>	Second MOTION to Reopen Case by Rian G. Waters. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit)(Waters, Rian) (Entered: 03/03/2022)
03/09/2022	123	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered DENYING <u>122</u> Plaintiff's Second Motion pursuant to Fed. R. Civ. P. 60(b) for substantially the same reasons as stated in the court's October 12, 2021 order denying Plaintiff's first Rule 60(b) motion. (See Dkt. No. 99 (allowing motion insofar as Plaintiff requested filing excess pages but denying substance of motion).) Namely, "a party who seeks recourse under Rule 60(b) must persuade the trial court, at a bare minimum... that exceptional circumstances exist favoring extraordinary relief; that if the judgment is set aside, he has the right stuff to mount a potentially meritorious claim or defense...." <i>Karak v. Bursaw Oil Corp.</i> , 288 F.3d 15, 19 (1st Cir. 2002). Plaintiff's new evidence further allegations of online feuding between Plaintiff and Defendant Aiden Kearney do not cure the defects in his case described in detail in the court's order dated May 11, 2021 (Dkt. No. 89). Plaintiff submitted an affidavit describing Defendant Kearney's fabrication of threats against Kearney's children, made in Plaintiff's name, for the purpose of filing a false police report. (Dkt. No. 122-1.) This behavior does not convert Defendant Kearney into a state actor for purposes of 42 U.S.C. § 1983. See <i>Howard v. Malac</i> , 270 F. Supp. 2d 132, 144 (D. Mass. 2003) (describing state action doctrines and gathering cases). (Figueroa, Tamara) (Entered: 03/09/2022)

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