

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RIAN WATERS,
Plaintiff,
v.
META PLATFORMS INC., et al.,
Defendants.

Case No. [23-cv-00643-YGR](#) (RS)

**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING
ORDER, DISMISSING COMPLAINT;
JUDGMENT**

I. INTRODUCTION

Plaintiff has filed an application to proceed *in forma pauperis* (“IFP”), Dkt. 15, the operative First Amended Complaint (“FAC”), Dkt. 17, and a motion for a temporary restraining order (“TRO”), Dkt. 20. The FAC alleges defendants Meta Platforms Inc. (“Meta”), Aidan Kearney, and Worcester Digital Marketing LLC (“WDM”) violated 42 U.S.C. § 1985(2) (Claims 1 and 2) and 42 U.S.C. § 1983 (Claim 4); and *Bivens* (Claim 5). It additionally avers Meta neglected to prevent Kearney’s harassment of plaintiff in violation of 42 U.S.C. § 1986 (Claim 3). For the reasons stated below, the motion for a TRO is denied, the motion for IFP status is denied as moot, and the FAC is dismissed with prejudice. Judgment is entered in favor of Defendants.¹

///

¹ This Order and Judgment are being entered by the undersigned as Duty Judge during the temporary unavailability of the assigned Judge, as the motion requests immediate action.

1 **II. BACKGROUND**

2 This section is based on the averments in the FAC. Plaintiff is an individual who uses
3 Meta’s online platform Facebook. Defendant Aidan Kearney, his company WDM, and others have
4 harassed plaintiff online, including on Facebook, for several years. The complaint does not allege
5 the reasons for the harassment. From Plaintiff’s description of Kearney, the harassment appears
6 related to Plaintiff’s political beliefs, rather than animus based on a protected class. *See* Dkt. 17
7 (“FAC”) ¶ 106 (stating such animus is not required to support § 1985(2) claims).

8 Plaintiff has brought multiple prior actions against Defendants related to harassment,
9 including a 2020 case in the U.S. District Court for the District of Massachusetts. *See Waters v.*
10 *Facebook Inc.*, No. 20-30168-MGM (D. Mass. Oct. 26, 2020); FAC ¶ 20. Plaintiff’s claims here
11 are based on Defendants’ conduct during the course of that litigation. Relevant here, that case also
12 included § 1985(2) claims, which were dismissed for reasons including Plaintiff’s failure to allege
13 that Defendants’ harassment was based on class-based animus. *See* FAC ¶¶ 102–06.

14 Kearney twice used Facebook to harass Plaintiff to prevent him from participating in the
15 Massachusetts litigation. First, in November 2021, while the case was pending before the First
16 Circuit, Kearney conspired with others on Facebook to “deter or prevent [Plaintiff] from attending
17 or testifying freely in federal court . . . by trying to frame [Plaintiff] for threatening to rape and
18 murder [Kearney’s] children.” *Id.* ¶ 132. Kearney did so by creating a fake version of Plaintiff’s
19 Facebook account and making the threats from that account. Allegedly, Kearney later attempted to
20 submit the fake threats to the Court. Second, in June 2022, Kearney posted on Facebook a motion
21 Plaintiff had filed and then told his “followers” to harass a witness identified in the motion. *Id.* ¶
22 60. Kearney then hosted a YouTube video in which he made further threats toward that witness.
23 Plaintiff does not identify any threats targeted at himself.

24 Regarding Meta’s involvement in this harassment, Plaintiff avers only that Meta was aware
25 of Kearney’s activity on Facebook generally, that Kearney had posted content on Facebook that
26 violated community standards, and that Kearney claimed in a book he wrote in 2018 that he had
27 discussions with two Facebook employees about paying to have his content remain on Facebook

1 even if it violated community standards.

2 The operative FAC was filed on March 24, 2023 and seeks a permanent injunction, \$10
3 million in compensatory damages, and/or nominal and punitive damages. On April 3, 2023,
4 Plaintiff filed a motion seeking a TRO to enjoin Defendants from “making any blog, post, or
5 video, that shames, threatens, discusses, or otherwise harasses any persons involved in this case
6 including, court officials, natural parties, lawyers, or witnesses, on Facebook or any website or
7 social-media page directly associated with this case” starting ten days prior to the hearing on a
8 (contemplated) request for a preliminary injunction. Dkt. 20, at 5–6.

9 **III. LEGAL STANDARD**

10 **A. *In Forma Pauperis* Status and Dismissal**

11 A court may authorize a plaintiff to commence an action in federal court *in forma*
12 *pauperis*, meaning without prepayment of fees or security, if the plaintiff submits an affidavit
13 showing that he or she is unable to pay such fees or give security. 28 U.S.C. § 1915(a). Under 28
14 U.S.C. § 1915(e)(2)(B), the court must dismiss an action that fails to state a claim upon which
15 relief may be granted. “The standard for determining whether a plaintiff has failed to state a claim
16 upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil
17 Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 1108, 1112
18 (9th Cir. 2012) (citing *Lopez v. Smith*, 203 F.3d 1122, 1127–31 (9th Cir. 2000)).

19 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of claims alleged in the
20 complaint. *Ileto v. Glock*, 349 F.3d 1191, 1199–1200 (9th Cir. 2003). A complaint may be
21 dismissed under Rule 12(b)(6) if the plaintiff fails to state a cognizable legal theory or has not
22 alleged sufficient facts to support a cognizable legal theory. *Somers v. Apple, Inc.*, 729 F.3d 953,
23 959 (9th Cir. 2013). Although a court must accept as true all the factual allegations in the
24 complaint, legally conclusory statements that are not supported by actual factual allegations need
25 not be accepted. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). The complaint must proffer
26 sufficient facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v.*
27 *Twombly*, 550 U.S. 544, 555, 558–59 (2007).

1 participation in the litigation, let alone any facts showing a conspiracy to do so. He also does not
2 allege the harassment was in any way related to animus toward a protected status. Accordingly,
3 Claims 1 and 2 are dismissed, as is Claim 3, which is derivative of those claims.

4 Dismissal without leave to amend is warranted, because “it is clear that the complaint’s
5 deficiencies cannot be cured by amendment.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir.
6 1995). Nothing in the FAC indicates that Plaintiff could amend to aver the harassment was based
7 on class-based animus. Indeed, Plaintiff explicitly alleges that such animus is not required to
8 support his claim and that he has had a prior action against defendants dismissed for lack of such
9 allegations. These claims are thus dismissed with prejudice.

10 **B. Claims 4 and 5**

11 Claims 4 and 5 for violation of § 1983 and *Bivens* are dismissed with prejudice, as such
12 claims can only be brought against state actors. Defendants are private individuals and entities.
13 There are no plausible averments that they were acting under color of state law. *See Leer v.*
14 *Murphy*, 844 F.2d 628, 632–33 (9th Cir. 1988). Plaintiff’s vague averments that Kearney uses an
15 attorney’s login “issued by the state” to search criminal and family court information for public
16 shaming and claims to have connections to police and government officials, *see* FAC ¶¶ 69–78, is
17 inadequate to show that the “alleged infringement of the plaintiff’s federal rights is fairly
18 attributable to the State” such that the state is responsible for Kearney’s actions. *West v. Atkins*,
19 487 U.S. 42, 49 (1988) (internal quotation marks and citation omitted). These claims are thus
20 dismissed and, for the reasons listed above, leave to amend is not warranted.

21 **C. Temporary Restraining Order and IFP Status**

22 As discussed above, Plaintiff has failed to show his likelihood of success on the merits. As
23 such, there is no basis to issue a TRO, and that motion is therefore denied. Plaintiff’s request for
24 IFP status is denied as moot given the insufficiency of the FAC.

25 **V. CONCLUSION**

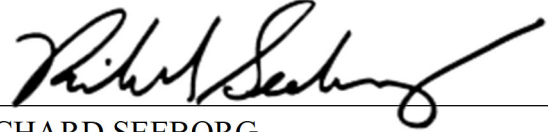
26 As stated above, the FAC is dismissed with prejudice. Plaintiff’s request for IFP, and his
27 motion for a TRO, are both denied; all other pending motions are denied as moot. Judgment is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

entered in favor of Defendants and against Plaintiff, and the case is closed.

IT IS SO ORDERED.

Dated: April 5, 2023



RICHARD SEEBORG
Chief United States District Judge