

It is evident that the complaint must be dismissed for failure to state a claim upon which relief can be granted. The circumstances compelling this disposition are the following:


- The CAN-SPAM Act can only be enforced by certain federal agencies and other designated persons. It does not provide a cause of action for private citizens. 15 U.S.C. § 7706; see *Martin v. CCH, Inc.*, 2011 WL 1118492 at *3 (N.D.Ill. March 24, 2011)(no cause of action for private citizens under CAN-SPAM Act); *RJ Production Co. v. Nestle USA, Inc.*, 2010 WL 1506914 (D.D.C. April 15, 2010) (pro se plaintiff lacked standing to enforce CAN-SPAM because only a provider of Internet access service can bring private cause of action). Thacker lacks standing to assert this claim.
- Thacker's First Amendment claim fails to state a claim upon which relief can be granted because the "First Amendment only protects a person from the government, or a particular state actor, not from private citizens." *Gross v. Town of Cicero, Ill.*, 619 F.3d 697, 709 (7th Cir. 2010). Thacker does not allege that Level 3 is a state actor.
- The claims against unnamed "all those in active concert" are dismissed because "it is pointless to include [an] anonymous defendant[] in federal court; this type of placeholder does not open the door to relation back under *Fed.R.Civ.P.* 15, nor can it otherwise help the plaintiff." *Wudtke v. Davel*, 128 F.3d 1057, 1060 (7th Cir. 1997) (internal citations omitted).

Having dismissed all of the federal claims, the court declines to exercise supplemental jurisdiction over any state law claim.

For the reasons explained above, the complaint fails to survive the screening required by §1915 because it fails to contain a legally viable claim against the defendants. Dismissal of the action is therefore mandatory. Thacker's motion to appoint counsel [7] and motion for preliminary injunction [8] are each **denied** as moot. Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 06/01/2011



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana