

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CARL A. WESCOTT,  
Plaintiff,  
  
v.  
  
GOOGLE, LLC,  
Defendant.

Case No. [24-cv-01513-PHK](#)

**ORDER DISMISSING COMPLAINT  
WITHOUT PREJUDICE PURSUANT  
TO 28 U.S.C. § 1915(e)(2)(B) AND  
DENYING MOTION FOR SERVICE**

Re: Dkts. 1, 5

*Pro se* Plaintiff Carl A. Westcott (“Plaintiff”) brings this action against Defendant Google LLC (“Google”). The Court previously granted Plaintiff’s application to proceed *in forma pauperis* (“IFP”), in accordance with 28 U.S.C. § 1915(a). [Dkt. 9]. The Court now analyzes whether Plaintiff’s Complaint satisfies the mandatory screening requirements of 28 U.S.C. § 1915(e)(2)(B).

**LEGAL STANDARD**

Any complaint filed pursuant to the IFP provisions of § 1915(a) is subject to mandatory review by the Court and *sua sponte* dismissal if the Court determines the complaint is “frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii); *see Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) not only permits, but *requires* a district court to dismiss an [IFP] complaint that fails to state a claim.”) (emphasis added); *see also Chavez v. Robinson*, 817 F.3d 1162, 1167-68 (9th Cir. 2016) (noting that § 1915(e)(2)(B) “mandates dismissal—even if

1 dismissal comes before the defendants are served”). Congress enacted this safeguard because “a  
2 litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks  
3 an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.” *Denton*  
4 *v. Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 324 (1989)).

5 If the Court dismisses a complaint pursuant to § 1915(e)(2)(B), the plaintiff may still file  
6 the same complaint by paying the filing fee because such dismissal is not on the merits; rather, the  
7 dismissal is an exercise of the Court’s discretion under the IFP statute. *Biesenbach v. Does 1-3*,  
8 No. 21-cv-08091-DMR, 2022 WL 204358, at \*2 (N.D. Cal. Jan. 24, 2022) (citing *Denton*, 504  
9 U.S. at 32).

10 Plaintiff proceeds in this matter *pro se*. Accordingly, in undertaking the mandatory  
11 screening of Plaintiff’s Complaint, the Court construes Plaintiff’s allegations liberally and affords  
12 him the “benefit of any doubt.” *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (citation  
13 omitted).

## 14 ANALYSIS

### 15 I. Whether the Complaint is Frivolous or Malicious

16 The Court first considers whether Plaintiff’s Complaint is “frivolous or malicious.” 28  
17 U.S.C. § 1915(e)(2)(B)(i). A complaint is frivolous if “it lacks an arguable basis either in law or  
18 in fact.” *Denton*, 504 U.S. at 31 (quoting *Neitzke*, 490 U.S. at 325). A complaint is legally  
19 frivolous if it fails to establish standing and subject matter jurisdiction. *Castillo v. Marshall*, 107  
20 F.3d 15 (9th Cir. 1997) (mem.) (quoting *Pratt v. Sumner*, 807 F.2d 817, 819 (9th Cir. 1987)). A  
21 complaint is malicious “if it was filed with the ‘intention or desire to harm another.’” *Andrews v.*  
22 *King*, 398 F.3d 1113, 1121 (9th Cir. 2005) (citations omitted).

23 The Court finds that Plaintiff’s Complaint is sufficiently rooted in law and fact such that it  
24 should not be dismissed as frivolous. In his Complaint, Plaintiff invokes federal diversity  
25 jurisdiction, pursuant to 28 U.S.C. § 1332, which requires that there be complete diversity of  
26 citizenship between the Parties and that the amount in controversy exceeds \$75,000 exclusive of  
27 interest and costs. With regard to diversity of citizenship, Plaintiff alleges that he is a citizen of  
28 Arizona and that Google is a citizen of California. [Dkt. 1 at ¶ 17]. With regard to the amount in

1 controversy, Plaintiff alleges that he has suffered hundreds of thousands of dollars in damages due  
2 to “los[t] emails, including gmail accounts, that were ‘hijacked.’” *Id.* at ¶¶ 30, 34-45. Plaintiff  
3 asserts a single cause of action for negligence against Google for “not helping the Plaintiff get his  
4 gmail accounts back.” *Id.* at ¶¶ 110-17.

5 The Court finds no indication that Plaintiff’s Complaint was “filed with the intention or  
6 desire to harm another.” *King*, 398 F.3d at 1121. Accordingly, the Complaint as drafted does not  
7 appear to be malicious.

8 Accordingly, the Court determines that Plaintiff’s Complaint is neither frivolous nor  
9 malicious for purposes of 28 U.S.C. § 1915(e)(2)(B)(i). Therefore, Plaintiff’s Complaint satisfies  
10 the first requirement of the mandatory screening statute.

11 **II. Whether the Complaint Fails to State a Claim for Relief**

12 The Court next considers whether the Complaint should be dismissed for failure to state a  
13 claim for relief. 28 U.S.C. § 1915(e)(2)(B)(ii). “The standard for determining whether a plaintiff  
14 has failed to state a claim upon which relief may be granted under § 1915(e)(2)(B)(ii) is the same  
15 as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison*, 668  
16 F.3d at 1112 (citing *Lopez*, 203 F.3d at 1127). “The Rule 12(b)(6) standard requires a complaint  
17 to contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
18 face.” *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012) (*Ashcroft v. Iqbal*, 556 U.S. 662,  
19 678 (2009)). Detailed factual allegations are not required but “[t]hreadbare recitals of the  
20 elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,  
21 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A pleading must  
22 “contain either direct or inferential allegations respecting all the material elements necessary to  
23 sustain recovery under *some* viable legal theory.” *Twombly*, 550 U.S. at 562 (citation omitted)  
24 (emphasis in original).

25 Here, Plaintiff alleges that he is the owner of multiple Google Gmail accounts, which he  
26 uses for both “personal and business communications.” [Dkt. 1 at ¶¶ 36, 71]. Plaintiff alleges  
27 that, since 2019, at least twenty-seven of his Gmail accounts have been “hijacked,” meaning that  
28 “someone else took over the account[s] and changed the password[s], with [] Plaintiff no longer

1 able to access his email[s].” *Id.* at ¶¶ 38-40, 65. Plaintiff alleges that “Mr. Robert J. Block  
2 (‘Block’) is the main person who has been doing this, with many people in his criminal gang  
3 involved (‘the Bob Block Criminal Gang[,]’ or the ‘Block Criminal Gang’).” *Id.* at ¶¶ 43-45.  
4 Plaintiff alleges that because “Mr. Block and his criminal gang” have also “take[n] over his cell  
5 phone service” and “shut [him] out of many of his laptops,” he has been “unable to recover his  
6 gmail accounts using the online recovery process.” *Id.* at ¶¶ 57-63. Plaintiff alleges that he has  
7 “contacted people in Google customer service and customer support in various ways to get help  
8 getting his gmail accounts back.” *Id.* at ¶ 74. He complains that despite “many attempts” to  
9 obtain Google’s assistance, he “still does not have the gmail accounts back.” *Id.* at ¶ 82.

10 Claiming that he has lost “hundreds of thousands of dollars” in business opportunities  
11 resulting from the loss of his “hijacked” Gmail accounts, Plaintiff asserts a single claim against  
12 Google for negligence. *Id.* at ¶¶ 94-102, 110-17. Specifically, Plaintiff alleges that “Google had  
13 legal duties to the Plaintiff, as a customer of Google, LLC[;]” that “Google employees shirked  
14 their duties and were negligent in not helping the Plaintiff get his gmail accounts back[;]” that  
15 “Google is responsible for the negligent acts of its employees under *respondeat superior* and  
16 vicarious liability[;]” and that Google’s negligence caused Plaintiff to suffer “financial harm in  
17 multiple categories, among them the loss of revenue he otherwise would have earned.” *Id.* at ¶¶  
18 111-16.

19 As relief, Plaintiff seeks: (1) a declaration that he is “the rightful owner of the Gmail  
20 accounts listed in Exhibit A;” (2) a Court order requiring “Google, Inc. to return the Plaintiff’s  
21 email accounts to the Plaintiff, the rightful owner;” (3) “all direct and consequential damages the  
22 Plaintiff incurred as a proximate cause of [Google’s] negligence;” (4) “reasonable compensation  
23 for the value of his time in representing himself while he cannot afford an attorney (*quantum*  
24 *meruit*);” (5) “reasonable future attorney’s and paralegal fees and costs[;]” and (6) “such other and  
25 further relief as this Court deems just and proper.” *Id.* at 15, 17.

26 To state a claim for negligence under California law, a plaintiff must plausibly allege: (1) a  
27 legal duty to use due care, (2) a breach of that legal duty, and (3) proximate cause between the  
28 breach and the plaintiff’s injury. *Brown v. USA Taekwondo*, 483 P.3d 159, 213 (Cal. 2021).

1           “The existence of a duty of care owed by a defendant to a plaintiff is a prerequisite to  
2 establishing a claim for negligence.” *Nymark v. Heart Fed. Savings & Loan Ass’n*, 231 Cal. App.  
3 3d 1089, 1095 (1991). “Duty is not universal; not every defendant owes every plaintiff a duty of  
4 care.” *Brown*, 483 P.3d at 164. Rather, “[a] duty exists only if the plaintiff’s interests are entitled  
5 to legal protection against the defendant’s conduct.” *Id.* (internal quotation marks and citation  
6 omitted).

7           Here, Plaintiff alleges that Google owed “legal duties” to him “as a customer,” and that  
8 Google “shirked those duties” by failing to help him recover his stolen Gmail accounts. [Dkt. 1 at  
9 ¶¶ 111, 113]. However, Plaintiff fails to plead the existence of any facts regarding the source of  
10 and the nature of Google’s purported duty. Plaintiff cannot rely on conclusory allegations to state  
11 a claim for relief. *See Iqbal*, 556 U.S. at 678 (“Threadbare recitals of the elements of a cause of  
12 action, supported by mere conclusory statements, due not suffice.”); *see, e.g., Langan v. United*  
13 *Servs. Auto Ass’n*, 69 F. Supp. 3d 965, 987 (N.D. Cal. 2014) (dismissing a negligence claim with  
14 leave to amend where the plaintiff failed to allege any facts to raise a reasonable inference that the  
15 defendants owed him a duty of care). Simply stating that duties were owed because Plaintiff is a  
16 customer does not identify sufficiently how those duties arose, what the scope and nature of those  
17 duties are, or what kind of “care” is involved in those duties.

18           Further, Plaintiff has failed to allege specific facts showing *how* Google breached its duties  
19 (*i.e.*, what Google and/or its employees did or did not do in connection with Plaintiff’s request for  
20 assistance with his Gmail accounts). Again, simply asserting that Google employees “shirked”  
21 their duties does not identify sufficiently what those employees did that was allegedly insufficient,  
22 or what they failed to do that was allegedly required, or how they performed actions in ways that  
23 were allegedly insufficient.

24           In addition, Plaintiff fails to allege sufficient facts from which to reasonably infer that the  
25 alleged breach of duties proximately caused Plaintiff’s injury. *See Day v. Google, Inc.*, No. 15-cv-  
26 01224-NC, 2015 WL 1545051, at \*2 (N.D. Cal. Apr. 6, 2015) (dismissing a negligence claim  
27 arising from the plaintiff’s purchase of a Google Nexus 9 tablet where the plaintiff failed to  
28 provide any specific facts regarding his interactions with Google support or the nature of the harm

1 caused to him by such interaction). Because the pleading as to how Google allegedly breached its  
2 alleged duties to Plaintiff is insufficient, the pleading is similarly deficient in identifying a  
3 sufficient causal link between the alleged breaches of duties and the alleged harms.

4 Accordingly, the Court finds that Plaintiff has failed to plausibly allege the requisite  
5 elements of a negligence claim. For that reason, Plaintiff's Complaint is subject to dismissal for  
6 failure to state a claim for relief. 28 U.S.C. § 1915(e)(2)(B)(ii).

7 **III. Whether the Defendant has Immunity from Monetary Relief**

8 While the Court finds that the Complaint must be dismissed for failure to state a claim for  
9 relief as discussed above, for completeness the Court turns to the third factor under §  
10 1915(e)(2)(B). Under the mandatory screening statute, the final inquiry is whether the Complaint  
11 seeks monetary relief against defendants who are immune from such relief. 28 U.S.C.  
12 § 1915(e)(2)(B)(iii). Here, Plaintiff seeks money damages from a corporate entity, Google, for  
13 alleged negligence in connection with Plaintiff's Gmail accounts as detailed above. There is  
14 nothing to suggest that Google is immune from such relief. Accordingly, the Court determines  
15 that Plaintiff's Complaint satisfies the "immunity" prong for purposes of § 1915(e)(2)(B)(iii).

16 **CONCLUSION**

17 For the reasons set forth herein, **IT IS ORDERED THAT:**

- 18 1. Plaintiff's Complaint [Dkt. 1] is **DISMISSED WITHOUT PREJUDICE**, pursuant to 28  
19 U.S.C. § 1915(e)(2)(B), for failure to state a claim for relief.
- 20 2. Plaintiff is **GRANTED LEAVE** to file an amended complaint that addresses the issues  
21 discussed herein by no later than **September 16, 2024**.
- 22 3. Plaintiff's motion requesting service of process [Dkt. 5] is **DENIED AS MOOT**.
- 23 4. If Plaintiff does not file an amended complaint by the ordered deadline or if he cannot cure  
24 the identified deficiencies, the Court will recommend the dismissal of this action in whole  
25 or in part.
- 26 5. Plaintiff is **ADVISED** that there are several resources for *pro se* litigants. The Court  
27 makes available a guide for *pro se* litigants called *Representing Yourself in Federal Court:  
28 A Handbook for Pro Se Litigants*, which provides instructions on how to proceed at every

1 stage of a case, including discovery, motions, and trial. This guide is available  
2 electronically online at [https://www.cand.uscourts.gov/wp-](https://www.cand.uscourts.gov/wp-content/uploads/2020/02/Pro_Se_Handbook_2020ed_links_12-2021_MBB.pdf)  
3 [content/uploads/2020/02/Pro\\_Se\\_Handbook\\_2020ed\\_links\\_12-2021\\_MBB.pdf](https://www.cand.uscourts.gov/wp-content/uploads/2020/02/Pro_Se_Handbook_2020ed_links_12-2021_MBB.pdf) or in hard  
4 copy form free of charge from the Clerk of Court’s Office. The Court additionally has a  
5 webpage with resources for *pro se* litigants: [https://www.cand.uscourts.gov/pro-se-](https://www.cand.uscourts.gov/pro-se-litigants/)  
6 [litigants/](https://www.cand.uscourts.gov/pro-se-litigants/). In addition, Plaintiff has the option to seek assistance from the Legal Help  
7 Center by making an appointment by telephone at (415) 782-8982 or by email at  
8 [fedpro@sfbar.org](mailto:fedpro@sfbar.org). The Legal Help Center is a free service provided by the Justice &  
9 Diversity Center of the Bar Association of San Francisco (“JDC”), and is not part of the  
10 United States District Court. The Legal Help Center is staffed by attorneys employed by  
11 the JDC to provide information and limited-scope legal assistance to *pro se* litigants in  
12 civil cases. See <https://cand.uscourts.gov/about/court-programs/legal-helpdesks/>.

13 6. The Court further **ADVISES** that the amended complaint shall include the caption and civil  
14 case number used in this Order (24-cv-01513-PHK) and the words FIRST AMENDED  
15 COMPLAINT shall be written on the caption page. The Court recommends that Plaintiff  
16 Wescott use this Court’s form complaint (available on the Court website) for drafting the  
17 amended complaint.

18 7. Because an amended complaint completely replaces the previous complaint, Plaintiff  
19 Wescott **SHALL** include in his first amended complaint all the claims he wishes to present  
20 and all the defendants he wishes to sue. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th  
21 Cir. 1992). The amended complaint **SHALL NOT** incorporate material from the prior  
22 complaint by reference.

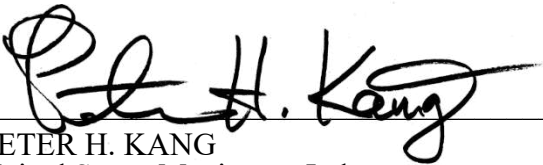
23 8. Plaintiff Wescott **SHALL** comply with all of this Court’s Orders (including all Standing  
24 Orders, available on the Court’s website) and all deadlines required by the Federal Rules of  
25 Civil Procedure and the Local Rules of this Court, in a timely fashion. When needed,  
26 Plaintiff Wescott may file a motion (prior to a deadline) requesting an extension of time to  
27 meet a Court-ordered deadline. In order to be granted, any such motion **SHALL** show good  
28 cause why there exists a need for a reasonable amount of additional time to complete the

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necessary tasks. Failure to file an amended complaint by the deadline herein and failure to prosecute this action timely may result in negative consequences for Plaintiff Wescott’s case, including recommendation for dismissal of this action with prejudice such as under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

**IT IS SO ORDERED.**

Dated: August 15, 2024

  
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PETER H. KANG  
United States Magistrate Judge