UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENT A. ALLEN,

Plaintiff,

-against-

ANTWAN A. PATTON (BIG BOI); ANTONIO M. REID (HITCO ENTERTAINMENT); BASTIAN LEHMANN (POSTMATES),

Defendants.

21-CV-3434 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, appearing *pro se*, brought this action asserting claims for appropriation of his ideas for the search engine Google and the social media platform Instagram.[1] By order dated April 22, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must

[1] Plaintiff does not specify a basis for the Court's jurisdiction in this complaint, but in substantially similar complaints filed the same day, Plaintiff invoked the Court's diversity jurisdiction. *See Allen v. Patton*, ECF 1:21-CV-03457, 2 (S.D.N.Y. filed April 19, 2021) (complaint naming Defendants Patton, Reid, and William Wang, CEO of Vizio); *Allen v. Patton*, ECF 1:21-CV-03459, 2 (S.D.N.Y. filed April 19, 2021) (complaint naming Defendants Patton, Reid, and Sundar Pichai of Alphabet, and alleging that Plaintiff had the idea for Spotify); *Allen v. Patton*, ECF 1:21-CV-03468, 2 (S.D.N.Y. filed April 19, 2021) (complaint naming Defendants Patton, Reid, and Amazon founder Jeff Bezos).

also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the "special solicitude" in *pro se* cases, *id*. at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief "that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true "[t]hreadbare recitals of the elements of a cause of action," which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

BACKGROUND

Plaintiff Kent Allen alleges the following facts. When Plaintiff was eight years old, he lived in Forest Park, a rural area in Georgia. He had the idea for Google (or Google Maps) technology because he "figured we all needed a way to locate each other." (ECF 2 at 6.)

Plaintiff befriended recording artists Big Boi and Andre 3000, who formed the musical group Outkast. Plaintiff was also "in reach with" Facebook founder Mark Zuckerburg, who he alleges is his cousin. (Id.)

Plaintiff moved away from Forest Park at some point during "the .com b[oo]m." (Id.). During that time, Plaintiff "carried" the domain name Google, but it "was compromised" and he was unable to renew it because someone else purchased the domain name. (Id.) "Only a few close friends knew of [Plaintiff's] idea" for Google. (Id.) Plaintiff discussed with Big Boi and Andre 3000 his inability to renew the Google domain name, but they said they did not know anything about it. Plaintiff filed a police report about the incident and was told that police had figured out who purchased the domain name and cautioned that individual "not to renew the domain" when it expired one year after purchase. (Id.)

When Plaintiff was nine years old, he moved to Decatur, Georgia, where he "helped develop such artists as Bow Wow, Outkast, Ludacris, Lauren London" and later "Jeeezy, and Keyshia Cole." (Id.) Plaintiff was also waiting for the Google domain purchaser's one-year registration to expire. In addition, Plaintiff "started to think of other business domains," and he "composed a list of domains to assign each artist." (Id.) Plaintiff's list included the domain names: Postmates, "Kangeroo," and Amazon; both Big Boi and Andre 3000 saw Plaintiff's list. Plaintiff "purchased each domain and the same thing happened" that had happened with his Google domain – that is, the domain names were compromised and someone else was able to purchase them. (*Id.* at 7.)

Later, while Plaintiff was present, Big Boi purchased the domain "heymoney.com," which he intended as a "trading app." (Id.) After seeing this, Plaintiff was able to determine "which one of his friends was doing this," that is, that Big Boi was involved with Plaintiff's

compromised domain names. Plaintiff then moved away from the area because he "was being bullied by the local kids." (Id.)

Plaintiff also had the idea for Instagram, and when he was 23, he "gave the idea" to Keyshia Cole "to be released to the public." (Id.) Plaintiff's "idea was for entertainers to stay in reach with each other and also market to the general public." (Id.)

Many of the artists that Plaintiff "helped develop" are "against" him. (*Id.* at 8.) He was unsuccessful in contacting them and "was made a mockery of on Instagram." (Id.) If Plaintiff had been "compensated [for his] ideas," he would have been able to help his mother with her medical expenses.

At 26 years old, Plaintiff began attending college and forgot about these matters from his childhood. At that point, Plaintiff resided in Pompano Beach, Florida. Because many of the individuals from Plaintiff's childhood were involved in businesses near Plaintiff's home, he was fired without cause from many jobs. He then worked as a self-employed accountant but eventually stopped doing so due to the "mockery [he] incurred on social media," including on Instagram and Facebook. Plaintiff seeks to be "compensated and . . . given credit for [his] ideas." (*Id.* at 9.)

Plaintiff names as defendants in this action Antwan A. Patton, who uses the stage name Big Boi; Antonio M. Reid, of Hitco Entertainment; and Bastian Lehmann, a co-founder of Postmates. Plaintiff identifies himself as a citizen of Florida, and alleges that Patton is a citizen of Georgia, and that Reid and Lemann are both citizens of California. Plaintiff seeks more than $12 million, based on "the company valuation of Postmates." (*Id.* at 11.)

DISCUSSION

A. Appropriation of Ideas

Plaintiff's allegations that he had the idea for the Instagram platform and Google's search engine and map software but was not credited or compensated for these ideas could be liberally construed as seeking relief for copyright or patent infringement.

1. Relief Under the Copyright Act

The Copyright Act gives the owner of a copyright certain "exclusive rights," 17 U.S.C. § 106, to protect "original works of authorship," 17 U.S.C. § 102(a). "[T]he author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection." *Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989). To establish copyright infringement, a claimant must show: (1) ownership of a valid copyright; and (2) unauthorized copying of constituent elements of the work that are original. *Feist Publ'n, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 361 (1991); *Jorgenson v. Epic/Sony Records*, 351 F.3d 46, 51 (2d Cir. 2003).

However, "copyright does not protect an idea, but only the expression of an idea." *Richard J. Zitz, Inc. v. Pereira*, 225 F.3d 646 (2d Cir. 2000) (citing *Kregos v. Associated Press*, 3 F.3d 656, 663 (2d Cir. 1993)); *see* 17 U.S.C. § 102(b) ("In no case does copyright protection for an original work of authorship extend to any idea [,] . . . concept, [or] principle, . . . regardless of the form in which it is described, explained, illustrated, or embodied in such work."); *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 547 (1985) ("[N]o author may copyright . . . ideas."); *Williams v. Chrichton*, 84 F.3d 581, 589 (2d Cir. 1996) ("Any similarity in the theme of the parties' works relates to the unprotectible idea of a dinosaur zoo."); *Eden Toys, Inc. v. Marshall Field & Co.*, 675 F.2d 498, 501 (2d Cir. 1982) ("Plaintiff cannot copyright the 'idea' of a snowman."); *Dean v. Cameron*, 53 F. Supp. 3d 641, 648 (S.D.N.Y. 2014) ("Plaintiff does

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