

Case: 8:20-cv-02667-CEH-AEP

Veamcast Corp.
c/o Joseph Dean, Veamcast Founder and CEO
5940 30th Ave S Unit 111
Gulfport, FL 33707

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

VEAMCAST CORP,
a Florida C corporation,

Plaintiff,

v.
FACEBOOK INC,
a Delaware corporation,

Case No. 8:20-cv-2667-T-36AEP

Defendant.

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REPORT AND RECOMMENDATION

Joseph Dean (“Dean”), as the founder and CEO of Plaintiff Veamcast Corporation (“Veamcast”), initiated this action against Defendant Facebook Inc. (“Facebook”) with the filing of a “Complaint of Anticompetitive Behavior by a Monopoly” (the “Complaint”) (Doc. 1). Currently before the Court are the Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 2), filed by Dean on behalf of Veamcast, and the Motion for Referral to Volunteer Attorney Program (Doc. 3). Under 28 U.S.C. § 1915, the Court may, upon a finding of indigency, authorize the commencement of an action without requiring the prepayment of fees or security therefor. 28 U.S.C. § 1915(a)(1). When an application to proceed *in forma pauperis* is filed, the court must review the case and dismiss it *sua sponte* if the court determines the action is frivolous or malicious, fails to state a claim upon 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). Dismissal for failure to state a claim in this context is governed by the same standard as dismissal under Rule 12(b)(6), Federal Rules of Civil Procedure. *Leonard v. F.B.I.*, 405 F. App’x 386, 387 (11th Cir. 2010) (*per curiam*) (citing *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997)). Namely, dismissal for failure to

state a claim is appropriate if the facts, as pleaded, fail to state a claim for relief that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and quotation omitted). Furthermore, an action is frivolous where the allegations are “clearly baseless,” “fanciful,” “fantastic,” “delusional,” or lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31-33 (1992). Accordingly, where a district court determines from the face of the complaint that the factual allegations are clearly baseless or the legal theories are without merit, the court may conclude a case has little or no chance of success and dismiss the complaint before service of process. *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993) (*per curiam*).

In reviewing a complaint, courts hold *pro se* pleadings to a less stringent standard and therefore construe the complaint more liberally. *Tannenbaum v. U.S.*, 148 F.3d 1262, 1263 (11th Cir. 1998) (*per curiam*) (“*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed.”). To state a claim, a pleading must contain a short and plain statement of the grounds for the court’s jurisdiction, a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for the relief sought. Fed. R. Civ. P. 8(a)(1)-(3). Here, the Complaint (Doc. 1) does not contain factual allegations providing the Court with enough information to determine whether the Court has jurisdiction over this matter or whether Plaintiff can state a viable claim.¹ Even construing the allegations contained in the Complaint broadly, the allegations appear to simply present an airing of grievances by Dean on behalf of Veamcast against Facebook for monopolistic behavior and a request for punitive damages, compensatory damages, the costs of the lawsuit, and “whatever else the court sees just and fit to award” (Doc. 1, at 6). The allegations in the

¹ The Complaint also does not comport with the requirements of Rule 10, Federal Rules of Civil Procedure, which requires a party to state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. Fed. R. Civ. P. 10(b).

Complaint fail, however, to set forth factual allegations sufficient to state a cognizable claim. For that reason, Veamcast's request to proceed *in forma pauperis* should be denied.

Going further, the request likewise should be denied because Veamcast, as an artificial corporate entity, cannot proceed *in forma pauperis*. Instead, under 28 U.S.C. § 1915, only individuals may proceed without payment of the filing fee. *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-09 (1993) (citations omitted); see *Moorish Am. People of U.S. Republic v. Detzner*, Case No. 4:18cv545-WS/CAS, 2019 WL 587921, at *2 (N.D. Fla. Jan. 8, 2019) (citing *Rowland* for the proposition that "the statute which permits a 'person' to proceed without payment of the filing fee refers only to individuals" and accordingly recommending denial of the request of a corporate entity to appear *in forma pauperis*), *report and recommendation adopted at* 2019 WL 586751 (N.D. Fla. Feb. 13, 2019). Given Dean's request that the Court allow Veamcast to proceed *in forma pauperis*, such request should be denied.

Beyond that, as a non-lawyer, Dean may not represent Veamcast in this action. Parties may plead and conduct their cases either by counsel or personally, otherwise referred to as *pro se*. 28 U.S.C. 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel"). "The right to appear *pro se*, however, is limited to those parties conducting their own cases and does not apply to persons representing the interests of others." *Franklin v. Garden State Life Ins.*, 462 F. App'x 928, 930 (11th Cir. 2012) (*per curiam*) (citations and internal quotation marks omitted); see also *U.S. ex rel. Stronstorff v. Blake Med. Ctr.*, No. 8:01-CV-844-T23MSS, 2003 WL 21004734, at *1 (M.D. Fla. Feb. 13, 2003) ("Axiomatically, a lay person is entitled to represent only himself, not any other person or entity."). Given that Dean may only represent his interests in this action, he may not seek any relief on behalf of Veamcast or otherwise represent Veamcast. Importantly, a corporation

may appear in federal court only through counsel. *See Rowland*, 506 U.S. at 202 (1993) (citations omitted) (“[A] corporation may appear in the federal courts only through licensed counsel.”); *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985) (citations omitted) (“The rule is well established that a corporation is an artificial entity that can act only through agents, cannot appear *pro se*, and must be represented by counsel.”); *see also* M.D. Fla. R. 2.03(e) (“A corporation may only appear and be heard only through counsel admitted to practice in the Court pursuant to Rule 2.01 or Rule 2.02.”). Dean therefore cannot pursue claims on behalf of Veamcast in this action, but rather, to the extent that Veamcast seeks to pursue any claims in this action, it must do so through counsel.

To that end, Dean submitted the Motion for Referral to Volunteer Attorney Program (Doc. 3) on behalf of Veamcast. Essentially, Dean asks the Court to refer his request to proceed *in forma pauperis* to a volunteer attorney program because he cannot afford counsel. If Dean wishes to pursue individual claims on his own behalf, there are resources that Dean can independently pursue for assistance with those claims. As noted above, Veamcast cannot proceed *in forma pauperis* in this action and also must obtain counsel. If Veamcast seeks to pursue its claims through counsel, it is appropriate to afford Veamcast an opportunity to file an amended complaint, which should set forth factual allegations establishing the Court’s jurisdiction and factual allegations establishing that Veamcast is entitled to relief in this forum, rather than dismiss such claims in their entirety. *See Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005) (*per curiam*) (citation omitted) (“Ordinarily, a party must be given at least one opportunity to amend before the district court dismisses the complaint.”). Accordingly, for the foregoing reasons, it is hereby

RECOMMENDED:

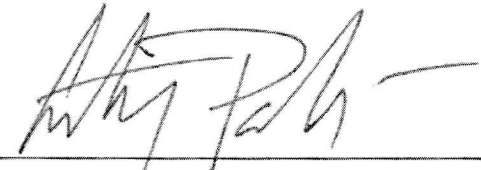
1. The Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 2) be DENIED.

2. The Motion for Referral to Volunteer Attorney Program (Doc. 3) be DENIED AS MOOT.

3. Veamcast be given a period of thirty (30) days from the date of the district judge's order on the aforementioned motions to obtain counsel and be given a period of sixty (60) days from the date of the district judge's order on the aforementioned motions to submit an amended complaint that states a cognizable federal claim, including the jurisdictional basis and factual basis for such claim. If Veamcast fails to comply with either deadline, it is recommended that the matter be dismissed without prejudice.

4. If Dean seeks to proceed on behalf of himself in this matter, he should familiarize himself with both the Federal Rules of Civil Procedure and the Local Rules for the Middle District of Florida, copies of which can typically be reviewed in the Clerk's Office, located on the second floor of the Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida. To the extent that Dean would like assistance in pursuing claims on behalf of himself in this action, he may seek assistance from the Federal Bar Association by completing a request form at <http://federalbartampa.org/pro-bono>. Dean is also encouraged to consult www.fedbar.org/prosehandbook and to consult the "Litigants Without Lawyer" guidelines on the Court's website, located at <http://www.flmd.uscourts.gov/litigants-without-lawyers>. If Dean seeks to proceed on his own behalf, Dean be given a period of sixty (60) days from the district judge's order on the aforementioned motions to submit an amended complaint setting forth claims he maintains on behalf of himself rather than on behalf of Veamcast.

IT IS SO REPORTED in Tampa, Florida, on this 19th day of November, 2020.



ANTHONY E. PORCELLI
United States Magistrate Judge

NOTICE TO PARTIES

A party has fourteen days from the date they are served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1)(C). A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1; 28 U.S.C. § 636(b)(1).

cc: Hon. Charlene E. Honeywell
Counsel of Record