UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JASON LAVET BETHUNE, Plaintiff, v. FACEBOOK INC. and MARK ZUCKERBERG, Defendants.	Case No. 21-CV-2118 (NEB/HB) ORDER OF DISMISSAL

Plaintiff Jason Lavet Bethune alleges, tersely, that defendants Facebook, Inc. ("Facebook") and Mark Zuckerberg shut down a social-media page created by him, and he now seeks $222 billion in damages as a result. Bethune did not pay the filing fee for this matter, instead applying for *in forma pauperis* ("IFP") status. *See* ECF No. 2. That IFP application is now before the Court and must be considered before any other action may be taken in this matter.

After review, the Court concludes that Bethune qualifies financially for IFP status. That said, "[n]otwithstanding any filing fee, or any portion thereof, that may have been paid [by an IFP applicant], the court shall dismiss the case at any time if the court determines" that the action is frivolous, malicious, or fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B); *accord Atkinson v. Bohn*, 91 F.3d 1127, 1128 (8th

Cir. 1996) (per curiam). In reviewing whether a complaint states a claim on which relief may be granted, this Court must accept as true all of the factual allegations in the complaint and draw all reasonable inferences in the plaintiff's favor. *Aten v. Scottsdale Ins. Co.*, 511 F.3d 818, 820 (8th Cir. 2008). Although the factual allegations in the complaint need not be detailed, they must be sufficient to "raise a right to relief above the speculative level . . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must "state a claim to relief that is plausible on its face." *Id.* at 570. In assessing the sufficiency of the complaint, the court may disregard legal conclusions that are couched as factual allegations. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Pro se complaints are to be construed liberally, but the pleading must still allege sufficient facts to support the claims advanced. *See Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

Bethune seeks relief pursuant to four federal statutes: 18 U.S.C. § 249, 18 U.S.C. § 242, 18 U.S.C. § 371, and 42 U.S.C. § 1983, with the final statute implicitly invoked due to alleged infringement of Bethune's constitutional rights under the First Amendment. *See* Compl. at 4 [ECF No. 1]. All four claims are non-starters. The first three statutory provisions are criminal-law provisions that do not supply a right of action to private litigants such as Bethune. *See Frison v. Zebro*, 339 F.3d 994, 999 (8th Cir. 2003) (noting that "[c]riminal statutes, which express prohibitions rather than personal entitlements and specify a particular remedy other than civil litigation, are . . . poor candidates for the imputation of private rights of action. (Quotation omitted)); 18 U.S.C. § 249(b) (specifying

that the provision relates to "prosecution" of "offense[s]" to be "undertaken by the United States"); *Horde v. Elliot*, No. 17-CV-0800 (WMW/SER), 2018 WL 987683, at *10 (D. Minn. Jan. 9, 2018) (collecting cases for "well-settled" conclusion that "18 U.S.C. § 242 does not provide a private right of action); *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007) (noting that § 241 and § 371 do "not provide for a private right of action and are thus not enforceable through a civil action"); *Deuerlein v. Nebraska Child Protective Services*, 793 F. App'x 468, 468 (8th Cir. 2020) (per curiam) (citing *Andrews* in affirming dismissal of action brought under § 371).

By contrast, § 1983 does supply a private right of action to litigants seeking to vindicate their constitutional rights. That said, "[o]nly state actors can be held liable under Section 1983." *Youngblood v. Hy-Vee Food Stores, Inc.*, 266 F.3d 851, 855 (8th Cir. 2001). Neither Facebook nor Zuckerberg is alleged, or can plausibly be alleged, to be a "state actor" within the meaning of § 1983. *See Prager University v. Google LLC*, 951 F.3d 991, 997 n.3 (9th Cir. 2020) (collecting cases for proposition that private social-media companies such as and including Facebook are not state actors for purposes of § 1983). Bethune cannot seek relief under § 1983 due to actions taken by the defendants named to this lawsuit.

Accordingly, Bethune has failed to state a claim on which relief may be granted, and this action will be dismissed pursuant to § 1915(e)(2)(B)(ii). Because the claims raised by Bethune are not amenable to repleading and any proposed amendment of the

complaint would be futile, the dismissal will be effected with prejudice. Finally, the Court certifies that the grounds for dismissal set forth in this order are sufficiently well established by prior case law that any appeal from this order would be taken in the absence of good faith. Any request by Bethune to proceed IFP on appeal from the dismissal of this action would therefore be denied by the Court on that basis. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3).

CONCLUSION

Based on the foregoing and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. This matter is DISMISSED WITH PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).
2. The application to proceed *in forma pauperis* of plaintiff Jason Lavet Bethune [ECF No. 2] is DENIED.
3. The Court certifies that any appeal taken from this action would not be taken in good faith and that any application to proceed *in forma pauperis* on appeal would be denied by the Court on that basis.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 15, 2021

BY THE COURT:

s/Nancy E. Brasel
Nancy E. Brasel
United States District Judge