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EASTERN DISTRICT ROUNDUP

Case Dismissed for Frivolous Allegations and Lack of Subject Matter Jurisdiction

By Samuel Butt and John Moore

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1. Complaint Dismissed For Lack Of Subject Matter Jurisdiction And As Frivolous

In *Emrit v. Burnett*, 25 CV 2873 (EDNY, Nov. 27, 2025), Judge Pamela K. Chen dismissed pro se plaintiff's complaint against, among others, Erin Burnett and Volodymyr Zelensky, sua sponte, for lack of subject matter jurisdiction and because it was frivolous.

Plaintiff, proceeding in forma pauperis, alleged that Burnett: 1) made racist comments; 2) defamed Presidents Donald Trump and Bill Clinton by insinuating they were on a client list maintained by Jeffrey Epstein; 3) spent too much time covering stories about Alexei Navalny and Zelensky; and 4) made condescending comments towards the daughter of Steph and Ayesha Curry.

Plaintiff also alleged that: 1) he "wishes that the defendant Erin Burnett... would hurry up and run for president in 2028 so that [he] can get back to his amazing music career"; 2) he filed lawsuits against Elon Musk and Sean Combs, whom "nobody likes"; 3) his father won awards from the Nuclear Regulatory Commission; 4) he won an NAACP scholarship; 5) his father played steel pan music for Robert F. Kennedy; 6) "cosmic microwave background radiation was discovered in 1965"; 7) he tried to obtain a patent for "three groundbreaking and novel ideas related to quantum mechanics, astrophysics, special relativity, and general relativity..."; 8) electron orbitals are in the form of an electron wave, and are connected to the "Captain EO" movie at Epcot; 9) a woman

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committed intentional infliction of emotional distress by deactivating her WhatsApp account without informing plaintiff; and 10) a Florida Hooters "has something to do with cancer genes, oncogenes, retroviruses, and doll eyes."

A court may dismiss a pro se complaint sua sponte under certain circumstances, including where it lacks subject matter jurisdiction. Additionally, a court may dismiss an in forma pauperis action under 28 U.S.C. §1915(e)(2)(B) where the action "(i) is frivolous or malicious; [or] (ii) fails to state a claim on which relief may be granted." An action is "'frivolous' when either: (1) 'the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy'; or (2) the claim is 'based on an indisputably meritless legal theory.'"

The court dismissed the Complaint sua sponte on two grounds. First, plaintiff alleged only tortious conduct by the defendants and conceded that the amount he was seeking was "0 dollars". Accordingly, there was no federal question or diversity jurisdiction, given the amount in controversy.

Second, the Complaint was frivolous since "… [p]laintiff's allegations concerning his music career, his father, Hooters, and electrons are exactly the kinds of delusory allegations courts have refused to entertain." Thus, plaintiff's allegations "are meritless and lack a basis in reality." The court also denied leave to amend since "the substance of the claim pleaded is frivolous on its face" and any amendment would be futile.

Chen ordered plaintiff to show cause why he should not be barred from filing any future in forma pauperis actions in the Eastern District of New York without first obtaining permission from the court, given that plaintiff had filed over 1,000 cases across the country and had previously been warned that his conduct could result in such an injunction.

2. Motion To Suppress Denied

In *United States v. Walden*, 24 CR 521 (EDNY, Nov. 12, 2025), Judge Gary R. Brown denied defendant's motion to suppress evidence obtained during a manual and forensic search of his cell phone during an outbound border search.

Defendant had been identified by federal agents as a suspected purchaser of child sexual abuse material (CSAM). Agents learned that he would be traveling from JFK Airport to Italy and intercepted him on the jetway as he was boarding the plane.

Agents asked defendant and his wife to produce their phones and share their passcodes for opening the phones. Having accessed defendant's phone, an agent scrolled through multiple screens and apps (including a "fake calculator app" used to hide photos and other data), identifying several items that were relevant to the investigation. A later forensic examination of the phone revealed pictures and videos clearly identifiable as CSAM along with conversations regarding the purchase of thousands of other images and videos.

The government is permitted under the Fourth Amendment to conduct "routine" searches at the border—whether the subject is entering or leaving the country—without probable cause or even reasonable suspicion to believe that a crime has been committed. When reasonable suspicion is present,

officers may conduct more intrusive searches that go beyond the routine.

The search of defendant's phone went beyond a routine search because the agent examined several apps and folders within the phone. Thus, "the manual search of defendant's phone was non-routine and hence intrusive," meaning that the analysis turned on whether there was reasonable suspicion for the search.

The magnitude of privacy interests potentially implicated by searching the phone did not elevate the degree of suspicion required to justify the search. Reasonable suspicion has already been found to justify extremely intrusive searches at the border, including stomach pumping and body cavity searches. A phone search is no more intrusive and so did not require a higher quantum of suspicion.

It was "beyond question" that the agents had reasonable suspicion that defendant possessed CSAM when they approached him in the jetway. Defendant had already been linked to four accounts used to procure CSAM. During the encounter itself, defendant admitted to familiarity with the workings of a CSAM conspiracy and had in his wallet credit cards used to purchase CSAM. Thus, the search was appropriate and justified.

Even if the search had not been valid, material obtained during the manual search of the phone would not be excluded because the agents' conduct fell within the good-faith exception to the exclusionary rule. Under that exception, the exclusionary rule does not apply when the government acts with an objectively reasonable good faith belief that its conduct was lawful. Here, Second Circuit authority and "more than two centuries of jurisprudence establishing the extraordinary breadth of border search authority, provided a solid foundation for the Government's actions."

Nor could defendant seek to suppress the cell phone evidence on the alternate ground that his statement of the phone's passcode should be suppressed. Defendant was not subject to a custodial interrogation, nor was there any evidence that his free will had been overborne by government agents. Thus, defendant's statement was voluntary and would not be suppressed.

3. Complaint Dismissed For Failure To Plead Damages Under Computer Fraud and Abuse Act

In *Leifer v. John Does* 1-9, 22 CV 1770 (EDNY, Nov. 14, 2025), Judge Nina R. Morrison dismissed a complaint under the Computer Fraud and Abuse Act (CFAA, 18 U.S.C. §1030) for failure to meet the statute's standard for pleading damages.

The complaint alleged violation of CFAA and state law by three named defendants and nine "John Does" based on their engagement in, or failure of a duty to prevent, unauthorized access to a computer. When directed to show cause why the CFAA claim should not be dismissed, plaintiff responded with additional allegations. Morrison considered the additional allegations and found them insufficient to cure the complaint's failure to adequately plead damages in excess of CFAA's $5,000 threshold.

The complaint's allegation that "[a]s a direct and proximate result of Defendants' conduct in violation of the CFAA, [Plaintiff] has suffered and will continue to suffer damages in excess of $5,000" (quoting complaint, brackets in opinion) was an insufficient "'formulaic recitation' of

the loss element of a CFAA cause of action" and "does not establish any factual basis for Plaintiff's alleged loss." Quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff's new allegation that he had paid counsel at least $20,000 to investigate the alleged security breach failed to "explain[] in any detail what this investigation entailed."

Plaintiff's reliance on *Feldman v. Comp Trading, LLC*, No. 19-CV-4452-RPK-RLM, 2021 WL 930222, at *6 (E.D.N.Y. Mar. 11, 2021), was unpersuasive because the Feldman plaintiffs identified specific amounts they had paid to IT consultants and counsel for specific tasks, and specific amounts they lost due to diversion of employee time. "In other words, the Feldman plaintiffs aggregated the total costs of 'responding to an offense, conducting a damage assessment, and restoring the [email] to its condition prior to the offense,' including 'any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service,'" as called for by the quoted language in 18 U.S.C. §1030(e)(11). Plaintiff, by contrast, described "merely the costs of retaining counsel to represent him in litigation," and "'the cost of bringing an action under the CFAA... is not sufficiently related to the computer or the unauthorized access itself to qualify as a consequential 'loss' under §1030(g)." Quoting *Lawson v. Rubin,* No. 17-CV-6404 (BMC), 2018 WL 2012869, at *17 (E.D.N.Y. Apr. 29, 2018).

Plaintiff's request for discovery to explore a basis to allege diversity jurisdiction was denied because plaintiff failed to make the required threshold showing of some basis to assert diversity. The complaint alleged, on information and belief, that two of the defendants shared plaintiff's New York domicile. Mere speculation that they might have a different domicile was insufficient. Morrison declined to exercise supplemental jurisdiction over the state law claims and dismissed the complaint sua sponte.