

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES ANDREW BLATT :
 : CIVIL ACTION
 Plaintiff :
 :
 vs. :
 : NO. 14-CV-7192
 UNKNOWN NAMED AGENTS OF :
 GOOGLE, INC. :
 :
 Defendants :

ORDER

AND NOW, this 10th day of August, 2015, upon consideration of Defendants' Motion to Dismiss Or, in the Alternative, Motion to Transfer (Doc. No. 34), it is hereby ORDERED that the Motion is GRANTED and this action is TRANSFERRED to the United States District Court for the Northern District of California.¹ See, 28 U.S.C. §1404(a).

¹ It is well established that in considering motions to dismiss under Fed. R. Civ. P. 12(b)(6), the district courts must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom, viewing them in the light most favorable to the plaintiff. Great Western Mining & Mineral Co. v. Fox, Rothschild, LLP, 615 F.3d 159, 161 n.1 (3d Cir. 2010); Krantz v. Prudential Investments Fund Management, 305 F.3d 140, 142 (3d Cir. 2002); Hamilton v. Allen, 396 F. Supp. 2d 545, 548-549 (E.D. Pa. 2005). In so doing, the courts must consider whether the complaint has alleged enough facts to state a claim to relief that is plausible on its face. Bell Atlantic v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929, 949 (2007). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009).

In this case, the gravamen of Plaintiff's First Amended Complaint is that certain unknown and unidentified Google employees infiltrated Plaintiff's computer and cell phones through Plaintiff's use of Google Chrome and his Gmail accounts and began randomly manipulating them to, *inter alia*, delete certain photographs, add certain music and lose certain files and other documents on which Plaintiff was purportedly working. Plaintiff seeks to

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.

recover compensatory and punitive damages under the federal Wiretap and Computer Fraud and Abuse Acts and under the state law theories of conversion, harassment, and intentional infliction of emotional distress. While it is difficult to conceive how Plaintiff may be able to prove such incredible claims, he does again request leave to amend. And notwithstanding our belief that it is highly unlikely that Plaintiff could prevail on his theories, we cannot definitively find based on the materials before us that an amendment would be entirely futile. Given that we do not wish to abuse our discretion by denying Plaintiff one final opportunity to amend his complaint, we resolve the instant motion on another ground. See, e.g., Newark Branch, NAACP v. Town of Harrison, NJ, 907 F.2d 1408, 1416-1417 (3d Cir. 1990).

As Defendant points out, as a pre-requisite to Plaintiff's creation and use of a Gmail account, Plaintiff was required to accept Google's terms of service. Included among those terms of service is the following forum selection clause, which appears to be mandatory in nature:

All claims arising out of or relating to these terms or the Services will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.

It is now well-settled that when the parties' contract contains a valid forum-selection clause, which represents the parties' agreement as to the most proper forum, it is to be given controlling weight in all but the most exceptional cases and the plaintiff must bear the burden of showing why the court should not transfer the case to the forum to which the parties agreed. Atlantic Marine Construction Co., Inc. v. United States District Court for the Western District of Texas, 134 S. Ct. 568, 581, 187 L. Ed. 2d 487 (2013); Huberman v. Interval Leisure Group, Inc., Civ. A. No. 15-1560, 2015 U.S. Dist. LEXIS 81747 at *4 (E.D. Pa. June 24, 2015). Plaintiff here proffers nothing to justify disregard of the forum selection clause at issue and he therefore has clearly not shouldered his burden. We therefore find that this matter is properly finally adjudicated in the Northern District of California which is the situs of Santa Clara County.