

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DAVID LOCKMILLER,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA;
BRYAN’S MARKET, INC.,

Defendants-Appellees.

No. 19-16999

D.C. No. 3:19-cv-04554-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Submitted February 17, 2021**

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

David Lockmiller appeals pro se from the district court’s judgment dismissing his action alleging Federal Tort Claims Act (“FTCA”) and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e)(2)(B). *Barren v. Harrington*, 152 F.3d 1193,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed Lockmiller's negligence claim against the United States because Lockmiller failed to allege facts sufficient to state a plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("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 misconduct alleged."); *Lam v. United States*, 979 F.3d 665, 672 (9th Cir. 2020) (setting forth elements of a FTCA claim).

The district court properly dismissed Lockmiller's negligence claim against Bryan's Market, Inc. because Lockmiller failed to demonstrate diversity jurisdiction. *See* 28 U.S.C. § 1332(a); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857-58 (9th Cir. 2001) (requirements for diversity jurisdiction).

We reject as without merit Lockmiller's contention that the FTCA's limitations on attorney's fees violated his First Amendment rights.

All pending motions are denied.

AFFIRMED.