

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>PRESTON DENT,</b>	:	Civil No. 1:21-CV-1814
	:	
<b>Plaintiff</b>	:	
	:	<b>(Judge Rambo)</b>
v.	:	
	:	<b>(Magistrate Judge Carlson)</b>
	:	
<b>SAMIRAH RANDOLPH,</b>	:	
	:	
<b>Defendant</b>	:	

**REPORT AND RECOMMENDATION**

**I. Statement of Facts and of the Case**

This matter comes before the Court for screening review of a *pro se* civil action. The plaintiff, who alleges that he is a resident of Oberlin, Pennsylvania, is suing the defendant, who lives in Steelton, Pennsylvania, alleging that the defendant “will cause my life hell,” and “is praying to destroy me and stop me from making money.” (Doc. 1). Thus, the gravamen of Dent’s two-page complaint seems to be a claim of defamation and other state law torts brought by one Pennsylvania resident against another Pennsylvania resident.

Along with this complaint, the plaintiff filed a motion for leave to proceed *in forma pauperis*. (Doc. 2). For the reasons set forth below, we will conditionally GRANT this motion for leave to proceed *in forma pauperis* (Doc. 2) and direct that the lodged *pro se* complaint be deemed filed, but find that since the complaint as

drafted fails to state a claim upon which relief can be granted in federal court, we recommend that the court dismiss this complaint without prejudice to the plaintiff attempting to file an amended complaint in this court or attempting to file this action in the appropriate Court of Common Pleas.

## II. Discussion

### A. Screening of *Pro Se In forma Pauperis* Complaints–Standard of Review

This court has an on-going statutory obligation to conduct a preliminary review of *pro se* complaints brought by plaintiffs given leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e)(2)(B)(ii). Specifically, we are obliged to review the complaint to determine whether any claims are frivolous, malicious, or fail to state a claim upon which relief may be granted. This statutory text mirrors the language of Rule 12(b)(6) of the Federal Rules of Civil Procedure, which provides that a complaint should be dismissed for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).

With respect to this benchmark standard for the legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court’s opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), continuing with our opinion in Phillips [v. County of Allegheny], 515 F.3d 224, 230 (3d Cir. 2008)], and culminating recently with the Supreme Court’s decision in

Ashcroft v. Iqbal, -U.S.-, 129 S. Ct. 1937 (2009), pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox, Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court “need not credit a complaint’s bald assertions or legal conclusions when deciding a motion to dismiss.” Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally, a court need not “assume that a . . . plaintiff can prove facts that the . . . plaintiff has not alleged.” Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action, a plaintiff must provide some factual grounds for relief which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do.” Id., at 555. “Factual allegations must be enough to raise a right to relief above the speculative level.” Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon

which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court held that, when considering a motion to dismiss, a court should “begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” Id., at 679. According to the Supreme Court, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id., at 678. Rather, in conducting a review of the adequacy of a complaint, the Supreme Court has advised trial courts that they must:

[B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id., at 679.

Thus, following Twombly and Iqbal, a well-pleaded complaint must contain more than mere legal labels and conclusions; it must recite factual allegations sufficient to raise the plaintiff’s claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

[A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint’s well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a “plausible claim for relief.” In

other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

As the Court of Appeals has observed:

The Supreme Court in Twombly set forth the "plausibility" standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. A complaint satisfies the plausibility standard when the factual pleadings "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 556). This standard requires showing "more than a sheer possibility that a defendant has acted unlawfully." Id. A complaint which pleads facts "merely consistent with" a defendant's liability, [ ] "stops short of the line between possibility and plausibility of 'entitlement of relief.'" "

Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011), cert. denied, 132 S. Ct. 1861 (2012).

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis:

First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Iqbal, 129 S. Ct. at 1947. Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Id., at 1950. Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief."

Santiago v. Warminster Twp., 629 F.3d 121, 130 (3d Cir. 2010) (quoting Iqbal, 129 S. Ct. at 1950).

In considering a motion to dismiss, the court generally relies on the complaint, attached exhibits, and matters of public record. Sands v. McCormick, 502 F.3d 263, 268 (3d Cir. 2007). The court may also consider “undisputedly authentic document[s] that a defendant attached as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the [attached] documents.” Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993). Moreover, “documents whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered.” Pryor v. Nat’l Collegiate Athletic Ass’n, 288 F.3d 548, 560 (3d Cir. 2002); see also U.S. Express Lines, Ltd. v. Higgins, 281 F.3d 382, 388 (3d Cir. 2002) (holding that “[a]lthough a district court may not consider matters extraneous to the pleadings, a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss in one for summary judgment”). However, the court may not rely on other parts of the record in determining a motion to dismiss, or when determining whether a proposed amended complaint is futile because it fails to state a claim upon which relief may be granted. Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994).

It is against these guideposts that we assess the instant complaint.

**B. In its Current Form, the Plaintiff’s Complaint Fails to State a Claim Upon Which Relief Can be Granted in Federal Court.**

It is well-settled that federal courts are courts of limited jurisdiction. As a general rule, there are two primary grounds for federal district court jurisdiction over a civil lawsuit. First, “district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—(1) citizens of different States.” 28 U.S.C. § 1332(a)(1). This ground of federal jurisdiction is known as diversity jurisdiction. The second principal ground for invoking the jurisdiction of a federal court is known as federal question jurisdiction. Under this ground of jurisdiction, “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

As we perceive it, Dent’s complaint does not allege any “civil actions arising under the Constitution, laws, or treaties of the United States,” 28 U.S.C. § 1331, giving rise to federal question jurisdiction. Instead, Dent simply brings state law claims in federal court. However, the plaintiff may not assert federal jurisdiction over these state claims, since we can only exercise federal jurisdiction over such state law claims in “civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between— (1) *citizens of different States.*” 28 U.S.C. § 1332(a)(1) (emphasis added). In the instant case, this

court's diversity jurisdiction simply does not provide a basis for exercising jurisdiction over this particular controversy since the complaint recites that the plaintiff and the defendants are all citizens and residents of Pennsylvania. Given that the complaint reveals on its face that this lawsuit is not between citizens of different states, the plaintiff may not invoke diversity jurisdiction in this matter.

In light of this basic jurisdictional flaw in this complaint, we conclude that the state law claims set forth in this pleading simply do not meet the requirements prescribed by law for a federal lawsuit, since "the facts alleged in the complaint are [not] sufficient to show that the plaintiff has a 'plausible claim for relief' " in federal court under this court's diversity jurisdiction. Fowler, 578 F.3d at 210-11. Indeed, at present, the complaint does not even contain "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), since the complaint actually seems to demonstrate on its face that federal jurisdiction does not lie here.

In fact, this court has previously held that Pennsylvania resident plaintiffs may not maintain state law claims against Pennsylvania resident defendants in federal court. In dismissing and refusing to reinstate a similar lawsuit, this court noted in terms that are equally applicable here that: "Plaintiff's Complaint indicates that both he and Defendant . . . are located and domiciled in Pennsylvania. Thus, there is not diversity jurisdiction over this action because 'complete diversity is lacking when

the plaintiff is a citizen of one state and a defendant is a citizen of that same state.”

Boldrini v. Bruno, No. CIV.A. 3:11-1401, 2013 WL 619610, \*2 (M.D. Pa. Feb. 19, 2013) (quoting Brett v. Brett, No. 12–3301, 2012 WL 5450879, \*1 (3d Cir. Nov. 8, 2012)); see also Zambelli Fireworks Mfg. Co. v. Wood, 592 F.3d 412, 420 (3d Cir. 2010). Consequently, we have consistently concluded that where a *pro se* complaint brings state law claims and reveals on its face that there is no diversity of citizenship, screening dismissal of that pleading in favor of state court litigation is entirely appropriate. See, e.g., Kline v. Kline, et al., No. 4:18-CV-2095, 2018 WL 6005458, \*6 (M.D. Pa. Oct. 31, 2018), report and recommendation adopted sub nom. Kline v. Kline, et al., No. 4:18-CV-02095, 2018 WL 5994406 (M.D. Pa. Nov. 15, 2018); Baker v. Leitzel, No. 1:18-CV-1366, 2018 WL 3640419, \*3 (M.D. Pa. Jul. 11, 2018), report and recommendation adopted, No. 1:18-CV-1366, 2018 WL 3631289 (M.D. Pa. Jul. 31, 2018); Mendez v. Strohlein, No. 3:17-CV-1141, 2017 WL 3084104, \*3 (M.D. Pa. Jun. 29, 2017), report and recommendation adopted, No. 3:17-CV-1141, 2017 WL 3084094 (M.D. Pa. Jul. 19, 2017).

This conclusion that non-diverse parties may not maintain a state law claim in federal court applies here as well and would compel dismissal of any state law claim in this complaint. Yet, while these allegations do not state grounds for a lawsuit in federal court, this does not mean that Dent has no legal remedies available to him.

The plaintiff may bring these claims in state court. Those courts certainly stand ready to hear his state law claims.

To the extent that the plaintiff is endeavoring to bring some form of federal civil rights claim against the defendant, this complaint encounters other legal obstacles. First, under the principal federal civil rights statute, 42 U.S.C. § 1983, the plaintiff may only bring civil rights claims against persons who are acting under color of state and federal laws. This term, which is found in the primary federal civil rights statute, 42 U.S.C. § 1983, is a term of art with a specific and specifically defined meaning. As we have explained, section 1983:

“[I]mposes civil liability upon any person who, acting under the color of state law, deprives another individual of any rights, privileges, or immunities secured by the Constitution or laws of the United States.” Shuman v. Penn Manor Sch. Dist., 422 F.3d 141, 146 (3d Cir. 2005). Section 1983 “does not create any new substantive rights but instead provides a remedy for the violation of a federal constitutional or statutory right.” Id. In order to establish a claim under § 1983, therefore, a plaintiff must establish both a deprivation of a federally protected right and that this deprivation was committed by one acting under color of state law. Woloszyn v. County of Lawrence, 396 F.3d 314, 319 (3d Cir. 2005).

Banks v. Macon, No. 1:13-CV-01695, 2013 WL 3863950, \*4 (M.D. Pa. Jul. 23, 2013). Accordingly:

It is axiomatic that 42 U.S.C. § 1983 provides for a cause of action against persons acting “under color of state law.” Thus, in order for a defendant to be liable under § 1983, [t]he [defendant] must “have exercised power ‘possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.’ ”

West v. Atkins, 487 U.S. 42, 49 (1988) (quoting United States v. Classic, 313 U.S. 299, 326 (1941)).

Id. at \*5.

In this case, Dent's complaint is devoid of any allegations that Samirah Randolph is acting under color of state law or is cloaked in the authority of state law. Quite the contrary, Dent seems to allege that Randolph is violating state law. In the absence of any allegations of state action, any civil rights claims that Dent wishes to bring against Randolph under 42 U.S.C. § 1983 fail as a matter of law and should be dismissed.

While we have found that this complaint does not allege claims over which this court has jurisdiction, we recognize that *pro se* plaintiffs often should be afforded an opportunity to amend a complaint before the complaint is dismissed in its entirety, see Fletcher-Hardee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007), unless granting further leave to amend would be futile or result in undue delay. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). Therefore, it is recommended that the court dismiss this legally deficient complaint but afford the plaintiff an opportunity to either attempt to amend his complaint to state a federal claim within the jurisdiction of this court or file this action in the appropriate court, a state Court of Common Pleas.

### III. Recommendation

Accordingly, for the foregoing reasons, IT IS RECOMMENDED that the Plaintiff's complaint be dismissed without prejudice to the plaintiff endeavoring to correct the defects cited in this report, provided that the plaintiff acts within 20 days of any dismissal order.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 26<sup>th</sup> day of October 2021.

S/Martin C. Carlson  
Martin C. Carlson  
United States Magistrate Judge