

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

RICHARD MATTHEWS,

Plaintiff,

v.

**JAMALE R. GRIFFIN, RAY MARTINEZ,
KATHRYN B. JENSEN de LUGO,
DENESE MARSHALL, JEWEL V. OWEN,
G. RITA DUDLEY-GRANT, LINDSY
WAGNER, LORI THOMPSON,
and CHRISTOPHER KROBLIN,**

Defendants.

1:24-cv-00005-WAL-EAH

**TO: Richard Matthews, *Pro Se*
Shari Natalya D’Andrade, Esq.
Chivonne Thomas, Esq.**

REPORT & RECOMMENDATION

THIS MATTER comes before the Court on a June 7, 2024 Order by the District Judge, Dkt. No. 29, that referred all pending and future dispositive motions in this case for a Report and Recommendation (“R&R”). Dkt. No. 25. After Plaintiff Richard Matthews, appearing pro se, filed an Amended Complaint, Defendant Christopher Kroblin filed a Motion to Dismiss under Fed. R. 12(b)(1) and 12(b)(6). Plaintiff Matthews did not file a response within the time permitted by LRCi 6.1(b)(1), and the time to do has expired. For the reasons set forth below, the Court recommends that Defendant Kroblin’s Motion to Dismiss under Rule 12(b)(1) be granted.

BACKGROUND

Matthews filed a 75-page Amended Complaint—the operative pleading in this matter—on June 16, 2024. Dkt. No. 34-2. He named nine Defendants: Jamale R. Griffin,

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President of the Law Enforcement Supervisor’s Union (“LESU”); Ray Martinez, Virgin Islands Police Department (“VIPD”) Commissioner; Kathryn B. Jensen de Lugo, Paternity & Child Support Director, V.I. Department of Justice; Denese Marshall, Police Behavioral Services Unit Clinical Psychologist; Jewel V. Owen, Clinical Psychologist; Rita Dudley-Grant, Clinical Community Outreach Coordinator, Island Therapy Solutions; Lindsay Wagner, CEO, Island Therapy Solutions; Lori Thompson, Clinical Community Outreach Coordinator, Insight Psychological Services; and Christopher Kroblin, attorney. *Id.* at 1-3. Matthews organized the Amended Complaint by separating his allegations into sections entitled “The VIPD and LESU,” “Paternity and Child Support,” “The Doctors,” “Conspiracy History,” and “The Attorney”; he included 370 allegations encompassing events from 2012 to 2024. Dkt. No. 34-2 at pp. 11-51. The section concerning “The Attorney”—i.e., Defendant Kroblin, an attorney at Kellerhals Ferguson Kroblin PLLC—is relevant here, *id.* at pp. 43-51, although allegations involving Kroblin and another attorney who worked at his firm, Marjorie Whalen (not named as a Defendant), are scattered throughout the Amended Complaint.

Matthews alleged that Kroblin represented him in a lawsuit filed in the District Court of the Virgin Islands in 2014 entitled *Matthews v. Law Enforcement Supervisor’s Union, Government of the Virgin Islands (Virgin Islands Police Department), Thomas Hannah (Assistant Police Commissioner), and Unknown Co-Conspirators*, 1:2014-cv-00035. *Id.* at p. 8. Matthews claimed that the lawsuit was untimely and did not meet the Virgin Islands Tort Claims Act (“VITCA”) requirements, which he first learned when he read—in March 2024—the September 11, 2017 Opinion by Judge Anne Thompson dismissing that lawsuit, *id.* ¶¶

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326-27. He discovered that Kroblin did not adequately represent him in that lawsuit, and that Kroblin's "negligence cause[d] harm to his reputation, emotional distress, and a loss of approximately \$40,000 in legal expenses." *Id.* ¶ 328.

He recalled that Attorney Kroblin had told him that the case had been dismissed, but Kroblin did not provide him with any documents or explain why. *Id.* ¶ 322. Matthews added that, on April 21, 2024, he "observed" an email dated September 18, 2017 that he "never observed prior to April 21, 2024, alleging Plaintiff sent a response to Kroblin[s] assistant [Attorney Marjorie Whalen] in response to the September 11, 2017 opinion. *Id.* p. 6. He alleged that "according to the two unfamiliar emails, Whalen and Plaintiff had communication about the Court Opinion, dated September 11, 2017." *Id.* ¶¶ 339, 347. He described these "two unfamiliar emails" as follows: the first one was dated September 15, 2017, indicating Whalen was the author, and the second one, dated September 18, 2017, indicated he was the author. *Id.* ¶ 345. However, he "never observe[d]" those two emails that referenced the Court's September 2017 opinion, before April 21, 2024. *Id.* ¶ 347. He also "observe[d] another questionable email, dated January 11, 2018" in which Whalen informed him that they were trying to appeal his case, but the cost would be \$5,000. *Id.* ¶ 349.

Matthews alleged that "[u]pon information and belief, Kroblin became more embedded in the conspiracy with the LESU et al after September 11, 2017" where the court had "clearly pointed to Kroblin's negligence in filing the lawsuit untimely and failure to adhere to the VITCA requirements," and Kroblin had not "fully disclos[ed]" the reasons for

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dismissal, which was unacceptable. *Id.* ¶ 366. If Matthews had known the reasons behind the dismissal, he would have filed a lawsuit against Kroblin then. *Id.*

Matthews named Kroblin in four of the claims raised in his Amended Complaint: (1) Civil Conspiracy, where he alleged that Kroblin, along with one of the Defendant psychologists who saw him, agreed to “generate misdiagnoses, and disinformation and place in Plaintiff medical records” which caused, inter alia, “irreparable damage to Plaintiff reputation, emotional distress and other monetary loss.” *Id.* pp. 57-58. The second claim, Intentional Infliction of Emotional Distress, alleged that Kroblin did not file his lawsuit on time, he paid approximately \$40,000.00 in legal expenses and, “in retaliation, [Kroblin] did not fully disclose[] the reasons the lawsuit was dismissed,” which caused “irreparable harm to his reputation, emotional distress and monetary loss.” *Id.* pp. 59-60. The third claim, Legal Malpractice, alleged that Kroblin was negligent and breached his duty when he untimely filed the 2014 lawsuit that did not meet the VITCA requirements, and when he did not notify Matthews about the September 2017 Court Opinion and Order “in a timely manner,” *id.* p. 65. In describing his “injury,” Matthews claimed that his reputation and credibility were tarnished, and Kroblin’s actions caused or contributed to Matthews’s VIPD complaints/grievances not being investigated or taken seriously. Here, Matthews interposed issues regarding other Defendants and events which are difficult to decipher. *Id.* p. 66.¹ The

¹ For example, he asserted: “Kroblin lack of inform consent, not knowing that Hannah finding that Plaintiff is disingenuous to remain in Plaintiff file after September 11, 2017. Plaintiff was not giving an opportunity to decide to continue working as a law enforcement lieutenant (officer), or even, pursue and earn a Master Degree in Public Administration with a concentration in Criminal Justice in 2021. Plaintiff would not have continued to work in Law

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fourth claim, Defamation, alleged that “Kroblin apparently influenced an email indicating Plaintiff is the author, Plaintiff discovered the email on April 21, 2024, back[]dated September 18, 2017, with negligent defaming information with reckless disregard of whether the statement(s) was false or not, which harm Plaintiff[.]” *Id.* p. 69.

Matthews sought \$5,000,000 in damages against Defendant Kroblin. *Id.* at 70.

II. Motion to Dismiss

On July 17, 2024, Defendant Kroblin filed the instant motion to dismiss the first amended complaint² pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Dkt. No. 66.³ In his memorandum, Kroblin argues that all the claims against him are territorial claims that have no nexus to the U.S. Constitution or any federal statute. Dkt. No. 67 at 5-6. While the Court noted in its June 24, 2024 R&R that the Court had subject matter jurisdiction over the Amended Complaint because two of Matthews’s claims—due process and unfair representation—were brought (or potentially brought) under federal statutes, subject matter jurisdiction must be satisfied for each and every claim in a complaint. *Id.* at 6. Since the due process and unfair representation claims were not asserted against Kroblin, the Amended Complaint failed to establish and could not establish subject matter jurisdiction

enforcement without Plaintiff integrity, credibility, reputation and character.” Dkt. No. 34-2 at pp. 65-66.

² Kroblin previously filed a motion to dismiss the initial complaint for improper service, under Fed. R. Civ. P. 12(b)(5) in June 2024. Dkt. No. 25. After Matthews filed his Amended Complaint, he filed a motion to dismiss Kroblin from the lawsuit, Dkt. No. 36, which he then withdrew, Dkt. No. 37. These motions were addressed in a prior Report & Recommendation, dated June 24, 2024, Dkt. No. 43, which is pending.

³ Because the initial motion to dismiss, Dkt. No. 66, was filed incorrectly, Kroblin refiled the motion as Dkt. No. 68 on July 18, 2024.

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under federal question jurisdiction for the claims against Kroblin, and diversity jurisdiction, which had not been asserted, would be inapplicable. *Id.* at 7 & n.1. Thus the Court should conclude that it lacks subject matter jurisdiction over the claims against Kroblin and dismiss the Amended Complaint as to him. *Id.* at 7.

Kroblin also argues that Matthews's claims are facially time-barred or fail to state a claim, warranting dismissal under Rule 12(b)(6). *Id.* The legal malpractice claim was time-barred on its face, as such a claim is subject to a two-year statute of limitations. *Id.* at 8. Matthews based this claim on his allegations that the untimely-filed 2014 lawsuit did not comply with the VITCA and was dismissed, and Kroblin did not notify Matthews of the September 2017 dismissal in a timely manner, which tarnished Matthews's reputation and credibility. *Id.* Matthews also claimed he did not learn of the September 2017 dismissal until March 2024 when he read the opinion for the first time. However, Matthews also alleged that Whalen sent him an email on September 15, 2017 about the opinion, *id.* citing Dkt. No. 34-2 ¶¶ 5, 339, 345, 347. To support this point, Kroblin attached as an exhibit a copy of Whalen's actual email and Matthews's September 18, 2017 email response. *Id.* at 8-9 & Dkt. No. 67-1. Having known about the dismissal years before he read the opinion, the discovery rule was inapplicable, the legal malpractice claim lapsed on September 18, 2019, and was time-barred. *Id.* at 9.

In a footnote, Kroblin contends that because the Amended Complaint "expressly incorporates by reference" Whalen's September 15, 2017 email and his September 18, 2017 response, the Court may consider those documents in deciding the motion to dismiss without

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converting it into a motion for summary judgment. *Id.* at 8 n.2 (quoting, *inter alia*, *In re Amarin Corp. PLC Sec. Litig.*, No. 19-cv-6601, 2021 WL 1171669, at *7 (D.N.J. Mar. 29, 2021), *aff'd* No. 21-2071, 2022 WL 2128560 (3d Cir. June 14, 2022) (a court could consider documents integral to or expressly relied upon in the complaint on a motion to dismiss)).

Kroblin asserts that Matthews's defamation claim was incoherent and fundamentally flawed because he did not assert the claim's essential elements, such as that Kroblin made any false statement about him, published any such statement to a third party, that it was negligently published, or that it harmed Matthews. *Id.* at 10. Matthews alleged:

In retaliation, Kroblin apparently influenced an email indicating Plaintiff is the author, Plaintiff discovered the email on April 21, 2024, backed [sic] dated September 18, 2017, with negligent defaming information with reckless disregard of whether the statement(s) was false or not, which harm Plaintiff to harm Plaintiff [sic].

Id., quoting Dkt. No. 34-2 at p. 67. While Matthews alleged that Kroblin somehow caused Matthews to author that email—wrongdoing that Matthews discovered on April 21, 2024—Whalen had informed Matthews of the dismissal of the lawsuit, attached a copy of the opinion, and Matthews responded on September 18, 2017, as shown by the attached exhibit. *Id.* Thus the allegation that Kroblin caused a false email was baseless and the claim must be dismissed. *Id.* Even assuming a defamatory statement was published, the claim lapsed on September 18, 2019, the discovery rule was inapplicable, and the claim was time-barred. *Id.*

The civil conspiracy claim against Kroblin—that “Thompson and Kroblin appeared to generate misdiagnoses, disinformation and place in Plaintiff's medical records,” Dkt. No. 34-2 at 57—was vague and conclusory and offered no facts on any agreement between these

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two Defendants or how Matthews was harmed by the misdiagnoses. Kroblin explains that Matthews asked Whalen, not Kroblin, for a psychologist referral because Matthews was seeking a second opinion on Defendant Dudley-Grant's diagnosis of Matthews, and Whalen suggested Matthews contact Thompson. *Id.* ¶¶ 63, 64. Even though the Amended Complaint failed to allege any connection between Kroblin and Thompson, Matthews alleged that Kroblin, an attorney, conspired with Dr. Thompson to render medical misdiagnoses. Having failed to identify any tortious conduct by Kroblin, this claim must fail. Dkt. No. 67 at 11.

With regard to the IIED claim, also governed by a two-year statute of limitations, Matthews alleged that Kroblin did not file the lawsuit on time, he paid \$40,000 in legal expenses and, in retaliation, Kroblin did not fully disclose the reasons the lawsuit was dismissed. *Id.* at 12. But pursuant to the email from Whalen, Matthews knew why the lawsuit had been dismissed on September 18, 2017 and the statute of limitations lapsed on September 18, 2019. The claim is thus time-barred. *Id.* It is also insufficiently pleaded as his claims did not rise to the level of extreme and outrageous conduct required for an IIED claim. Matthews never stated the late filing was intentional or reckless and he did not allege he suffered severe emotional distress. *Id.*

DISCUSSION

I. Legal Standards

A. Standard for a Rule 12(b)(1) Motion to Dismiss for Lack of Jurisdiction

Article III of the United States Constitution limits federal courts to hearing enumerated cases and controversies. A court "shall dismiss the action" as soon as it becomes

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apparent “by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter[.]” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006) (internal quotation marks and citation omitted). “[B]ecause it involves a court’s power to a hear a case,” a challenge to the court’s subject matter jurisdiction “can never be forfeited or waived.” *United States v. Cotton*, 535 U.S. 625, 630 (2002). Kroblin has raised such a challenge under Fed. R. Civ. P. 12(b)(1). *Gould Elecs., Inc. v. United States*, 220 F.3d 169, 178 (3d Cir. 2000). Rule 12(b)(1) motions are either facial or factual challenges. *CNA v. United States*, 535 F.3d 132, 140 (3d Cir. 2008). A facial attack concerns the sufficiency of the pleadings, whereas a factual attack is a dispute over the existence of certain jurisdictional facts alleged by the plaintiff. *Id.* (citing *United States ex rel. Atkinson v. Pa. Shipbuilding Co.*, 473 F.3d 506, 514 (3d Cir. 2007)). In deciding a motion that attacks the complaint on its face, the court must accept the allegations in the complaint as true. *Mortensen v. First Federal Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977); *Gould Elecs.*, 220 F.3d at 176 (“In reviewing a facial attack, the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff.”).

Here, Kroblin asserted a facial attack on Matthews’s claims against him. As such, the Court accepts the allegations in the complaint as true and utilizes the standard for dismissal under Rule 12(b)(6). *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 357–58 (3d Cir. 2014).

B. Standard for a Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim

“To survive a motion to dismiss, a civil plaintiff must allege facts that ‘raise a right to relief above the speculative level on the assumption that the allegations in the complaint are

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true (even if doubtful in fact).” *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Dismissal under Rule 12(b)(6) is appropriate if a complaint does not contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570); *see also Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. The complaint “must state enough facts to raise a reasonable expectation that discovery will reveal evidence of [each] necessary element” of a plaintiff’s claim. *Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315, 321 (3d Cir. 2008) (internal quotation marks omitted).

II. Analysis

Defendant Kroblin contends that the Court lacks jurisdiction over the four state law claims Matthew asserted against him (civil conspiracy, IIED, legal malpractice, and defamation) because they have no nexus to the U.S. Constitution or any federal statute. Dkt. No. 67 at 5-6. He cites cases standing for the proposition that a federal court must have subject matter jurisdiction over every claim. *Id.* at 6. Kroblin’s position is generally true, but the specific analysis the Court must make in this circumstance is whether the Court may properly exercise supplemental jurisdiction over the state claims asserted against him.

Under 28 U.S.C. § 1331, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Where there is

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original jurisdiction, “the district courts shall [also] have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a); *see also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). Put another way, a district court may exercise supplemental jurisdiction where state-law claims share a “common nucleus of operative fact” with the claims that support the district court's original jurisdiction. *De Asencio v. Tyson Foods, Inc.*, 342 F.3d 301, 307–08 (3d Cir. 2003). Supplemental jurisdiction promotes “judicial economy, convenience and fairness to litigants.” *Id.* (internal quotation marks omitted); *see also In re Cmty. Bank of N. Va. Mortg. Lending Pracs. Litig.*, 911 F.3d 666, 672 (3d Cir. 2018) (“the federal courts’ original jurisdiction over federal questions carries with it jurisdiction over state law claims that derive from a common nucleus of operative fact, such that the relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional case.”) (internal quotation marks omitted); *see also Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 303 (3d Cir. 1998) (Section 1367 “does not permit courts to take jurisdiction over tangentially related claims. The issue is whether there is a common nucleus of operative fact and whether the claims are part of the same case or controversy under Article III.”) (internal quotation marks omitted).

The test for determining whether a court should exercise supplemental jurisdiction over a state law claim requires the court to conclude that:

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(1) [t]he federal claim must have substance sufficient to confer subject matter jurisdiction on the court; (2) [t]he state and federal claims must derive from a common nucleus of operative fact; and (3) considered without regard to their federal or state character, a plaintiffs' claims are such that he would ordinarily be expected to try them all in one judicial proceeding.

Williams v. Bd. of Educ. of Paterson, No. 15-cv-0765, 2017 WL 3131974, at *4–5 (D.N.J. 2017) (quoting *Gibbs*, 383 U.S. at 725); *see also Freedom Mortg. Corp. v. Fitzpatrick*, No. 20-cv-5872, 2021 WL 141334, at *4 & n.5 (D.N.J. Jan. 15, 2021) (applying same standard and test in case with similar procedural posture).

Here, jurisdiction over Matthews's state law claims against Kroblin may be premised only on § 1367, in connection with Matthews's federal law claims over which the Court has original jurisdiction, because all parties in this action are citizens of the Virgin Islands, and thus diversity jurisdiction under 28 U.S.C. § 1332(a) is not available. As indicated above, those federal claims are the 42 U.S.C. § 1983 due process cause of action and a possible duty of fair representation claim under 29 U.S.C. § 301.⁴ Matthews asserted the due process claim against Defendants Martinez (VIPD Police Commissioner) and De Lugo (Director, V.I. Department of Justice Division of Paternity & Child Support) in relation to Martinez not hearing one of Matthews's grievances in June 2022 before issuing a second Fitness For Duty Evaluation ("FFDE"), and De Lugo not administering a mistake of fact/garnishment hearing in April 2023 related to Matthews's paternity proceeding in state court, which caused him

⁴ In the June 24, 2024 R&R, the Court discussed the federal court's subject matter jurisdiction over the Amended Complaint. Dkt. No. 43 at 18 & n.15. The Court stated that the first federal claim was "clearly brought under 42 U.S.C. § 1983 alleging a procedural due process violation under the 14th Amendment," and the second federal claim "may be liberally construed as a claim under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a)." *Id.*

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injury. Dkt. No. 34-2 at 62. Liberally construing the Amended Complaint, a federal duty of fair representation (“DFR”) hybrid claim could be discerned from Matthews’s unfair representation claim alleged against Defendant Griffin, President of the LESU, and his breach of contract claim against Defendant Martinez. As to the unfair representation claim, Matthews alleged that Griffin failed to adequately represent him in FFDE proceedings, failed to ensure the VIPD conducted a proper investigation into various FFDE directives and Matthews’s grievances, and failed to protect his employment, which caused him harm. Dkt. No. 34-2 at 53-54. As to the breach of contract claim, Matthews alleged that Martinez issued a second FFDE directive before hearing the grievance on the first FFDE directive. Martinez also failed to conduct a proper investigation into (1) a time period during which Matthews was absent, which was required before issuing an FFDE Directive and (2) a forgery case by another officer, and (3) a grievance Matthews had filed. *Id.* at 55. Matthews also asserted that Martinez failed to pay his overtime demand and compensate him for back pay. *Id.* The Court will assume, for purposes of this R&R only, that the federal claims have “substance sufficient to confer subject matter jurisdiction on the court,” *Williams*, 2017 WL 3131974, at *4-5, although it is actually the liberal construction accorded pro se complaints that allows the Court to so conclude.

The two federal claims are limited, involving only three of the nine named Defendants. They are confined to relatively recent events and discrete acts, as opposed to many of the other sprawling claims that involve many Defendants and cover time periods of up to a decade. The federal due process claim against Martinez and De Lugo implicate

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constitutional claims against state officials, and the DFR claim involves employment-related issues that concern the VIPD and the LESU. The elements of the § 1983 and DFR federal claims differ significantly from the elements and proof needed to prove each the state law claims of civil conspiracy, defamation, legal malpractice, and intentional infliction of emotional distress against Kroblin and require an assessment of totally different facts.

Thus, it is crystal clear that the state claims against Kroblin share no “common nucleus of operative fact” with the § 1983 and DFR claims that support the district court’s original jurisdiction. *De Asencio*, 342 F.3d at 308. Where “the same acts violate parallel federal and state laws, the common nucleus of operative facts is obvious.” *Id.* at 308 (internal quotation marks omitted); *see also HB Gen. Corp. v. Manchester Partners, L.P.*, 95 F.3d 1185, 1198 (3d Cir. 1996) (“Claims are part of the same case or controversy if they share significant factual elements.”). The state claims are not based on parallel laws to the federal claims, as all of them are common-law torts; the federal and state claims lack any kind of relationship.

Consequently, nothing would be gained in terms of “judicial economy, convenience, and fairness to the litigants” from trying “in one judicial proceeding” Matthews’s state law claims against Kroblin alongside the § 1983 and DFR federal claims alleged against certain other Defendants. *Gibbs*, 383 U.S. at 725. The Court therefore recommends granting Defendant Kroblin’s motion to dismiss pursuant to Rule 12(b)(1) for lack of jurisdiction, and dismissing the Amended Complaint as against him.

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Given this proposed resolution, it is not necessary for the Court to reach Kroblin's additional arguments that the Amended Complaint must be dismissed against him for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

III. Amendment

Pro se litigants are to be granted leave to file a curative amended complaint "even when a plaintiff does not seek leave to amend . . . unless such an amendment would be inequitable or futile." *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). In this instance, amendment would be futile because Matthews cannot remedy the deficiency caused by lack of subject matter jurisdiction. *Foman v. Davis*, 371 U.S. 178, 182 (1962). His § 1983 and DFR claims are so utterly disparate from the state law claims he raised against Defendant Kroblin that the Court cannot imagine how he could amend his state claims to be part of a "common nucleus of operative fact" with the federal claims. *De Asencio*, 342 F.3d at 308.

CONCLUSION

Accordingly, for the reasons discussed above, the Court **RECOMMENDS** that the Motion to Dismiss, Dkt. No. 66, 68, filed by Defendant Kroblin be **GRANTED** and the Amended Complaint be **DISMISSED** as to him, without leave to amend.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice, 28 U.S.C. § 636(b)(1), and must "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection." LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and

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Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S.
140 (1985).

ENTER:

Dated: August 12, 2024

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE