

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

FRANKLIN XAVIER,

Plaintiff,

v.

**JOMO MEADE (Judge)
and THE TERRITORY OF THE
VIRGIN ISLANDS,**

Defendants.

1:23-cv-00052

TO: Franklin Xavier, Pro Se

REPORT & RECOMMENDATION

THIS MATTER comes before the Court for an initial screening, pursuant to 28 U.S.C. § 1915(e)(2), of the Amended Complaint filed by pro se Plaintiff, Franklin Xavier, who is proceeding in forma pauperis. For the following reasons, the Court recommends that the Amended Complaint be dismissed with prejudice.

BACKGROUND

On November 22, 2023, Xavier filed a complaint pursuant to 42 U.S.C. § 1983 and an application to proceed in forma pauperis. Dkt. Nos. 1, 2. The Court granted his renewed motion to proceed in forma pauperis on February 28, 2024, Dkt. No. 19. In the meantime, Xavier filed an Amended Complaint on February 2, 2024. Dkt. No. 10.

In his Amended Complaint, Xavier names as Defendants Jomo Meade, a Senior Sitting Judge in the Superior Court of the Virgin Islands, in his individual and official capacity, and the Territory of the Virgin Islands. *Id.* He asserts that, in November 2021, he was arrested on

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a local charges (assault and use of a dangerous weapon), and the matter was assigned to Judge Meade. *Id.* at 1. In December 2021, Xavier filed a motion for recusal of Judge Meade based on a conflict of interest. In March 2022, the motion was denied because it provided an insufficient basis for recusal. *Id.*

Xavier further states that in June 2008, he and his then-wife were both indicted by a federal grand jury on firearms-related charges. *Id.* at 2. In August 2008, the U.S. Magistrate Judge appointed Meade, who was then an attorney in private practice, to represent Xavier's wife. *Id.* Although it is not clear from the allegations in Xavier's § 1983 complaint, he appears to allege that the failure of Judge Meade to recuse himself in the 2021 Superior Court case because he previously represented Xavier's wife in the federal case, constituted a conflict of interest, a violation of ethics, and a violation of his constitutional and statutory rights under the due process clause and the Fourth and Fourteenth Amendments, as the 2021 case was unnecessarily delayed and prejudiced him. *Id.*

Xavier seeks injunctive relief to "refrain other action deem by the court" and one million dollars in "monetary and punitive damages" from Defendants for their intentional violations of his constitutional and statutory rights, which caused him emotional distress and pain and suffering. *Id.* He has attached the December 2022 Notice of Entry of the Order Denying Motion for Recusal from the Superior Court, the Order Denying Recusal, pages of the docket report of the 2008 federal court case, and a motion for appointment of counsel in the current case. Dkt. Nos. 10-1, 10-2, 10-3.

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DISCUSSION

A. Standard of Review

The court must screen a plaintiff's *pro se* complaint for cognizable claims and *sua sponte* dismiss all or any part of an action that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). A complaint is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” *Id.* at 327. “A complaint is malicious when it duplicates allegations of another [] federal lawsuit by the same plaintiff.” *Daley v. United States Dist. Court*, 629 F. Supp. 2d 357, 359-60 (D. Del. 2009) (internal quotation marks omitted). Whether a complaint fails to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) is governed by the same standard as Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Schreane v. Seana*, 506 F. App'x 120, 122 (3d Cir. 2012) (citing *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000)). Accordingly, a court must determine whether the complaint includes “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) (quotation marks omitted). Finally, where applicable, a court must also consider whether the law affords certain governmental entities and officials immunity against particular types of lawsuits. 28 U.S.C. § 1915(e)(2)(B)(iii).

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Because Xavier is proceeding *pro se*, his pleadings are to be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). However, he “still must allege sufficient facts in the[] complaint[] to support a claim.” *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013).

B. Claims under 42 U.S.C. § 1983

Xavier has filed an Amended Complaint under 42 U.S.C. § 1983, which authorizes a person to seek redress for a violation of his federal civil rights by a person who was acting under color of state law. Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983. To recover under 42 U.S.C. § 1983, a plaintiff must show: (1) a person deprived him or caused him to be deprived of a right secured by the Constitution or laws of the United States, and (2) the deprivation was done under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

It is well settled that “Territories and their officers, acting in their official capacities, are not ‘persons’ under § 1983.” *Ngiraingas v. Sanchez*, 495 U.S. 182, 191–92 (1990); *see also Brow v. Farrelly*, 994 F.2d 1027, 1037 (3d Cir. 1993) ([N]either the Territory of the Virgin

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Islands nor its officers acting in their official capacities are ‘persons’ under 42 U.S.C. § 1983.’.” Similarly, agencies of the Government of the Virgin Islands are not “person[s]” amenable to suit under § 1983. *McCauley v. Univ. of the Virgin Islands*, 618 F.3d 232, 240 (3d Cir. 2010); *Gautier v. Gov’t of Virgin Islands*, 12-cv-0076, 2023 WL 6065208, at *2 (D.V.I. Sept. 18, 2023). As a result, Xavier’s claims against the Government of the Virgin Islands and Judge Meade in his official capacity fail to state a claim under § 1983. Amendment of these claims would be futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002); *see also Alvin. v. Suzuki*, 227 F.3d 107, 121 (3d Cir. 2000) (explaining that amendment is futile where the amended complaint could not survive a motion to dismiss for failure to state a claim). It is therefore recommended that the Amended Complaint be dismissed against these Defendants with prejudice for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

In addition, “certain government employees also enjoy immunity in their individual capacities from liability under § 1983 for conduct within the scope of their duties. A judge is immune from liability for actions taken in his judicial capacity, unless such action is taken in the absence of all jurisdiction.” *Gannaway v. Stroumbakis*, 842 F. App’x 725, 730 (3d Cir. 2021) (citing *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978)). Xavier does not argue—nor does it appear—that Judge Meade acted in the absence of all jurisdiction when he denied Xavier’s recusal motion in December 2022. Rather, Judge Meade’s order denying recusal was a judicial act issued in accordance with state law. *See Figueroa v. Blackburn*, 208 F.3d 435, 443 (3d Cir. 2000) (explaining that a “judicial act” is one that is “normally performed by a

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judge”); Title 4 V.I.C. §§ 284(4), 285 (regarding grounds for disqualifications of a judge and duty to disclose disqualification). Because Judge Meade is also absolutely immune from suit in his individual, personal capacity, 28 U.S.C. § 1915(e)(2)(B)(iii), the claims against him should be dismissed with prejudice without leave to amend as amendment would be futile. *See Grayson*, 293 F.3d at 108; *see also Alvin*, 227 F.3d at 121.

Finally, § 1983 provides that injunctive relief against judicial officers is not available unless the judge violated a declaratory decree or declaratory relief was unavailable. 42 U.S.C. § 1983. Xavier has failed to allege any such violation. His request for injunctive relief appears to be confined to what this Court may find appropriate to enjoin, given that his actual requests for relief are confined to money damages for past conduct by Judge Meade. But “declaratory judgment is inappropriate solely to adjudicate past conduct,” and may be requested if a plaintiff shows a likelihood of future injury, *Corliss v. O’Brien*, 200 F. App’x 80, 84 (3d Cir. 2006) (per curiam), thereby seeking to define legal rights and obligations for future conduct between parties. *Williams v. United States*, No. 21-cv-503, 2021 WL 5356112, at *5 (D.N.J. Nov. 17, 2021). Because Xavier’s allegations concern only past conduct, it would be futile to permit him to amend his complaint to add a claim for prospective injunctive or declaratory relief, and it is also recommended that any claims for injunctive relief asserted by Xavier be dismissed with prejudice.

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CONCLUSION

Based upon the foregoing, it is **RECOMMENDED** that Xavier's Amended Complaint, Dkt. No. 10, be **DISMISSED WITH PREJUDICE**.

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

The Clerk of Court shall mail a copy of this Report and Recommendation to the pro se Plaintiff by certified mail, return receipt requested.

ENTER:

Dated: February 28, 2024

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