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,[1]

Defendants.

1:24-cv-00005-WAL-EAH

TO: Richard Matthews, *Pro Se*
Shari Natalya D'Andrade, Esq.

REPORT & RECOMMENDATION

THIS MATTER comes before the Court on two Orders by the District Judge, Dkt. Nos. 22, 29 (1) referring this matter to the undersigned for a preliminary screening and Report and Recommendation, including Plaintiff's Motion for Reconsideration, Dkt. No. 6; and (2) referring all pending future non-dispositive pretrial matters for final disposition, including a Motion to Seal, Dkt. No. 23,[2] and all pending and future dispositive matters for Report(s) and Recommendation, including a Motion to Dismiss filed by Defendant Christopher Kroblin, Dkt. No. 25. After the District Judge issued those Orders, Matthews

[1] In the caption of his Amended Complaint, Matthews added Unknown Co-Conspirators as a Defendant. Dkt. No. 34 at 1. However, "Unknown Co-Conspirators" was not listed as a Defendant in Section II(B) of his Complaint form where the Court instructed him to name the Defendants, Dkt. No. 28. Accordingly, the Court has removed that party from the caption of this case.

[2] The Court has already granted Matthews's Motion to Amend, Dkt. No. 23. That motion did not contain a Motion to Seal. Matthews simply stated his intention to file a Motion to Seal. *Id.*

filed a Motion to Dismiss Kroblin from the Lawsuit, Dkt. No. 36, and a Motion to Withdraw his Motion to Dismiss Kroblin, Dkt. No. 37. For the reasons stated below, the Court recommends that: the Amended Complaint, Dkt. No. 34-2, be permitted to go forward in litigation; the Motion for Reconsideration, Dkt. No. 6, be denied; the Motion to Dismiss by Defendant Kroblin, Dkt. No. 25, be denied as moot; the Motion to Withdraw Motion to Dismiss Kroblin, Dkt. No. 37, filed by Matthews, be granted; and the Motion to Dismiss Kroblin from Lawsuit, Dkt. No. 36, filed by Plaintiff Matthews, be denied as moot.

BACKGROUND

I. Motion for Interim Injunction

On March 27, 2024, Plaintiff Richard Matthews, a retired Virgin Islands Police Department ("VIPD") Lieutenant, appearing pro se, sought to initiate this case by filing a "Motion for Interim Injunction" without an accompanying complaint. Dkt. No. 1. In the motion, he referred to reading May and June 2022 progress notes on March 24, 2024, authored by psychologist Dr. Rita Grant, after which he became "fully aware of the extensive damage of fraudulent misdiagnose[s] of mental illness and other significant disinformation in [his] medical records." *Id*. at 1, 2. It is unclear if he reviewed his medical records from other psychologists—Dr. Denese Marshall, Dr. Jewel Owens, and Dr. Lori Thompson—but he asserts he suffered "substantial damages," "did not know what was going on," and requested that the Court intervene quickly, even before he filed a complaint, to "stop the use" of those medical records because he had "reason to believe that some or all of those medical records are likely to contain fraudulent misdiagnoses and other significant disinformation that cause damage to Plaintiff[‘s] reputation, imminent danger. . . and certainty to cause future damages to Plaintiff[‘s] overall well-being.” *Id.* He added that his life was “in imminent danger,” without further explanation. *Id*. at 2. He claimed that the fraudulent misdiagnoses were retaliatory acts against him for filing a district court lawsuit in 2014, and that his reputation had been ruined by them. *Id.* at 5-6. He asked the Court to address this “serious conspiracy.” *Id.* at 6. Among the many documents he attached to the motion as exhibits were some of the notes by Dr. Grant. Dkt. No. 1-7.

Also on March 27, 2024, Matthews paid the filing fee for this action.

On May 3, 2024, the District Judge denied Matthews’s Motion for Preliminary Injunction on the ground that he had not initiated this action with a complaint. Dkt. No. 3. On May 15, 2024, Matthews filed a Complaint, Dkt. No. 5, as well as a Motion for Reconsideration, Dkt. No. 6.[3] In the motion, he asked the Court to apply the “Doctrine of Merger” to consolidate the instant case with a second case he had filed on April 11, 2024 in federal court, *Matthews v. Gov’t of the Virgin Islands Department of Justice*, 1:24-cv-0007, which he had removed from the Superior Court of the Virgin Islands. *Id.* at 2. He stated that while the subject matter of the two cases was different “on the surface,” they both involved a conspiracy among some of the same defendants that caused him harm, and consolidation would promote judicial economy and serve the interests of justice. *Id.* He attached two exhibits to the motion that, he contended, linked Defendants Ray Martinez and Dr. Jewel

[3] In its Order referring this motion to the undersigned for an R&R, the District Judge characterized this motion as a Renewed Motion for Interim Injunction. Dkt. No. 22.

Owen and linked both cases: (1) a November 2, 2022 Commissioner's Directive from Police Commissioner Martinez to Matthews, concerned Matthews's failure to comply with two previously-scheduled Fitness for Duty Evaluations ("FFDE") and rescinded his administrative pay until he agreed to comply, Dkt. No. 6-3; and (2) a June 8, 2022 Commissioner's Directive from Martinez to Matthews providing that he had been separated from the VIPD for over 30 days; in accordance with the CBA, he was being directed to attend a FFDE by Dr. Owen scheduled for June 14, 2022, and placed him on administrative leave with pay. Once Dr. Owen's FFDE report had been received, he would be notified to schedule dates for missed training and recertifications that took place while he was on leave. Dkt. No. 6-4. In the Motion for Reconsideration, Matthews also asked the Court to apply Rule 60, Relief from a Judgment or Order, but his reasoning is unclear. Dkt. No. 6 at 2.

Matthews moved for permission to use electronic case filing, Dkt. No. 17, which the Court granted, Dkt. No. 18.

On June 6, 2024, Matthews filed a Motion to Amend his Complaint.[4] Dkt. No. 23. Although the Court pointed out that Matthews could have amended his complaint as a matter of right, it nevertheless granted the motion on June 7, 2024. Dkt. No. 28. The Order instructed Matthews to use the proper caption for the case, and advised him that the only

[4] In the motion, Matthews referred to his intent to "seal the case" and his plan to file a Motion to Seal, given that unspecified documents contained personal information. Dkt. No. 23 at 2. He has not yet filed a motion to seal, describing which documents should be sealed. Matthews is adept enough at filing documents seeking various forms of relief that he could do so if he wished.

Defendants in the case would be those individuals or entities that he listed as Defendants in Part II(B) of his Amended Complaint form. *Id*. at 2-3.

II. Amended Complaint

Matthews filed his 75-page long Amended Complaint on June 13, 2024. Dkt. No. 34-2. He names nine Defendants: Jamale R. Griffin, President of the Law Enforcement Supervisor's Union ("LESU"); Ray Martinez, 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; Lindsy Wagner, CEO, Island Therapy Solutions; Lori Thompson, Clinical Community Outreach Coordinator, Insight Psychological Services; and Christopher Kroblin, attorney. *Id.* at 2-3 (Section II(B) of the Amended Complaint).[5] Matthews has 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,"

[5] In the Statement of Claims section of the form complaint (Section III), Matthews included the Defendants he named in Section II(B), as well as eleven other people or entities mentioned throughout the Amended Complaint, including: Anonymous Complainant, Former Police Captains Kenneth Edwards, Edmond Walters, and Clyde Newton, former Assistant Police Commissioners Thomas Hannah and Rodney Querrand, Sr., former LESU President Anthony Hector, former LESU Chairman Mark Corneiro, former Attorney General Vincent Frazier, Former IA [Internal Affairs] Director Jason Marsh, and Former Police Commissioner Trevor Velinor. Dkt. No. 34-2 at 6-7. Given that the Court clearly instructed Matthews to include the people and entities he wished to name as Defendants in Section II(B) of the Complaint form, Dkt. No. 28, and these persons are not named in that section, the Court does not consider them Defendants. Matthews also does not cite the actions of any of these individuals in his causes of action section, Dkt. No. 34-2 at 52-70, as having injured him.

and has included 370 allegations encompassing events from 2012 to 2024. Dkt. No. 34-2 at 11-51. He then sets out ten claims in separate sections, with summary allegations describing the particular Defendant's actions that support the allegation and the injury they caused him: Tortious Interference, Unfair Representation, Breach of Contract, Civil Conspiracy, Intentional Infliction of Emotional Distress, Personal Injury, Due Process Violations, Medical Malpractice, Legal Malpractice, and Defamation. *Id*. at 52-70.

The Amended Complaint is sometimes hard to follow, as Matthews mixes time frames, Defendants, and other individuals (both identified and unidentified) in his effort to describe an alleged longstanding conspiracy to ruin his reputation and defame him through fraudulent misdiagnoses by the Defendant psychologists, and to retaliate against him and terminate him as a result of his work in certain VIPD investigations and for filing grievances and challenging VIPD actions.[6] *See* ¶¶ Dkt. No. 34-2, ¶¶ 352-370. The Court will attempt to distill his allegations, omitting excessive background detail concerning events from 2012 through 2020 that Matthews apparently believes sets the stage for his claims (particularly his civil conspiracy cause of action), but in practice serve to make his claims harder to discern as they are clogged with this background detail.

Matthews alleges that he first saw a psychologist in 2014, Dr. Marshall, Dkt. No. 34-2 ¶ 173, who referred him to Dr. Owen in 2020. *Id.* ¶ 194.[7] In February 2020, Dr. Owen's

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[6] Throughout the Amended Complaint, he describes grievances he filed from 2012-2020. *See, e.g.,* Dkt. No. 34-2 ¶¶ 5-21.

[7] Matthews describes work-related issues he discussed with Dr. Marshall which, without context, are difficult to understand. Dkt. No. 34-2 ¶¶ 174-178. He asked for his records

doctor's note indicated that Matthews had a condition that could worsen, and returned him to active duty."[8] *Id.* ¶¶ 196-199. In 2022, he had appointments with Defendant Grant, a psychologist, given the job stress he was experiencing.[9] *Id.* ¶¶ 39, 42-45. She never told him he had any mental illness. *Id.* ¶ 41. Dr. Grant gave him a doctor's note and he was out of work from April 26-May 13, 2022. *Id.* ¶ 48 (and again from May 13-30 based on his blood pressure, *id*. ¶ 50). After his last appointment with Dr. Grant, he asked for a copy of his medical records from May and June 2022 and observed "omissions and fraudulent misdiagnoses" in them, after which he wrote her stating that she never told him that he suffered from any emotional disorder.[10] *Id*. ¶¶ 59-61. In June 2022, he met with Defendant Thompson and expressed concern about the FFDE evaluation that was to be conducted by Dr. Owen; Dr. Thompson said while his anxiety level was high, he did not have an emotional or mental disorder. *Id.* ¶ 64-81

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from Dr. Marshall in 2015 but did not receive them. *Id.* ¶¶ 182-83. He then describes sessions in 2019 with Dr. Marshall, who, in his view, worsened his situation. *Id.* ¶¶ 190-192.

[8] The Amended Complaint also refers to grievances he filed in 2020 in response to attempts to defame his character and reputation and terminate him, which he does not explain. Dkt. No. 34-2 ¶ 304.

[9] The Amended Complaint refers to appointments with Grant in 2020, apparently in relation to a prior FFDE, where Dr. Grant noted Matthews had a "history of Paranoid Ideation, which refer to a symptom characterized by temporary feelings of threat, persecution or conspiracy." Dkt. No. 34-2 ¶¶ 160-169. He considered the reference to paranoid ideation as a "fraudulent misdiagnosis designed to damage [his] reputation." *Id.* ¶ 170.

[10] He also alleges he discovered in March 2024 that Dr. Grant's June 2022 notes contained "fraudulent misdiagnoses and disinformation" and that documents were missing. Dkt. No. 34-2 ¶ 60, 170, 360. It is unclear if he received some notes in 2022, 2024, or both.

In April 2022, an anonymous internal affairs complaint was lodged against Matthews, claiming that he was feigning to be ill or injured, *Id.* ¶¶ 25-37. Defendant Martinez issued three Fitness For Duty Evaluation Directives. The first one involved being out of work for 30 days or more, and the second one involved the feigned illness/injury investigation. *Id.* ¶ 52. Matthews was served with these two directives on June 8, 2022, *id.,* although he also alleges he was served with the second directive in August 2022, *id.* ¶ 87. He was placed on administrative leave pending the outcome of the evaluations. *Id.* ¶ 53. Matthews contested the first two FFDE Directives by filing grievances. The first grievance apparently contended that he had not been out of work for 30 days and was not feigning illness. *Id.* ¶ 54. He asked the union to challenge the second one, but he ended up filing the grievance. *Id.* ¶¶ 88-92.

On August 17, 2022, Martinez held hearings on Matthews's grievances and the first FFDE Directive,[11] after which Matthews requested the Union to file an injunction, per the Collective Bargaining Agreement ("CBA"), to stop the FFDE concerning his absence of 30 days or more. Martinez issued a final order on the first FFDE grievance a week later. *Id.* ¶¶ 93-98. Matthews was served with a third FFDE Directive in November 2022. *Id.* ¶ 104. Martinez held a hearing on December 1, 2022 (it is unclear which grievance or FFDE this involved), and a final Order was issued on December 7. *Id.* ¶¶ 107-109. Beginning on December 15, 2022, Matthews was not paid, which interfered with his obligations under an

[11] It is difficult to discern from the Amended Complaint when hearings were held on particular FFDE grievances and other grievances, or on the FFDEs themselves.

October 2020 child support order. *Id.* ¶ 112. On January 6, 2023, Matthews generated an intent to retire letter, effective on September 30, 2023. *Id.* ¶ 116.

In March 2023, Matthews received a letter from "Paternity" that he owed $1,192.00 in child support arrears.[12] He requested an Administrative Mistake of Fact hearing to modify the arrearage. *Id.* ¶¶ 121-122, 138. The hearing was postponed twice and never held. *Id.* ¶¶ 123-126. Defendant De Lugo did not administer an Administrative Mistake of Fact Hearing in Matthews's child support case, did not timely notify him so he could respond to a garnishment notification, and approved a December 2023 interim child support order involving him. *Id.* at 4. In October 2023, he received a garnishment notification letter due to non-payment of child support and another document that his arrearage was $6,514.51. *Id.* ¶¶ 128-137. In December 2023, an Interim Child Support Order was issued assessing a $50.00/month payment effective January 1, 2023, which he appealed. *Id*. ¶¶ 139-147.

In March 2024, he sought to retrieve his records from Dr. Grant's office. *Id.* ¶¶ 148-153. He discovered a sentence in his records that he had been under her care "for a recognized diagnos[i]s from the DSM-5 from June 2020," researched DSM-5, and learned that Suicidal Behavior Disorder was a recognized DSM-5 diagnosis. *Id.* ¶¶ 154-157. However, the notes did not explain what fell under DSM-5. *Id.* ¶ 158.

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[12] He also alleged that he received a November 5, 2023 letter from "Paternity" that his arrearage was $1,192.00. Dkt. No. 34-2 ¶ 143.

Defendant Kroblin filed a district court lawsuit on Matthews's behalf against the former Police Commissioner and Assistant Commissioner in 2014, but did not do so in a timely manner, and did not notify him of the September 2017 Order dismissing the case. Matthews read the opinion for the first time in 2024. *Id.* ¶¶ 30, 179, 322-328. Kroblin "upon information and belief" became "more embedded with the conspiracy in 2017, given his negligence in filing the untimely lawsuit." *Id.* ¶ 366

Matthews alleges "upon information and belief" that the Union's Free Mason members and associates held him responsible for how an investigation related to the sensitive 2012 case turned out, *id*. ¶ 356, *see also id.* ¶¶ 218-246, and destroyed his career by carrying out a conspiracy for 12 years or longer, *id.* ¶ 353. He was first defamed in 2013 after he was involved in a fender bender automobile accident with a VIPD vehicle, *see id*. ¶¶ 247-255, the conspiracy continued for 12 years through the recent VIPD interference with his Child Support Order, *id.* ¶ 354, as well as by LESU, *id.* ¶ 357. The Defendant psychologists (Marshall, Owen, Grant, Thompson) collaborated with the LESU by keeping Matthews employed without being aware of the conspiracy to defame him, through their fraudulent misdiagnoses which caused him to fail to FFDEs instead of following proper protocols to avoid misdiagnoses *Id.* ¶ 360. In addition, the conspiracy to terminate him through multiple FFDE Directives started in 2020 and continued in 2022, showing bad faith practices by the conspirators. *Id.* ¶¶ 363-365.

In the "Relief Requested" part of the complaint form, Matthews seeks $17,000,000 in damages as follows: $5,000,000 against Defendant Griffin; $1,000,000 each against

Defendants Martinez, de Lugo, Marshall, Owen, Dudley-Grant, Wagner, and Thompson, and $5,000,000 against Defendant Kroblin. Dkt. No. 34-2 at 70. He also seeks various forms of injunctive relief, including (1) preventing enforcement of the 2017 district court judgment in 1:14-cv-00035; (2) preventing the disclosure of his medical records, seeking their destruction once the instant lawsuit is completed and an oath by the Defendant psychologists that no copies remain, and that no entity involved in the lawsuit can refer to any information from those records for any reason; (3) a written apology from all Defendants; (4) all withheld compensation from the VIPD "not covered in the Claims"; (5) return of his 2021 tax return; (6) being given a specific Training Certificate; (7) removal of disingenuous comments or fraudulent disinformation from his personnel file; and (8) placement on disability for an eye injury. *Id*. at 70-72.

III. Motions Involving Defendant Kroblin

On June 6, 2024, Defendant Christopher Kroblin filed a motion to dismiss the initial complaint against him based on improper service of process under Fed. R. Civ. P. 12(b)(5). Dkt. No. 25. In his memorandum, he stated that his office on St. Thomas received a certified mail envelope with the summons and a flash drive, purportedly constituting service of process. Dkt. No. 26 at 1. But since the Virgin Islands did not permit service of a complaint by certified mail, service was improper and the complaint against him must be dismissed. *Id.* at 2-3.

On June 18, 2024, Matthews filed a Motion to Dismiss Defendant Kroblin from the lawsuit. Dkt. No. 36. He stated that he had been contacted by an attorney at Kroblin's law firm who informed him that he was bound by the engagement letter he had signed in 2014 (regarding the 2014 district court lawsuit where Kroblin had represented him) that required mediation of all fee disputes related to that litigation, and requested he dismiss Kroblin. *Id*. & Dkt. No. 36-2. The firm also forwarded him a copy of the engagement letter. Dkt. No. 36-3. Matthews apparently agreed with Kroblin's position and filed the motion to dismiss Kroblin. Dkt. No. 36.

A day later, Matthews filed a motion to withdraw his motion to dismiss Kroblin. Dkt. No. 37. He asserted that while he may be bound to release Kroblin from the lawsuit, he wanted him to first answer the Amended Complaint, which had merit. *Id*. at 2. In addition, Kroblin's motion to dismiss did not reference any legal authority, as required by the Local Rules. *Id.* Finally, because an Amended Complaint supersedes the original complaint, Kroblin's motion to dismiss (directed to the original complaint) would be mooted. *Id.* at 3.

On June 21, 2024, Matthews filed proofs of service on a number of the Defendants in this case. Dkt. Nos. 38-42.

DISCUSSION

I. Preliminary Matter: Scope of Review

As a preliminary matter, because Matthews has paid the filing fee, this Court may not engage in the kind of "initial screening" that a court must undertake for litigants who proceed in forma pauperis. The relevant "initial screening" statute governing non-prisoner civil actions, 28 U.S.C. § 1915(e)(2), provides as follows:

> *Notwithstanding any filing fee or any portion thereof*, that may have been paid, the court shall dismiss the case at any time if the court determines that—
> (B) the action . . .
> (i) is frivolous or malicious;
> (ii) fails to state a claim on which relief may be granted; or
> (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2).[13] Although the italicized language would seem to indicate that even if a party has paid the full or a partial filing fee, the statute would apply to their complaint, such that the Court would engage in a preliminary screening to determine the applicability of sections 1915(e)(2)(i)-(iii), the Third Circuit held to the contrary in *Grayson v. Mayview State Hospital*, 293 F.3d 103 (3d Cir. 2002):

> Although the language of § 1915(e)(2) does not expressly limit the provision's reach to *in forma pauperis* claims, we believe Congress intended it to be so limited. *See Benson v. O'Brian*, 179 F.3d 1014, 1016–17 (6th Cir. 1999). The provision is located within § 1915, entitled "Proceedings in forma pauperis," and it replaces § 1915(d), which only applied to *in forma pauperis* claims. *Id*. at 1016. Further, a contrary interpretation expanding § 1915(e)(2) to all suits would both alter radically the process of civil litigation in federal courts and make similar provisions of the PLRA superfluous. *Id*. at 1017. Indeed, we have previously stated that "Section 804 of the PLRA, which amends 28 U.S.C. § 1915, redefines the rights and obligations of litigants who are granted *in forma pauperis* status." *Santana v. United States*, 98 F.3d 752, 753–54 (3d Cir. 1996).

[13] In addition, 28 U.S.C. § 1915A(a) specifically applies to prisoners proceeding in forma pauperis. It provides that "[t]he court shall review, before docketing if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." In this circumstance, the court shall identify cognizable claims or dismiss the complaint if it is frivolous, malicious, or fails to state a claim, or seeks monetary relief from any defendant immune from such relief." 28 U.S.C. § 1915A(b). That statute does not apply here either.

Id. at 109 n. 10. Thus, based on this governing authority, the Court cannot undertake an initial screening and make the kind of dispositive recommendations that § 1915(e)(2) would require because Matthews is not proceeding in forma pauperis.

Also guiding this Court's review is the "general rule . . . that where a plaintiff is pro se, courts are to accord an even more liberal reading of the complaint, employing less stringent standards when considering pro se pleadings than when judging the work product of an attorney." *Banks v. Pennsylvania*, No. 09-cv-1437, 2010 WL 569545, at *2 (W.D. Pa. Jan. 4, 2010) (citing *Haines v. Kerner*, 404 U.S. 519 (1972)).

II. Rule 8 Initial Review of the Amended Complaint

A Court may preliminarily assess a complaint to determine whether it complies with Fed. R. Civ. P. 8. That Rule sets forth general rules of pleading and requires that a complaint contain a "(1) a short and plain statement of the grounds for the court's jurisdiction . . . [and] (2) a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a)(1), (2). In addition, "[e]ach allegation must be simple, concise and direct." Fed. R. Civ. P. 8(d). "The statement should be plain because the principal function of pleadings under the Federal Rules is to give the adverse party fair notice of the claim asserted so as to enable him to answer and prepare for trial." *Kamdem-Ouaffo v. Huczko*, 810 F. App'x 82, 84 (3d Cir. 2020) (quoting *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988)). The "statement should be short because '[u]nnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage.'" *Id.*

(quoting *Salahuddin*, 861 F.2d at 42). "'Taken together,' Rules 8(a) and 8(d)(1) 'underscore the emphasis placed on clarity and brevity by the federal pleading rules.'" *Binsack v. Lackawanna Cnty. Prison*, 438 F. App'x 158, 160 (3d Cir. 2011) (quoting *In re Westinghouse Secs. Litig.*, 90 F.3d 696, 702 (3d Cir. 1996)). "A district court may sua sponte dismiss a complaint for failure to comply with Rule 8, but dismissal is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Bey v. U.S. Dep't of State, Nat. Passport Ctr.*, 416 F. App'x 136, 138 (3d Cir. 2011) (internal quotation marks omitted).

The Amended Complaint is burdened with an excessive amount of background material describing problems and issues that Matthews confronted as a VIPD officer from 2012 through 2023. However, when that material is considered only as background meant to supply context for his claims, the allegations that Matthews makes are actually well organized and concise, and provide the Defendants fair notice of his claims. The Court believes the Amended Complaint in this case is akin to the complaint reviewed in *Anand v. Indep. Blue Cross*, No. 21-2679, 2022 WL 2339476 (3d Cir. June 29, 2022). In *Anand*, the district court "reasoned that the complaint was too long and included conclusory allegations and irrelevant detail." *Id.* at *2. While the Third Circuit panel agreed, it pointed out that "verbosity or length is not by itself a basis for dismissing a complaint based on Rule 8(a)." *Id.* (citing *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008)). Neither was the inclusion of '"repetitious and irrelevant matter"' ground for dismissal. *Id.* (quoting *Garrett v. Wexford Health*, 938 F.3d 69, 94 (3d Cir. 2019) ("[I]t is an abuse of discretion to dismiss an entire complaint if it contains some claims that satisfy Rule 8.")). "Instead, the touchstone is notice. Thus, dismissal for failure to comply with Rule 8 is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Id.* (internal quotation marks and citation omitted).

The panel held that *Anand* was not such a case because, "[f]or the most part, Anand's amended complaint is clearly written and reveals the nature of his claims (albeit a great many of them). Indeed the length of the amended complaint is partly a function of the number of claims asserted." *Id.* The panel concluded that the district court should not have dismissed the entire amended complaint without prejudice for failure to comply with Rule 8. *Id.* It also noted that a court could consider, inter alia, the effectiveness of less drastic alternatives, such as striking surplusage or excusing the defendant from answering it, and noted that the district court could further narrow the claims under Rule 12(b)(6) if warranted in the future. *Id.*

Given the procedural posture presented here, where the Court emphasizes that it is not its function, at this juncture, to opine on whether Matthews actually states claims for his various causes of action, including whether they fit within the statute of limitations, given that this is not a 28 U.S.C. § 1915(e)(2) initial screening, narrowing of claims should await testing in motions to dismiss. Accordingly, the Court does not recommend dismissal without prejudice[14] for failure to comply with Rule 8.

III. Subject Matter Jurisdiction

Pursuant to Fed. R. Civ. P. 12(h)(3), "[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). Subject matter jurisdiction "may be raised at any time during the course of a case and may be raised *sua sponte* by the Court." *In re Intel Corp. Microprocess Antitrust Litig.*, 476 F. Supp. 2d 452, 455 (D. Del. 2007).

Here, the Civil Cover Sheet that Matthews filed with his original complaint indicates that jurisdiction is predicated on raising federal questions. Dkt. No. 5-1. On the Amended Complaint form, he checked the box asserting jurisdiction under 42 U.S.C. § 1983. Dkt. No. 34-2 at 1. In the section on the form where he was asked to identify the Constitutional rights he believes to have been violated he lists: unfair representation, breach of contract, civil conspiracy, intentional infliction of emotional distress, due process violation, and medical malpractice, where each of those claims violated the "1st, 5th, 8th, and 14th

[14] The Third Circuit has recognized that a plaintiff should be afforded notice and an opportunity to respond before a case is dismissed with prejudice for lack of failure to comply with Rule 8. *Bey*, 416 F. App'x at 138 (dismissal of plaintiff's complaint for failure to comply with Rule 8 was not abuse of discretion after plaintiff was given opportunity to amend); *see also* 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1281; 2A Moore's *Federal Practice* ¶ 8.13, at 8–81 to 8–82 n. 3 (stating that where a court chooses to dismiss a lengthy complaint for violating Rule 8, it shall normally grant the plaintiff an opportunity to file an amended pleading that conforms to the pleading requirements).

Amendments"; personal injury, that violated the "5th and 8th Amendments"; and defamation that violated the "1st Amendment." *Id*. at 10.

Many of these claims are state law claims that do not have a nexus to the U.S. Constitution or federal statutes. The only two claims that appear to have such a nexus is Matthews's "Due Process" and "Unfair Representation" claims, Dkt. No. 34-2 at 62-63 and 53-55. The first is clearly brought under 42 U.S.C. § 1983 alleging a procedural due process violation under the 14th Amendment, and the second may be liberally construed as a claim under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a)[15]—both of which claims would confer jurisdiction over the Amended Complaint in district court. Whether Matthews has actually stated claims under these statutes (or if he actually does seek to allege a cause of action under § 301) are matters to be determined in future litigation.

IV. Motion for Reconsideration

The District Judge referred Matthews's "Renewed Motion for Interim Injunction"—i.e., his Motion for Reconsideration, Dkt. No. 6—to the undersigned for an R&R. Dkt. No. 22. As indicated in the background above, Matthews seeks to consolidate the two cases he had filed in federal court—the instant case, *Matthews v. Griffin*, 1:24-cv-00005, and another

[15] Section 301 provides a federal cause of action for "violation[s] of contracts between an employer and a labor organization representing employees." 29 U.S.C. § 185(a). A claim brought under Section 301 may be "pure" or "hybrid." *Service Employees Int'l Union Local 36 v. City Cleaning Co.*, 982 F.2d 89, 94 n.2 (3d Cir. 1992). A "pure" action involves a union suing an employer for breach of a collective bargaining agreement, which is not applicable here. A "hybrid" claim is one brought by an employee against his employer for an alleged breach of a collective bargaining agreement and against his union for breaching its duty of fair representation, *see id.*, which may be applicable.

case, *Matthews v. Virgin Islands Department of Justice*, 1:24-cv-00007, on the ground that the conspiracies he alleged in both cases, while "different at the surface," involved the same defendants and, because the cases were closely related, judicial economy would be served by consolidation. Dkt. No. 6 at 2.[16]

Pursuant to Local Rule of Civil Procedure 7.3, a motion for reconsideration "shall be based on: (1) an intervening change in controlling law; (2) the availability of new evidence, or; (3) the need to correct clear error or prevent manifest injustice." LRCi 7.3(a). Motions for reconsideration "are not to be used as 'a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not.'" *United States v. Matthias*, No. 19-cr-0069, 2022 WL 2157111, at *3 (D.V.I. June 15, 2022). With regard to new evidence, "a motion for reconsideration cannot be used to introduce for the first time evidence that was previously available, thus giving the party seeking to present such evidence a second bite at the apple." *Greene v. V.I. Water & Power Auth.*, 06-cv-11, 2012 WL 4755061, at *2 (D.V.I. Oct. 5, 2012) (citations omitted).

[16] This request for consolidation in the motion for reconsideration seeks different relief than Matthews requested in his Motion for Interim Injunction, where he asked the Court to immediately prevent the use of his medical (psychological) records containing "fraudulent misdiagnoses and significant disinformation" (although he did not state who would be sharing those records). Dkt. No. 1 at 1, 5. He also asked the Court to subpoena his records from four psychologist Defendants (Marshall, Grant, Owen, Thompson), assess the fraudulent diagnoses, assess his damages, and address the serious conspiracy involving him. *Id*. at 4-6.

The Court recommends that the Motion for Reconsideration be denied. First, Matthews does not ask the Court to reconsider any of the factual or legal grounds relied on by the District Judge in denying his Motion for Interim Injunction. Nor does he reassert those arguments now that he has filed a complaint and ask the Court to rule on them. Rather, he seeks entirely new relief—consolidation of his two district court cases—based on a new theory that some of the Defendants and the conspiracy in both cases are the same, and therefore judicial economy would be served by merging them. But this Court submitted an R&R to the District Judge on June 7, 2024 recommending that the *Matthews v. Gov't of the V.I. Department of Justice* case—in which Matthews had removed the appeal of his child support case from the Superior Court—be remanded to the Superior Court based on lack of subject matter jurisdiction, Dkt. No. 38. Matthews has not timely filed any objections to that R&R. Consolidation of the two cases in district court will not be possible if the District Judge accepts the recommendation and remands the second case to Superior Court.

Moreover, Fed. R. Civ. P. 42(a) governs consolidation, and allows a court, in its discretion to join actions if they "involve a common question of law or fact." Fed. R. Civ. P. 42(a). "The factors the Court considers in deciding a motion to consolidate are: (1) is the common issue the princip[al] issue, (2) will consolidation cause delay in one of the cases, and (3) will consolidation lead to confusion or prejudice in the trial of a case?" *Beberman v. U.S. State Dep't*, No. 17-cv-0048, 2018 WL 3795226, at *3 (D.V.I. Aug. 9, 2018) (internal quotation marks omitted), *aff'd on other grounds sub nom. Beberman v. Sec'y United States Dep't of State*, No. 19-2745, 2022 WL 2037944 (3d Cir. June 7, 2022). The district court has "broad discretion to consolidate matters involving common questions of law or fact." *Robinson v. N.J. Mercer Cnty. Vicinage-Family Div*., 562 F. App'x 145, 148 (3d Cir. 2014). Other than Matthews's conclusory statement that some Defendants and the conspiracy in his 75-page complaint in *Matthews v. Griffin* are the same as in *Matthews v. Gov't of the V.I. Department of Justice*, he provides no basis for the Court to consolidate the cases, even if the Court had not recommended that the second case be remanded.[17] Accordingly, the Court recommends that the Motion for Reconsideration, Dkt. No. 6, be denied.

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[17] Even if the Court construed the Motion for Reconsideration as a motion to address the merits of the Motion for Interim Injunction—which, even with the liberal construction given pro se filings would be an improper stretch—the Court would recommend denial. To prevail on a motion for preliminary injunctive relief, the moving party must show: (1) a reasonable probability of success on the merits; (2) that he will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief. *See N.J. Retail Merchs. Ass'n v. Sidamon-Eristoff*, 669 F.3d 374, 385-86 (3d Cir. 2012). The movant must demonstrate irreparable harm "by a clear showing of immediate irreparable injury." *Donlow v. Garfield Park Acad*., No. 09-cv-6248, 2010 WL 1381010, at *1 (D.N.J. Apr. 1, 2010)). It is well-established that "[a] failure to demonstrate irreparable injury must necessarily result in the denial of a preliminary injunction." *ACE Am. Ins. Co. v. Wachovia Ins. Agency, Inc.,* 306 F. App'x 727, 732 (3d Cir. 2009). Here, Matthews claims that the Court must prevent the four psychologists (and likely anyone else who has access to his records) from publishing them because he will suffer harm to his reputation. However, these records have been in existence since 2022, and he himself attached them to his motion on a public docket. If publication of the records actually caused the kind of immediate irreparable harm he complains of, he would not only not have assisted in creating such harm, but would have also moved earlier to show that the harm of publishing them would be immediate. Having failed to show irreparable harm, the motion for a preliminary injunction, if considered on its merits, would fail. *Davis v. Potter*, No. 22-cv-00062, 2024 WL 1367827, at *5, *7 (D.V.I. Mar. 30, 2024) (movant's failure to establish irreparable harm or likelihood of success on the merits ends the analysis).

V. Motions Regarding Defendant Kroblin

On June 6, Defendant Kroblin filed a motion to dismiss the original complaint against him based on improper service of process pursuant to Fed. R. Civ. P. 12(b)(5). Dkt. No. 25. Subsequently, the original complaint was superseded by the Amended Complaint, which renders Defendant Kroblin's motion to dismiss moot. It is therefore recommended that the District Judge deny the motion to dismiss, Dkt. No. 25, as moot.

On June 18, 2024, Matthews filed a motion to dismiss Kroblin from the Lawsuit, Dkt. No. 36, followed the next day by a motion to withdraw that motion to dismiss Kroblin, Dkt. No. 37. Given that Matthews has changed his mind about dismissing Kroblin, it is recommended that the motion to withdraw the motion to dismiss, Dkt. No. 37, be granted. Once that occurs, it is recommended that Matthews's motion to dismiss Kroblin, Dkt. No. 36, be denied as moot.

CONCLUSION

Accordingly, for the reasons discussed above, the Court **RECOMMENDS**:

1. Matthews's Amended Complaint, Dkt. No. 34-2, be permitted to proceed.
2. The Motion for Reconsideration, Dkt. No. 6, be denied.
3. Defendant Kroblin's motion to dismiss, Dkt. No. 25, directed at the initial complaint, be denied as moot.
4. The Motion to Withdraw Motion to Dismiss Kroblin from the Lawsuit, Dkt. No. 37, filed by Plaintiff Matthews, be granted.

5. The Motion to Dismiss Kroblin, Dkt. No. 36, filed by Plaintiff Matthews, be denied as moot.

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).

ENTER:

Dated: June 24, 2024

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