

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, Defendants Drs. Lindsay Wagner, Jewel Owen, Rita Dudley-Grant, and Lori Thompson,¹ filed a Motion to Dismiss under Fed. R. 12(b)(1) and 12(b)(6) or, in the Alternative, Motion for Severance. Dkt. No. 70, 71. 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 the Defendants' Motion to Dismiss under Rule 12(b)(1) be granted.

¹ A fifth psychologist, Dr. Denese Marshall, is named as a Defendant, but the Motion to Dismiss is filed only on behalf of Drs. Wagner, Owen, Dudley-Grant, and Thompson. Dkt. No. 71.

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BACKGROUND

Matthews, a retired lieutenant with the Virgin Islands Police Department (“VIPD”), 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, 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; 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 Doctors”—relating to the psychologist-Defendants—is relevant here, *id.* at pp. 26-34, although allegations involving the psychologists are scattered throughout the Amended Complaint.

Matthews alleged that the first time he saw a psychologist, Defendant Dr. Denise Marshall, was in February 2014 for work-related stress. Dkt. No. 34-2, ¶¶ 173, 205.² In early

² The Defendants mistakenly cite the original complaint in this action, Dkt. No. 5, as setting forth the allegations against them. However, that complaint was superseded by the Amended Complaint, Dkt. No. 34-2, which is the operative pleading.

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2020, Dr. Marshall referred Matthews to Defendant Dr. Jewel Owen, after Dr. Marshall recused herself from caring for Matthews. *Id.* ¶¶ 193, 194. On February 5, 2020, Matthews requested that Dr. Owen draft a letter on his behalf requesting additional annual leave time from work. *Id.* ¶¶ 188, 197. Dr. Owen’s first letter indicated that Matthews’s condition “can worsen.” When Matthews requested a “simple” letter, Dr. Owen “immediately changed the letter to a simple letter.” *Id.* ¶¶ 196-97. Dr. Owen returned Matthews to active duty in March 2020. *Id.* ¶ 200.

In July 2020, the LESU selected Defendant Dr. Rita Dudley-Grant to conduct a Fitness-For-Duty Exam (“FFDE”) on Matthews. *Id.* ¶ 207. Matthews alleges that the July 2020 FFDE performed by Dr. Dudley-Grant damaged his career because it contained “fraudulent misdiagnoses” including an indication that he had a history of paranoid ideation, which referred to “temporary feelings of threat, persecution, or conspiracy” and post-traumatic disorder in remission”—diagnoses designed to damage his reputation. *Id.* ¶¶ 168-72. Dr. Dudley-Grant also saw him for stress management purposes in July 2020. *Id.* ¶ 38. Matthews resumed seeing Dr. Dudley-Grant for stress management sessions once a month and then once a week in 2022. *Id.* ¶¶ 39, 45. Dr. Dudley-Grant never told him that he had a mental illness at any of these sessions because he did not have a mental illness. *Id.* ¶¶ 40, 41. She provided him with a doctor’s note when he was out of work from April 26 to May 13, 2022. *Id.* ¶ 48.

On June 8, 2022, Matthews was served with two directives by his employer, the VIPD, that included his having to obtain a FFDE for being out of work for 30 days or more; he filed

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a grievance regarding those directives the next day. *Id.* ¶¶ 52, 54. He asserted that Dr. Dudley-Grant “tr[ie]d to persuade [him] to go against the FFDE grievance . . . and . . . to go ahead to see Dr. Owen to execute the FFDE scheduled on June 14, 2022.” *Id.* ¶ 58. He told Dr. Dudley-Grant that he would not take her advice, left her office, and “never return[ed] for any more sessions.” *Id.* ¶ 59. After he stopped seeing Dr. Dudley-Grant, he requested copies of his “medical records” for his last sessions with her (including May 26 and June 10, 2022). *Id.* He observed “omissions and fraudulent misdiagnoses” in Dr. Dudley-Grant’s progress notes and noticed that the notes did not include references to certain work-related issues that he thought should have been there. *Id.* ¶ 60. Matthews also discovered that the notes indicated that he was under Dr. Dudley-Grant’s care “for a recognized diagnoses from DSM-5 from June 16, 2020.” *Id.* ¶ 154. He researched DSM-5³ and was “alarmed that Suicidal Behavior Disorder is a proposed diagnoses in DSM-5”; however, because he never attempted suicide, his “mental health record is tarnished.” *Id.* ¶¶ 155-57. He complained that Dr. Dudley-Grant never discussed or provided any material to him explaining the other categories that fall under DSM-5 or any other diagnoses associated with it. *Id.* ¶ 158. These notes had a “severe impact . . . on [his] VIPD career and overall well-being.” *Id.* ¶ 159.

In June 2022, he asked his attorney to recommend a psychologist that could give him a second opinion, and the attorney suggested Defendant Dr. Lori Thompson. *Id.* ¶¶ 63, 64, 317. Matthews completed a self-assessment prior to commencing sessions with Dr.

³ This refers to the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition, a publication by the American Psychiatric Association.

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Thompson. *Id.* ¶¶ 67, 68. During the sessions, Matthews informed Dr. Thompson that he disagreed with Dr. Dudley-Grant’s diagnoses that he showed symptoms of an emotional disorder. *Id.* ¶¶ 67-70. He also expressed concern about Dr. Owen administering his FFDE because he had “follow up sessions with Owen in the past” after which Police Commissioner Martinez sent him for an FFDE. *Id.* ¶ 71. Dr. Thompson informed Matthews that the self-test results showed that his anxiety levels were high but that he was “without an emotional disorder” and that because the test was similar to the FFDE testing, he should pass with no problem. *Id.* ¶¶ 76, 81. Matthews did not request his records from Dr. Thompson because her “verbal diagnosis . . . was more in line with how [he] could relate to and could understand.” *Id.* ¶ 77. Dr. Thompson told him that many people worked with anxiety every day and that he should return to work. *Id.* ¶¶ 79, 80.

The Amended Complaint makes only one allegation concerning Defendant Dr. Lindsay Wagner: her medical records were missing a document. *Id.* at p. 8.

Matthews named some or all of the Psychologist Defendants in three of the claims raised in his Amended Complaint. In the Civil Conspiracy cause of action, Matthews alleged that Owen and Marshall appeared to agree that Marshall would refer him to Owen for job and family stress sessions; Owen placed harmful fraudulent misdiagnoses and disinformation in his medical records, and then Marshall attempted to conduct a FFDE using Owen’s misdiagnoses. Griffin and Dudley-Grant appeared to have agreed that LESU paid for an FFDE report that caused Matthews irreparable harm with fraudulent misdiagnoses and disinformation from Marshall and Owen’s medical records, and Wagner agreed to conceal a

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“Second Opinion letter” dated June 22, 2022 that Matthews discovered was missing from his medical records in March 2024. Thompson, along with Attorney Thomas Kroblin (another Defendant) appeared to have agreed to generate misdiagnoses and disinformation and place it in his medical records. *Id.* at 57.

In the Medical Malpractice claim, Matthews alleged that, “in retaliation,” Marshall’s, Owen’s, Dudley-Grant’s and Thompson’s “actions fell below a standard of care.” *Id.* at 63. He asserted that Owen, Dudley-Grant, and Thompson appeared not to have followed standard mental illness diagnoses protocols prior to diagnosing him with symptoms of mental illness, thereby misdiagnosing him. *Id.* The fraudulent misdiagnoses/ disinformation in his medical records was placed there to be used against him to discredit his grievances, to terminate him, and to force him into retirement. *Id.* at 64.

The third claim, Defamation, alleged that “in retaliation,” Owen, Dudley-Grant, and Thompson included defamatory information—apparently in his medical records—with reckless disregard whether the statements were false or not, causing Matthews harm.⁴ *Id.* at 68. Matthews sought \$1,000,000 in damages each against each Psychologist-Defendant, a written apology, and destruction of his medical records. *Id.* at 70-71.

II. Motion to Dismiss or for Severance

On July 23, 2024, Defendants Wagner, Owen, Dudley-Grant, and Thompson (collectively, the “Defendants”) filed the instant motion to dismiss the First Amended

⁴ Matthews alleged an Intentional Infliction of Emotional Distress claim against Dr. Marshall as well. Dkt. No. 34-2 at 59-60.

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Complaint as to them, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), or in the alternative, a motion for severance. Dkt. No. 70. In their memorandum, the Defendants first argue that Matthews failed to meet his burden of establishing federal jurisdiction. Dkt. No. 71 at 7. He asserted that jurisdiction was conferred pursuant to 42 U.S.C. § 1983, which provides a cause of action to plaintiffs subjected to the deprivation of rights secured by the U.S. Constitution or any federal statute. *Id.* But although Matthews invoked § 1983 and asserted that certain of his claims violated various Constitutional Amendments, he failed to state an actual violation of the Constitution or federal law to support a federal cause of action against these Defendants. Specifically, Matthews did not indicate how the civil conspiracy, medical malpractice, and defamation claims for allegedly placing “fraudulent misdiagnoses” in his medical records and the FFDEs violated his civil rights or any constitutional amendments, or comprised an essential element of his claims. *Id.* at 8. The Court therefore lacked subject matter jurisdiction over his claims. *Id.*

The Defendants then contended that because Matthews did not establish any actual damages showing that he suffered an injury in fact, he also lacked standing to support subject matter jurisdiction. *Id.* at 9. Although he claimed that he was fraudulently misdiagnosed with symptoms of mental illness that caused damage to his reputation, emotional distress, and other monetary loss, the only support he presented for this allegation was that he disagreed with the psychologists’ conclusions. Dkt. No. 34-2 ¶¶ 70, 77, 158, 178, 199. While he may be under some degree of mental distress, he does not indicate how the diagnoses were incorrect or fraudulent. Dkt. No. 70 at 10. Further, an FFDE is given to determine if an individual is

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“free from any physical, emotional, or mental conditions that might adversely affect his exercising the powers or duties of a police officer.” 23 V.I.C. § 1206(h). Therefore, the fact that indications of mental illness may have been included in his FFDEs did not lead to the conclusion that the FFDEs impacted his relationship with his employer in a job he voluntarily retired from. *Id.* at 11-12.

The Defendants go on to argue that Matthews has not met the requirements of the Virgin Islands Medical Malpractice Act, 27 V.I.C. § 166i, which requires that any proposed complaint be filed with the Medical Malpractice Action Review Committee before bringing a medical malpractice action against any health care provider. The Amended Complaint did not refer to or include proof of any such filing, and thus the medical malpractice claim (which was also untimely) must be dismissed. *Id.* at 12-13. Matthews also failed to state any claim because he did not assert any actual damages caused by the Defendants—a necessary element to medical malpractice, civil conspiracy, and defamation causes of action. *Id.* at 14-15. While he alleged various harms by the Defendants, he also admitted that many of those harms did not damage him. *Id.* Further, he did not state a claim for civil conspiracy: while he offered conclusory statements that Drs. Owen, Dudley-Grant, and Thompson plotted with “other conspirators” by “fraudulently misdiagnos[ing him] to fail [him] in FFDEs,” Dkt. No. 34-2 ¶ 360, those allegations do not plausibly suggest the existence of a conspiracy to violate his constitutional rights. That Defendant Martinez, the Police Commissioner, scheduled an FFDE with Dr. Owen is not enough to support an allegation that the VIPD and LESU influenced her diagnoses which influenced the diagnoses of other doctors. *Id.* at 16.

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Defendants add that Matthews's defamation claim was not supported by any facts: he merely alleged "fraudulent misdiagnoses" contained in his privileged medical files and potentially referred to in the FFDEs that may or may not be contained in his privileged employment records. He does not explain how the doctors' opinions were false or negligent or how the FFDEs were unprivileged publications to a third party. They posit that the claim is untimely. *Id.* at 17-18. Moreover, while Matthews asks the Court to prevent the Defendants from publishing his records because he would suffer reputational harm, he himself attached them to his motion on a public docket which undercuts his assertion of harm. *Id.* at 18.

Finally, the Defendants assert that, if the claims against them are not dismissed in their entirety, any remaining claims should be severed under Fed. R. Civ. P. 21 or bifurcated under Fed. R. Civ. P. 42(b). *Id.* at 18-19. Matthews's Amended Complaint spans nine years, contains different factual and legal issues, and few allegations arise out of transactions within the control of these Defendants. *Id.* at 19-20. Severance would promote judicial economy because, by involving unrelated parties and incidents, Matthews was seeking to "double-dip" on damages resulting from an unconnected nexus, such that a trial would be inefficient, nonsensical and would cause confusion for the jury. *Id.* at 20.

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 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).

The Defendants have challenged the Court’s subject matter jurisdiction over the claims asserted against them 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, the Defendants assert a facial attack on Matthews’s claims against them. 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).

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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 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).

C. Pro Se Pleadings

While courts construe *pro se* pleadings liberally, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), “there are limits to [this] procedural flexibility.” *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013)). The *pro se* litigant must still allege sufficient facts to support a valid claim. *Id.* A court’s leniency with respect to pleading formalities does not relieve a *pro se* plaintiff of his burden to establish the Court’s jurisdiction. *Shipe v. Nationwide Ins. Co.*, No.

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21-cv-1316, 2023 WL 6072803, at *1 (M.D. Pa. Dec. 23, 2021) (dismissing pro se complaint for failing to plead facts establishing the court’s subject matter jurisdiction).

II. Analysis

“When a motion under Rule 12 is based on more than one ground, the court should consider the 12(b)(1) challenge first because if it must dismiss the complaint for lack of subject matter jurisdiction, all other defenses and objections become moot.” *In re Corestates Tr. Fee Litig.*, 837 F. Supp. 104, 105 (E.D. Pa. 1993), *aff’d*, 39 F.3d 61 (3d Cir. 1994); *see also Mortensen v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 895 n.22 (3d Cir. 1977) (“if the court lacks jurisdiction to hear the case then a fortiori it lacks jurisdiction to rule on the merits”).

Defendants contend that, although Matthews has invoked § 1983 to assert jurisdiction over the Amended Complaint, and he claims that Counts IV (Civil Conspiracy), VIII (Medical Malpractice), and X (Defamation) involve violations of various Constitutional Amendments, he fails to “state an actual violation of the United States Constitution or a federal law to support a federal cause of action against these Defendants.” Dkt. No. 71 at 8. Specifically, Matthews fails to show how his allegations that Defendants put “fraudulent misdiagnoses” in his medical records and FFDEs violated his civil rights, any constitutional amendments or constitute an essential element of his claims. *Id.* Moreover, the state law claims do not have a nexus with his federal claims, warranting dismissal for lack of subject matter jurisdiction. *Id.*

The Court agrees that it lacks subject matter jurisdiction over the three state law claims asserted against the Defendants and will recommend dismissal under Rule 12(b)(1).

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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 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); *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).

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

(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 as this case).

Here, jurisdiction over Matthews's state law claims against the Defendants may be premised only on § 1367, in connection with Matthews's federal law claims over which the Court has original jurisdiction. This is 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. Moreover, Matthews did not assert the 42 U.S.C. § 1983 due process claim or the possible duty of fair representation claim under 29 U.S.C. § 185—over which the Court has original jurisdiction—against the four psychologist Defendants.⁵ Matthews asserted the due process

⁵ 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.* The Court did not consider Matthews's scattershot references to various constitutional amendments in relation to his various state law claims, set forth on page 10 of the Amended Complaint, Dkt. No. 34-2, as somehow transforming those state law claims into constitutional claims under § 1983 merely by citing constitutional amendments but making no such constitutional claim.

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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 allegedly caused him injury. Dkt. No. 34-2 at 62.

Liberalizing the Amended Complaint, a federal duty of fair representation ("DFR") hybrid claim may 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; (2) a forgery case by another officer, and (3) a grievance Matthews had filed. *Id.* at 55. Matthews asserted that Martinez failed to pay his overtime demand and compensate him for back pay. *Id.* The Court will assume, for purposes of this

In addition, because the Amended Complaint does not indicate that the Defendants are state actors—they are all described as psychologists in private practice—it would be extremely unlikely that a § 1983 claim may be asserted against them in any event. *See id.* at pp. 2, 3, 5.

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R&R only, that the two 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 involve 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 (including the instant Defendant) and cover time periods of up to a decade. The federal due process claim against Martinez and De Lugo implicate 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 the state law claims of civil conspiracy, defamation, and medical malpractice against the instant Defendants that revolve around alleged “fraudulent misdiagnoses” and require an assessment of totally different facts.

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.”). But the state claims here are not based on parallel laws to the federal claims, as two of them (defamation, civil conspiracy) are common-law torts and one falls under local statute (medical malpractice). In sum, the federal and state claims lack any kind of relationship; the state claims against the Defendants share no “common nucleus of operative fact” with the § 1983 constitutional and

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DFR employment claims that support the district court's original jurisdiction. *De Asencio*, 342 F.3d at 308.

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 the Defendants alongside the § 1983 and DFR federal claims alleged against certain other Defendants. *Gibbs*, 383 U.S. at 725. The Court therefore recommends granting the Defendants’ motion to dismiss pursuant to Rule 12(b)(1) for lack of jurisdiction, and dismissing the Amended Complaint as against them without prejudice. *See Mohn v. United States*, No. 23-1023, 2023 WL 4311609, at *2 (3d Cir. July 3, 2023) (“[W]hen a district court dismisses claims for lack of subject matter jurisdiction, the dismissal should be without prejudice.”).

Given this proposed resolution, it is not necessary for the Court to reach the Defendants’ additional arguments that the Amended Complaint must be dismissed against them for failure to assert standing or failure to state a claim under Fed. R. Civ. P. 12(b)(6). *In re Corestates Tr. Fee Litig.*, 837 F. Supp. at 105.

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

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claims are so utterly disparate from the state law claims he has raised against the Defendants here that the Court cannot fathom 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. 70, filed by Defendants, Drs. Lindsay Wagner, Jewel Owen, Rita Dudley-Grant, and Lori Thompson, be **GRANTED** and the Amended Complaint be **DISMISSED WITHOUT PREJUDICE** as to them, 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 Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985).

ENTER:

Dated: August 21, 2024

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