2025 WL 2327933
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United States District Court, M.D. Pennsylvania.

VICTOR KHOLOD, Plaintiff,
v.
NATIONSTAR MORTGAGE LLC, d/b/a MR. COOPER; WELLS FARGO BANK, N.A., Defendants.

CIVIL NO: 3:24-cv-1631
|
Filed 07/22/2025

REPORT AND RECOMMENDATION

Susan E. Schwab United States Magistrate Judge

I. Introduction.

***1** The plaintiff, Victor Kholod ("Kholod"), proceeding pro se, raises claims against the defendants Nationstar Mortgage LLC ("Nationstar") and Wells Fargo Bank, N.A. ("Wells Fargo") related to alleged unauthorized withdrawals from a bank account. The defendants have each moved to dismiss Kholod's complaint pursuant to Fed. R. Civ. P. 12(b)(6). *Docs. 4, 9.* We recommend that the defendants' motions to dismiss be granted, and Kholod's complaint be dismissed with leave to amend.

II. Background and Procedural History.

Kholod commenced this civil action via a complaint he filed in the Magisterial District Court 43-4-02, in Monroe County, Pennsylvania, on September 9, 2024. *Doc. 1-2.* Wells Fargo was served with a copy of the Summons and Complaint on September 11, 2024. Before Nationstar was served, Wells Fargo removed this case to the Middle District of Pennsylvania pursuant to a Notice of Removal filed on September 25, 2024. *Doc. 1.* The Notice of Removal asserted that the court has federal subject matter jurisdiction because the complaint asserts a cause of action under federal law, specifically the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693, and that the court has supplemental jurisdiction over Kholod's state law claims. *Doc. 1* at 2.

Shortly thereafter, on October 2, 2024, Wells Fargo filed a motion to dismiss Kholod's complaint (*doc. 4*) and a brief in support (*doc. 5*). After Nationstar was served, it filed a Notice of Consent to Removal (*doc. 7*), its own motion to dismiss (*doc. 9*), and a brief in support (*doc. 10*).

Kholod failed to timely file a brief in opposition to either motion to dismiss. However, he eventually filed a brief in opposition to Nationstar's motion to dismiss on December 27, 2024. *Doc. 16.* We determined that we would consider Kholod's brief in opposition in deciding the motion to dismiss as if it were properly filed. *Doc. 18.* However, Kholod has not filed a brief in opposition to Wells Fargo's motion to dismiss, nor a response to Wells Fargo's Notice (*doc. 20*), which pointed out the same. The motions to dismiss are now ripe for review.

III. Motion to Dismiss Standards.

In accordance with Fed. R. Civ. P. 12(b)(6), the court may dismiss a complaint for "failure to state a claim upon which relief can be granted." When reviewing a motion to dismiss under Rule 12(b)(6) "[w]e must accept all factual allegations in the complaint as true, construe the complaint in the light favorable to the plaintiff, and ultimately determine whether [the] plaintiff may be entitled to relief under any reasonable reading of the complaint." *Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010).

In making that determination, we "consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the [plaintiff's] claims are based upon these documents." *Id.* at 230.

"A Rule 12(b)(6) motion tests the sufficiency of the complaint against the pleading requirements of Rule 8(a)." *I.H. ex rel. D.S. v. Cumberland Valley Sch. Dist.*, 842 F. Supp. 2d 762, 769–70 (M.D. Pa. 2012). "Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). The statement required by Rule 8(a)(2) must give the defendant fair notice of the nature of the plaintiff's claim and of the grounds upon which the claim rests. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Detailed factual allegations are not required, but more is required than "labels," "conclusions," or "a formulaic recitation of the elements of a cause of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "In other words, a complaint must do more than allege the plaintiff's entitlement to relief." *Fowler v. UPMC Shadyside*, 578 F.3d

203, 211 (3d Cir. 2009). "A complaint has to 'show' such an entitlement with its facts." *Id.*

***2** In considering whether a complaint fails to state a claim upon which relief can be granted, the court " 'must accept all facts alleged in the complaint as true and construe the complaint in the light most favorable to the nonmoving party.' " *Krieger v. Bank of Am., N.A.*, 890 F.3d 429, 437 (3d Cir. 2018) (quoting *Flora v. Cty. Of Luzerne*, 776 F.3d 169, 175 (3d Cir. 2015)). But a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). A court also need not "assume that a ... plaintiff can prove facts that the ... plaintiff has not alleged." *Associated Gen. Contractors of Cal. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983).

Following *Twombly* and *Iqbal*, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, it must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis:

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

Santiago v. Warminster Twp., 629 F.3d 121, 130 (3d Cir. 2010) (footnote and citations omitted) (quoting *Iqbal*, 556 U.S. at 675, 679).

A complaint filed by a *pro se* litigant is to be liberally construed and " 'however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.' " *Erickson*, 551 U.S. at 94 (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Nevertheless, "pro se litigants still must allege sufficient facts in their complaints to support a claim." *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013).

IV. Kholod's Complaint.

Kholod's allegations are sparse and include minimal factual context for his legal allegations. Kholod alleges that David Morgan & Sons LLC ("Morgan & Sons"), a registered business, had a business account at Wells Fargo. *Doc. 1-2* at 3. Nationstar was the recipient of three unauthorized withdrawals from the business account totaling to $11,659.88: (1) a withdrawal of $3,535.96 on August 2, 2022; (2) a withdrawal of $1,867.88 on September 12, 2022; and (3) a withdrawal of $6,256.04 on December 27, 2022. *Id.* These withdrawals were made without prior consent or authorization from Kholod. *Id.* Kholod alleges that he made numerous attempts to resolve the issue, including sending two formal letters and conducting telephone negotiations. *Id.* at 4. Kholod does not state when these attempts occurred, but states that defendants did not take any action to return the funds. *Id.* Kholod also alleges he filed a police report to document the violation, which has incident number PA2023-923140. *Id.*

Kholod alleges the defendants have violated: (1) the Electronic Funds Transfers Act ("EFTA"), 15 U.S.C. § 1693; (2) Article 4A of the Uniform Commercial Code; and (3) Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S.A. § 201-1, *et. seq*. Kholod also brings a breach of contract claim. *Id.* Kholod seeks an investigation into the unauthorized withdrawals, a return of the money, and compensation for losses and expenses incurred by Kholod. *Id.* at 5.

***3** Also included in his complaint is an "Assignment Agreement" between Morgan & Sons and Kholod, which purports to assign to Kholod any claims Morgan & Sons has against Nationstar. *Id.* at 1–2. The Assignment Agreement does not mention Wells Fargo.

V. Discussion.

While Kholod's complaint is sparse, the facts he does include show he does not have standing to bring claims against Wells Fargo. We also conclude that his claim against Nationstar is not covered by the EFTA. [1] Moreover, we do not find that exercising supplemental jurisdiction over Kholod's state law claims would be appropriate.

A. Kholod Has Not Alleged Standing To Pursue Claims Against Wells Fargo.

Pursuant to Article III of the Constitution, a plaintiff must have standing to maintain an action in court. "To establish Article III standing, a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likel[ihood] that the injury will be redressed by a favorable decision." *Susan*

B. Anthony List v. Driehaus, 573 U.S. 149, 157-58 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.' " *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016), *as revised* (May 24, 2016) (quoting *Lujan*, 504 U.S., at 560).

Here, Kholod alleges that unauthorized withdrawals were made from the Morgan & Sons' business account. Accordingly, Kholod had alleged an injury in fact to Morgan & Sons, but not to himself. Kholod attempts to rectify this problem by presenting an assignment agreement between Morgan & Sons and himself that purports to assign any claim Morgan & Sons has against Nationstar to Kholod:

> The Assignment Agreement provides in pertinent part that: Assignor holds a claim against Nationstar Mortgage LLC dba Mr. Cooper, located at 8950 Cypress Waters Blvd, Coppell, TX 75019, in the amount of $11,659.88. Assignor wishes to assign and transfer to Assignee all rights, title, and interest in and to the aforementioned claim and any resultant judgment or recovery.

Doc. 1-2 at 1; *see also Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 286 (2008) ("[T]he assignee of a claim has standing to assert the injury in fact suffered by the assignor." (quoting *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 773 (2000)). However, the Assignment Agreement does not assign any claim that Morgan & Sons has against Wells Fargo to Kholod. Accordingly, we recommend dismissing Kholod's complaint against Wells Fargo for lack of standing. *See also Thorne v. Pep Boys Manny Moe & Jack Inc.*, 980 F.3d 879, 896 (3d Cir. 2020) (noting that a "[d]ismissal for lack of standing reflects a lack of jurisdiction," so such a dismissal must be without prejudice).

B. Kholod Has Not Stated a Claim Under the EFTA Against Nationstar.

***4** Kholod seeks to bring a claim under the EFTA for the allegedly unauthorized transfers from Morgan & Sons. We agree with Nationstar that Kholod has not stated a claim under the EFTA because the EFTA only governs consumer accounts and because Nationstar is not a financial institution subject to liability under the EFTA.

1. The EFTA Only Governs Consumer Accounts.

The EFTA was enacted to "provide a provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems" with "[t]he primary objective" bring "the provision of individual consumer rights." 15 U.S.C. § 1693. Further, an "account" is defined under the act as a "demand deposit, savings deposit, or other asset account ... established primarily for personal, family, or household purposes ...." *Id.* § 1693a(2). As such, courts have consistently (and easily) found that the EFTA only applies to consumer accounts and not to business accounts. *See, e.g., Binns v. BB & T Bank*, 377 F. Supp. 3d 487, 493 (E.D. Pa. 2019) (finding the EFTA did not apply to a corporate account that was occasionally used for personal reasons); *MZL Cap. Holdings, Inc. v. TD Bank, N.A.*, No. 14-CV-05772 RMB/AMD, 2015 WL 4914695, at *10 (D.N.J. Aug. 18, 2015) (finding the plain terms of the EFTA make it inapplicable to corporations or other business entities); *Ironforge.com v. Paychex, Inc.*, 747 F.Supp.2d 384, 402 (W.D.N.Y. 2010) ("Corporations or other business entities are not 'consumers' for the purposes of EFTA.") (citing *Kashanchi v. Texas Commerce Med. Bank, N.A.*, 703 F.2d 936, 939-42 (5th Cir. 1983); *Fischer & Mandell LLP v. Citibank, N.A.*, No. 09 Civ. 1160(RJS), 2009 WL 1767621, at *3–4 (S.D.N.Y. June 22, 2009) (holding that, because "the EFTA only applies to accounts of 'natural persons,' 'established primarily for personal, family, or household purposes,' " the EFTA did not apply to an IOLA account, "which, by definition, is an account established purely for commercial reasons") (quoting 15 U.S.C. § 1693a(2)).

Here, Kholod has clearly alleged that the three allegedly unauthorized withdrawals were made from the Morgan & Sons' business account. *Doc. 1-2* at 3. Accordingly, we find that the EFTA does not govern Kholod's claim and we recommend dismissal of Kholod's EFTA against both defendants on this basis.

2. Nationstar is Not a Financial Institution Covered By the EFTA.

The EFTA places liability on "financial institutions" for damages proximately caused by the financial institutions failure to make an electronic fund transfer or stop payment

on an electronic fund transfer under certain circumstances. 15 U.S.C. § 1693h(a). A "financial institution" is "a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer." 15 U.S.C. § 1693a(9).

Here, Kholod's complaint does not include any allegations that would support a finding that Nationstar is a financial institution, as Kholod only alleges that Nationstar was the recipient of the unauthorized withdrawal, not the entity that maintained Kholod's bank account. [2]

***5** In Kholod's brief in opposition to Nationstar's motion to dismiss, he states that "[w]hile EFTA primarily regulates financial institutions, courts have extended its applicability to third parties who facilitate or initiate unauthorized electronic fund transfers." *Doc. 16* at 1. Kholod only provides fake precedential support for this contention. He first cites "*Lefkowitz v. CitiBank*, 2021 WL 3456789 (S.D.N.Y. 2021)" for support (*id.*), but this citation does not lead to an actual case, nor can we locate any case out of the Southern District of New York (or elsewhere) which Kholod might have intended to cite. His also cites to *Binns v. BB & T Bank*, 803 F. App'x 618 (3d Cir. 2020), stating the case "acknowledged that factual disputes regarding the role of third parties in unauthorized transfers require resolution at trial rather than dismissal at the pleading stage." *Doc. 16* at 2. Put simply, this case does not contain this proposition nor does it even mention the EFTA.

Accordingly, we recommend dismissal of the EFTA claim against Nationstar on this ground as well.

C. State Law Claims.

In addition to federal claims, Kholod is asserting three state law claims: (1) violations of Article 4A of the UCC, codified under 13 Pa. C.S. § 4A101, *et. seq.*; (2) violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law; and (3) contact law claims. Such claims would fall within the court's supplemental jurisdiction. [3] Whether to exercise supplemental jurisdiction is within the discretion of the court. 28 U.S.C. § 1367(c)(3) provides that district courts may decline to exercise supplemental jurisdiction over a state-law claim if the district court has dismissed all claims over which it has original jurisdiction. When deciding whether to exercise supplemental jurisdiction, "a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity." *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 173 (1997) (quoting *Carnegie-Mellon Univ. v. Cahill*, 484 U.S. 343, 350 (1988)). The Third Circuit has held that "where the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so." *Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000) (quoting *Borough of West Miflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995)).

There is nothing unique about this case such that considerations of judicial economy, convenience, and fairness provide an affirmative justification for exercising supplemental jurisdiction over Kholod's state-law claims. Accordingly, because we conclude that the complaint fails to state any federal claims upon which relief can be granted, the court should decline to exercise supplemental jurisdiction over Kholod's state law claims.

***6** Because this case arrived in federal court via removal, however, the proper course is to remand to the state court in which the case originated, rather than dismiss the state law claims. Accordingly, if Kholod does not file an amended complaint, the state law claims should be remanded to Magisterial District Court 43-4-02, in Monroe County, Pennsylvania. *See also, Royal Canin U. S. A., Inc. v. Wullschleger*, 604 U.S. 22, 43–44 (2025) (where a plaintiff amends the complaint to delete all federal-law claims after removal, a federal court's supplemental jurisdiction over state law claims dissolves and the case must be remanded back to state court).

D. Kholod's List of Supporting Cases.

Finally, we briefly address the eight cases Kholod includes in his complaint as support for his claims for relief. *Doc. 1-2* at 4. The citations were incomplete. Nevertheless, we searched for each case on Westlaw and LexisNexis. These searches were largely fruitless. The cases Kholod cites and the results of our search follow:

1. According to Kholod, "*PA Partnership Inc. v. XYZ Corp*, 2020" "involved the wrongful withdrawal of funds from one company's account by another, resulting in compensation to the aggrieved party." *Doc 1-2* at 4. We have been unable to locate any possible case that might fit the description given for this case. Defendant Wells

Fargo's brief in support stated that its search for this case was fruitless as well. *Doc. 5* at 20.

2. Per Kholod, in "*Levy Baldante Finney & Rubenstein v. Wells Fargo Bank*, 2018" "[t]he court held the company liable for failing to prevent unauthorized transactions." *Doc. 1-2* at 4. In its brief, Defendant Wells Fargo Bank points the court to *Levy Baldante Finney & Rubenstein, P.C. v. Wells Fargo Bank, N.A.*, No. 3241 EDA 2016, 2018 WL 847756 (Pa. Super. Ct. Feb. 14, 2018). *Doc. 5* at 20-21. This case, however, involved fraudulent endorsements on checks that had been withdrawn from a law firm's IOLTA accounts and business accounts. *Levy Baldante Finney & Rubenstein, P.C.*, 2018 WL 847756, at *3. Neither the facts nor the legal analysis in this case supports Kholod's claim for relief. We were unable to find another case that fit the citation provided by Kholod.

3. Kholod also cites "*Chasen v. Littman*, 2019" in which, according to Kholod, "[t]he court considered the issue of unauthorized use of funds between companies." *Doc. 1-2* at 4. In its brief, Defendant Wells Fargo Bank provides the following as the proper citation for this case: *L. Offs. of Bruce J. Chasan, LLC v. Pierce Bainbridge Beck Price & Hecht, LLP*, No. 2:18-CV-05399-AB, 2019 WL 1957950 (E.D. Pa. May 2, 2019), *aff'd*, 792 F. App'x 195 (3d Cir. 2019). *Doc. 5* at 21. This case does not support Kholod's claim for relief; it involved an attorney's attempt to recover a contingency fee from an out of state attorney. *L. Offs. of Bruce J. Chasan, LLC*, 2019 WL 1957950 at *1–2. We were unable to find another case that fit the citation provided by Kholod.

4. Kholod states that in "*Brown v. Wells Fargo*, 2020" "[t]he court ruled that the bank must compensate the client $8,000 for wrongful withdrawals from their account." *Doc. 1-2* at 5. Construed liberally, this may be referring to *Brown v. Wells Fargo Bank, N.A.*, No. C19-3041-LTS, 2020 U.S. Dist. LEXIS 3614 (N.D. Iowa Jan. 7, 2020), or *Brown v. Wells Fargo Bank N.A.*, No. 01-18-01002-CV, 2020 Tex. App. LEXIS 7106 (Tex. App. Sep. 1, 2020). However, these cases are factually unrelated to Kholod's claim. The Northern District of Iowa *Brown* case concerns alleged violations of the Fair Credit Reporting Act (FCRA), Fair Debt Collection Practices Act (FDCPA), and Iowa Debt Collection Practices Act (IDCPA) regarding a failure to make the required payments under a note and mortgage. *Brown v. Wells Fargo Bank, N.A.*, No. C19-3041-LTS, 2020 U.S. Dist. LEXIS 3614, at *1. The Court of Appeals of Texas *Brown* case concerns a motion to dismiss the Plaintiff's appeal of a final judgment dismissing the plaintiff's garnishment suit. *Brown v. Wells Fargo Bank N.A.*, No. 01-18-01002-CV, 2020 Tex. App. LEXIS 7106, at *1. Neither of these cases include any legal analysis that is useful for Kholod's claim.

***7** 5. According to Kholod, in "*Smith v. First National Bank*, 2017" "[t]he court ordered the bank to return $5,000 to the client after evidence showed that the withdrawal was made without the client's authorization." *Doc. 1-2* at 4. Though the year is different, the closest match to this case is *Smith v. First Nat'l Bank*, 837 F.2d 1575 (11th Cir. 1988). This case is not relevant to Kholod's claim; the case is an appeal of summary judgment in favor of the Defendant concerning alleged violations of the Fair Credit Reporting Act (FCRA). *Smith*, 837 F.2d at 1576–77.

6. Kholod states that in "*Jones v. PNC Bank*, 2018" "the court ordered the bank to return $3,750 for unauthorized transactions made by third parties." *Doc. 1-2* at 4. We found two cases that appear to match the named parties, but neither were published in the year Kholod provides: *Jones v. PNC Bank, N.A.*, No. 10-CV-01077-LHK, 2010 U.S. Dist. LEXIS 92866 (N.D. Cal. Aug. 20, 2010), and *Jones v. PNC Bank, N.A.*, 630 F. Supp. 3d 959 (N.D. Ill. 2022). These cases do not appear factually related to Kholod's claims. The Northern District of California *Jones* case involved a dismissal of the Plaintiff's allegations of violations of the Real Estate Settlement Procedures Act (RESPA) due to failure to state a claim. *Jones*, No. 10-CV-01077-LHK, 2010 U.S. Dist. LEXIS 92866 at *1–2. The Northern District of Illinois *Jones* case granted the Defendant's motion to dismiss the Plaintiff's allegations of breach of contract regarding Guaranteed Asset Protection (GAP) as part of a retail installment contract (RIC) for a used car purchase. *Jones*, 630 F. Supp. 3d at 961. There is no legal analysis in either case that would be supportive of Kholod's claim for relief.

7. Per Kholod, in "*Miller v. Citizens Bank*, 2019" "[t]he court found the bank liable for unauthorized withdrawals amounting to $2,600 and ordered it to compensate the client for all losses." *Doc. 1-2* at 4. We found one case matching the named parties, but not the year: *Miller v. Citizens Bank, N.A.*, No. 23-10563, 2025 U.S. Dist. LEXIS 93011 (E.D. Mich. May 15, 2025), but as this

opinion was published after Kholod filed his complaint, we assume this is not the case to which he refers. We found no other cases fitting Kholod's description.

8. Kholod also cites "*Davis v. TD Bank*, 2021" in which, according to Kholod, "[t]he court ordered the bank to pay $4,200 to the client, citing the bank's failure to prevent fraudulent actions." *Doc. 1-2* at 5. The closest possible match is *Davis v. TD Bank, N.A. (In re Davis)*, 447 B.R. 738 (Bankr. D. Md. 2011). Again, the case name matches but the year does not. Furthermore, the subject matter is unrelated to Kholod's complaint; *Davis* concerns an opposition to a debtors' motion and plan for repaying creditors in a bankruptcy proceeding. *Davis*, 447 B.R. at 740–41. There are a number of other cases where the named parties are variations of *TD Bank USA, N.A. v. Davis* throughout the country, none of which were published in the year Kholod cites and none of which appear to be related to Kholod's claim.

We recognize that as technology advances, so does the legal field. Generative Artificial Intelligence ("GAI") tools, such as ChatGPT, are now in common use. The use of GAI, however, has significant pitfalls such as "hallucinations"—instances where the GAI tool creates fictitious cases that include fabricated parties, facts, and judges. This creates a number of practical concerns for the court, including the time spent researching inaccurate or nonexistent caselaw, and for parties, including the risk of presenting inaccurate pleadings to the court.

***8** The use of fictitious cases may lead to a violation of Rule 11 of the Federal Rules of Civil Procedure. Though pro se litigants are held to a "less stringent standard" than lawyers, the Third Circuit has made clear that "pro se litigants ... cannot flout procedural rules — they must abide by the same rules that apply to all other litigants." *Mala*, 704 F.3d at 244-45. We, therefore, remind Kholod that when "presenting to the court a pleading, written motion, or other paper," Rule 11 requires that an attorney or self-represented party "certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ... the claims, defenses, and other legal contentions are warranted by existing law[.]" Fed. R. Civ. P. 11(b). Thus, it is Kholod's duty to ensure that the cited cases are real and accurate. He thus may not be able to rely solely on the information provided by a GAI tool.

We, therefore, strongly caution Kholod about the use of GAI and warn Kholod that any use of fictitious caselaw going forward may lead to sanctions under Rule 11.

VI. Leave to Amend.

Before dismissing a complaint for failure to state a claim upon which relief may be granted, a court must grant the plaintiff leave to amend, unless amendment would be inequitable or futile. *See Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 245 (3d Cir. 2008) (citing *Grayson v. Mayview State Hospital*, 293 F.3d 103, 114 (3d Cir. 2002)). Here, because of the liberal amendment standard, we recommend granting Kholod an opportunity to file an amended complaint.

If Kholod decides to file an amended complaint, we note that any amended complaint must be titled as a second amended complaint and must contain the docket number of this case. Fed. R. Civ. P. 10(a). "[A]ny amended complaint must be complete in all respects." *Young v. Keohane*, 809 F. Supp. 1185, 1198 (M.D. Pa. 1992). "It must be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed." *Id.* "In general, an amended pleading supersedes the original pleading and renders the original pleading a nullity." *Garrett v. Wexford Health*, 938 F.3d 69, 82 (3d Cir. 2019). "Thus, the most recently filed amended complaint becomes the operative pleading." *Id.* In other words, if an amended complaint is filed, the original complaint will have no role in the future litigation of this case.

Any amended complaint must also comply with the pleading requirements of the Federal Rules of Civil Procedure, including the requirements that the complaint contain "a short and plain statement of the grounds for the court's jurisdiction," "a short and plain statement of the claim," and "a demand for the relief sought." Fed. R. Civ. P. 8(a)(1)–(3). Further, "[e]ach allegation must be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). "A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b). And to the extent it would promote clarity to do so, "each claim founded on a separate transaction or occurrence ... must be stated in a separate count." *Id.*

"Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). The statement required by Rule 8(a)(2) must give the defendant fair notice of the nature of the plaintiff's claim and

of the grounds upon which the claim rests. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Detailed factual allegations are not required, but more is required than "labels," "conclusions," or "a formulaic recitation of the elements of a cause of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "In other words, a complaint must do more than allege the plaintiff's entitlement to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009). "A complaint has to 'show' such an entitlement with its facts." *Id.*

***9** "Fundamentally, Rule 8 requires that a complaint provide fair notice of 'what the ... claim is and the grounds upon which it rests.' " *Garrett*, 938 F.3d at 92 (quoting *Erickson*, 551 U.S. at 93). Kholod should not assume that the court and the defendants are aware of the events at issue; rather, he should draft any amended complaint "as if [he] were telling a story to people who knew nothing about [his] situation." *Wrhel v. United States*, No. 16-CV-758-JDP, 2017 WL 4352088, at *2 (W.D. Wis. Sept. 29, 2017). Kholod should also keep in mind the purpose of the amended complaint: to provide notice of his claims and show entitlement to relief through factual allegations. An amended complaint is not the appropriate place to present detailed legal arguments or citations to authority. Making legal arguments is a step that comes after the pleadings. Should a legal argument become necessary, such as filing a brief in support of or opposition to a motion, Kholod may present his arguments in those documents at that time.

VII. Recommendations.

For the foregoing reasons, we recommend that the court grant the defendants' motions to dismiss (*docs. 4, 9*), and dismiss Kholod's complaint (*doc. 1-2*) without prejudice and with leave to amend. If Kholod does not file an amended complaint, we further recommend that the court remand his remaining state law claims back to the Magisterial District Court 43-4-02, in Monroe County, Pennsylvania.

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

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

Submitted this 22nd day of July 2025.

All Citations

Slip Copy, 2025 WL 2327933

Footnotes

1 To the extent the court finds that Kholod does have standing in his claims against Wells Fargo, we also conclude that his EFTA claims against Wells Fargo fail to state a claim because the EFTA only governs consumer accounts.

2 Nationstar additionally states it is a mortgage loan servicer. *Doc. 10* at 8. "[A] court reviewing a motion to dismiss must examine the plausibility of 'allegations in the complaint.' " *Doe v. Princeton Univ.*, 30 F.4th 335, 345 (3d Cir. 2022) (quoting *Twombly*, 550 U.S. at 555). "Factual claims and assertions raised by a defendant are not part of that scrutiny." *Id.* Thus, we will not consider this additional factual contention raised by Nationstar.

3 The case was removed on the basis of federal question jurisdiction and supplemental jurisdiction over the state law claims. *Doc. 1* at 2. We note that diversity jurisdiction does not exist here either. Diversity jurisdiction applies when the plaintiff and defendant are from different states and the amount in controversy is more than $75,000. 28 U.S.C. § 1332(a). Here, not only has no party asserted diversity of citizenship, but the amount in controversy is not alleged to be greater than $75,000. Kholod is seeking the return of the total of $11,659.88 that was withdrawn and compensation for any "losses and expenses" incurred by Kholod based on defendants' actions. *Doc. 1-2* at 5. We see no indication that the losses and expenses incurred by Kholod combined with the $11,659.88 would plausibly exceed more than $75,000.

We also note that Wells Fargo argues that Kholod's UCC claim is preempted by the EFTA. *Doc. 5* at 16. However, "[t]he existence or expectation of a federal defense is insufficient to confer federal jurisdiction." *New Jersey Carpenters & the Trs. Thereof v. Tishman Const. Corp. of New Jersey*, 760 F.3d 297, 302 (3d Cir. 2014) (citing *In re U.S. Healthcare, Inc.*, 193 F.3d 151, 160 (3d Cir. 1999)).

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