

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Mahmoud Elmilligy v. CVS Pharmacy, Inc. et al.

Civil Action No. 25-13497 (D.N.J. Nov. 24, 2025) · No. 2:25-cv-13497 · Decided November 24, 2025

SUMMARY

The United States District Court for the District of New Jersey grants Mahmoud Elmilligy’s application to proceed in forma pauperis but dismisses his complaint without prejudice. The court concludes that the § 1983 claims lack allegations of state action, HIPAA provides no private right of action, and the remaining negligence claim does not establish federal-question or diversity jurisdiction.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Jamel K. Semper
JURISDICTION	United States District Court for the District of New Jersey
DECIDED	November 24, 2025
DOCKET	2:25-cv-13497
DISPOSITION	dismissed
PROCEDURAL POSTURE	The court sua sponte screened a pro se complaint under 28 U.S.C. § 1915(e)(2)(B) after granting the plaintiff's application to proceed in forma pauperis.
STANDARD OF REVIEW	The court applied the Rule 12(b)(6) failure-to-state-a-claim standard through 28 U.S.C. § 1915(e)(2)(B), liberally construing the pro se complaint while requiring compliance with Federal Rule of Civil Procedure 8.
PRECEDENTIAL VALUE	unpublished

TOPICS

- subject matter jurisdiction
- section 1983
- hipaa
- civil procedure

PRACTICE AREAS

- civil procedure
- civil rights
- health law
- torts

QUESTIONS PRESENTED

1. Whether the complaint stated a claim under 42 U.S.C. § 1983 against private defendants absent allegations of state action.
2. Whether HIPAA provides a private right of action for alleged HIPAA violations.
3. Whether the court had federal-question or diversity subject matter jurisdiction over the remaining negligence claim.
4. Whether the complaint was subject to dismissal under 28 U.S.C. § 1915(e)(2)(B).

HOLDINGS

1. A Section 1983 claim does not extend to private conduct unless the plaintiff alleges facts showing that the defendant acted under color of state law or that the state was sufficiently involved to constitute state action. Because Plaintiff alleged no wrongdoing by a state actor and no facts establishing state action, the Section 1983 claim was dismissed for failure to state a claim.
2. HIPAA does not provide a private right of action to remedy alleged HIPAA violations. Plaintiff's HIPAA claim was therefore dismissed for failure to state a claim.
3. The negligence claim did not arise under the Constitution or federal law and therefore did not establish federal-question jurisdiction.
4. Diversity jurisdiction was not established because the complaint did not allege or request any amount of damages, including an amount in controversy exceeding \$75,000.
5. A court must dismiss an action proceeding in forma pauperis if it is frivolous, fails to state a claim upon which relief may be granted, or seeks monetary relief from an immune defendant. Applying that standard, the court dismissed the complaint without prejudice.

KEY QUOTATIONS

“a district court may allow a plaintiff to commence a civil action without paying the filing fee—that is, in forma pauperis—so long as the plaintiff submits an affidavit demonstrating he or she is “unable to pay such fees,””

“Pro se complaints are “liberally construed” and “held to less stringent standards than formal pleadings drafted by lawyers.””

“a short and plain statement of the claim showing that the pleader is entitled to relief;”

“more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”

FACTUAL BACKGROUND

Plaintiff alleged that CVS and other defendants violated his civil rights, withheld his medication in breach of a duty of care, and violated HIPAA. The complaint did not allege wrongdoing by a state actor or facts showing that any defendant acted under color of state law. It also did not allege or request a specific amount of damages, and the remaining negligence claim was characterized as a state-law tort claim.

PROCEDURAL HISTORY

Plaintiff filed a pro se complaint against CVS Pharmacy, Inc. and other defendants, together with an application to proceed in forma pauperis and supplemental written responses. The district court granted the application, screened the complaint, dismissed the federal civil-rights and HIPAA claims for failure to state a claim, found no basis for federal subject matter jurisdiction over the remaining negligence claim, dismissed the complaint without prejudice, denied as moot a motion to compel a ruling on the IFP application, and closed the matter.

DISPOSITION

dismissed

CASES CITED

- Shorter v. United States, 12 F.4th 366, 371, 374 (3d Cir. 2021)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Nat'l Collegiate Ath. Ass'n v. Tarkanian, 488 U.S. 179, 191-192 (1988)
- In re U.S. Vision Data Breach Litig., No. 22-06558, 2025 WL 615366, at *9 (D.N.J. Feb. 26, 2025)
- Polanco v. Omnicell, Inc., 988 F. Supp. 2d 451, 468-69 (D.N.J. 2013)
- Fernandes v. DAR Dev. Corp., Inc., 222 N.J. 390, 403-404 (2015)
- Nicholas v. Mynster, 213 N.J. 463, 478 (2012)

OPINION

ELMILLIGY

PER CURIAM.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

MAHMOUD ELMILLIGY

Civil Action No. 25-13497 Plaintiff,

v. AMENDED OPINION AND ORDER

CVS PHARMACY, INC et al. November 24, 2025 Defendants. SEMPER, District Judge. THIS MATTER comes before the Court on pro se Plaintiff Mahmoud Elmilligy's Complaint and application to proceed in forma pauperis ("Application"). (ECF 1, 5.) Plaintiff also submitted additional written responses supplementing that application ("Written Responses")¹. (ECF 7.) This Court has reviewed the Complaint sua sponte for sufficiency pursuant to 28 U.S.C. § 1915(e)(2) (B) and Federal Rule of Civil Procedure 8(a); and WHEREAS a district court may allow a plaintiff to commence a civil action without paying the filing fee—that is, in forma pauperis—so long as the plaintiff submits an affidavit demonstrating he or she is "unable to pay such fees," 28 U.S.C. §

1915(a)(1), but the court must dismiss a case that is frivolous, “fails to state a claim upon which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” *Id.* § (e)(2)(B); see *Shorter v. United States*, 12 F.4th 366, 374 (3d Cir. 2021). This Court, having reviewed Plaintiff’s 1 Plaintiff also filed a Motion to Compel Ruling on Pending IFP. (ECF 17.) In light of this Opinion, that Motion is moot. Application and Written Responses, finds leave to proceed in forma pauperis is warranted, and the Application is GRANTED; and WHEREAS a district court has original jurisdiction over an action when there is diversity jurisdiction pursuant to 28 U.S.C. § 1332 or when there is federal question jurisdiction pursuant to 28 U.S.C. § 1331. Diversity jurisdiction exists when there is a dispute between citizens of different states alleging an amount in controversy in excess of \$75,000. See 28 U.S.C. § 1332. Federal question jurisdiction exists when a dispute “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331; and WHEREAS the standard for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B) is the same standard applied under Federal Rule of Civil Procedure 12(b)(6). See *Shorter*, 12 F.4th at 371. Pro se complaints are “liberally construed” and “held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quotation marks omitted); see also Fed. R. Civ. P. 8(e). However, a pro se complaint must still comply with Federal Rule of Civil Procedure 8, which requires “a short and plain statement of the claim showing that the pleader is entitled to relief;” Fed. R. Civ. P. 8(a)(2), that “give[s] the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration and citation omitted). Factual allegations “must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). While the Court must accept factual allegations in the complaint as true, legal conclusions are not entitled to the same presumption. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (internal citation omitted); and WHEREAS Plaintiff alleges that Defendants violated his civil rights under 42 U.S.C. § 1983 (“Section 1983”), breached their duty of care owed to him by withholding his medication, and violated the Health Insurance Portability and Accountability Act (“HIPPA”). (ECF 1 ¶¶ 16- 18.) While Plaintiff’s first cause of action alleges a violation of his civil rights pursuant to Section 1983, such claims must be brought against a state actor or a private party acting under the color of state law. See *Nat’l Collegiate Ath. Ass’n v. Tarkanian*, 488 U.S. 179, 191-192 (1988) (explaining that actions under Section 1983 do not extend to private conduct, unless it can be shown that the state was “sufficiently involved” so as to treat the conduct as a state action.) Plaintiff does not allege any wrongdoing by a state actor, nor does he offer factual allegations suggesting that any Defendant acted under the color of state law. (See ECF 1 ¶¶ 8-15.) Moreover, Plaintiff’s third claim, a violation of HIPPA, does not provide a private right of action. See *In re U.S. Vision Data Breach Litig.*, No. 22-06558, 2025 WL 615366, at *9 (D.N.J. Feb. 26, 2025) (“Courts have held that HIPAA does not provide a private right of action to remedy HIPAA

violations.”) (citing *Polanco v. Omnicell, Inc.*, 988 F. Supp. 2d 451, 468–69 (D.N.J. 2013)). Accordingly, the Court must dismiss Plaintiff’s first and third causes of action for failure to state a claim upon which relief can be granted; and WHEREAS Plaintiff’s remaining cause of action alleges negligence by Defendant CVS for breaching its duty of care, which is a state-law tort claim that does not arise under the Constitution or federal law.² Therefore, no federal question jurisdiction exists. Because the Complaint does not allege or request any amount of damages (see ECF 1 at 3), there is no diversity.² See *Fernandes v. DAR Dev. Corp., Inc.*, 222 N.J. 390, 403-404 (2015) (outlining the elements of negligence as (1) owing a duty of care, (2) breach of that duty, (3) causation, and (4) resulting damages); see also *Nicholas v. Mynster*, 213 N.J. 463, 478 (the elements of medical malpractice require “(1) the applicable standard of care; (2) deviation from that standard of care; and (3) that the deviation proximately caused the injury.”) jurisdiction pursuant to 28 U.S.C. § 1332. Thus, the Court has no basis for exercising subject matter jurisdiction, and the Complaint is dismissed without prejudice. IT IS on this 24th day of November 2025, ORDERED that Plaintiff’s application to proceed in forma pauperis (ECF 7) is hereby GRANTED and Plaintiff’s Motion to Compel (ECF 17) is DENIED as MOOT; and it is further ORDERED that Plaintiff’s Complaint (ECF 1) is DISMISSED without prejudice; and it is further ORDERED that the Clerk of the Court is directed to mail a copy of this Opinion and Order to Plaintiff by certified mail; and it is further ORDERED that the Clerk of the Court shall CLOSE this matter. /s/ Jamel K. Semper .

HON. JAMEL K. SEMPER

United States District Judge Orig: Clerk cc: Jessica S. Allen, U.S.M.J. Parties