

DLD-262

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1871

ROGER WILSON,
Appellant

v.

DELTA AIRLINES; SHAREBUILDERS.COM

On Appeal from the United States District Court
for the Western District of Pennsylvania
(W.D. Pa. Civil Action No. 2-18-cv-00305)
District Judge: Honorable Nora Barry Fischer

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

July 12, 2018

Before: JORDAN, SHWARTZ and KRAUSE, Circuit Judges

(Opinion filed: July 20, 2018)

OPINION*

PER CURIAM

Roger Wilson, proceeding pro se, appeals an order of the United States District

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Court for the Western District of Pennsylvania dismissing his complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). We will summarily affirm the judgment of the District Court.

Wilson filed a complaint against Delta Airlines and ShareBuilders.com alleging that they “stole stock off [him]” that he bought in 2006. Wilson brought his claim under 18 U.S.C. § 1341, a criminal statute prohibiting mail fraud, and sought \$25 million in damages.

The District Court adopted the Magistrate Judge’s report and recommendation to dismiss the complaint as frivolous because it is based on an indisputably meritless legal theory. The Magistrate Judge explained that the criminal statute that Wilson claims was violated does not provide a private cause of action. The District Court overruled Wilson’s objections to the Magistrate Judge’s report in which he challenged the procedures that were used and cited additional statutes in support of his claim. This appeal followed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our standard of review is plenary. Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990).

The District Court’s decision is supported by the record. Wilson has not shown that improper procedures were used in his case. See 28 U.S.C. § 636(b) (authorizing recommendations by a Magistrate Judge). We agree that § 1341 does not on its own give rise to a private cause of action. Wisdom v. First Midwest Bank, 167 F.3d 402, 408 (8th Cir. 1999). To the extent Wilson sought to amend his complaint, he did not show that he

has a non-frivolous claim. His complaint was properly dismissed. See Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Because this appeal does not raise a substantial question, we will summarily affirm the judgment of the District Court.¹

¹ Wilson's motion to modify the record to change the amount of damages he seeks from the defendants is denied.

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July 12, 2018

Before: JORDAN, SHWARTZ and KRAUSE, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on July 12, 2018. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered April 17, 2018 be and the same hereby is affirmed.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: July 20, 2018

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROGER WILSON,)	
)	
Plaintiff,)	
)	
vs.)	
	)	Civ. A. No. 18-305
DELTA AIRLINES, SHARE	)	Judge Nora Barry Fischer
BUILDERS.COM,	)	Magistrate Judge Cynthia Reed Eddy
)	
)	
Defendant,)	

ROGER WILSON,)	
)	
Plaintiff,)	
)	
vs.)	
	)	Civ. A. No. 18-306
CHRIS EYSTER and PAUL BOAS,	)	Judge Nora Barry Fischer
	)	Magistrate Judge Cynthia Reed Eddy
)	
Defendant,)	

ROGER WILSON,)	
)	
Plaintiff,)	
)	
vs.)	
	)	Civ. A. No. 18-307
MCKEESPORT POLICE DEPT., et al.,	)	Judge Nora Barry Fischer
	)	Magistrate Judge Cynthia Reed Eddy
)	
Defendant,)	

ROGER WILSON,)	
)	
Plaintiff,)	
)	
vs.)	
	)	Civ. A. No. 18-308
U.S. GOV'T / FEDERAL A/G and	)	Judge Nora Barry Fischer
RENEWAL CENTER,	)	Magistrate Judge Cynthia Reed Eddy
)	
Defendant,)	

ROGER WILSON,)	
)	
Plaintiff,)	
)	
vs.)	
	)	Civ. A. No. 18-311
MIKE HEALEY,	)	Judge Nora Barry Fischer
	)	Magistrate Judge Cynthia Reed Eddy
Defendant,)	

ROGER WILSON,)	
)	
Plaintiff,)	
)	
vs.)	
	)	Civ. A. No. 18-314
UNITED STATES OF AMERICA, et al.	)	Judge Nora Barry Fischer
	)	Magistrate Judge Cynthia Reed Eddy
Defendant,)	

MEMORANDUM ORDER

AND NOW, this 17th day of April, 2018, after *pro se* Plaintiff Roger Wilson was granted leave to proceed in forma pauperis in each of the above listed actions by the United States Magistrate Judge, who then proceeded to file separate Reports and Recommendations in each of

the cases with the Court, recommending that each of the Complaints be dismissed, *sua sponte*, pursuant to 28 U.S.C. §1915(e)(2), as the claims set forth in each of the actions were frivolous, and Plaintiff having filed objections to same, and after conducting a de novo review upon an independent review of the record in each of the cases,

The Court hereby ORDERS the following:

1. Civil Action No. 18-305 *Wilson v. Delta Airlines et al.* - The Report and Recommendation filed on April 9, 2018 [11] recommending that Plaintiff's claims for fraud seeking \$25 million in damages due to an alleged theft of stock that he purchased in 2006 by Defendants be dismissed as frivolous is adopted as the Opinion of the Court; Plaintiff's objections to the Report and Recommendation complaining of the screening procedures utilized by the Magistrate Judge and claiming that he would cite to additional statutes [12] are OVERRULED; Plaintiff's Complaint [9] is DISMISSED, with prejudice, as it is frivolous; Plaintiff's Motion to Get the Marshals to Make Service [5] is DENIED, as moot; and the Clerk of Court is directed to mark this case CLOSED;
2. Civil Action No. 18-306 *Wilson v. Eyster et al.* -- The Report and Recommendation filed on April 9, 2018 [10] recommending that Plaintiff's claims for "Slavery 18 USC 1589" and "18 USC Theft By Deception" seeking \$2 billion in damages from his prior defense counsel in criminal numbers 06-316 and 07-101 be dismissed as frivolous is adopted as the Opinion of the Court; Plaintiff's objections to the Report and Recommendation [12] stating he cited the incorrect statute and wishes to pursue claims under 18 USC 1584 and contends that the screening procedure utilized by the Magistrate Judge is illegal are OVERRULED, as they are without merit; Plaintiff's

Complaint [8] is DISMISSED, as frivolous; Plaintiff's Motion to Get the Marshals to Make Service [4] is DENIED, as moot; and the Clerk of Court is directed to mark this case CLOSED;

3. Civil Action 18-307 *Wilson v. McKeesport Police Dept. et al.* – The Report and Recommendation filed on April 9, 2018 [11] recommending that Plaintiff's claims for "Obstruction [of] Justice 18 U.S.C. 1503" seeking \$25 million in damages from the McKeesport Police Department, the City of McKeesport, the SEC, the U.S. Gov't and State of PA arising from his having filed police reports (in 2011 and 2017) complaining that Delta Airlines stole around \$10 million in stock be dismissed, as frivolous, is adopted as the Opinion of the Court; Plaintiff's objections to the Report and Recommendation [12] once again objecting to the procedures of the Magistrate Judge and claiming that he is attempting to pursue civil antitrust claims are OVERRULED, as his claims are still frivolous; Plaintiff's Motion to Get the Marshals to Make Service [4] is DENIED, as moot; Plaintiff's Complaint [7] is DISMISSED, with prejudice, as it is frivolous; and the Clerk of Court is directed to mark this case CLOSED.

4. Civil Action No. 18-308 – *Wilson v. U.S. Gov't, et al.* – The Report and Recommendation filed on April 9, 2018 [10] recommending that Plaintiff's claims for "Slavery 18 USC 1585" wherein he asserts that he was arrested in 2011 between May and July and held by the U.S. Government until December 2011 without trial and knew he was innocent be dismissed, as frivolous, is adopted as the Opinion of the Court; Plaintiff's objections [11] complaining about the alleged illegal procedures utilized by the Magistrate Judge and clarifying that the Government both incarcerated

him without trial and stole his patents are OVERRULED, as his claims are frivolous; Plaintiff's Complaint [7] is DISMISSED, with prejudice, as it is frivolous; Plaintiff's Motion to Get the Marshals to Make Service [4] is DENIED, as moot; and the Clerk of Court is directed to mark this case CLOSED.

5. Civil Action No. 18-311 – *Wilson v. Healey* – The Report and Recommendation dated April 9, 2018 [8] recommending that Plaintiff's claim for "Slavery 18 USC 1584" against his prior counsel Michael Healey, Esquire, (who represented him in 2012 during supervised release proceedings), seeking \$100 million in damages be dismissed, as frivolous, is adopted as the Opinion of the Court; Plaintiff's objections [9] contesting the Magistrate Judge's procedures and complaining about his incarceration on violation petitions and the alleged theft of his patents are OVERRULED, as they are meritless; Plaintiff's Motion for Service by U.S. Marshal [3] is DENIED, as moot; Plaintiff's Complaint [6] is DISMISSED, with prejudice, as it is frivolous; and the Clerk of Court is directed to mark this case CLOSED;
6. Civil Action No. 18-314 – *Wilson v. United States of America et al.* – The Report and Recommendation filed on April 9, 2018 [8] recommending that Plaintiff's claims for "Obstruction [of] Justice 18 U.S.C. 1503" and "42 U.S.C. 1981 Equal Rights Under the Law" seeking \$50,000 in damages against the Defendants based on his having attempted to file police reports against his attorney for illegally stealing money from him but the law enforcement agents refuse to take the reports and then later, upon taking one of his reports, refused to arrest the attorney must be dismissed, as frivolous; Plaintiff's objections [9] are OVERRULED as they are without merit; Plaintiff's Complaint [6] is DISMISSED, with prejudice, as it is frivolous; Plaintiff's

Motions [3], [4] seeking the U.S. Marshal to make service are DENIED, as moot;
and, the Clerk of Court is directed to mark this case CLOSED.

IT IS SO ORDERED.

s/Nora Barry Fischer
Nora Barry Fischer
U.S. District Judge

cc/ecf: All counsel of record

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROGER WILSON,

Plaintiff,

vs.

DELTA AIRLINES, SHARE
BUILDERS.COM,

Defendants

)
)
) Civil Action No. 2:18-cv-00305
)
)
)

) United States District Judge
) Nora Barry Fischer
)

) United States Magistrate Judge
) Cynthia Reed Eddy
)

REPORT AND RECOMMENDATION

I. RECOMMENDATION

The Court respectfully recommends that Plaintiff's Complaint (ECF No. 9) filed on April 2, 2018, be *sua sponte* dismissed with prejudice prior to service under 28 U.S.C. §1915(e)(2) because the action is frivolous.

II. REPORT

A. Procedural Background

Within a four-day span, Plaintiff, Roger Wilson, filed ten law suits, *pro se*, seeking Leave to Proceed *in forma pauperis*. He voluntarily withdrew four of the cases, *Wilson v. Federal A/G Maryland et al.*, 2:18-cv-00304; *Wilson v. Memphis F.C.I. et al.*, 2:18-cv-00312; *Wilson v. FCI Cumberland*, 2:18-cv-00313; and *Wilson v. FCI Gilmer, et al.*, 2:18-cv-00315 for "lack of venue". The six remaining cases filed during that time period are: *Wilson v. Delta Airlines, et al.*, 2:18-cv-00305; *Wilson v. Eyster et al.*, 2:18-cv-00306; *Wilson v. McKeesport Police Dept., et al.*, 2:18-cv-00307; *Wilson v. U.S. Gov't/Federal A/g et al.*, 2:18-cv-00308; *Wilson v. Healey*, 2:18-cv-00311; and *Wilson v. United States of America et al.*, 2:18-cv-00314.

Also pending with the court is *Wilson v. U.S. Gov't*, 2:17-01467, which was filed on November 13, 2017, for which Wilson paid the filing fee. The court also notes that Wilson also filed *Wilson v. United States and Office of Atty General*, 2:17-cv-00301 on March 8, 2017, for which he paid the filing fee. This case was dismissed pursuant to FRCP 12(b)(1), with prejudice, as amendment would be futile. Wilson filed a notice appealing this decision to the Third Circuit Court of Appeals. (*Id.* at ECF No. 29).

B. Legal Standard

Plaintiff is proceeding *pro se* and as such, he is entitled to liberal construction of his submissions in federal court. This means that the Court must liberally construe the factual allegations of the complaint because *pro se* pleadings, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erikson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation omitted); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). In addition, the court should ““apply the applicable law, irrespective of whether a pro se litigant has mentioned it by name.”” *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002) (quoting *Holley v. Dep’t of Veterans Affairs*, 165 F.3d 244, 247-48 (3d Cir. 1999)). However, *pro se* litigants are not free to ignore the Federal Rules of Civil Procedure. *Pruden v. Long*, Civ. A. No. 3:CV-06-2007, 2006 WL 3325439, *1 (M.D. Pa. Oct. 24, 2006).

Pursuant to 28 U.S.C. §1915(a), Plaintiff requested and has been granted leave to proceed *in forma pauperis*. Thus, his allegations must be reviewed in accordance with the directives provided in 28 U.S.C. §1915(e). Section 1915(e)(2), as amended, requires the federal courts to review complaints filed by persons¹ who are proceeding *in forma pauperis* and to dismiss, at any

¹ Although the Third Circuit has not ruled on the issue, several district courts in the Third Circuit have considered the question of whether this revised in forma pauperis statute applies only to prisoners and have concluded that it does not. *Leatherman v. Obama*, C.A. No. 12-1486, 2012 WL 5398912 (W.D. Pa. Nov. 2, 2012) (Fisher, J.), *adopting R&R* 2012 WL 5398856 (W.D. Pa. October 22, 2012); *Harrison v. Shapiro*, No. 97-2133, 1997 WL 197950, at * 1 (E.D. Pa. 1997); *Jones v. North Atlantic Treaty*

time, any action that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §1915(e)(2)(B). “[A] complaint...is frivolous where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Hawkins v. Coleman Hall, C.C.F.*, No. 11-3467, 2011 WL 5970977, at *2 (3d Cir. Nov. 30, 2011) (“An appeal is frivolous when it lacks an arguable basis either in law or fact.” (citing *Neitzke, supra*). Thus, under §1915(e)(2)(B), courts are “authorized to dismiss a claim as frivolous where ‘it is based on an indisputable meritless legal theory or where the factual contentions are clearly baseless.’” *O’Neal v. Remus*, No. 09-14661, 2010 WL 1463011, at *1 (E.D. Mich. Mar. 17, 2010) (quoting *Price v. Heyrman*, No. 06-C-632, 2007 WL 188971, at *1 (E.D. Wis. Jan. 22, 2007) (citing *Neitzke*, 490 U.S. at 327)).²

In determining whether a complaint fails to state a claim upon which relief may be granted for purposes of Section 1915(e)(2)(B), courts apply the same standard applied to motions to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *D’Agostino v. CECOM RDEC*, 436 F. App’x 70, 72 (3d Cir. 2011) (citing *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999)). A complaint must be dismissed pursuant to Rule 12(b)(6) if it does not allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 556 (2007) (rejecting the traditional 12(b)(6) standard set forth in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw

Organization, No. 98–1185, 1998 WL 136511, at *1 n. 1 (E.D. Pa.1998); *McAllen v. Attic Away From Home*, No. 00–941, 2000 WL 1752618, at *2 n. 7 (D. Del. 2000). Each of these courts has found the mention of the word “prisoner” to be a typographical error, and that the Congress meant the statute to read “person.” I find this reasoning to be persuasive. *See also, Anyanwu v. Moore*, 151 F.3d 1053 (D.C. Cir.1998); *Mitchell v. Farcass*, 112 F.3d 1483, 1484 (11th Cir.1997); *Powell v. Hoover*, 956 F.Supp. 564, 568 (M.D. Pa.1997).

² Dismissal under Section 1915(e)(2) is “often made *sua sponte* prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering [frivolous] complaints[.]” *Neitzke*, 490 U.S. at 324, or complaints which fail to state a claim on which relief may be granted.

the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). The United States Court of Appeals for the Third Circuit has expounded on this standard in light of its decision in *Phillips v. County of Allegheny*, 515 F.3d 224 (3d Cir. 2008) (construing *Twombly* in a civil rights context), and the Supreme Court’s decision in *Iqbal*:

After *Iqbal*, it is clear that conclusory or “bare-bones” allegations will no longer survive a motion to dismiss: “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 129 S.Ct. at 1949. To prevent dismissal, all civil complaints must now set out “sufficient factual matter” to show that the claim is facially plausible. This then “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 1948. The Supreme Court’s ruling in *Iqbal* emphasizes that a plaintiff must show that the allegations of his or her complaints are plausible. *See Id.* at 1949-50; *see also Twombly*, 505 U.S. at 555, & n. 3.

Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009). In making this determination, the court must accept as true all allegations of the complaint and all reasonable factual inferences must be viewed in the light most favorable to the plaintiff. *Angelaastro v. Prudential-Bache Sec., Inc.*, 764 F.2d 939, 944 (3d Cir. 1985). “To the extent that a complaint filed *in forma pauperis* which fails to state a claim lacks even an arguable basis in law, Rule 12(b)(6) and §1915([e]) both counsel dismissal.” *Neitzke*, 490 U.S. at 328 (footnote omitted).

C. Plaintiff’s claims

Presently before the Court is *Wilson v. Delta Airlines and Share Builders.com*, 2:18-cv-00305, which the court notes is far from a model of clarity as it lacks specificity in its detail and relief sought. Wilson is pursuing a claim for “Fraud 18 USC 1341”. (ECF No. 9, p. 4). In support of his alleged 18 U.S.C. §1341 criminal mail fraud claim against the Defendants, Wilson alleges, *in toto*, that “Delta Airlines and Share Builders.com stole stock off me that I bought in 2006 Dec.

I have an expert witness.” (*Id.* at 5). He seeks 25 million dollars. (*Id.* at 5). Because of the early stage of this litigation, service on the Defendants has not yet been ordered or effectuated.

Plaintiff alleges that defendants violated 18 U.S.C. § 1341, a statute directed at criminal liability for mail fraud. A criminal statute does not give rise to civil liability, unless the statute expressly provides a private cause of action. *Simpson, Jr. v. The City of Coatesville*, No. 12-4803, 2015 WL 7251546 at *6 (E.D. Pa. Nov. 17, 2015) (citing *Frank B. Fuhrer Wholesale Co. v. MillerCoors LLC*, No. 13-1155, 2013 WL 5875819 *6 (W.D. Pa. Oct. 30, 2013)). Section 1341 does not provide an express private cause of action; therefore, “there is no private cause of action for violation of the federal mail and wire fraud statutes.” *Addlespurger v. Corbett*, 461 Fed. App’x 82,87 (3d Cir. 2012); *Jones v. TD Bank*, 468 Fed. App’x 93(3d Cir. 2012) (finding that the federal mail fraud statute did not provide plaintiff with a private right of action); *Wisdom v. First Midwest Bank*, 167 F.3d 402, 408 (8th Cir. 1999) (joining the Fifth and Sixth Circuits in finding no private cause of action for mail fraud); *Marley v. Donahue*, 133 F.Supp.3d 706 (D. N.J. 2015).

Plaintiff’s claim is based on an indisputably meritless legal theory and should therefore be dismissed, *sua sponte*, pursuant to 28 U.S.C. §1915(e)(2). *Neitzke*, 490 U.S. at 328. Therefore, the court recommends that the complaint be dismissed as frivolous, with prejudice, as it would be futile for Plaintiff to amend his claims. See *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007).

III. Conclusion

For the reasons set forth herein, it is respectfully recommended that the Complaint be dismissed with prejudice, as frivolous pursuant to the screening provisions of 28 U.S.C. 1915(e)(2).

Plaintiff is permitted to file Objections to this Report and Recommendation to the assigned United States District Judge. In accordance with 28 U.S.C. § 636(b), Fed. R. Civ. P. 6(d) and 72(b)(2), and LCvR 72.D.2, Plaintiff, because he is a non-electronically registered party, must file objections to this Report and Recommendation by **April 26, 2018**. Failure to file Objections within this timeframe “will waive the right to appeal.” *Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011).

Dated this 9th day of April, 2018.

s/Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

cc: Honorable Nora Barry Fischer
(via CM/ECF electronic notification)

ROGER WILSON
516 Sinclair Street, Apt. 501
McKeesport, PA 15132
(via U.S. First Class mail)