

## Appendix A.

1. Summary Dtdet

2. General Docket

Original

**UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT**

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At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1<sup>st</sup> day of June, two thousand and eighteen,

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Bobbie Lee Adams, III,

Plaintiff - Appellant,

v.

Netflix, Inc.,

Defendant - Appellee.

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**ORDER**

Docket No. 17-3270

IT IS HEREBY ORDERED that Appellant's motion to file a written argument in lieu of oral argument is GRANTED.

For The Court:

Catherine O'Hagan Wolfe,  
Clerk of Court

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7<sup>th</sup> day of June, two thousand eighteen.

PRESENT: JOSÉ A. CABRANES,  
GERARD E. LYNCH,  
SUSAN L. CARNEY,  
*Circuit Judges.*

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BOBBIE LEE ADAMS, III,

*Plaintiff-Appellant,*

v.

17-3270-cv

NETFLIX, INC.,

*Defendant-Appellee.*

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**FOR PLAINTIFF-APPELLANT:**

Bobbie Lee Adams, III, *pro se*, Norwich,  
CT.

**FOR DEFENDANT-APPELLEE:**

Tonia Ouellette Klausner, Wilson Sonsini  
Goodrich & Rosati, P.C., New York, NY.

Appeal from a judgment of the United States District Court for the District of Connecticut  
(Stefan R. Underhill, *Judge*).

**UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the November 3, 2017 judgment of the District Court be and hereby is **AFFIRMED**.

Plaintiff-appellant Bobbie Lee Adams, III, proceeding *pro se*, appeals from a November 3, 2017 judgment in favor of Netflix, Inc. (“Netflix”). Adams alleged that Netflix violated various provisions of the United States Constitution and the United States Code by continuing to charge him for its streaming service after he had cancelled it. He claimed \$75,020.16 in damages: \$20.16 for the subscription fee, \$50,000 for pain and suffering, and \$25,000 in punitive damages. The magistrate judge recommended that the District Court *sua sponte* dismiss the action under 28 U.S.C. § 1915(e)(2)(B)<sup>1</sup> for lack of subject matter jurisdiction. The District Court adopted the recommendation over Adams’s objections. This appeal followed. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review *de novo* a district court’s *sua sponte* dismissal of a complaint under 28 U.S.C. § 1915(e)(2)(B). *Milan v. Wertheimer*, 808 F.3d 961, 963 (2d Cir. 2015). We afford a *pro se* litigant “special solicitude” and interpret the complaint “to raise the strongest claims that it suggests.” *Hill v. Curcione*, 657 F.3d 116, 122 (2d Cir. 2011) (internal quotation marks and alterations omitted). Although a district court should typically refrain from dismissing a *pro se* complaint without permitting at least one opportunity to amend, it may deny leave to amend when amendment would be futile. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000).

Upon review, we conclude that Adams failed to plead facts sufficient to establish either federal question or diversity jurisdiction, and therefore affirm the District Court’s judgment.

Adams’s claims “fail[] to raise a colorable federal question” because they are “foreclosed by Supreme Court [and] Second Circuit precedent.” *Gallego v. Northland Grp. Inc.*, 814 F.3d 123, 128 (2d Cir. 2016); *see also Bailey Patterson*, 369 U.S. 31, 33 (1962) (holding that federal question jurisdiction does not exist when the claim is “wholly insubstantial, legally speaking nonexistent”). He argues that federal question jurisdiction exists because Netflix justified its purportedly fraudulent scheme by invoking a federal statute. But it is well established that a federal defense does not give rise to federal question jurisdiction. *See, e.g., Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 271 (2d Cir. 2005) (“[A]

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<sup>1</sup> 28 U.S.C. § 1915(e)(2)(B) provides, in relevant part:

[T]he court shall dismiss the case at any time if the court determines that . . .

(B) the action or appeal--

(i) is frivolous or malicious; [or]

(ii) fails to state a claim on which relief may be granted . . . .

plaintiff may not create federal subject-matter jurisdiction by alleging in his complaint that the defendant's (anticipated) federal defense should fail."). Nor can Adams establish federal question jurisdiction by citing the United States Constitution. Netflix is not a state actor, and Adams did not allege that Netflix engaged in anything resembling state action. See *Cranley v. Nat'l Life Ins. Co. of Vermont*, 318 F.3d 105, 111 (2d Cir. 2003) ("[A] litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes 'state action.'" (internal quotation marks omitted)).

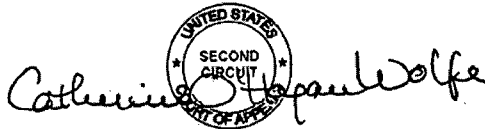
Adams's attempt to establish diversity jurisdiction fares no better. He contends that he satisfied the amount-in-controversy requirement of 28 U.S.C. § 1332(a)<sup>2</sup> because he alleged \$75,020.16 in damages: \$20.16 for the non-refunded subscription fee, \$50,000 for the pain and suffering he experienced, and \$25,000 in punitive damages. Although "we recognize a rebuttable presumption that the face of the complaint is a good faith representation of the actual amount in controversy," this presumption can be overcome when it is "a legal certainty" that the jurisdictional threshold cannot be met. *Scherer v. Equitable Life Assurance Soc'y of U.S.*, 347 F.3d 394, 397 (2d Cir. 2003) (internal quotation marks omitted). And it is overcome here: even if successful, Adams cannot recover \$25,000 in punitive damages because under Connecticut law common-law punitive damages are limited "to litigation expenses, such as attorney's fees," *Hylton v. Gunter*, 97 A.3d 970, 978 (Conn. 2014), and Adams is proceeding *pro se*.

Finally, although neither the magistrate judge nor the District Court addressed whether Adams should have been given leave to amend, we conclude that leave to amend would have been futile. See *Cuoco*, 222 F.3d at 112. Adams has failed to demonstrate any tenable basis for the District Court to assume subject matter jurisdiction over his complaint.

### CONCLUSION

We have reviewed all of the arguments raised by Adams on appeal and find them to be without merit. For the foregoing reasons, we **AFFIRM** the November 3, 2017 judgment of the District Court.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk

The signature is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

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<sup>2</sup> 28 U.S.C. § 1332(a) provides, in relevant part, that "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs," and the parties exhibit diversity of citizenship.

**General Docket**  
**Court of Appeals, 2nd Circuit**

<b>Court of Appeals Docket #:</b> 17-3270 <b>Nature of Suit:</b> 3480 Consumer Credit Adams v. Netflix, Inc. <b>Appeal From:</b> CONNECTICUT (NEW HAVEN) <b>Fee Status:</b> IFP Granted	<b>Docketed:</b> 11/03/2017 <b>Termed:</b> 06/07/2018
<b>Case Type Information:</b> 1) Civil 2) Private 3) -	
<b>Originating Court Information:</b> <b>District:</b> 0205-3 : <u>17-cv-1468</u> <b>Trial Judge:</b> Stefan R. Underhill, U.S. District Judge <b>Date Filed:</b> 08/30/2017 <b>Date Order/Judgment:</b> 10/17/2017 <b>Date NOA Filed:</b> 11/01/2017	
<b>Prior Cases:</b> None	
<b>Current Cases:</b> None	
<b>Panel Assignment:</b> Not available	

Bobbie Lee Adams, III  
Plaintiff – Appellant

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Bobbie Lee Adams, III, –  
[NTC Pro Se]  
113 Oneco Street  
Norwich, CT 06360

Netflix, Inc.  
Defendant – Appellee

Tonia Klausner, Esq., –  
Direct: 212-999-5800  
[COR LD NTC Retained]  
Wilson Sonsini Goodrich & Rosati, P.C.  
1301 Avenue of the Americas  
New York, NY 10019

Netflix, Inc., –  
**Terminated:** 12/28/2017  
[NTC –]  
100 Winchester Drive  
Los Gatos, CA 95032

Bobbie Lee Adams, III,

Plaintiff – Appellant,

v.

Netflix, Inc.,

Defendant – Appellee.



11/03/2017	<u>1</u>	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant Bobbie Lee Adams, III, FILED. [2166792] [17-3270] [Entered: 11/07/2017 03:15 PM]
11/03/2017	<u>2</u>	DISTRICT COURT ORDER, entered in the district court as docket entry #12, dated 10/17/2017, RECEIVED.[2166807] [17-3270] [Entered: 11/07/2017 03:20 PM]
11/03/2017	<u>3</u>	ELECTRONIC INDEX, in lieu of record, FILED.[2166809] [17-3270] [Entered: 11/07/2017 03:21 PM]
11/07/2017	<u>4</u>	INSTRUCTIONAL FORMS, to Pro Se litigant, SENT.[2166814] [17-3270] [Entered: 11/07/2017 03:23 PM]
11/27/2017	<u>8</u>	ORDER, dated 11/27/2017, dismissing appeal by 12/18/2017, unless Appellant Bobbie Lee Adams, III, submits Form D-P, FILED.[2179622] [17-3270] [Entered: 11/27/2017 12:37 PM]
11/27/2017	<u>9</u>	ORDER, dated 11/27/2017, dismissing appeal by 12/18/2017, unless Appellant Bobbie Lee Adams, III, submits acknowledgment and notice of appearance, FILED.[2179633] [17-3270] [Entered: 11/27/2017 12:40 PM]
11/29/2017	<u>10</u>	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Party Bobbie Lee Adams, III, FILED. Service date 11/21/2017 by US mail.[2181960] [17-3270] [Entered: 11/29/2017 11:37 AM]
11/29/2017	<u>11</u>	FORM D-P, on behalf of Appellant Bobbie Lee Adams, III, FILED. Service date 11/21/2017 by US mail.[2181962] [17-3270] [Entered: 11/29/2017 11:37 AM]
11/29/2017	<u>12</u>	LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellant Bobbie Lee Adams, III, informing Court of proposed due date 01/30/2018, RECEIVED. Service date 11/21/2017 by US mail.[2181964] [17-3270] [Entered: 11/29/2017 11:38 AM]
11/29/2017	<u>13</u>	PAPERS, Local 24.1 Statement Form, on behalf of Appellant Bobbie Lee Adams, RECEIVED.[2181968] [17-3270] [Entered: 11/29/2017 11:40 AM]
11/29/2017	<u>14</u>	NOTICE, to Appellee Netflix, Inc., regarding a corporation proceeding Pro Se, and requesting a response 30 days from the date of this letter, SENT.[2181978] [17-3270] [Entered: 11/29/2017 11:44 AM]
12/12/2017	<u>18</u>	NEW CASE MANAGER, Dana Ellwood, copy to pro se appellant and appellee, ASSIGNED.[2192355] [17-3270] [Entered: 12/12/2017 12:08 PM]
12/13/2017	<u>21</u>	LOCAL RULE 31.2 NOTICE, placing this appeal on the Court's Expedited Calendar, setting appellant's brief due date as 01/17/2018, appellee's brief due date as 02/21/2018, copy to pro se parties,TRANSMITTED.[2193095] [17-3270] [Entered: 12/13/2017 10:01 AM]
12/27/2017	<u>22</u>	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee Netflix, Inc., FILED. Service date 12/27/2017 by US mail. [2202018] [17-3270] [Entered: 12/27/2017 02:51 PM]
12/28/2017	23	ATTORNEY, Tonia Klausner for Netflix, Inc., in case 17-3270 , [22], ADDED.[2202604] [17-3270] [Entered: 12/28/2017 10:43 AM]
12/28/2017	<u>24</u>	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee Netflix, Inc., FILED. Service date 12/28/2017 by US mail.[2202643] [17-3270] [Entered: 12/28/2017 11:02 AM]
01/17/2018	<u>25</u>	BRIEF, on behalf of Appellant Bobbie Lee Adams, III, FILED. Service date 01/13/2018 by US mail. [2217016] [17-3270] [Entered: 01/19/2018 11:34 AM]
01/17/2018	26	APPENDIX, not filed pursuant to LR 30.1(e), EXEMPTED.[2217019] [17-3270] [Entered: 01/19/2018 11:36 AM]

02/21/2018	<u>33</u>	BRIEF, on behalf of Appellee Netflix, Inc., FILED. Service date 02/21/2018 by US mail. [2240371] [17-3270] [Entered: 02/21/2018 01:22 PM]
03/08/2018	<u>36</u>	CASE CALENDARING, for the week of 06/04/2018, PROPOSED.[2252424] [17-3270] [Entered: 03/08/2018 03:40 PM]
03/13/2018	<u>38</u>	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Tonia Klausner, Esq. for Appellee Netflix, Inc., FILED. Service date 03/13/2018 by US mail. [2255314] [17-3270] [Entered: 03/13/2018 10:59 AM]
03/20/2018	<u>40</u>	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Appellant Bobbie Lee Adams, III, FILED. Service date 03/14/2018 by US mail. [2262280] [17-3270] [Entered: 03/22/2018 11:33 AM]
04/04/2018	<u>42</u>	CASE CALENDARING, for argument on 06/06/2018, SET.[2271747] [17-3270] [Entered: 04/04/2018 02:26 PM]
04/04/2018	<u>43</u>	ARGUMENT NOTICE, to attorneys/parties, copy sent to pro se, TRANSMITTED.[2271889] [17-3270] [Entered: 04/04/2018 03:14 PM]
04/09/2018	<u>44</u>	NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellee Netflix, Inc., FILED. Service date 04/09/2018 by CM/ECF, US mail. [2274407] [17-3270] [Entered: 04/09/2018 10:37 AM]
05/29/2018	<u>48</u>	MOTION, to file a written argument in lieu of oral argument, on behalf of Appellant Bobbie Lee Adams, III, FILED. Service date 05/25/2018 by US mail.[2314112] [17-3270] [Entered: 05/30/2018 04:24 PM]
06/01/2018	<u>53</u>	MOTION ORDER, granting motion to file a written argument in lieu of oral argument[48] filed by Appellant Bobbie Lee Adams, III, FILED. Copy to Pro Se [2316038][53] [17-3270] [Entered: 06/01/2018 02:24 PM]
06/06/2018	<u>55</u>	CASE, to JAC, GEL, SLC, SUBMITTED.[2319123] [17-3270] [Entered: 06/06/2018 12:51 PM]
06/07/2018	<u>57</u>	NEW CASE MANAGER, Yana Segal, ASSIGNED.[2319800] [17-3270] [Entered: 06/07/2018 09:34 AM]
06/07/2018	<u>58</u>	SUMMARY ORDER AND JUDGMENT, affirming judgment of the district court, by JAC, GEL, SLC, copy to pro se, FILED.[2319807] [17-3270] [Entered: 06/07/2018 09:38 AM]
06/28/2018	<u>60</u>	JUDGMENT MANDATE, ISSUED.[2334600] [17-3270] [Entered: 06/28/2018 11:44 AM]

## Appendix B.

1. Order granting leave to proceed in forma pauperis, but dismissing the action.
2. Recommended ruling.

**Orders on Motions****3:17-cv-01468-SRU Adams v. Netflix HQ****MOTREF, PROSE, WIG****U.S. District Court****United States District Court for the District of Connecticut****Notice of Electronic Filing**

The following transaction was entered on 9/18/2017 at 3:57 PM EDT and filed on 9/18/2017

**Case Name:** Adams v. Netflix HQ**Case Number:** 3:17-cv-01468-SRU**Filer:****Document Number:** 7(No document attached)**Docket Text:**

**ORDER granting [2] Motion for Leave to Proceed in forma pauperis based on the financial information provided, but for the reasons set forth in the Recommended Ruling filed herewith, the Undersigned recommends that this action be dismissed under 28 U.S.C. sec. 1915(e)(2)(b). Signed by Judge William I. Garfinkel on 9/18/17. (Cates, S)**

**3:17-cv-01468-SRU Notice has been electronically mailed to:****3:17-cv-01468-SRU Notice has been delivered by other means to:**

Bobbie L. Adams, III  
113 Oneco St.  
Norwich, CT 06360

**Other Orders/Judgments**

3:17-cv-01468-SRU Adams v. Netflix HQ

MOTREF, PROSE, WIG

**U.S. District Court****United States District Court for the District of Connecticut****Notice of Electronic Filing**

The following transaction was entered on 9/18/2017 at 3:58 PM EDT and filed on 9/18/2017

**Case Name:** Adams v. Netflix HQ

**Case Number:** 3:17-cv-01468-SRU

**Filer:**

**Document Number:** 8

**Docket Text:**

**RECOMMENDED RULING :** For the reasons set forth in the attached Recommended Ruling, the Undersigned recommends that Plaintiff's complaint be dismissed under 28 U.S.C. sec. 1915(e)(2) (B). This is a Recommended Ruling. Any objection must be filed within 14 days after service. Objections due by 10/2/2017.

Signed by Judge William I. Garfinkel on 9/18/17.(Cates, S)

3:17-cv-01468-SRU Notice has been electronically mailed to:

3:17-cv-01468-SRU Notice has been delivered by other means to:

Bobbie L. Adams, III  
113 Oneco St.  
Norwich, CT 06360

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1034868047 [Date=9/18/2017] [FileNumber=5112166-0]  
] [b04f6286f0febd9b344c3012d346e704bb070ff77ee6fd954310e10609f8f7e6da7  
d00e3de5facdbdce03087781eb4f816f0ede5dae05c24258bc18b34ec8368]]

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

BOBBIE L. ADAMS,

Plaintiff,

v.

No. 3:17-cv-1468(SRU)(WIG)

NETFLIX HQ,

Defendant.

X

**RECOMMENDED RULING OF DISMISSAL**

Plaintiff Bobbie L. Adams brings this action against Netflix HQ. Now before the Court is Plaintiff's motion for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. §1915. [Doc. #2]. For the reasons that follow, Plaintiff's motion is granted, but the Court recommends this matter be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Applications to proceed *in forma pauperis* require a two-step process of review by the district court. *See Bey v. Syracuse Univ.*, 155 F.R.D. 413, 413 (N.D.N.Y. 1994). First, the Court must determine whether the litigant qualifies to proceed *in forma pauperis* based upon economic status. 28 U.S.C. §1915. Based upon review of Plaintiff's financial affidavit, the motion to proceed *in forma pauperis* is granted.

Second, the Court must determine whether the cause of action is frivolous, malicious, or without merit. 28 U.S.C. §1915(e)(2)(B). This Court "*shall dismiss* the case at any time if the court determines that...the action (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." *Id.* (emphasis added). The term "frivolous" is not intended to be insulting or demeaning; it is a term of art that has a precise meaning. A claim is said to be frivolous if it does

not have an arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The Court, by using this term as required, does not intend to diminish what the plaintiff has experienced.

When a plaintiff appears *pro se*, the complaint must be construed liberally in the plaintiff's favor and must be held to a less stringent standard than formal pleadings drafted by lawyers. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). It is well established that "[t]he power to dismiss *sua sponte* must be reserved for cases in which a *pro se* complaint is so frivolous that, construing the complaint under the liberal rules applicable to *pro se* complaints, it is unmistakably clear that the court lacks jurisdiction or that the claims are lacking in merit." *Mendlow v. Seven Locks Facility*, 86 F. Supp. 2d 55, 57 (D. Conn. 2000).

Federal courts are courts of limited jurisdiction. U.S. Const., Art. III. In order for this Court to exercise subject matter jurisdiction, either (1) the plaintiff must set forth a colorable claim arising under the U.S. Constitution or a federal statute, thus invoking this Court's federal question jurisdiction under 28 U.S.C. § 1331; or (2) there must be complete diversity of citizenship between the plaintiff and the defendant and the amount in controversy must exceed \$75,000 under 28 U.S.C. § 1332. *See DaSilva v. Kinsho Int'l Corp.*, 229 F.3d 358, 363 (2d Cir. 2000) (identifying and discussing the two categories of subject matter jurisdiction). "If the court determines at any time that it lacks subject-matter jurisdiction, the court *must* dismiss the action." Fed. R. Civ. P. 12(h)(3) (emphasis added). Thus, where jurisdiction is lacking, dismissal is mandatory. *Lydonville Sav. Bank & Trust Co. v. Lussier*, 211 F.3d 697, 700-01 (2d Cir. 2000); *Manway Constr. Co. v. Housing Auth. of Hartford*, 711 F.2d 501, 503 (2d Cir. 1983).

Here, although Plaintiff invokes both categories of subject matter jurisdiction, the Court finds that jurisdiction is lacking. As to federal question jurisdiction, the complaint does not

allege a claim arising under federal law. The complaint alleges violations of the United States Constitution, but such claims are not colorable: the defendant in this case is a private entity, and constitutional claims require government action. *See Profitt v. Freedman*, No. 3:17-CV-0715LEKDEP, 2017 WL 3835867, at \*3 (N.D.N.Y. Aug. 8, 2017), *report and recommendation adopted*, No. 3:17-CV-715LEKDEP, 2017 WL 3731902 (N.D.N.Y. Aug. 29, 2017) (“Where a plaintiff fails to allege the requisite governmental action on the part of the defendants named in a complaint, the court may dismiss the action under 28 U.S.C. § 1915(e).”). Because Netflix is not a government agency, the constitutional claims fail.

Additionally, though the complaint lists federal statutes as the basis for federal question jurisdiction, none of the statutes listed applies here. 18 U.S.C.A. § 1341, the criminal mail fraud statute, does not provide for a private right of action. *Ghawi v. Law Offices Howard Lee Schiff, P.C.*, No. 3:13-CV-115 JBA, 2014 WL 6885141, at \*6 (D. Conn. Dec. 1, 2014) (“Section 1341 ... provides for criminal penalties for violations and does not create a private right of action.”). 15 U.S.C.A § 1601, which relates to consumer credit transactions, is inapplicable because the complaint does not allege the use of credit. In all, the complaint does not permit the court to exercise federal question jurisdiction.

The complaint also does not satisfy the requirements of diversity jurisdiction. Although there may be complete diversity of citizenship between the parties, the amount in controversy requirement is not met in this case. Federal diversity jurisdiction requires an amount in controversy of at least \$75,000. 28 U.S.C. 1332(a). The amount in controversy “is measured as of the time that a complaint is filed, and it is established by the face of the complaint and the dollar amount actually claimed.” *Lapaglia v. Transamerica Cas. Ins. Co.*, 155 F. Supp. 3d 153, 154–55 (D. Conn. 2016) (internal citations omitted). The complaint, however, “must allege facts



in a non-conclusory manner that plausibly establish grounds for relief.” *Id.* at 155 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

The Second Circuit has explained that “the sum claimed by the plaintiff controls if the claim is apparently made in *good faith*. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.” *Chase Manhattan Bank, N.A. v. Am. Nat. Bank & Tr. Co. of Chicago*, 93 F.3d 1064, 1070 (2d Cir. 1996). Here, the complaint alleges that Netflix wrongly charged Plaintiff’s checking account for \$21.16 after he had cancelled his subscription. The complaint seeks to recover that amount, plus \$50,000.00 for pain and suffering and \$25,000.00 in punitive damages. It is unlikely that an actual injury of \$21.16 would give rise to \$75,000.00 of additional damages, and Plaintiff has not pleaded a good faith basis for how that amount was arrived upon. Thus, the Court does not find that there is a reasonable probability that this case has damages sufficient to satisfy the amount in controversy necessary for diversity jurisdiction. *See Nanya-Amir El v. 2000 New Century Travel Inc.*, No. 09-CV-798 (DLI), 2009 WL 899679, at \*1-2 (E.D.N.Y. Mar. 27, 2009) (holding that because plaintiff did not provide a good faith basis for the damages claimed, the amount in controversy requirement was not met).

For the reasons set forth above, the Court recommends that this matter be dismissed for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1915(e)(2)(B). This is a Recommended Ruling. *See* Fed. R. Civ. P. 72(b)(1). Any objection to this Recommended Ruling should be filed within 14 days after service. *See* Fed. R. Civ. P. 72(b)(2).

SO ORDERED, this 18<sup>th</sup> day of September, 2017, at Bridgeport, Connecticut.

/s/ William I. Garfinkel  
WILLIAM I. GARFINKEL  
United States Magistrate Judge