NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2782

JEROME L. GRIMES,
Appellant

v.

AVIS BUDGET GROUP

On Appeal from the United States District Court for
the District of New Jersey
(D.C. Civil Action No. 2-18-cv-01936)
District Judge: Honorable Susan D. Wigenton

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 22, 2019

Before: KRAUSE, SCIRICA and NYGAARD, Circuit Judges

(Opinion filed January 28, 2019)

OPINION[1]

PER CURIAM

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

Jerome L. Grimes appeals the dismissal of his action for failure to state a claim. For the following reasons, we will affirm.

Because the parties are familiar with the history and facts of the case, we will recount the events in a summary fashion. This action arises from the rental of a car by Grimes from Avis Budget Group, Inc., sometime around December 2014. According to Grimes, Avis used "live human hostages" as bait in order to trick him into rendering emergency assistance to a person. Grimes maintains this was an elaborate ruse designed to separate him from his vehicle, which was subsequently impounded. Grimes alleges he left some property in the vehicle, valued at more than $10,000, which he attempted to retrieve from Avis's rental vehicle distribution yard at DFW International Airport in early March 2015. He maintains he was unsuccessful, as an Avis employee allegedly advised airport police that Grimes was a criminal trespasser with no legal business at the facility. Grimes subsequently brought suit.

After Grimes was given leave to amend his complaint, he alleged various causes of action against Avis, including conspiracy, "covert terror actions," defamation, intimidation, kidnapping, and theft. Avis filed a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The District Court granted the motion, determining that Grimes had failed to allege sufficient facts to support his claims, while also holding his defamation claim was time-barred. Additionally, the District Court took judicial notice of the fact that this was the fourth lawsuit Grimes had filed based on the same set

of facts, and that it was highly unlikely Grimes would be able to further amend his complaint to state a viable cause of action. Thus, the District Court dismissed the amended complaint with prejudice. Grimes appealed.

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We have jurisdiction to review the District Court's order pursuant to 28 U.S.C. § 1291. We review the District Court's grant of the motion to dismiss pursuant to Rule 12(b)(6) de novo. Newark Cab Ass'n v. City of Newark, 901 F.3d 146, 151 (3d Cir. 2018). "To survive a motion to dismiss, a complaint must contain sufficient factual allegations, taken as true, to 'state a claim to relief that is plausible on its face.'" Fleisher v. Standard Ins., 679 F.3d 116, 120 (3d Cir. 2012) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). We accept all factual allegations in the complaint as true and construe those facts in the light most favorable to the plaintiff. Id. Although pro se complaints are held to "'less stringent standards than formal pleadings drafted by lawyers,'" pro se litigants are still required to assert sufficient facts in their complaints to support a claim. Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 244–45 (3d Cir. 2013) (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)).

Upon our review of the amended complaint, we come to the same conclusion as the District Court. As noted above, Grimes asserted various causes of action against Avis, which he brought under "U.S.C. 28" and the First Amendment. He does not elaborate on these claims in any meaningful manner. See Dkt. #11. Rather, he generally alleges Avis harmed him in various ways while providing no detail on those alleged harms, which is insufficient to state a claim. See Ashcroft v. Iqbal, 556 U.S. 662, 678

(2009) (noting that, while the pleading standard of Rule 8 does not require "'detailed factual allegations,'" it requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation," and that a complaint is insufficient "if it tenders 'naked

assertions' devoid of 'further factual enhancement'" (alteration omitted) (quoting Twombly, 550 U.S. at 557)). For example, his allegation of defamation—which is apparently based on the employee who notified airport police that Grimes was a criminal trespasser with no legal business at the facility—is nothing but a bare assertion.[1] Moreover, his allegations, as described above, do not state a *plausible* claim for relief. See id. at 679 ("Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."); cf. Denton v. Hernandez, 504 U.S. 25, 33 (1992) (ruling that a court may dismiss a complaint when the facts alleged are "wholly incredible").

On appeal, Grimes argues he has stated a plausible claim for relief "under defamation violations protected by the [Fourth] Amendment." Appellant's Br. 31. He further contends that the statute of limitations has been tolled pursuant to "Civil Code of Procedure 335" and the Sixth Amendment. Appellant's Br. 31, 46. As to the various

[1] Because we will affirm the District Court's conclusion that Grimes has failed to state a plausible claim for relief, we need not reach its alternative conclusion that his defamation claim was time-barred.

other causes of action, Grimes generally alleges he has stated sufficient facts to support his claims, and also alleges new facts.[2] These arguments and facts were not presented to

the District Court, and thus we need not address them. See In re Capital Cities/ABC, Inc.'s Application for Access to Sealed Transcripts, 913 F.2d 89, 96 (3d Cir. 1990) (noting we will only consider on appeal the record and facts that were also presented to the District Court). Regardless, even if Grimes had presented these arguments and facts to the District Court, it would not change our conclusion that he has failed to state a plausible claim for relief. See Fleisher, 679 F.3d at 120.

Finally, we agree with the District Court's determination that allowing any further amendment to the complaint would fail to cure the deficiencies in Grimes's pleadings, as this is his fourth suit based on the same alleged facts. It is evident Grimes has been given

[2] On appeal, he appears to allege, among other things, that a police officer "used reverse psychology without a psychology degree" with "covert terror intent," that he was imprisoned for 60 days due to an "inside job[]" by a "public defender covert post-9/11 terrorist," and that Avis employees "abused their authority, conspired, and invaded" his privacy with "illegal technology" and terroristic intent to steal his property left in the

the opportunity, on more than one occasion, to pursue his claims. We conclude his pursuit in this case was rightfully ended by the District Court.

Accordingly, for the foregoing reasons, we will affirm the District Court's judgment.[3]

rented vehicle. Appellant's Br. 2–16.

[3] We also grant both Avis's motion to file a supplemental appendix and Grimes's motion to file a supplemental addendum to the appendix.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEROME L. GRIMES,

Plaintiff,

v.

AVIS BUDGET GROUP, INC.,

Defendant.

Civil Action No: 18-1936 (SDW) (LDW)

ORDER

July 10, 2018

WIGENTON, District Judge.

This matter, having come before this Court on Defendant Avis Budget Group, Inc.'s ("Defendant") Motion to Dismiss *pro se* Plaintiff Jerome L. Grimes' Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), and this Court having considered the parties' submissions, and for the reasons stated in this Court's Letter Opinion dated July 10, 2018,

IT IS on this 10th day of July, 2018

ORDERED that Defendant's Motion to Dismiss is **GRANTED**.

s/ Susan D. Wigenton
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

Orig: Clerk cc: Leda
Dunn Wettre, U.S.M.J.
Parties

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF MARTIN LUTHER KING COURTHOUSE **SUSAN D. WIGENTON**
UNITED STATES DISTRICT JUDGE

50 WALNUT ST.
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July 10, 2018

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LETTER OPINION FILED WITH THE CLERK OF THE COURT

Re: Grimes v. Avis Budget Group, Inc.
Civil Action No. 18-1936 (SDW) (LDW)

Litigants:

Before this Court is Defendant Avis Budget Group, Inc.'s ("Defendant") Motion to Dismiss *pro se* Plaintiff Jerome L. Grimes' ("Plaintiff") Amended Complaint pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6). Jurisdiction is proper pursuant to 28 U.S.C. § 1332. Venue is proper pursuant to 28 U.S.C. § 1391. This opinion is issued without oral argument pursuant to Rule 78. For the reasons discussed below, Defendant's Motion to Dismiss is **GRANTED**.

I. BACKGROUND AND PROCEDURAL HISTORY

This matter arises from Plaintiff's attempt to retrieve personal items that he left in Defendant's rental car. (*See generally* Am. Compl., ECF No. 11.) The Amended Complaint does not specify the rental period; however, Plaintiff states that he was "separated" from the vehicle on December 14, 2014. (*Id.* at 4.) Between December 14, 2014 and February 4, 2015, the car was held at Shreveport City Police Department's Automobile Impound Facility. (*Id.*) On or about February 4, 2015, the car was released to Defendant. (*Id.* at 4-5.) This Court understands the Amended Complaint to allege that, on March 2, 2015, Plaintiff went to Defendant's rental vehicle distribution yard at Dallas/Fort Worth International Airport to retrieve certain items that were left

in the car, which included a "wall vault security safe" and "smaller valuable items[.]" (*Id.* at 2-3.) Defendant's employee, Christopher Shultz, purportedly advised airport police officers that Plaintiff was a criminal trespasser with no legal business at the facility. (*Id.* at 2.) Plaintiff alleges that Defendant's employees stole his personal property, which he values at more than $10,000. (*Id.*)

On February 7, 2018, Plaintiff filed a Complaint in the instant matter. (ECF No. 1.) On April 18, 2018, Defendant filed a Motion to Dismiss. (ECF No. 10.) On April 27, 2018, Plaintiff filed an Amended Complaint; as a result, on May 7, 2018, Magistrate Judge Leda Dunn Wettre terminated Defendant's motion without prejudice with leave to refile. (ECF Nos. 11, 14.) The Amended Complaint lists various allegations against Defendant, including, conspiracy, "covert terror actions[,]" defamation, intimidation, kidnapping, and theft. (ECF No. 11 at 2-3.) On May 22, 2018, Defendant filed the instant Motion to Dismiss the Amended Complaint. (ECF No. 15.) Plaintiff opposed the motion on June 8, 2016. (ECF No. 16.)

II. STANDARD OF REVIEW

To survive a motion to dismiss under Rule 12(b)(6), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This Rule "requires 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[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted); *see also Phillips v. Cty. of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (stating that Rule 8 "requires a 'showing,' rather than a blanket assertion, of an entitlement to relief"). In considering a motion to dismiss under Rule 12(b)(6), a court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips*, 515 F.3d at 231 (citation omitted). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Fowler v. UPMC Shadyside*, 578 F.3d 203 (3d Cir. 2009) (discussing the *Iqbal* standard).

III. DISCUSSION

Pro se complaints, "however inartfully pleaded, are . . . [held] to less stringent standards than formal pleadings drafted by lawyers[.]" *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nevertheless, "even 'a pro se complaint must state a plausible claim for relief.'" *Yoder v. Wells Fargo Bank, N.A.*, 566 F. App'x. 138, 141 (3d Cir. 2014) (quoting *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013)); *see also Martin v. U.S. Dep't of Homeland Sec.*, No. 17-3129, 2017 WL 3783702, at *3 (D.N.J. Aug. 30, 2017). Although Rule 8 does not require detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. Here, Plaintiff's factual allegations are insufficient to support his claims for conspiracy, defamation, kidnapping, or theft[1]. Furthermore, Plaintiff has failed to

[1] This Court notes that pursuant to the Amended Complaint, Plaintiff's "wall vault security safe" was returned to him in June 2015. (Am. Compl. at 3.) Additionally, it is unclear what "smaller valuable items" were allegedly stolen.

viable causes of action based on his allegations of intimidation and "covert terror actions." Therefore, the Amended Complaint is dismissed because it fails to state a claim upon which relief can be granted.

This Court also notes that under the laws of both New Jersey and Texas, a claim for defamation is subject to a one-year statute of limitations. N.J. Stat. Ann. § 2A:14-3 ("Every action at law for libel or slander shall be commenced within 1 year next after the publication of the alleged libel or slander."); Tex. Civ. Prac. & Rem. Code Ann. § 16.002 (West 2017) ("A person must bring suit for . . . libel [or] slander . . . not later than one year after the day the cause of action accrues."). Here, Plaintiff alleges that he was defamed in March 2015 when Defendant's employee advised an airport police officer that Plaintiff was a criminal trespasser. (Am. Compl. at 2.) Because the alleged defamation occurred nearly three years before Plaintiff filed his Complaint in February 2018, the cause of action must be dismissed as time-barred.

IV. CONCLUSION

For the reasons discussed herein, Defendant's Motion to Dismiss is **GRANTED**, and Plaintiff's Amended Complaint is dismissed with prejudice.[2] An appropriate Order follows.

/s/ Susan D. Wigenton

SUSAN D. WIGENTON, U.S.D.J

Orig: Clerk cc:
Parties
Leda D. Wettre, U.S.M.J.

[2] This Court takes judicial notice of Plaintiff's three prior lawsuits, which were based on the same March 2, 2015 incident, because they are referenced in the Amended Complaint and are matters of public record. *See Guidotti v. Legal Helpers Debt Resolution*, 716 F.3d 764, 772 (3d Cir. 2013) (citation omitted) (explaining that a court may consider exhibits attached to the complaint and matters of public record on a motion to dismiss). Specifically, on March 26, 2015, Plaintiff filed suit against Defendant's employees in the Northern District of Texas. (*See* Am. Compl. at 5.) The case was dismissed without prejudice based on Plaintiff's failure to prosecute or comply with court orders to pay the filing fee. (Judgment, *Grimes v. Shultz*, No. 15-cv-951 (N.D. Tex. May 28, 2015), ECF No. 14.) On February 29, 2016, Plaintiff filed a complaint against Defendant in the District of New Jersey. (*See* Am. Compl. at 5.) By Order dated May 6, 2016, this Court dismissed Plaintiff's complaint with prejudice for failure to state a claim upon which relief may be granted. (Order, *Grimes v. Avis Budget Grp.*, No. 16-1281 (D.N.J. May 6, 2016), ECF No. 5.) On July 11, 2017, Plaintiff filed another complaint in the Northern District of Texas against Defendants Avis, Budget, and (Payless) Group Inc. (*See* Am. Compl. at 5.) The district court dismissed Plaintiff's complaint without prejudice for want of prosecution. (Judgment, *Grimes v. Avis*, No. 17-1820 (N.D. Tex. Nov. 30, 2017), ECF No. 11.) Whereas this is the fourth suit that Plaintiff has initiated based on the same circumstances, there is nothing to suggest that any further amendments would cure the deficiencies in Plaintiff's pleadings.