

**UNPUBLISHED**

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

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**No. 20-1107**

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DERRICK ALLEN,

Plaintiff - Appellant,

v.

TRI-LIFT NORTH CAROLINA, INC.; BOB BONDS, President; KAREN BONDS,  
Office Manager; NICKOL HAINES, Resource Manager; HAILEY FULLER,  
Receptionist,

Defendants - Appellees.

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Appeal from the United States District Court for the Middle District of North Carolina, at  
Greensboro. Thomas D. Schroeder, Chief District Judge. (1:19-cv-00851-TDS-JEP)

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Submitted: May 19, 2020

Decided: May 21, 2020

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Before NIEMEYER, HARRIS, and RICHARDSON, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Derrick Michael Allen, Sr., Appellant Pro Se. Denis E. Jacobson, Daniel D. Stratton,  
TUGGLE DUGGINS, PA, Greensboro, North Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Allen appeals the district court's order dismissing his 42 U.S.C. § 1983 (2018) complaint for lack of subject-matter jurisdiction. We have reviewed the record and find no reversible error. Accordingly, we deny Allen's motion to appoint counsel and affirm for the reasons stated by the district court. *Allen v. Tri-Lift N.C., Inc.*, No. 1:19-cv-00851-TDS-JEP (M.D.N.C. Jan. 7, 2020). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

FILED: May 21, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUITNo. 20-1107, Derrick Allen v. Tri-Lift North Carolina, Inc.  
1:19-cv-00851-TDS-JEP

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NOTICE OF JUDGMENT

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Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. ([www.supremecourt.gov](http://www.supremecourt.gov))

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:**

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov), or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

**PETITION FOR REHEARING AND PETITION FOR REHEARING EN**

**BANC:** A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

**MANDATE:** In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

**U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM**  
(Civil Cases)

**Directions:** Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$500 (effective 12/1/2013). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
- Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: \_\_\_\_\_

Prevailing Party Requesting Taxation of Costs: \_\_\_\_\_

<b>Appellate Docketing Fee (prevailing appellants):</b>			<b>Amount Requested:</b> _____			<b>Amount Allowed:</b> _____	
<b>Document</b>	<b>No. of Pages</b>		<b>No. of Copies</b>		<b>Page Cost (≤\$.15)</b>	<b>Total Cost</b>	
	<b>Requested</b>	<b>Allowed (court use only)</b>	<b>Requested</b>	<b>Allowed (court use only)</b>		<b>Requested</b>	<b>Allowed (court use only)</b>
<b>TOTAL BILL OF COSTS:</b>						<b>\$0.00</b>	<b>\$0.00</b>

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Certificate of Service**

I certify that on this date I served this document as follows:

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

FILED: May 21, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-1107  
(1:19-cv-00851-TDS-JEP)

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DERRICK ALLEN

Plaintiff - Appellant

v.

TRI-LIFT NORTH CAROLINA, INC.; BOB BONDS, President; KAREN  
BONDS, Office Manager; NICKOL HAINES, Resource Manager; HAILEY  
FULLER, Receptionist

Defendants - Appellees

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J U D G M E N T

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In accordance with the decision of this court, the judgment of the district  
court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in  
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DERRICK ALLEN, )  
)  
Plaintiff, )  
)  
v. ) 1:19cv851  
)  
TRI-LIFT NORTH CAROLINA, INC., )  
NICKOL HAINES, HAILEY FULLER, )  
BOB BOND, and KAREN BOND, )  
)  
Defendants. )

**MEMORANDUM ORDER**

Plaintiff Derrick Allen, proceeding *pro se*, brings this action against Defendants Tri-Lift North Carolina, Inc., Nickol Haines, Hailey Fuller, Bob Bond, and Karen Bond for alleged violation of Allen's civil rights pursuant to 42 U.S.C. § 1983. Before the court is Defendants' motion to dismiss for lack of subject-matter jurisdiction and failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6), respectively. (Doc. 12.)

According to the allegations of Allen's complaint, viewed in the light most favorable to him, he participated in a forklift training course held by Tri-Lift on July 18, 2019. (Doc. 1 at 4.) He paid \$150 to participate in the course, but he never received the certificate from Defendants indicating that he completed the training. (*Id.*) Bob Bond is the president of Tri-Lift, and the other named Defendants are managers and employees of the company.

(Id. at 2-3.) The complaint seeks compensation from Defendants for Allen's mental anguish and punitive damages for Defendants' failure to provide him with the training certificate. (Id. at 6.) The complaint asserts that Allen is a citizen of Durham County in North Carolina and that the Defendants, including Tri-Lift, are all citizens of North Carolina. (Id. at 2-3.)

On August 20, 2019, Allen filed this complaint asserting a violation of his civil rights pursuant to 42 U.S.C. § 1983. (Id. at 3.) On the complaint form, Allen checked the box indicating that he was bringing suit against state or local officials (as opposed to federal officials). (Id. at 3.) On September 13, Defendants filed the present motion to dismiss. (Docs. 12, 13.) The court issued Allen a Roseboro notice,<sup>1</sup> indicating that Allen had a right to file a 20-page response. Allen timely filed an opposition brief (Docs. 15, 16), and Defendants filed a reply. (Doc. 17.)

## **I. ANALYSIS**

Defendants argue that the court lacks subject-matter jurisdiction to consider Allen's claims and so the complaint should be dismissed. In the alternative, they argue that Allen has failed to state a claim as a matter of law, which likewise merits dismissal of the complaint.

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<sup>1</sup> See Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975).

A court must consider its subject matter jurisdiction as a "threshold matter" prior to addressing the merits of the case. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998). "The plaintiff has the burden of proving that subject matter jurisdiction exists." Evans v. B.F. Perkins Co., a Div. of Standex Int'l Corp., 166 F.3d 642, 647 (4th Cir. 1999) (citing Richmond, Fredericksburg & Potomac R.R. Co. v. United States, 945 F.2d 765, 768 (4th Cir. 1991)). When a defendant argues that a complaint fails to allege any facts establishing subject-matter jurisdiction, a 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction is evaluated under the same standard of review as a 12(b)(6) motion to dismiss. Adams v. Bain, 697 F.2d 1213, 1219 (4th Cir. 1982). Under Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556). In considering the motion, a court "must accept as true all of the factual allegations contained in the complaint," Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), and all reasonable inferences must be drawn in the plaintiff's favor.

Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997). Mere legal conclusions are not accepted as true, however, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678.

The court is mindful that Allen proceeds *pro se* and is therefore entitled to a liberal construction of his complaint. See Hall-El v. United States, No. 1:11CV1037, 2013 WL 1346621, at \*2 (M.D.N.C. Apr. 3, 2013) (citing Erickson, 551 U.S. at 94). But while the court must construe a *pro se* complaint liberally, it is not obliged to become an advocate for the unrepresented party, Weller v. Dep't of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990), or "to construct full blown claims from sentence fragments," Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

Federal district courts are courts of limited jurisdiction, possessing "only that power authorized by Constitution and statute." Exxon-Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 552 (2005) (quoting Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)). This court has jurisdiction over suits involving federal questions, 28 U.S.C. § 1331, and suits between citizens of different states when the amount in controversy exceeds \$75,000, 28 U.S.C. § 1332.

Allen does not allege a claim involving a federal question because he has not made out a proper claim under 42 U.S.C. § 1983.

A claim invoking federal question jurisdiction "may be dismissed for want of subject-matter jurisdiction if it is not colorable, i.e., if it is 'immaterial and made solely for the purpose of obtaining jurisdiction' or is 'wholly insubstantial and frivolous.'" Arbaugh v. Y&H Corp., 546 U.S. 500, 513 n.10 (2006) (quoting Bell v. Hood, 327 U.S. 678, 682-83 (1946)).

In a § 1983 action, "[t]he person charged must either be a state actor or have a sufficiently close relationship with state actors such that a court would conclude that the non-state actor is engaged in the state's actions." DeBauche v. Trani, 191 F.3d 499, 506 (4th Cir. 1999). Thus, "private action must have a 'sufficiently close nexus' with the state that the private action 'may be fairly treated as that of the State itself.'" Id. at 507 (quoting Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 51 (1999)).

Allen has not alleged any facts indicating that Defendants are state actors, other than a conclusory allegation that Defendants "act[ed] under color of law." (Doc. 1 at 4.) Since this legal conclusion is not accepted as true, the court concludes that Defendants' actions as alleged constitute private action that does not implicate § 1983. Thus, the court lacks federal question jurisdiction.<sup>2</sup>

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<sup>2</sup> To the extent Allen claims that the Seventh Amendment gives him a cause of action in this case (Doc. 1 at 4), he is incorrect. See Jean-Paul

The court likewise lacks diversity jurisdiction. Title 28, United States Code, section 1332 requires that a plaintiff be a citizen of a different state than the defendants. Allen's complaint alleges that all parties involved in this suit are citizens of North Carolina. In his opposition brief, Allen confirms this, stating that he resides in Durham County, North Carolina, and that all defendants are citizens of Greensboro, North Carolina. (Doc. 15 at 1.) Additionally, Allen has not alleged an amount in controversy in excess of \$75,000. See 28 U.S.C. § 1332(b). He paid \$150 for the forklift training course and seeks compensatory damages for "mental anguish" and "punitive damages in accordance with federal law." (Doc. 1 at 6.) Nowhere does he allege that these damages exceed \$75,000. Thus, the court lacks diversity jurisdiction over this case.

For these reasons, the court lacks authority to decide Allen's claims. It is therefore unnecessary to address Defendants' alternative argument that Allen has failed to state a claim upon which relief can be granted. Dismissal will be without prejudice so that Allen may pursue his rights in an appropriate (state) court with jurisdiction to address them.

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v. Wells Fargo Nat'l Ass'n, No. 1:15cv00682, 2015 WL 5774715, at \*2 (M.D.N.C. Sept. 30, 2015) (noting that the Seventh Amendment does not provide a standalone federal cause of action).

## II. CONCLUSION

For the reasons stated,

IT IS THEREFORE ORDERED that Defendants' motion to dismiss (Doc. 12) is GRANTED, and the complaint is DISMISSED WITHOUT PREJUDICE.

/s/ Thomas D. Schroeder  
United States District Judge

January 7, 2020

FILED: June 23, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-1107  
(1:19-cv-00851-TDS-JEP)

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DERRICK ALLEN

Plaintiff - Appellant

v.

TRI-LIFT NORTH CAROLINA, INC.; BOB BONDS, President; KAREN BONDS, Office Manager; NICKOL HAINES, Resource Manager; HAILEY FULLER, Receptionist

Defendants - Appellees

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O R D E R

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The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk