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NOT RECOMMENDED FOR PUBLICATION

No. 22-1083

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GANIYU AYINLA)	
JAIYEOLA,	)	ON APPEAL FROM
Plaintiff-Appellant,	)	THE UNITED
v.	)	STATES DISTRICT
ROBERT ALLEN	)	COURT FOR THE
BRUNDAGE,	)	WESTERN DISTRICT
Defendant-Appellee.	)	OF MICHIGAN

ORDER

(Filed Nov. 14, 2022)

Before: GUY, SUHRHEINRICH, and STRANCH,
Circuit Judges.

Ganiyu Ayinla Jaiyeola, a pro se California resident, appeals the district court's sua sponte dismissal of his complaint for lack of subject-matter jurisdiction. Appellee, Attorney Robert Allen Brundage, asks that this court take judicial notice of Jaiyeola's prior lawsuits, certain state bar proceedings that purportedly belie Jaiyeola's allegations, and Brundage's certificate of good standing from the Supreme Court of California. Jaiyeola separately moves this court to impose sanctions against Brundage and Brundage's lawyer for alleged misconduct during the pendency of this appeal. This case has been referred to a panel of the court that,

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upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

In 2016, Jaiyeola filed a products-liability lawsuit (“*Jaiyeola I*”) in state court against Toyota Motor Corporation and others for alleged defects in his 1996 Toyota Camry. The defendants removed that case to federal court, where extensive discovery and motion practice ensued. As relevant here, Jaiyeola filed a contested motion for sanctions against two defense attorneys, alleging that they had committed fraud on the court. At the close of discovery, the district court granted summary judgment in favor of the defendants on each of Jaiyeola’s claims and denied Jaiyeola’s motion for sanctions as moot. *See Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 1:17-cv-562, 2019 WL 3543628 (W.D. Mich. Aug. 5, 2019). On appeal, we affirmed the district court’s judgment but reversed its denial of Jaiyeola’s sanctions motion and remanded the matter for consideration of that motion. *Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 19-1918, 2021 WL 518155, at *6 (6th Cir. Feb. 1, 2021), *cert. denied*, 141 S. Ct. 2655 (2021).

On remand, the district court denied Jaiyeola’s motion for sanctions, and Jaiyeola appealed. We affirmed in an October 7, 2022, order. *See Jaiyeola v. Toyota Motor Corp.*, No. 21-2737, slip. op. (6th Cir. October 7, 2022).

While that appeal was still pending, Jaiyeola filed a motion for relief from judgment under Federal Rule of Civil Procedure 60(b), as well as a motion for leave to file additional sanctions motions against the

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defendants, their attorneys of record, and Brundage (the defendants’ appellate attorney, who did not appear as counsel of record on the district court docket). Jaiyeola alleged in one of his sanctions motions that Brundage had engaged in the unauthorized practice of law in contravention of Michigan Compiled Laws § 600.916(1) by “ghostwriting” the defendants’ response to his Rule 60(b) motion. On December 10, 2021, the district court summarily denied each of Jaiyeola’s post-judgment motions as frivolous and instructed the clerk to “reject any further filings by [Jaiyeola] in this case.” We affirmed the district court’s order on these motions in its entirety. *Jaiyeola v. Toyota Motor Corp.*, No. 21-1812, slip op. at 5-7 (6th Cir. June 16, 2022).

On December 14, 2021—four days after the *Jaiyeola I* court denied Jaiyeola’s motion for sanctions against Brundage and imposed the filing restriction—Jaiyeola filed this lawsuit against Brundage, reiterating his assertion that Brundage had violated section 600.916(1) by “ghostwriting pleadings” in *Jaiyeola I*. He sought more than \$5 million in damages, declaratory relief, legal costs, and attorneys’ fees. A magistrate judge recommended that the district court sua sponte dismiss Jaiyeola’s complaint for lack of subject-matter jurisdiction upon concluding that it neither presented a federal question nor satisfied the statutory requirements for diversity jurisdiction. Jaiyeola objected to the magistrate judge’s report and subsequently moved the clerk of court for an entry of default against Brundage based on his failure to file a responsive

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pleading. Over Jaiyeola’s objections, the district court adopted the magistrate judge’s report and recommendation, dismissed the complaint for lack of subject-matter jurisdiction, and denied the motion for entry of default as moot.

In this appeal, Jaiyeola challenges the district court’s dismissal of his complaint for lack of subject-matter jurisdiction. He alternatively argues that the district court should have allowed him to amend his complaint to cure any jurisdictional defects.

We review de novo a district court’s decision to dismiss a complaint for lack of subject-matter jurisdiction. *Janis v. Ashcroft*, 348 F.3d 491, 492 (6th Cir. 2003). Dismissal is warranted if the facts alleged in the complaint, accepted as true and viewed in the light most favorable to the plaintiff, show that the court lacks subject-matter jurisdiction. *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 440 (6th Cir. 2012). “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). We may affirm the district court’s judgment on any basis that is supported by the record. *Angel v. Kentucky*, 314 F.3d 262, 264 (6th Cir. 2002).

Federal courts have subject-matter jurisdiction in cases “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “A claim arises under federal law when ‘the plaintiff’s statement of his own cause of action shows that it is based upon [federal] laws or [the federal] Constitution.’” *Cobb v.*

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Contract Transp., Inc., 452 F.3d 543, 548 (6th Cir. 2006) (quoting *Louisville & N.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908)) (insertions in *Cobb*). Jaiyeola's complaint alleged only that Brundage violated Michigan's statute prohibiting the unauthorized practice of law. Thus, the district court properly determined that it did not present a federal question. Although Jaiyeola argues that federal-question jurisdiction exists because the alleged unauthorized practice of law in *Jaiyeola I* also constituted a violation of the Federal Rules of Civil Procedure, those rules do not create an independent basis for federal subject-matter jurisdiction. *See Fed. R. Civ. P.* 82 ("These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts."); *Palkow v. CSX Transp., Inc.*, 431 F.3d 543, 555 (6th Cir. 2005) ("[M]erely invoking the Federal Rules of Civil Procedure is not sufficient grounds to establish federal question jurisdiction.").

Having determined that Jaiyeola failed to assert a federal claim, the only other possible basis for federal subject-matter jurisdiction in this matter is diversity jurisdiction. Federal courts have diversity jurisdiction in civil cases where there is (1) complete diversity of citizenship between the plaintiff and all defendants and (2) an amount in controversy exceeding \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). With respect to the amount-in-controversy requirement, "[g]enerally, the amount claimed by the plaintiff in the complaint rules, as long as claimed in good faith, and [e]vents occurring subsequent to the institution of

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suit . . . do not oust jurisdiction.’”¹ *Charvat v. GVN Mich., Inc.*, 561 F.3d 623, 628 (6th Cir. 2009) (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

But if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed.

St. Paul Mercury Indem. Co., 303 U.S. at 289. It appears to a legal certainty that “[a] claim is less than the jurisdictional amount where the ‘applicable state law bar[s] the type of damages sought by plaintiff.’” *Rosen v. Chrysler Corp.*, 205 F.3d 918, 921 (6th Cir. 2000) (quoting *Wood v. Stark Tri-County Bldg. Trades Council*, 473 F.2d 272, 274 (6th Cir. 1973)).

It is clear from the face of the complaint that diversity jurisdiction is lacking here. The district court in *Jaiyeola I* explicitly found that Jaiyeola’s motion for sanctions against Brundage for engaging in the unauthorized practice of law was frivolous, so Jaiyeola’s

¹ Jaiyeola alleged that he was a citizen of Michigan and that Brundage was a citizen of California. Although Jaiyeola changed his residency to California during the pendency of this appeal, that is immaterial because diversity of citizenship is determined at the commencement of a lawsuit; subsequent occurrences do not typically divest a federal court of subject-matter jurisdiction. *See Rosado v. Wyman*, 397 U.S. 397, 405 n.6 (1970).

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request for damages against Brundage in this subsequent lawsuit—which is based on the same conduct—cannot be said to have been made in good faith.

In any event, Jaiyeola cannot make a viable claim for money damages based strictly on Brundage’s alleged violation of section 600.916(1)—Michigan’s statute prohibiting the unauthorized practice of law—because that statute neither expressly nor impliedly creates a private cause of action for damages. *See Randall v. Mich. High Sch. Athletic Ass’n*, 965 N.W.2d 690, 701 (Mich. Ct. App. 2020) (“[G]enerally speaking, a plaintiff cannot make a viable claim for money damages based strictly on violation of a statute unless the Legislature provides for a statutory cause of action.”). Section 600.916(1) expressly provides that “[a] person who violates this section” by engaging in the unauthorized practice of law “is guilty of contempt of the supreme court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law.” Mich. Comp. Laws § 600.916(1). And a cause of action cannot be inferred because section 600.916(1) provides an adequate means to enforce its purpose. *See Randall*, 965 N.W.2d at 702; *see also* Mich. Comp. Laws § 600.1715(1) (“[P]unishment for contempt may be a fine of not more than \$7,500.00, or imprisonment . . . not [to] exceed 93 days, or both.”). Because Jaiyeola has no viable claim for damages as a matter of Michigan law, it appears to a legal certainty that he cannot recover the jurisdictional amount in the present lawsuit, even assuming

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the request was made in good faith. *See Rosen*, 205 F.3d at 921.

In sum, the district court properly dismissed Jaiyeola's complaint for lack of subject-matter jurisdiction because it had neither federal-question nor diversity jurisdiction over the dispute. Jaiyeola argues that the district court should have allowed him to amend his complaint to cure it of any jurisdictional defects. But granting Jaiyeola leave to amend would have been futile because no amendment could dispel the bad-faith nature of Jaiyeola's request for damages, and it is a "legal certainty" that Jaiyeola cannot satisfy section 1332(a)'s jurisdictional amount-in-controversy requirement given that he has no viable claim for damages as a matter of Michigan law. *See Crawford v. Roane*, 53 F.3d 750, 753 (6th Cir. 1995) ("A motion to amend a complaint should be denied if the amendment is brought in bad faith, for dilatory purposes, results in undue delay or prejudice to the opposing party, or would be futile.").

Finally, Jaiyeola's motion for sanctions is not well-taken. Federal courts have inherent power to impose sanctions for abuse of the judicial process, but that power "must be exercised with restraint and discretion." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). The record reflects that Brundage's lawyer, Steven M. Wolock, emailed Jaiyeola, asking if he would be willing to voluntarily dismiss the instant appeal in exchange for Brundage agreeing not to pursue sanctions against him for bringing a frivolous lawsuit. When Jaiyeola declined that settlement offer, Wolock replied, "If you

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change your mind, feel free to email me.” Jaiyeola characterizes Wolock’s emails as “threatening, intimidating, and harassing.” But neither of Wolock’s emails show that he actually threatened, intimidated, or harassed Jaiyeola; rather, they show only that Wolock believed that Jaiyeola could potentially face legal consequences for pursuing a frivolous lawsuit. This is far from sanctionable conduct.

For these reasons, we **GRANT** Brundage’s motion to take judicial notice, **DENY** Jaiyeola’s motion for sanctions, and **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF
THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GANIYU AYINLA JAIYEOLA,

Plaintiff, Case No. 1:21-cv-1053
v. HON. JANET T. NEFF
ROBERT A. BRUNDAGE,
Defendant.

OPINION AND ORDER.

(Filed Feb. 8, 2022)

Plaintiff, Ganiyu Ayinla Jaiyeola, filed this Complaint alleging three violations of Michigan's Unauthorized Practice of Law statute, Mich. Comp. Laws § 600.916(1). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that this Court dismiss this case for lack of subject-matter jurisdiction (ECF No. 11). The matter is presently before the Court on Plaintiff's motion for leave to file objections to the R & R and his proposed objections.¹ The Court will consider Plaintiff's proposed objections. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of

¹ Plaintiff is on “restricted-filer” status, which requires him to seek leave of court before any filing is docketed. See ECF No. 336, *Jaiyeola v. Toyota Motor North America, Inc.*, No. 1:17-cv-562 (W.D. Mich.).

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the R & R to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In his objections, Plaintiff argues that both federal question and diversity jurisdiction exist in this case. Plaintiff's arguments regarding federal jurisdiction are confusing. Plaintiff alleges violations of state law in his Complaint (ECF No. 1 at PageID.10-18). Supplemental jurisdiction pursuant to 28 U.S.C. § 1337 alone cannot provide the basis for subject matter jurisdiction (ECF No. 11 citing *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065, 1068 n.3 (11th Cir. 2001) and 4 Charles Allen Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 3722 (4th ed.)). To the extent Plaintiff is now claiming that this Court has jurisdiction because the Clerk of Court violated Plaintiff's First Amendment rights by rejecting some of his filings or some other violation of federal law, Plaintiff failed to allege any such claim in the Complaint. Accordingly, the Court finds that federal question jurisdiction does not exist.

Plaintiff's arguments regarding diversity jurisdiction also fail. A federal court has diversity jurisdiction when (1) there is complete diversity of citizenship among the parties (that is, no plaintiff is a citizen of the same state as any defendant) and (2) the "amount in controversy" is greater than \$75,000. *See* 28 U.S.C. § 1332(a).

The Court agrees with the Magistrate Judge's determination that complete diversity does not exist.

At issue is whether Plaintiff named Carmen Bickerdt—who is a citizen of the same state as Plaintiff—as a defendant in this case. Plaintiff did not identify Bickerdt as a defendant in the Complaint; instead, he alleged that Bickerdt was a “key witness[]” (ECF No 1 at PageID.1). Nonetheless, Plaintiff alleged that Bickerdt was liable for compensatory and punitive damages and asked the Court to enter judgment against Bickerdt, among other individuals (*id.* at PageID.12-13, 15, 17).

Plaintiff does not dispute that he still seeks damages and judgment against Bickerdt. He argues that the Magistrate Judge did not cite any law “that states that when you seek damages against a party you must make that party a Defendant” (ECF No. 12-1 at PageID.526). It is a basic principle that when a Plaintiff files a complaint seeking damages and asking that a judgment be entered against an individual, that individual is properly considered a defendant. The Court is unaware of any case where a plaintiff was permitted to circumvent the complete diversity requirement by avoiding naming a party a defendant but still seeking the same remedies that would be available if the party was named a defendant. Plaintiff cannot use this tactic to get around the complete diversity requirement. See *Mississippi ex rel Hood v AU Optronics Corp.*, 571 U.S. 161, 174 (2014) (“We have interpreted the diversity jurisdiction statute to require courts in certain contexts to look behind the pleadings to ensure that parties are not improperly creating or destroying diversity jurisdiction.”). Thus, the Court finds that Bickerdt is properly considered a defendant. Because Bickerdt

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and Plaintiff are both citizens of the same state, complete diversity is lacking.

The Court also agrees with the Magistrate Judge's determination that the amount in controversy is not over \$75,000. For the reasons set forth in the R & R—specifically the detailed history of this case and *Jaiyeola v. Toyota Motor North America, Inc.*, No. 1:17-cv-562 (W.D. Mich.), the Court finds that this is the rare case where Plaintiff's broad damages claim is not made in good faith. Moreover, the fact that Plaintiff requested a settlement of \$5,617,000 in the related case is not relevant. Plaintiff alleges three violations of "ghostwriting" response briefs that were filed in a case after the Court already entered judgment against him. The underlying motions were frivolous. As the Magistrate Judge adequately concluded, "Plaintiff cannot sidestep this determination and imbue his baseless assertions with legitimacy simply by recasting them as claims in a complaint, paying a filing fee, and initiating a separate action" (ECF No. 11 at PageID.495). Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

Finally, there are several other pending motions in this case (ECF Nos. 5, 6, 7, 14, 16, 20, 22, and 23). The Court has reviewed each motion. None of the motions have any effect on the subject matter jurisdiction issue. Because the Court finds that it does not have subject matter jurisdiction over this matter, Plaintiff's motions are properly denied as moot.

Accordingly:

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IT IS HEREBY ORDERED that the Plaintiff's motion for leave to file objections (ECF No. 12) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's objections are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 11) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motions (ECF Nos. 5, 6, 7, 14, 16, 20, 22 and 23) are DENIED as moot.

IT IS FURTHER ORDERED that the Plaintiff's Complaint is DISMISSED for lack of jurisdiction. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58.

Dated: February 8, 2022 /s/ Janet T. Neff
JANET T. NEFF
United States District Judge

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No. 22-1083

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GANIYU AYINLA)	
JAIYEOLA,)	
Plaintiff-Appellant,)	
v.	)	ORDER
ROBERT ALLEN	)	(Filed Dec. 27, 2022)
BRUNDAGE,)	
Defendant-Appellee.)	

BEFORE: GUY, SUHRHEINRICH, and STRANCH,
Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

**ENTERED BY ORDER OF
THE COURT**

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 22-1424

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GANIYU AYINLA)
JAIYEOLA,) ON APPEAL FROM
Plaintiff-Appellant,) THE UNITED
v.) STATES DISTRICT
THOMAS L. DORWIN,) COURT FOR THE
Defendant-Appellee.) WESTERN DISTRICT
) OF MICHIGAN
)

ORDER

(Filed Oct. 5, 2022)

Before: SUTTON, Chief Judge; GUY and COLE,
Circuit Judges.

Ganiyu Ayinla Jaiyeola, a pro se California resident, appeals the district court's judgment dismissing his civil-rights complaint for lack of subject-matter jurisdiction. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2016, Jaiyeola filed a products-liability lawsuit ("Jaiyeola I") in state court against Toyota Motor Corporation and others for alleged defects in his 1996 Toyota Camry. The defendants removed that case to federal court, where extensive and contentious

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discovery and motion practice ensued. As relevant here, Jaiyeola filed a contested motion in which he asked the district court to sanction two defense attorneys for allegedly committing fraud on the court. At the close of discovery, the district court granted summary judgment in favor of the defendants on each of Jaiyeola’s claims and denied Jaiyeola’s motion for sanctions as moot. *See Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 1:17-cv-562, 2019 WL 3543628 (W.D. Mich. Aug. 5, 2019). On appeal, we affirmed the district court’s judgment but reversed its denial of Jaiyeola’s sanctions motion and remanded the matter for consideration of that motion. *Jaiyeola v. Toyota Motor N. Am., Inc.*, No. 19-1918, 2021 WL 518155, at *6 (6th Cir. Feb. 1, 2021), *cert. denied*, 141 S. Ct. 2655 (2021).

On remand, the district court denied Jaiyeola’s motion for sanctions, concluding that he had failed to meet his burden of proving by “clear and convincing evidence that Defendants’ counsel presented intentionally false material to the Court.” Jaiyeola’s appeal from that ruling is currently pending before this court in Case No. 21-2737.

Thereafter, Jaiyeola filed a Federal Rule of Civil Procedure 60(b) motion for relief from judgment, as well as a motion for leave to file two additional sanctions motions against certain defense attorneys. The district court summarily denied each of those motions and instructed the clerk to “reject any further filings by [Jaiyeola] in this case.” We affirmed the district court’s order in its entirety. *Jaiyeola v. Toyota Motor*

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Corp., No. 21-1812, slip op. at 5-7 (6th Cir. June 16, 2022).

Meanwhile, in December 2021, Jaiyeola filed a federal lawsuit (“*Jaiyeola II*”) alleging that Robert Brundage, Toyota Motor North America, Inc.’s appellate counsel, had engaged in the unauthorized practice of law by “ghostwriting pleadings” in *Jaiyeola I*. The district court dismissed that lawsuit for lack of subject-matter jurisdiction, *Jaiyeola v. Brundage*, No. 1:21-cv-1053, 2022 WL 368650, at *1-2 (W.D. Mich. Feb. 8, 2022), and Jaiyeola’s appeal from that judgment is currently pending before this court in Case No. 22-1083.

In February 2022, Jaiyeola filed this fee-paid lawsuit under 42 U.S.C. § 1983 against Thomas L. Dorwin, who is the Clerk of Court for the United States District Court for the Western District of Michigan. Jaiyeola alleged that Dorwin violated his constitutional rights and the Federal Rules of Civil Procedure by not entering a default that he had requested against Brundage in *Jaiyeola II* once Brundage failed to file a timely responsive pleading. According to Jaiyeola, an entry of default against Brundage in *Jaiyeola II* would have conferred federal subject-matter jurisdiction on the district court in that case. Jaiyeola sued Dorwin in his personal and official capacities and sought damages, declaratory relief, and injunctive relief, as well as costs, attorneys’ fees, and interest. He subsequently sought leave to file recusal motions against the magistrate judge and the district court judge in this matter because they are the judges who presided over *Jaiyeola II*.

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On initial screening, the magistrate judge recommended that the district court dismiss Jaiyeola's complaint for lack of subject-matter jurisdiction pursuant to the rule of *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999) (per curiam), upon concluding that Dorwin is not a "state actor" subject to suit under § 1983 and that, in any event, Dorwin is entitled to absolute quasi-judicial immunity. She also recommended that the district court designate Jaiyeola as a vexatious litigant. Over Jaiyeola's objections, the district court adopted in part and rejected in part the magistrate judge's report and recommendation and dismissed Jaiyeola's complaint with prejudice. In doing so, the district court agreed that Jaiyeola's complaint was subject to dismissal but declined to declare Jaiyeola a vexatious litigant. The district court also denied Jaiyeola leave to file his recusal motions.

In this appeal, Jaiyeola challenges the district court's conclusion that Dorwin is entitled to quasi-judicial immunity. He also raises claims of judicial bias. By limiting his appellate brief to those issues, Jaiyeola has forfeited appellate review of the district court's alternative determination that Dorwin is not subject to suit under § 1983, *see Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 318 (6th Cir. 2005), which is wholly dispositive of his challenge to the district court's dismissal.

Jaiyeola also argues that the magistrate judge and the district court judge were both biased against him, thus requiring their recusal or disqualification. A judge's conduct may be "characterized as 'bias' or

‘prejudice’ if “it is so extreme as to display clear inability to render fair judgment.” *Liteky v. United States*, 510 U.S. 540, 551 (1994). But a judge’s frustration with a litigant does not give rise to an inference of bias or partiality absent some indication of personal animosity on the part of the judge. *See United States v. Griffin*, 84 F.3d 820, 830-31 (7th Cir. 1996); *accord Gordon v. Lafler*, 710 F. App’x 654, 664 (6th Cir. 2017). Jaiyeola has failed to make such a showing, and his accusations of judicial bias and vindictiveness are completely unfounded. To the extent that Jaiyeola takes issue with a particular adverse ruling, “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Liteky*, 510 U.S. at 555. Moreover, although Jaiyeola argues that the magistrate judge exhibited bias against him by recommending that he be declared a vexatious litigant, he cannot show prejudice because the district court ultimately rejected that recommendation.

For these reasons, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF
THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GANIYU AYINLA JAIYEOLA,

Plaintiff, Case No. 1:22-cv-129
v. HON. JANET T. NEFF
THOMAS L. DORWIN,
Defendant. /

OPINION AND ORDER

(Filed Apr. 26, 2022)

This is the third related case brought by Plaintiff Ganiyu Ayinla Jaiyeola. See *Ganiyu Ayinla Jaiyeola v. Toyota Motor North America, Inc., et al.*, No. 1:17-cv-562 (W.D. Mich.) (*Jaiyeola I*); *Ganiyu Ayinla Jaiyeola v. Robert A. Brundage*, No. 1:21-cv-1053 (W.D. Mich.) (*Jaiyeola II*). Plaintiff initiated this action against Defendant Thomas L. Dorwin, the Clerk of this Court, alleging claims pursuant to 42 U.S.C. § 1983. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that this Court (1) dismiss the Complaint with prejudice for lack of subject matter jurisdiction and (2) preclude Plaintiff from filing any additional motions, briefs, or other documents in the three related cases, as well as prevent Plaintiff from filing any new case related to this case (ECF No. 5). The matter is presently before the Court on Plaintiff's objections (ECF

No. 9) to the R & R and Plaintiff's motions for leave to file motions to recuse (ECF Nos. 6 and 7). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. Civ. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. For the reasons stated below, the Court adopts the recommendation to dismiss the Complaint but rejects the recommendation to preclude Plaintiff from further filings.

Plaintiff raises two main issues in his Objections. First, Plaintiff argues that the Magistrate Judge erred in finding that Defendant is entitled to quasi-judicial immunity. He contends that Defendant is not immune because he repeatedly acted "in the complete absence of jurisdiction" and "failed to act when he had a duty to do so" (ECF No. 9 at PageID.107).

The Court has reviewed the record and finds no error in the Magistrate Judge's analysis. Plaintiff's claims stem from Defendant not entering default against a defendant in *Jaiyeola II*. As the Magistrate Judge explained, this Court has held that the Clerk of Court is entitled to judicial immunity in nearly the identical situation. In *McCreary v. Bell*, No. 1:10-cv-1211, 2011 WL 4559712 (W.D. Mich. Sept. 30, 2011), U.S. District Judge Gordon J. Quist held that the Clerk of Court was entitled to quasi-judicial immunity because she was acting on behalf of the Court when she allegedly failed to enter default. Plaintiff's allegations against Defendant in this case concern acts that are intricately related to the judicial process. Plaintiff was not entitled to the entry of default because the Court

lacked subject matter jurisdiction. Furthermore, Plaintiff has not shown that Defendant “had a history of being unfair to Plaintiff” (ECF No. 9 at PageID.109). Accordingly, Plaintiff’s objection lacks merit.

Second, Plaintiff argues that the R & R “clearly shows” the Magistrate Judge’s “judicial bias with prejudice against Plaintiff” (ECF No. 9 at PageID.110). This objection is also related to Plaintiff’s motions seeking to have the Magistrate Judge and the undersigned recuse. In *Jaiyeola I*, the Court denied two of Plaintiff’s motions for disqualification of the Magistrate Judge (See ECF Nos. 334 and 342, *Jaiyeola I*, No. 1:17-cv-562). Plaintiff’s objection, as well as the motions, lack merit for the same reasons the Court explained in its previous orders.

Furthermore, Plaintiff has not shown that the undersigned should recuse itself from this case. Under 28 U.S.C. § 455(a), “[a]ny justice, judge, or magistrate of the United States shall disqualify [herself] in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). When bias is urged as the basis for recusal, “the issue is whether ‘a reasonable person would be convinced the judge was biased.’” *Grove Fresh Distrib., Inc. v. John Labatt, Ltd.*, 299 F.3d 635, 640 (7th Cir. 2002) (quoting *Lac du Flambeau Indians v. Stop Treaty Abuse Wis., Inc.*, 991 F.2d 1249, 1255 (7th Cir. 1993) (citations omitted)). A judge’s rulings in a case are ordinarily not enough to support a litigant’s request for recusal based on alleged bias. See *United States v. Jamieson*, 427 F.3d 394, 405 (6th Cir. 2005). “‘Personal’ bias is prejudice that emanates from

some source other than participation in the proceedings or prior contact with related cases.” *Youn*, 324 F.3d at 423 (citing *Wheeler v. Southland Corp.*, 875 F.2d 1246, 1251-52 (6th Cir. 1989)). In the absence of proof of extrajudicial bias, the moving party must show that the judge has “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Liteky*, 510 U.S. at 555. In this case, Plaintiff provides no evidence that the undersigned has a personal bias or prejudice against Plaintiff or in favor of Defendants. *See Heard v. Caruso*, 351 F. App’x 1, 15 (6th Cir. 2009). The fact that the undersigned has ruled against Plaintiff in other cases is not a valid basis for recusal.

Finally, the Court must address the Magistrate Judge’s recommendation “to preclude Plaintiff from filing any additional motions, briefs, or other documents, with the exception of an objection to this Report and Recommendation, in *Jaiyeola I*, *II*, or *III*, and that he be precluded from filing any new case relating in any way to *Jaiyeola I*, *II*, or *III*” (ECF No. 5 at PageID.35). Although the Court agrees that such a sanction is warranted based on Plaintiff’s repeated filings of frivolous motions, the Court finds that such a sanction confers too much discretion to the Clerk of Court in discerning whether a new case is “relating in any way” to *Jaiyeola I*, *II*, or *III*. If Plaintiff files any additional cases, the case should go through the normal case opening procedure. If the case is related to *Jaiyeola I*, *II*, or *III*, the Magistrate Judge will make such a finding and the case will be properly assigned to the undersigned. *See* W.D. Mich. LCivR 3.3.1(d)(iii)(B). The Court finds no

reason to deviate from the standard procedure at this time.

Accordingly, this Court adopts in part and rejects in part the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 9) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 5) is ADOPTED as to dismissing the Complaint and REJECTED as to precluding Plaintiff from future filings related to this same subject matter.

IT IS FURTHER ORDERED that Plaintiff's motions for leave to file motions to recuse (ECF Nos. 6 and 7) are DENIED.

A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58.

Dated: April 26, 2022 /s/ Janet T. Neff
JANET T. NEFF
United States District Judge

App. 26

No. 22-1424

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GANIYU AYINLA)	
JAIYEOLA,)	
Plaintiff-Appellant,	)	ORDER
v.	)	(Filed Nov. 7, 2022)
THOMAS L. DORWIN,)	
Defendant-Appellee.)	

BEFORE: SUTTON, Chief Judge; GUY and COLE,
Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

**ENTERED BY ORDER OF
THE COURT**

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk
