No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Philip A. Bralich, Ph.D.
_____ — PETITIONER
(Your Name)

VS.

Gayner, et al
(see attached Caption).
_____ — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States Supreme Court, Docket 21-7528

_____

_____

etitioner has **not** previously been granted leave to proceed *in forma paup s* in any other court.

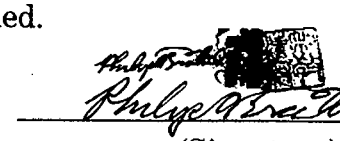
☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____

_____, or

☐ a copy of the order of appointment is appended.



(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Philip A. Bralich, Ph.D., am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ N/A	$	$
Self-employment	$ 0	$	$	$
Income from real property (such as rental income)	$ 0	$	$	$
Interest and dividends	$ 0	$	$	$
Gifts	$ 0	$	$	$
Alimony	$ 0	$	$	$
Child Support	$ 0	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$ 1,102	$	$	$
Disability (such as social security, insurance payments)	$ 1,902	$	$	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$	$	$
Other (specify): Loss of Spouses Income	$	$	$	$
Total monthly income:	$	$	$	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			$
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			$
			$
			$

4. How much cash do you and your spouse have? $ 500
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checking	$ 500	$
	$	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model $12,000
Value

☐ Motor Vehicle #2
Year, make & model N/A
Value

☐ Other assets
Description N/A
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	$	$
	$	$
	$	$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ 800	$ N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 200	$
Home maintenance (repairs and upkeep)	$ N/A	$
Food	$ 800	$
Clothing	$ 200	$
Laundry and dry-cleaning	$ 100	$
Medical and dental expenses	$ 1000	$

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 250	$
Recreation, entertainment, newspapers, magazines, etc.	$ 500	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$	$
Life	$	$
Health	$	$
Motor Vehicle	$ 200	$
Other: _____	$	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$	$
Installment payments		
Motor Vehicle	$ 425	$
Credit card(s)	$	$
Department store(s)	$	$
Other: _____	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ N/A	$
Other (specify): _____	$	$
Total monthly expenses:	$	$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 16, 2023

Verified by PDFFiller
09/12/2021

(Signature)

Miscellaneous Docket No. _____

Word Count 7.243

IN THE SUPREME COURT OF THE UNITED STATES

In re Philip A. Bralich, Ph.D.,
Pro Se Petitioner,

vs.

Michael Gayner, et al,
Respondents.

On a Petition for a Writ of Certiorari under 28 U.S.C. 1254(1) and United States Supreme Court Rule 10(c) of the Supreme Court of the United States to the United States Court of Appeals for the Tenth Circuit in Bralich v. Gayner et al, Case No. 21-cv-01416 (Three-Judge Court) before the Honorable Judges Hartz, Kelly and Holmes (author) which case was itself appealed from the United States District Court for the District of Colorado, Case No. 21-cv-03800 (RMR), the Appellate Court case having been concluded via an Order and Judgment affirming the judgement of the district court dismissing the case *sua sponte* and denying the Pro Se Plaintiff/Appellant's motion for leave to file supplemental evidence.

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX IN SUPPORT

Philip A. Bralich, Ph.D.
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Boulder, CO 80302
(831)641-9610
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Bigotry," or bigotry toward unprotected classes such as the poor, the middle class, political opponents (as evidenced on cable news), and workplace competitors by both protected and unprotected classes. Specifically, these entail

1. One constitutional and three federal issues regarding Fed. R. Civ. P. 8(a) and 12(b)(6) dismissals under Twombly/Iqbal Standards:
    a. that the proliferation of confusion and the generation of legal scholarship to understand, interpret, and explain the Twonbly-Iqbal standards represents a violation of the 14th amendment which guarantees equal access to the Courts as only an elite group of attorneys could possibly be expected to meet the standards and that newer and less well-educated attorneys and Pro Se litigants (especially those without higher degrees) are incapable of it.
    b. that the Twombly/Iqbal standards illegally ignore the role of the "Statement of the Claim" portion of a standard complaint to flesh out "plain and simple statements" and "claims upon which relief can be granted."
    c. that Twombly/Iqbal standards obscure and deny the differences between standard and fraud (9(c)) complaints and any possible distinction between claims that require greater or lesser specificity, thereby illegally disregarding the distinctions expected and determined by the authors of the Fed. R. of Civ. P.

d. Unequal standards for those making allegations of failure to state a claim under 8(a) and 12(b)(6).

2. Statutory Issues Concerning Pseudo-*Sua Sponte* Dismissals which are by definition and necessarily used to indicate that a court has taken notice of an issue *on its own motion* without prompting or suggestion from either party and not when the parties have already filed motions in that regard, denying the parties an opportunity to argue their case as they saw fit and on their own without judicial interference.

3. The use of early Fed. R. of Civ. P. 16 Status Conferences to disrupt standard, written initial motions practice before a responsive pleading to unfairly disadvantage Pro Se litigants through forcing them into oral argument on a variety of dispositive issues at once in a single meeting rather than one at a time and in writing with time to research and prepare responses.

4. Constitutional Issues Regarding the Abuse of Pro Se Plaintiffs and Other Issues Requiring Remand of the Matter to the Lower Court for Jury Trial.

   a. The issue that deadlines to submit Motions to Quash Service ensue immediately upon being allowed after having been stayed according to Fed. R. Civ. P. 7 if the Court has not specifically mentioned otherwise.

   b. Sound Motions for Default Judgments were ignored due to the illegal status conferences.

c. Constitutional and statutory issues of platitudinous, lock step patterns of widespread abuse of Pro Se litigators and several other issues were not addressed due to the *pseudo-sua sponte* dismissal on 8(a) and 12(b)(6) and remain a pressing need for review and adjudication.

LIST OF PARTIES.

PHILIP A. BRALICH, PH.D.,
Pro Se Petitioner,

v.

MICHAEL GAYNER, EXECUTIVE DIRECTOR, SHAMBHALA MOUNTAIN CENTER, MEMBERS OF THE SHAMBHALA BOARD, MEMBERS OF SHAMBHALA INT'L CARE AND CONDUCT COMMITTEE, MEMBERS OF THE COUNCIL OF MAKYI RABJAN, SHAMBHALA MOUNTAIN CENTER CARE AND CONDUCT OFFICERS, THE GOVERNING COUNCIL OF SHAMBHALA MOUNTAIN CENTER, CHARLES G. LIEF, JOY VALANIA, BETSY RAILLA, BOULDER SHAMBHALA CENTER, SEATTLE SHAMBHALA CENTER, DAN PETERSON, CHRISTY CASHMAN, JUDITH SIMMER-BROWN, TIMOTHY QUIGLEY, ERIC SPIEGEL, GWIN STEWART, KATHY SPIER, KATHY KINKAID, DEFENSE LANGUAGE INSTITUTE AND FOREIGN LANGUAGE CENTER, KELLY FINEY, MILWAUKEE SHAMBHALA CENTER, BERKELEY SHAMBHALA CENTER, SAN FRANCISCO SHAMBHALA CENTER, BARRY A. SULLIVAN, ESQ., SUSAN COATES, MARTHA RZASA,
Defendants.

RELATED CASES.

The current case for which a Petition of Certiorari is being sought is for Bralich v. Gayner, et al., Case No. 22-cv-01416 brought before the United States Court of Appeals for the 10th Circuit on appeal from the United States District Court for the District of Colorado which originated under the same name (Bralich v. Gayner, et al.) in Case No. 1:21-cv-03800 (RMR-STV). While this Petition is primarily based on matters arising from dismissals under Fed. R. of Civ. P. Rules 8 and 12, the District Court Case and its Appeal to the Appeals Court involves 14th Amendment issues regarding Twombly-Iqbal dismissals specifically and the abuse of Pro Se Litigants as well as Fed. R. of Civ. P. 7, 8, 12, and 56.

There are a total of 13 related cases that were filed that impact the current matter all revolving around the same issues and are listed in the table below and described immediately thereafter. Two of the cases were filed in error due to Pro Se naivete and two of are only peripherally related. These two are marked with strikethrough, while directly pertinent matters are highlighted in green and indirectly pertinent matters are highlighted in yellow.

#	Case Title	Case No.	Court	Date Filed	Date Closed
1.	Bralich v. Sullivan	1:2017cv00203	Hawaii District Court	05/04/2017	11/16/2017
2.	Bralich v. Sullivan, et al	1:2017cv00547	Hawaii District Court	11/03/2017	09/18/2019
3.	~~Bralich v. Republican National Committee, et al~~	~~1:2020cv03248~~	~~District Of Columbia District Court~~	~~11/02/2020~~	~~11/19/2020~~
4.	~~Bralich v. Fox News Network, LLC et al~~	~~1:2020cv04466~~	~~Georgia Northern District Court~~	~~11/02/2020~~	~~03/1/2021~~
5.	Bralich v. Fox News Network, LLC et al	1:2020cv09161	New York Southern District Court	10/30/2020	02/18/2021 (Appealed to 2nd Circuit)
6.	Bralich v. Fox News Network, LLC.	0:2021cv00884	U.S. Court Of Appeals, Second Circuit	04/06/2021	6/16/2021 Petition for Writ of Certiorari to SCOTUS, hearing denied 06/06/2022
7.	Bralich V. Fox News Network, et al	21-7528	United States Supreme Court	04/04/2022	Petition for Writ of Certiorari to SCOTUS, hearing denied 06/06/2022
8.	Bralich v. Gayner, et al	1:2020cv03800	Colorado District Court	12/24/2020	11/24/2021 (Appealed to 10th Circuit)
9.	Bralich v. Gayner, et al	0:2021cv01416	U.S. Court Of Appeals, Tenth Circuit	11/30/2021	09/02/2022 Petition for Writ of Certiorari to SCOTUS pending
10.	Bralich v. Bell, et al	1:2022cv01896	Colorado District Court	07/29/2022	Open
11.	Drala Mountain Center bk Chapter: 11 & Subchapter V	22-10656-JGR	U.S. Bankruptcy Court for the state of Colorado	02/28/2022	Date of last filing: 12/09/202(Plan confirmed: 09/20/2022
12.	Drala Mountain Center bk Chapter: 11		U.S. Bankruptcy Appellate Panel for		

	&Subchapter V.		the 10th Circuit		
13.	Bralich v. Brown, et al.	Hfx 518063	Supreme Court of Nova Scotia	11/15/2022	(Open)

Table 1: Related Cases.

CORPORATE DISCLOSURE STATEMENT.

Responding to Rule 29.6, there are no corporations involved in the writing and submission of this petition, and thus no corporate disclosure statement is required.

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OPINIONS BELOW.

The opinions in this matter from the United States Court of Appeals for the 10th Circuit, Case No. 0:21-01416 (Three-Judge Court) appears at Appendix "A," and that for the preceding matter in the United States District Court for the for the District of Colorado, Case No. 1:20-cv-03800 (RMR-STV) appears at Appendix "B."

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The date on which the United States Court of Appeals decided this case in the negative was September 2, 2022 including a denial of Appellant's motion for leave to file additional evidence (Appendix "A"). The Mandate was issued September 26th, 2022. No petition for rehearing was timely filed in this case.

The specific basis for jurisdiction in this Court also includes Rule 10(c) as the matter in question involves a novel issue in Civil Rights violations that has yet to be considered by the legislature and the Courts, and there are thus no constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case and by Supreme Court Rule 10(c)) is a significantly pressing national interest and importance of the matters under consideration.

The current Petition constitutes a publicly important case though the press and the population have only begun to recognize it as such and is one that has yet to be addressed by the legislature or adjudicated in the Courts at all, let alone in this the highest court of the land.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The Constitution states only one command twice that no one shall be "deprived of life, liberty or property without due process of law" in the 5th and 14th Amendments. The 14th Amendment, ratified in 1868, uses the same eleven words as the 5th, the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law and provide fair procedures.

As such, the United States Supreme Court should review this matter not solely for the errors in the 10th Circuit of Appeals decisions in the lower Court but to clarify important issues concerning the Twombly and Iqbal rulings as described in the "Questions" above concerning both the 14th Amendment Right to Equal Access to the Courts, and federal statutory issues in a) the role of the Statement of Claim section of a Complaint in demonstrating the sufficiency of a claim, b) the differences in pleading requirements in fraud (9(c)) and non-fraud litigation, c) the deprivation of parties' right to argue their own case in their own manner in pseudo-sua sponte actions, and abuses of Pro Se litigants in general, d) the violation of rights of non-protected classes in the growing problem of Workplace and Academic Bullying, and e) in the Pro Se Plaintiff Polka including status conferences held before Responsive Pleadings.

STATEMENT OF THE CASE.

I. Relief Sought.

Pursuant to Supreme Court Rule10(c) and 28 U.S.C. 1254(1), Petitioner Philip A. Bralich, Ph.D. (Petitioner) hereby humbly and respectfully submits this Petition for a Writ of Certiorari concerning the final order and judgment of the United States Appellate Court of the Tenth Circuit in the matter or Bralich v. Gayner, et al, Case No. 22-01416 (Three Judge Panel) presided over by the Honorable Judges Hartz, Kelly, and Holmes (author of the Opinions), dated the 2nd day of September, 2022, reaffirming the lower court's order dismissing the case *sua sponte* for lack of subject matter jurisdiction (see Appendix (A), now before the United States Court of Appeals for the Second District and pending judgment (In re: Bralich 21-884 & 21-904), requesting of this Court a reconsideration of the judgment and permission to try the case in the United States Supreme Court.

As outlined above, the Constitutional and Federal Statutory matters in the civil case under consideration represent matters of both significantly pressing national interest and importance and unique issues in the area of Civil Rights that have yet to brought before this court or to be considered by the legislature for appropriate legislative action, to wit, the violations of the 14th Amendment due to Twombly-Iqbal standards, the growing and as yet unlegislated problem of workplace and academic mobbing and bullying of non-protected classes (equal opportunity bigotry), pre-responsive pleadings' status conferences used to abuse Pro Se Litigants, and **Pseudo-***sua sponte dismissals*.

II. The Issues Presented.

As presaged above in the "Questions Presented" and "Related Cases" sections of this Petition, the issues presented for review in this Petition concern the issues involving the Twombly and Iqbal decisions of the United States Supreme Court, questions concerning *pseudo-sua sponte* decisions where Defendant Attorneys clearly indicated their intention in advance to file Motions identical to the *sua sponte* dismissals, and the need to remand the current matter to the lower Court for adjudication and Jury Trial due to issues that were left unresolved due to the premature and illegal, *sua sponte*, Twombly and Iqbal causes of dismissal. Arguments in support of the Petitioner's request for relief are presented in the order just described. Specifically, they are presented under the following headings and subheadings:

A. Four constitutional issues regarding Fed. R. Civ. P. 8(a) and 12(b)(6) dismissals under Twombly/Iqbal Standards.
   1. Introduction.
   2. Denial of Equal Opportunity Access to the Courts.
   3. The Role of the "Statement of Claim" Section of a Complaint.
   4. The Obscuration of Greater and Lesser Degrees of Specificity.
   5. Unequal Standards for Those Making Claims of Failure State a Claim under 8(a) and 12(b)(6).

B. Statutory Issues Concerning Pseudo-*Sua Sponte* Dismissals.

C. The Use of Early Fed. R. Of Civ. P. 16 Status Conferences to Disrupt Standard, Written Initial Motions Practice Even before a Responsive Pleading and Unfairly Disadvantage Pro Se Litigants.

D. Constitutional Issues Regarding the Abuse of Pro Se Plaintiffs.
   1. Automatic Deadlines for Motions to Quash Summonses.
   2. Failure to Address Default Judgments.
   3. Consistent Patterns of Pro Se Abuse.

A. Four constitutional issues regarding Fed. R. Civ. P. 8(a) and 12(b)(6) dismissals under Twombly/Iqbal Standards.

1. Introduction.

Under the well-known standard Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Before the Twombly and Iqbal rulings, in Conley v. Gibson, 355 U.S. 41, 45-46 (1957), the Supreme Court famously interpreted this language as preventing the dismissal of a complaint under Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief."

In Twombly, the Court reinterpreted the substance of Rule 8(a), holding that plaintiffs must plead "enough facts to state a claim to relief that is plausible on its face" to avoid dismissal under Rule 12(b)(6). The Court stated that the Rule 8(a) pleading standard does not require "detailed factual allegations," but demands more than an "unadorned accusation." Twombly, supra, 550 U.S. at 555. Moreover, the Court held that a complaint that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Id. Nor does a complaint suffice if it tenders only "naked assertion[s]" devoid of "further factual enhancement." Id. at 557.

Two years later, in Ashcroft v. Iqbal, the Supreme Court overruled the Second Circuit's decision in Iqbal v. Hasty, 490 F.3d 143 (2d Cir. 2007), and held that the standard announced in Twombly governs "all civil actions and proceedings in the United States district courts. „Iqbal, supra, 129 S. Ct at 1953. Thereafter,

the Court made clear that the pleading standard announced in Twombly governs all civil actions in federal court.

Since the Twombly and Iqbal decisions, most courts recognize that a somewhat heightened pleading standard now applies under Rule 8(a)(2). CSX Transp., Inc. v. Mesero/e st. Recycling, Inc., 570 F. supp. 2d 966, 969 NV.D. Mich. 2008) ("Twombly did not change did not change the notice-pleading standard; 'detailed factual allegations' are still not necessary, but the Supreme Court did hold that a plaintiff's complaint must contain 'more than labels and conclusions.'"). However, the following four problems question the decisions in the Petitioner's case and in related cases in matters of complex litigation where the clarity of the Towmbly-Iqbal decisions becomes less clear.

2. Denial of Equal Opportunity Access to the Courts.

Specifically, denial of equal opportunity to access to the Courts as guaranteed by the 14th Amendment is due to the inability of mediocre attorneys and especially pro se plaintiffs to understand let alone meet the standards set therein as evidenced in the proliferation of legal articles by attorneys and judges still trying to interpret these rules and which remain impossibly baffling to all but an elite of attorneys and judges who are capable of writing and publishing such articles in established, refereed journals.

3. The Role of the "Statement of Claim" Section of a Complaint.

The Court held that the plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer "possibility" that a defendant has acted unlawfully. Id. Hence, in Twombly, the Supreme Court upheld the dismissal of a complaint where the plaintiffs did not "nudge. . .their claims across the line from conceivable to plausible." Id. at 570.

Additionally, the Supreme Court instructed that a claim has facial "plausibility" only when a plaintiff pleads sufficient factual content to allow the court to draw the reasonable inference that the defendant is liable for the alleged misconduct. Id. at 556.

However, in the cases considered under this Petition and certainly in many similar circumstances, the Petitioner made the necessary and sufficient "further factual enhancement" beyond a mere recitation of the elements of a claim, and while they were not sufficient to take the matter to discovery, the proper role of the Statement of Claim section of the claim, they were sufficient to necessitate a careful reading of the Statement of the Claim, and by that they should have passed the "plausibility" standard, and 8(a) and 12(b)(6) dismissals should have been deemed inappropriate.

Further, the courts below completely ignored and simply refused to argue the Petitioner's claim that the Colorado pleading standards were indeed met in the 8(a) statement and were further evidenced in the Statement of Claim to the degree that further evidence would indeed become evidence once the matter advanced to discovery. In addition, the matters were serious enough to require the Defendants

to submit a Responsive Pleading and that the matters alleged were representative enough of a novel, growing problem in the nation that is as yet unaddressed by the legislature or the Courts.

If the plain and simple statement needs to be sufficiently well-plead to determine whether or not a case can advance to Discovery then there is no need for the statement of Claim section of a complaint. Certainly, this clearly indicates an overreach for the scope and intent of an 8(a) statement. Like an abstract in a scholarly abstract, the 8(a) statement needs to be sufficiently well-formed to compel a reading of the entire paper, it does not have to make the entire argument but only suggest that the ... it is then in the full article that the complete argument and a detailed presentation of the evidence is made.

That Twombly/Iqbal violates the intent of the structure of a civil complaint by its designers by disallowing complainants to use the Statement of Claim section of a complaint to flesh out matters too complex to be included in an 8(a) "short and plain statement" indicating that the intent of such a plain and simple statement was for a more general statement than the Twombly/Iqbal standards allow and for. The plain and simple statement simply is not the full statement of claim and cannot be treated as such. It is a preface or an abstract to the claim and as such is correctly recognized as mere notice and to burden it with the details that belong in the full statement of claim especially in complex matters of litigation. A successful plain and simple statement must necessitate a full reading of the statement of the claim,

but it should not have to advance the matter to discovery on its own, nor should it make the Statement of Complain a superfluous exercise.

4. The Obscuration of Greater and Lesser Degrees of Specificity.

Although unaddressed by the Supreme Court, it is a fair inference that the standard announced by the Court in Twombly, which was based on the more permissive general pleading standard set forth in Rule 8(a), must still be "lower" than the standard announced in Rule 9(b). Equally well known, Rule 9(b) imposes a heightened pleading standard for fraud claims, requiring that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Id. For decades, the standard announced in Conley was straightforwardly applied; then came the decisions in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). These distinctions by the authors and maintainers of the Fed. R. of Civ. P. must be maintained as a matter of law.

In addition, Colorado pleading standards for per se defamation are less strict than not only a fraud claim, but also a standard defamation claim, a fact that was ignored without counterargument by the lower courts.

In the June 21st, 2021 *Denver Law Review*, Volume 28 Issue 4 Article 3 June 2021, in an article titled, "The Law of Libel in Colorado" by Philip S. Van Cise of the Denver Bar, Mr. Cise points out that in cases of per se defamation, it is only necessary to identify the perpetrators, the general nature of the per se defamation, and the damages asked for, all of which are provided in both the operative and the proposed complaints in the lower courts by the Petitioner.

> In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff, of the defamatory matter out of which the cause of the action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish *on the trial* that it was so published or spoken.

As the laws of libel relevant to and cited in this case are necessarily based on Colorado statutes, the pleading and evidence requirements must be determined within Colorado boundaries and restrictions.

> If the words, when construed according to their natural and ordinary meaning, are defamatory on their face, which, as we have seen, is a question of law for the court, the action may be maintained unless the defendant, and the burden is on him, can and does show that they were capable of a special meaning rendering them not defamatory, and that they were so understood. *Peake v. Oldham,* Cowp. 275; Bigelow's Cas. 122; Bigelow's Lead. Cas. 73.

5. Unequal Standards for Those Alleging Failure to State a Claim under 8(a) and 12(b)(6).

The District Court and others inequitably place the burdens of Twombly/Iqbal standards on the Complainant while completely exempting the Defense from any such requirement in their crafting of 8(b) allegations of failure to state a claim and still allows them to assert without argument or specific references to the 8(a) statement that it has not been met. Those making such allegations should speficify with equal particularlity how it is the claim failed.

Twombly/Iqbal standards for writing a Rule 8 plain and simple claim should also apply to those questioning a Rule 8 claim as well as those citing 8(b) in their responses. They cannot simply be allowed to merely make a threadbare, blind assertion of a failed claim according to Rule 8(a) even without mentioning Twombly-Iqbal without detailing how the claim failed to meet those standards. In applying the Twombly/Iqbal standards to a plaintiff's 8(a) statement without argument is

mere "proclamation-from-on-high" and a denial of due process to those plaintiffs who deserve to know how in particular their claim failed to meet the standard so that they can write a proper response.

In addition, though the Defense never had occasion to write their Responsive Pleadings, the Pro Se Appellant/Plaintiff argues that an identical problem exists in the Courts in general on this matter in that responses which must themselves confirm to the Twombly/Iqbal standards in the parallel 8(b) statements are not held to this standard thus indicating an illegal unwillingness to enforce Twombly/Iqbal requirements equitably throughout the Courts and this bias further impacts on the current Pro Se Appellant's ability to be fairly treated and receive equitable due process.

The quotes from the Fed. R. of Civ. P. below clearly indicate that there is no difference between the requirements for 8(a) and 8(b)(1)(A) statements and yet only plaintiffs and neither the Courts in denying or the Defense in arguing to dismiss are held to the standard nor are those writing responses.

Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief;

(b) DEFENSES; ADMISSIONS AND DENIALS.

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation.

To merely state that the "short and plain" statement is insufficient is simply not enough given the requirement in 8(c) as defined in Twombly-Iqbal but 8(b)(1)(A) also that dictates that a response to a complaint, even in the form of an initial dispositive motion, as "short and simple" can also not be an "unadorned accusation." Twombly, supra, 550 U.S. at 555. Moreover, the Court held that a complaint that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Id. Nor does a complaint suffice if it tenders only "naked assertion[s]" devoid of "further factual enhancement." Id. at 557. The defense necessarily has an equal obligation to flesh out their allegation of failure to state a claim with as much rigor as the Complainant has to make his/her claim.

B. Statutory Issues Concerning Pseudo-*Sua Sponte* Dismissals.

The Magistrate Judge in the District Court wrote his unrequested and unexpected Report and Recommendations ending the case through Sua Sponte dismissals of the complaints in spite of a clear Motion by one Defense Attorney before said Sua Sponte Dismissal which made the Sua Sponte Dismissal impossible due to that prior notice. A dismissal of a case where only one motion to the same effect was actually submitted but where all defense attorneys expressed their intention to do so at the status conferences had initial motions not been stayed to make for those status conferences. It is not of the Court's own order and without notice, it is merely **Pseudo-*sua sponte***, a mere assertion in contrast to the facts. The Appellate Court for the 10th Circuit supported this in spite of the flagrant

contrivance of a *sua sponte* decision where no such order could exist and thereby denied the parties the opportunity to argue their cases in their own manner.

Procedural due process refers to the constitutional requirement that when the federal government acts in such a way that denies a citizen of a life, liberty, or property interest, the person must be given notice, the opportunity to be heard, and a decision by a neutral decisionmaker. The Magistrate's action concerning the suspension of Motions, the status conferences, and the Sua Sponte dismissals as described above deprived the Defendant of his right to due process.

C. The Use of Early Fed. R. Of Civ. P. 16 Status Conferences to Disrupt Standard, Written Initial Motions Practice Even before Initial Motions and a Responsive Pleading and Unfairly Disadvantage Pro Se Litigants.

Fed. R. Civ. P. 16 *pre-trial* status conferences are used to aid discovery and other peripheral matters remaining after responsive pleadings have been completed. The term pre-trial here necessarily refers to the discovery stage of a trial and not to the initial pleadings stage of a trial.

The interjection of such status conferences at the initial pleadings stage of a conference are precluded as it has not even been determined yet whether or not the complaint is sufficient to be accepted by the court and whether or not the Defendant(s) will even have to file a Response. Neither the plaintiff(s) nor the defendant(s) have as yet been accepted into the trial arena where discovery begins. They are perhaps "knocking on the door" or have entered the foyer and the complaint must now be judged as to its suitability for adjudication, but they have yet to demonstrate they qualify at all and both the pre-trial and trial portions of a

proceeding are not yet licensed. Thus, pre-trial status conferences are also not licensed, and the parties are forced to make their cases in writing without the intercession of a Judge in a conference.

The Fed. R. Civ. P 7 initial motions are one means where the *potential* defendants in a trial can get a seriously flawed complaint dismissed. Rule 56 is another. However, without having passed these Rule 7 tests and, in Colorado, without the declaration of an official "at issue" date, Rule 16 conferences are simply not licensed as the parties are not yet qualified for the pre-trial portion of the proceedings.

Quote in support from the American Bar Association:

> Pre-trial Conferences
> Judges use pre-trial conferences with lawyers for many purposes. One type of conference gaining popularity is the status conference (sometimes called the early conference). This conference—***held after all initial pleadings have been filed***— helps the judge manage the case. Judges use it to establish a time frame for concluding all pre-trial activities and may set a tentative trial date at this time [emphasis added].

In Colorado, according to Colo. R. Civ. P. 16, Case Management and Trial Management, shall not commence until an "at issue" date has been declared which did not and could not occur in the relevant District Court case until all responsive pleadings have been filed.

> At Issue Date. A case shall be deemed at issue when all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed or defaults or dismissals have been entered against all non-appearing parties, or at such other time as the court may direct. The proposed order shall state the at issue date.
>
> **(b) Case Management Order.** Not later than 42 days after the case is at issue and at least 7 days before the case management conference, the parties shall file, in editable format, a proposed Case Management Order consisting of the matters set forth in subsections (1)-(17) of this section and take the necessary actions to comply with those subsections.

The matter simply is not at issue without the conclusion of initial responses – the complaint has been filed, the response has not, a status conference assumes that the Responsive Pleading has been filed and that the Plaintiff's complaint has not been thrown out and the Plaintiff is now fully aware of the Defenses response. In civil cases, status conferences can involve exchanging evidence, stipulating to certain terms, and starting negotiations on a settlement agreement, but none of this occurred.

Other states such as Florida more specifically state that status conferences cannot take place until after responsive pleadings are complete, and it is the Petitioner's contention that that is the intent of the rule as only the Plaintiff is at issue in the matter and then only tentatively and the entire matter can yet be disposed of without advancing to discovery.

> FLORIDA RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference. At any time after responsive pleadings or motions are due, the court may order, or a party, by serving a notice, may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference. At such a conference the court may:

In the matter of Bralich v. Gayner, et al in the United States District Court, due to the injection of such improperly scheduled, unnecessary, and unjustified Fed. R. Civ. P. Rule 16 status conferences and the concomitant illegal suspension of deadlines for both initial motions and the Initial Responsive Pleading, the matter was unnecessarily delayed by ten months, services of process were avoided, initial motions practices ignored and delayed, motions for default judgment ignored, and several other problems at the initiation of Defense Attorneys and the Magistrate and without censure by and with the support of the Courts at their onset and

without censure or support by the Court in response to Appellant/Plaintiff motions and oral arguments.

It is also evident that, as the first motion in the entire matter was a request for a status conference, the Defendant Attorneys' obvious intent to railroad the Pro Se Plaintiff into oral argument on a variety of issues at once rather than one at a time in writing without the time to research and think through complex legal issues as would naturally be allowed with standard written initial motions practice. This puts the Pro Se Litigant at a tremendous disadvantage in forcing him/her to engage in rapid fire oral arguments on a variety of issues at once in a haphazard order and manner determined by attorney interruptions rather than the Judge's stated agenda against practiced, trained, and experienced attorneys rather than one at a time with pauses in between and in writing as in standard initial motions practice.

During those conferences for which initial motions were suspended except for matters of captioning, services, and structure, style, and length of the prose in the Complaint, most all of the matters of initial motions that concerned the Defense Attorneys such as rule 8 and 12 matters were also brought up in oral argument and with details and arguments the Appellant/Plaintiff did not have an opportunity to research and/or prepare for and were offered in a dazzling, disorganized, rapid fire manner by all present that no pro se could reasonably be expected to field. Any complaints the Appellant/Plaintiff had concerning the process, the status conferences, and the attorneys' behaviors or motions were simply ignored. The Plaintiff has a right to file his complaint, be faced with initial motions, and if those are denied, to be presented with written responses.

In addition, as these status conferences constitute illegal interference with the Pro Se Plaintiff's right to submit a complaint and at least go through initial motions if not qualifying for initial pleadings as well, the Plaintiff's Motions for Summary judgment against those defendants who have defied the court by not responding should have been honored rather than put off along with the suspended motions. This illustrates a further bias of the Court against the Pro Se and for the Defense who were allowed to violate the prohibitions of the suspension while the Appellant/Plaintiff was not allowed a motion that was not actually suspended.

The Appellant/Plaintiff also argued that the request for the Rule 16 status conference and the granting of it constituted a de facto and de jure abdication of their rights to file Rule 7 initial motions and a responsive pleading by insisting on a conference that is not licensed until after an at issue date is in place. If the Attorneys had wanted to pursue initial motions, they should have done so in writing before filing a motion for a Rule 16 Conference and that having failed to so, they have made that de facto and de jure abdication of their right to do so and that the Defendants missed their chance in the rush to involve the court.

D. Constitutional Issues Regarding the Abuse of Pro Se Plaintiffs.

1. Automatic Deadlines for Motions to Quash Summonses.

At the second, pre-Responsive Pleadings Status Conference in the District Court, the Judge gave the Defendants permission to file Motions to Quash. The Petitioner naturally assumed that without special notice by the Court, Fed. R. of Civ. P. (7)

imposes a 21-day deadline to submit such motions. The defendants were all at least a week a late, and the Court refused to dismiss those motions for failing to meet the deadline even though he had not given any special deadline instructions at that second status conference when he told them they could submit.

2. Failure to Address Default Judgments.

The default judgment filed with the Clerk by the Pro Se Plaintiff was also ignored due to the stay on initial motions that was issued to allow matters that belonged in standard, written, initial motions practice to be discussed in those conferences. Had that Default judgment been filed by the clerk, it would have significantly impugned all defendants, not just those in default, with a clear indication of a consciousness of guilt and evidence of guilt that would have demonstrated the forthrightness of the Pro Se Plaintiff's complaint as well as the complainant's ability to ferret out significant further evidence.

3. Consistent Patterns of Pro Se Abuse.

The only across-the-board special treatment which the Supreme Court has guaranteed pro se litigants, apart from the due process rights accorded all litigants in civil cases, is the right to have courts liberally construe their pleadings. Pro se litigants deserve, of course, the minimum due process rights to which all other litigants are entitled. The most significant of these rights is an opportunity to be heard, "granted at a meaningful time and in a manner." Other minimum due process protections include the requirement of adequate

notice, the right to a neutral and detached decision maker, the right to hire counsel, the right to present evidence and confront and cross-examine witnesses, and the right not to be subjected to the jurisdiction or laws of a forum with which one has no significant contacts.

Quoting from the "Revised Pro Se Policy Recommendations from the Ameriican Judicature Society," based on "Proposed Recommendations" in Meeting the Challenge of Pro Se Litigation-A Report and Guidebook for Judges and Court MaJnagers (Chicago: AJS, 1998. http://caught.net/prose/PolicyRecom.pdf.

> Judges should assure that self-represented litigants in the courtroom have the opportunity to meaningfull y present their case. Judges should have the authority to insure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented litigants. Judges have a duty to maintain impartiality with respect to the parties in litigation. Judges also have a duty to ensure litigants' rights to a meaningful opportunity to be heard. In the case of self-represented litigants who are unfamiliar with the law, the rules of procedure and the rules of evidence, out-of-court assistance programs alone may be inadequate to assure their right to a meaningful hearing. Judges should insure that procedural and evidentiary rules are not used to hinder the legal interests of self-represented litigants. https://law.justia.com/constitution/us/amendment-14/05-procedural-due-process-civil.html

The Pro Se Petitioner in this matter and many others are being unfairly treated where every bit of written material is considered a Unabomber-like screed, summonses are routinely and unnecessarily challenged, Twombly-Iqbal is always invoked, early status conferences force oral arguments on multiple subjects in one forum without time to research and prepare written arguments, sound arguments are merely ignored rather than addressed and countered, and the pro se is always an impudent, bad actor wasting defendant and court time.

III. The Facts Necessary to Understand the Issue Presented.

The Civil matters in question are neither frivolous nor are they a means for dilatory or abusive purposes or meant to harass or to cause unnecessary delay or needless increase in the cost of litigation. As described in both the initial paragraph outlining the violated statutes as well as the statement of claim, the suit concerns a dynamic that has been plaguing not only the Plaintiff but countless others in our educational system, corporate workplaces, and religious institutions, devastating family, social, and career lives of innocent professionals from all those walks of life as well as emotionally damaging the children who are caught up in this problem among their teachers and parents. This dynamic, usually called school, workplace, or academic mobbing and bullying has been driving a growing body of research and scholarship in a variety of fields including the medical, psychiatric, and legal professions and is calling for effective legal means of addressing and redressing the problem and of legislation that can prevent it.

In particular, the Plaintiff argues that the Appeal Court's judgment on the matter was mistaken and may illustrate a bias toward the Petitioner either conscious or unconscious or perhaps toward pro se litigants in general and their tendency to prolix writing to ensure they have covered all the salient facts and details of the case they have to present as well as the many potential legal obstacles and pitfalls that exist in the law and in legal matters that are new to them and with writing skills learned from fields other than law that cannot be redressed except through remand to that Court.

REASONS WHY THE WRIT OF CERTIORARI SHOULD ISSUE.

In sum, the Petitioner humbly and respectfully petitions this the Supreme Court of the United States to grant a Writ of Certiorari to the United States District Court of the Tenth Circuit that the Supreme Court might review the above described case in lieu of the Constitutional and federal statutory issues described above and erroneous lower Court decisions and to excuse any arrogance or disrespect that might be implied by a Pro Se Petitioner's petition to the Supreme Court for a Writ of Certiorari to hear his Civil Case on appeal via Rules 10(c).

CONCLUSION

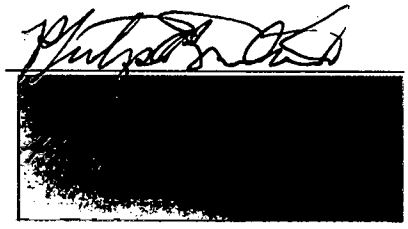
The Petition for a Writ of Certiorari should be granted.

Humbly and respectfully submitted,

Philip A. Bralich, Ph.D.

I declare under the penalty of perjury that the foregoing is true and correct.

Signed this 7th day of December, 2022.

Signature of Petitioner 

INDEX TO APPENDICES

APPENDIX A: Recommendation of United States Magistrate Judge by Magistrate Judge Scott T. Varholak (Document 200 and revised in 216) in Bralich v. Gayner et al, Case No. 1:20-cv-03800 RMR-STV in the United States District Court for the District of Colorado.

APPENDIX B: Order Adopting Amended Recommendation of United States Magistrate Judge by Judge Regina M. Rodriguez, U.S.D.J., (Document 209) in Bralich v. Gayner et al, Case No. 1:20-cv-03800 RMR-STV in the United States District Court for the District of Colorado.

APPENDIX C: Final Judgment, For the Court: Jeffrey P. Colwell, Clerk (Document 210) in Bralich v. Gayner et al, Case No. 1:20-cv-03800 RMR-STV in the United States District Court for the District of Colorado.

APPENDIX D: (1) Order & Judgment Cover Letter by Christopher M. Wolpert Clerk of Court, and (2) Order and Judgment* Before Judges Hartz, Kelly, And Holmes, Circuit Judges in Bralich v. Gayner, et al 0:2021cv01416 in the United States Court of Appeals for the 10th Circuit.

TABLE OF AUTHORITIES CITED

CASES.

AMENDMENTS.

STATUTES AND RULES.

Fed. R. Civ. P 9(c), pages 2, 10, and 17.

JOURNAL ARTICLES.

Philip S. Van Cise. June 21, 2021, "The Law of Libel in Colorado;" *Denver Law Review*, Volume 28 Issue 4 Article 3, on page 17.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-3800-RMR-STV

PHILIP A. BRALICH,

Plaintiff,

v.

MICHAEL GAYNER, et al.,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Entered By Magistrate Judge Scott T. Varholak

This matter is before the Court on Plaintiff's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 (the "Motion") [#213], which has been referred to this Court [#214]. The Court has carefully considered the Motion, the entire case file, and the applicable case law, and has determined that oral argument would not materially assist the Court. For the foregoing reasons, the Court respectfully **RECOMMENDS** that the Motion be **DENIED.**[1]

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[1] The Tenth Circuit has held that a Magistrate Judge does not have the authority "to enter an order denying [*in forma pauperis*] status;" instead, "the magistrate judge should . . . only issue[ ] a report and recommendation for a decision by the district court." *Lister v. Dep't Of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005); *see also* D.C.COLO.LCivR 72.1(b)(5) (stating that "[a] magistrate judge may . . . make determinations and enter appropriate orders under 28 U.S.C. § 1915, except to enter an order denying a request to proceed in forma pauperis").

Appendix "A"

I. BACKGROUND

Plaintiff initiated the instant lawsuit on December 24, 2020, and paid the filing fee of $402.00. [#1] On January 8, 2021, Plaintiff filed his Second Amended Complaint, purporting to name 26 Defendants. [#6] The Second Amended Complaint is 40 pages long, references approximately 24 federal statutes and four Colorado state statutes, and alleges "a malicious campaign of threats of and attempts at sexual and physical violence, harassment, defamation, real and threatened job denials and loss, . . . and religious persecution" dating back to 1983. [*Id.*] The Second Amended Complaint fails to separately identify each claim for relief and the specific defendant(s) against whom the claim is asserted. [*Id.*]

On July 14, 2021, Plaintiff filed a motion for leave to amend the Second Amended Complaint. [#106] The proposed Third Amended Complaint was a 57-page document containing allegations dating back decades and purporting to name 45 Defendants. [#106-2] The proposed Third Amended Complaint appeared to assert a RICO claim and multiple Colorado state law claims but again failed to separately identify each claim for relief and the specific defendant(s) against whom the claim was asserted. [*Id.*] Although the proposed Third Amended Complaint contained a background section describing many (but not all) of the Defendants, it failed to allege the specific actions allegedly undertaken by that defendant that harmed Plaintiff. [*Id.* at 10-15]

On November 24, 2021, the Court issued an Order denying Plaintiff's motion for leave to file the Third Amended Complaint and sua sponte dismissing Plaintiff's Second Amended Complaint with prejudice. [#209] The Court concluded that neither Plaintiff's Second Amended Complaint nor Plaintiff's proposed Third Amended Complaint satisfied

the pleading requirements of Federal Rule of Civil Procedure 8. [*Id.*] As the Court explained:

> [N]either Plaintiff's Second Amended Complaint nor its Third Amended Complaint contain allegations that would appropriately notify the Defendants of the claims against them such that they could respond to the complaint. Both the Third and Second Amended Complaints contain references to general grievances stemming from incidences that allegedly took place as early as the 1980s. Neither complaint, however, provides any specifics about the defendants' alleged conduct, nor does it tie conduct to particular defendants.

[*Id.* at 9] The Court entered a Final Judgment consistent with its Order on the same day. [#210]

On November 27, 2021, Plaintiff filed a Notice of Appeal. [#211] On November 30, 2021, Plaintiff filed the instant Motion "request[ing] leave to commence [his] appeal without prepayment of fees or security therefor pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24." [#213]

II. LEGAL STANDARD

Pursuant to Federal Rule of Appellate Procedure 24(a)(1), except in circumstances not present here, "a party to a district-court action who desires to appeal in forma pauperis ['IFP'] must file a motion in the district court" and attach an affidavit that (1) demonstrates the party's inability to pay or to give security for fees and costs, (2) claims an entitlement to redress, and (3) states the issues that the party intends to present on appeal. Pursuant to Rule 24(a)(2), "If the district court denies the motion, it must state its reasons in writing."

Pursuant to 28 U.S.C. § 1915(a)(1):

> any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.[2]

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). Section 1915(e)(2)(i) further provides that the Court "shall dismiss the case at any time" if the court determines that the action or appeal "is frivolous or malicious."

III. ANALYSIS

In order to succeed on a motion for leave to proceed on appeal without prepayment of costs or fees, the movant "must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991); *see also Lister v. Dep't Of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005). The Court considers each in turn.

A. Financial Inability

Pursuant to Section 1915(a) and Rule 24(a)(1), an applicant seeking to proceed IFP on appeal must submit an affidavit establishing the applicant's inability to pay or to give security for fees and costs. Notwithstanding that requirement, "a person should not be denied the opportunity to proceed under 28 U.S.C. § 1915(a)

[2] Although this provision refers to the applicant as a "prisoner," the Tenth Circuit has made clear that "Section 1915(a) applies to all persons applying for [*in forma pauperis*] status, and not just to prisoners." *Lister v. Dep't Of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005).

simply because he or she is not 'absolutely destitute.'" *Brewer v. City of Overland Park Police Dep't*, 24 F. App'x 977, 979 (10th Cir. 2002) (quoting *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948)).

Here, Plaintiff submitted an affidavit with the Motion indicating that Plaintiff receives monthly Social Security Insurance and worker's compensation benefits totaling $5,000 and has monthly expenses totaling only $3,625.[3] [#213 at 2-4] Plaintiff's estimated monthly income thus exceeds his estimated monthly expenses by $1,375 and Plaintiff offers no explanation for why this excess income cannot be used to pay the $505.00 in fees required for the Notice of Appeal.[4] [*Id.*] It thus "appears that [Plaintiff] had sufficient income to pay the filing fees at the time [he filed the Notice of Appeal]." *Brewer*, 24 F. App'x at 979. Accordingly, Plaintiff has not satisfied his burden of demonstrating that he is unable to pay the filing fee for the Notice of Appeal and his Motion should be denied. *See, e.g.*, *Brewer*, 24 F. App'x at 979 (denying application where applicant's "monthly income exceed[ed] his monthly expenses by a few hundred dollars"); *Nichols v. Denver Health and Hospital Authority*, No. 19-CV-02818-DDD-KLM, 2020 WL 12697597, at *2 (D. Colo. Dec. 23, 2020) (recommending denial of application where applicant's "average income over the past twelve months [was] $225 greater than her mandatory and discretionary monthly expenses"), *report and recommendation adopted sub nom.*, 2021 WL 5564900 (D. Colo. Jan. 7, 2021).

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[3] Plaintiff's affidavit indicates that he has minimal assets consisting of $500 in cash in banks and savings and loan associations and approximately $4,000 in equity in a vehicle. [#213 at 3]

[4] Pursuant to the Fee Schedule provided on the District of Colorado's website, the Docket Fee for a Notice of Appeal is $500.00 and the Filing Fee for a Notice of Appeal is $5.00. *See* Fee Schedule, *available at* http://www.cod.uscourts.gov/CourtOperations/FeeSchedule.aspx (last accessed Dec. 8, 2021).

B. Reasoned, Non-Frivolous Argument

Even if Plaintiff were able to establish his inability to pay the filing fees, Plaintiff has not demonstrated "the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardeleben*, 937 F.2d at 505. The Motion identifies the following three issues that Plaintiff desires to raise on appeal: (1) the pleading standards identified in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), "should also apply to those questioning a Rule 8 claim" and defense counsel "should not be allowed to make a threadbare assertion of a failed claim according to *Twombly-Iqbal* without detailing how the claim failed to meet those standards;" (2) the Federal Rules of Civil Procedure "make[ ] no provisions for status conferences" until after initial motions and pleadings are completed and a Rule 26(f) conference has been conducted and thus "Pre-Trial conferences cannot be held until the Pre-Trial portion of the [law]suit;" and (3) the 21-day deadline to file motions to quash "automatically ensues" when "the Court sets aside a suspension of deadlines to allow Motions to Quash Summonses." [#213 at 1] The Court addresses each in turn.

1. The Standard for Challenges to the Sufficiency of the Pleadings

As explained above, the Court sua sponte dismissed Plaintiff's Second Amended Complaint for failing to satisfy the pleading requirements of Federal Rule of Civil Procedure 8. [#209] Plaintiff's proposed issue on appeal regarding the standard that should be applied when a defendant challenges the sufficiency of a Plaintiff's pleading thus is irrelevant to the Court's order Plaintiff proposes to appeal. To the extent Plaintiff intends to argue on appeal that the *Twombly* and *Iqbal* pleading standard "should also

apply to [the Court]" when evaluating a pleading for compliance with Rule 8, any such argument is frivolous. As an initial matter, Plaintiff has offered no legal support for imposing such a requirement and the Court is aware of none. Although not entirely clear how the *Twombly* and *Iqbal* standard would be applied to the Court's Rule 8 review, the Court understands Plaintiff to contend that anyone challenging the sufficiency of the pleadings should be required to "detail[ ] how the claim failed to meet those standards." [#213 at 1] Even if such a standard were applied here, the Court provided Plaintiff with a detailed explanation regarding why his claims failed to meet Rule 8's requirements both in this Court's Recommendation [#200] and in the order of the Court adopting that Recommendation [#209]. Plaintiff thus has not identified a reasoned, nonfrivolous argument on the law and facts in support of his first proposed issue on appeal.

2. Status Conferences

Plaintiff has repeatedly challenged the Court's authority to conduct status conferences in this matter prior to conducting a scheduling conference and before "pleadings are completed." [*See, e.g.*, #92, 95, 161, 190] Plaintiff now proposes to raise this issue on appeal. As an initial matter, the status conferences conducted by the Court in this matter are irrelevant to the Court's dismissal of Plaintiff's claims and thus it is unclear what relief Plaintiff seeks on appeal related to the Court's decision to conduct status conferences. [*See* #209] Regardless, Plaintiff's challenge to the Court's authority to conduct status conferences is frivolous. Plaintiff has not identified any authority to support his position that the Court lacks the authority to conduct status conferences prior to a scheduling conference and the Court is aware of none. To the contrary, "district courts have the inherent authority to manage their dockets and courtrooms with a view

toward the efficient and expedient resolution of cases." *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016). Moreover, Federal Rule of Civil Procedure 16(a) expressly states that "the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences." Nothing in Rule 16 (or any other rule) prohibits the Court from conducting such conferences prior to a Scheduling Conference. Plaintiff thus has not identified a reasoned, nonfrivolous argument on the law and facts in support of his second proposed issue on appeal.

3. Motions to Quash

Plaintiff's final proposed issue on appeal—whether the 21-day deadline to file motions to quash "automatically ensues" when "the Court sets aside a suspension of deadlines to allow Motions to Quash Summonses"—also is frivolous. As an initial matter, the Court denied as moot the motions to quash filed by Defendants [#209] and thus it is unclear what relief Plaintiff seeks on appeal related to the motions to quash. Moreover, the Court has previously explained to Plaintiff why the deadline for Defendants to file motions to quash had not yet expired and Plaintiff has not identified any legal authority calling that explanation into question.[5] Plaintiff thus has not identified a reasoned, nonfrivolous argument on the law and facts in support of his third proposed issue on appeal.

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[5] At a Status Conference on July 29, 2021, the Court invited any defendant who intended to challenge the sufficiency of service to file a motion to quash. [#141] Plaintiff has since contended, without citation to any legal authority, that the Court's invitation to Defendants triggered a 21-day deadline for Defendants to file any such motions to quash. [*See, e.g.*, #149, 161, 190] As this Court previously explained, pursuant to Federal Rule of Civil Procedure 12(b), "[a] motion asserting [insufficient service of process] must be made before pleading if a responsive pleading is allowed" and, in this case, the Court suspended the deadline for Defendants to file responsive pleadings and thus the deadline for filing motions to quash did not expire. [*See* #155]

IV. CONCLUSION

For the foregoing reasons, the Court concludes that Plaintiff has not demonstrated either (1) "a financial inability to pay the required filing fees" for his Notice of Appeal or (2) "the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues [he proposes to] raise[ ] on appeal." *DeBardeleben*, 937 F.2d at 505. This Court thus respectfully **RECOMMENDS**:

(1) Plaintiff's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 [#213] be **DENIED**; and

(2) The Court certify in writing that Plaintiff's appeal is not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3).[6]

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[6] Within fourteen days after service of a copy of this Recommendation, any party may serve and file written objections to the magistrate judge's proposed findings of fact, legal conclusions, and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Griego v. Padilla (In re Griego)*, 64 F.3d 580, 583 (10th Cir. 1995). A general objection that does not put the district court on notice of the basis for the objection will not preserve the objection for *de novo* review. "[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Failure to make timely objections may bar *de novo* review by the district judge of the magistrate judge's proposed findings of fact, legal conclusions, and recommendations and will result in a waiver of the right to appeal from a judgment of the district court based on the proposed findings of fact, legal conclusions, and recommendations of the magistrate judge. *See Vega v. Suthers*, 195 F.3d 573, 579-80 (10th Cir. 1999) (holding that the district court's decision to review magistrate judge's recommendation *de novo* despite lack of an objection does not preclude application of "firm waiver rule"); *Int'l Surplus Lines Ins. Co. v. Wyo. Coal Refining Sys., Inc.*, 52 F.3d 901, 904 (10th Cir. 1995) (finding that cross-claimant waived right to appeal certain portions of magistrate judge's order by failing to object to those portions); *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (finding that plaintiffs waived their right to appeal the magistrate judge's ruling by failing to file objections). *But see, Morales-Fernandez v. INS*, 418 F.3d 1116, 1122 (10th Cir. 2005) (holding that firm waiver rule does not apply when the interests of justice require review).

DATED: December 8, 2021

BY THE COURT:

s/Scott T. Varholak
United Stated Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Regina M. Rodriguez

Civil Action No. 20-cv-3800-RMR-STV

PHILIP A. BRALICH,

Plaintiff,

v.

MICHAEL GAYNER, et al.,

Defendants.

ORDER ADOPTING AMENDED RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On November 9, 2021, United States Magistrate Judge Scott T. Varholak issued an amended recommendation (the "Recommendation") (ECF 200)[1] on the Plaintiff's Request to File a Second Amended Complaint (the "Motion to Amend) (ECF 106). Magistrate Judge Varholak recommends that the Motion to Amend be denied. Magistrate Judge Varholak also recommends, sua sponte, that Plaintiff's Second Amended Complaint (ECF 6) be dismissed with prejudice.

On November 11, 2021, the Plaintiff filed his objection to the Recommendation, at ECF 201. The Defendants have filed responses to the Plaintiff's objection, and the Plaintiff has responded. The matter is fully briefed and ripe for review.

---

[1] The Amended Recommendation, at ECF 200, is substantively identical to the Recommendation issued at ECF 199. The Amended Recommendation merely includes the advisement at footnote 14. For clarity, this Order refers only to the Amended Recommendation, as the more fulsome document.

Appendix "B"

The Court has received and considered the Recommendation along with the record and pleadings. After de novo consideration, the Court overrules the Plaintiff's objections and adopts the Recommendation in its entirety.

I. The Recommendation

Magistrate Judge Varholak first recommends that the Court deny Plaintiff's Motion to Amend. Magistrate Judge Varholak specifically finds that Plaintiff's proposed Third Amended Complaint fails to give fair notice to the Defendants as to the allegations against them, in violation of the requirement that a complaint "make clear exactly who is alleged to have done what to whom, to provide each individual with fair notice as to the basis of the claims against him or her." *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008). Judge Varholak explains, in great detail, how the Third Amended Complaint contains only vague assertions about actions taken by "Defendants," generally. *See* ECF 200 p. 9. This alone, Judge Varholak concludes, would justify denying Plaintiff leave to file the Third Amended Complaint.

Judge Varholak separately recommends that the Motion to Amend be denied because the Third Amended Complaint fails to comply with Federal Rule of Civil Procedure 8. Rule 8(a)(2) requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(d)(1) further specifies that "[e]ach allegation must be simple, concise, and direct." The purpose of Rule 8 is "to give opposing parties fair notice of the basis of the claim against them so that they may respond to the complaint, and to apprise the court of sufficient allegations to allow it to conclude, if the allegations are proved, that the claimant has a legal right to relief."

Monument Builders of Greater Kansas City, Inc. v. Am. Cemetery Ass'n of Kan., 891 F.2d 1473, 1480 (10th Cir. 1989). Judge Varholak opines that the Third Amended Complaint does not meet these requirements and notes that the Court is unsure how a Defendant could possibly file an answer to the proposed Third Amended Complaint. For these reasons, Judge Varholak separately recommends that the Motion to Amend be denied.

Judge Varholak also sua sponte recommends that the Second Amended Complaint be dismissed with prejudice for failure to satisfy Rule 8. ECF 200 p. 11 (citing to *Rodriguez v. Nationwide Homes, Inc.*, 756 F. App'x 782, 785 (10th Cir. 2018) ("If a complaint fails to meet the[] basic pleading requirements, a district court may dismiss the action sua sponte for failure to comply with Rule 8."); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) (finding that Federal Rule of Civil Procedure 41(b) "has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders"). Judge Varholak opines that the Plaintiff's Second Amended Complaint suffers from the same pleading deficiencies as does the Third Amended Complaint. Judge Varholak explains:

> Rather than containing simple, direct and concise allegations, the Second Amended Complaint is a 40-page stream of consciousness recitation of grievances from the last four decades. [#6] Rarely does it provide specific dates or specific examples of alleged misconduct. It fails to link particular actions to particular Defendants or identify which claims are being asserted against which Defendants. It thus "is not clear what specific claims for relief [Plaintiff] is asserting, the specific factual allegations that support each asserted claim, against which Defendant or Defendants each claim is being asserted, or what any of the named Defendants did that allegedly violated [Plaintiff's] rights." *Hayner*, 2018 WL 9537843, at *2. As a result, the Second Amended Complaint fails to satisfy Rule 8's pleading requirements and does not provide fair notice to Defendants of the claims being asserted against them or allow them an opportunity to meaningfully respond.

ECF 200 p. 12.

Judge Varholak also recommends that the Second Amended Complaint be dismissed with prejudice, explaining:

> Ordinarily, especially given Plaintiff's pro se status, the Court would recommend that the Second Amended Complaint be dismissed without prejudice and provide Plaintiff the opportunity to file an amended complaint. Here, however, Plaintiff has already filed three complaints, and has attempted to file a fourth complaint, and none has come close to stating a claim or satisfying Rule 8.[] Indeed, one could argue that the complaints have become progressively less coherent.

Id.

Judge Varholak further explains that dismissal with prejudice is necessary because the Defendants would suffer significant prejudice if Plaintiff's claims are not dismissed with prejudice. Finally, Judge Varholak identifies significant interference with judicial process, pointing to the Plaintiff's "numerous repetitive and often frivolous filings in this action—including repeated, baseless contentions that this Court lacks the authority to conduct status conferences and the filing of eight notices of alleged misconduct by Defendants that are improper under the Federal Rules of Procedure and that Plaintiff himself concedes 'may not be immediately pertinent to the current matter.'" ECF 200 pp. 14-15. These factors, Judge Varholak explains, warrant dismissal with prejudice.

II. De Novo Review of Plaintiff's Objections to the Recommendation

This Court is required to make a de novo determination of those portions of a magistrate judge's recommendation to which a specific objection has been made, and it may accept, reject, or modify any or all of the magistrate judge's findings or recommendations. Fed. R. Civ. P. 72(b).

Plaintiff's objection to the Recommendation is somewhat hard to follow and includes arguments beyond the scope of those relevant to the Recommendation. For

example, the Plaintiff has included in his objection a list of "Grounds for Appeal." These purported grounds for appeal are largely not relevant to the Court's consideration of the Recommendation. *See e.g.*, ECF 201 p. 2 ("1. Unjustified, unmotivated, and illegal Rule 16 Status Conferences to resolve trivial and largely contrived Rule 4 issues...).

Reading the Plaintiff's objection liberally, it appears that the Plaintiff has raised the following objections to the statements or findings of Judge Varholak:

First, the Plaintiff argues that the Recommendation includes an "overly strict numeration of the number of complaints that the Plaintiff has attempted to file." *Id.* at 5. The Plaintiff argues that there have not actually been five versions of his complaint, because that number includes "two Plaintiff and one Clerk's errors in submission in a quick succession over a few days that never became operative complaints and were never considered by the Court or the Defendant attorneys." The Plaintiff here appears to be responding to Judge Varholak's observations regarding prejudice to Defendants absent dismissal with prejudice and the significant interference with the judicial process caused by this matter.

The Court acknowledges this argument, but, reviewing the issue de novo, finds that Judge Varholak's application of the law and facts is appropriate. The number of complaints alone is not dispositive here. Judge Varholak also noted that, although this lawsuit has been pending for less than a year, there are over 200 docket entries, "many of which are completely extraneous and improperly filed by Plaintiff, but which defendants must still spend the time and resources necessary to review and, in some instances, respond." He also noted that the Plaintiff has failed to file a complaint that satisfies Rule

8 "despite the filing of numerous amended pleadings and receiving significant guidance from the Court." ECF 200 p. 14. Considering the issue de novo, taking into account the applicable law and the record of this matter as a whole, the Court agrees with Judge Varholak's findings.

The Plaintiff secondarily argues "in regard to the complaint that the Plaintiff did not use the standard form from [sic] for his complaint is unfair as he copied exactly the headings that the format of that form in an independent document, a common and perfectly parallel practice to prevent the unnecessary shuffling of papers that results when extra pages have to be appended and which gives the presentation of the material a less amateurish look." ECF 201 p. 6. This argument appears to respond to the Recommendation's notation that the Court recommended that Plaintiff utilize the Court's template complaint form. ECF 200 pp. 15-16. The Court again acknowledges the Plaintiff's argument here and finds that, considering the issue de novo, the Recommendation reaches the appropriate conclusion. Judge Varholak appears to have mentioned Plaintiff's failure to use the template form only to explain that the Court attempted to provide him with guidance so that he might meet the Rule 8 requirements and to support the ultimate conclusion that dismissal with prejudice is warranted. Considering the issue de novo, taking into account the applicable law and the record of this matter as a whole, the Court again agrees with Judge Varholak's findings.

The Plaintiff also argues that "the complaint that the writing of my documents are 'convoluted,' 'rambling' or in the form of sort of 'stream of consciousness' are also unjust and reflective of pat dismissals of pro se writing that simply ignored the well-structured

and well-organized writing the Plaintiff was able to produce due to his academic experience and years teaching basic writing. It seems that the short staffing and over docketing of the courts has caused the court staff to read this complaint far to [sic] cursorily." ECF 201 pp. 6-7. This argument mirrors the Plaintiff's contention in his "Grounds for Appeal" of a "Strong indication that the Court and Defendant Attorneys did not read the complaint." *Id.* at 2.

The Plaintiff has not identified anything to suggest that the Court failed to read or carefully consider his complaints. On the contrary, over 200 items have been filed in this case. Magistrate Judge Varholak has issued thoughtful orders addressing the merits of various motions filed, and he has engaged extensively with the parties in this matter. Nor has the Plaintiff identified anything suggesting that the Court has in any way treated him or other pro se plaintiffs unfairly.

Plaintiff next argues that "[d]elays in this matter have to be seen to be the fault of the Defendant Attorneys and the Court's lenient attitude toward them." ECF 201 p.7. The Plaintiff specifically points to the Defendants' request for a status conference and the alleged "absolute refusal to recognize that 'Boulder Shambhala Center a Trade Name for Shambhala USA.'" *Id.* This argument seems to respond to Magistrate Judge Varholak's observation that "Plaintiff's claims against Defendants have been pending for almost a year without Plaintiff asserting any plausible claims against them," and notation that "the Tenth Circuit has recognized that delay and uncertainty constitute prejudice to defendants..." ECF 200 p. 14 (citing *Faircloth v. Hickenlooper*, 758 F. App'x 659, 662 (10th Cir. 2018) (finding no error where district court found prejudice to defendants

resulted from "delay and uncertainty"); *Jones v. Thompson*, 996 F.2d 261, 264 (10th Cir. 1993) (finding that "[p]laintiffs . . . prejudiced the [d]efendants by causing delay and mounting attorney's fees")).

Plaintiff's argument that the delay is the fault of the Defendants is unsupported, as is his claim that the Court did not have the authority to conduct status conferences. Reviewing the Plaintiff's objection on this issue, the Court finds that Judge Varholak correctly found that the Defendants would suffer prejudice in the absence of a dismissal with prejudice.

Plaintiff finally argues that "the Recommendation's criticism of the Plaintiff's Rule 8(a) statement complete ignores the clearly labeled short statement written specifically for that purpose and also insists that the Plaintiff plead the matters of extortion via threats and acts of per se defamation with the particularity of a Rule 9(b) fraud claim." As a threshold matter, the Plaintiff does not identify whether he is objecting to the Recommendation's analysis of his Third Amended Complaint or his Second Amended Complaint. For the avoidance of doubt, the Court considers both.

The Court finds that Judge Varholak set forth the appropriate legal standard for analyzing whether a complaint meets the requirements of Rule 8. At a basic level, Rule 8 requires that a complaint give the opposing parties fair notice of the basis of the claim against them so that they may respond to the complaint, and to apprise the court of sufficient allegations to allow it to conclude, if the allegations are proved, that the claimant has a legal right to relief. *Monument Builders of Greater Kansas City, Inc. v. Am. Cemetery Ass'n of Kan.*, 891 F.2d at 1480. Nothing in the Recommendation suggests

that Magistrate Judge Varholak applied an incorrect or heightened standard when analyzing Plaintiff's claims.

Reviewing the issue de novo, the Court also agrees with the Recommendation's finding that neither Plaintiff's Second Amended Complaint nor its Third Amended Complaint contain allegations that would appropriately notify the Defendants of the claims against them such that they could respond to the complaint. Both the Third and Second Amended Complaints contain references to general grievances stemming from incidences that allegedly took place as early as the 1980s. Neither complaint, however, provides any specifics about the defendants' alleged conduct, nor does it tie conduct to particular defendants.

In his Third Amended Complaint, the Plaintiff refers generally to "an ever growing and elaborated pattern of Extortion and Coercion through threats and acts of Defamation based on threats and acts of creating a falsified biography of the Plaintiff in order to compel him to commit acts of both a legal and illegal and sexual and nonsexual nature such as but not limited to participation in the extortion by defamation against others and unwilling participation in closeted homosexual acts against his will by a criminal enterprise operated by and among the Defendants in a well-organized subculture within their legally organized institutes that has damaged the Plaintiff...". Plaintiff's allegation lacks any specificity, and reviewing the remainder of the Complaint (both Second and Third Amended Complaints) does not offer any clarity. Plaintiff fails to identify any specific instances of extortion and coercion, and he does not offer any specifics regarding the numerous additional allegations in the statement.

The Plaintiff also fails to tie the general conduct alleged to any particular defendant. For example, with regard to Defendant Kathy Kincaid, the Plaintiff alleges "Kathy Kincaid is a relatively new staff member at Shambala Mountain Center but an avid learner and perpetrator of community gossip and the techniques of defamation and extortion." ECF 106-1 p. 14. These general statements, unconnected to any actual allegation of wrongdoing, are typical of both the Second and Third Amended Complaints. Such general statements, which are not tied to any allegation and do not identify any legally redressable wrong, cannot meet the requirements of Rule 8. Thus, a de novo review of both the Second and Third Amended Complaints confirms that they do not conform with Rule 8.

III. Conclusion

Having reviewed the Plaintiff's objections to the Recommendation de novo, the Court finds that the Recommendation appropriately sets forth and applies the law applicable to the issues here. The Court agrees that the Plaintiff's Motion to Amend should be denied for the reasons set forth in the Recommendation. The Court also finds that the Plaintiff's Second Amended Complaint should be dismissed with prejudice for the reasons set forth in the Recommendation. The remaining motions pending in this action should be denied as moot.

The Court therefore **ORDERS** as follows:

(1) The Amended Recommendation [200] is **ACCEPTED AND ADOPTED** in its entirety;

(2) Plaintiff's Motion to Amend [106] is **DENIED**;

(3) Plaintiff's Second Amended Complaint [6] is **DISMISSED WITH PREJUDICE;**

(4) The Recommendation [199] is **DENIED AS MOOT**;

(5) Defendant Kincaid's Motion to Quash [156] is **DENIED AS MOOT**;

(6) Defendant Governing Council of Shambhala Mountain Center's Motion to Quash [157] is **DENIED AS MOOT**;

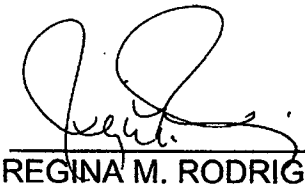
(7) Plaintiff's Discovery Motion [159] is **DENIED AS MOOT**'

(8) Various Defendants' Motion to Quash [162] is **DENIED AS MOOT**;

(9) The Clerk is **ORDERED** to enter judgment in favor of Defendants.

DATED: November 24, 2021

BY THE COURT:



REGINA M. RODRIGUEZ
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-03800-RMR-STV

PHILIP A. BRALICH,

Plaintiff,

v.

MICHAEL GAYNER, et al.,

Defendants.

FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is hereby entered.

Pursuant to the Order of Judge Regina M. Rodriguez entered on November 24, 2021. It is

ORDERED that the Magistrate Judge's Amended Recommendation [200] is ACCEPTED and ADOPTED. It is

FURTHER ORDERED as follows:

(1) Plaintiff's Motion to Amend [106] is **DENIED**;

(2) Plaintiff's Second Amended Complaint [6] is **DISMISSED WITH PREJUDICE;**

(3) The Recommendation [199] is **DENIED AS MOOT**;

(4) Defendant Kincaid's Motion to Quash [156] is **DENIED AS MOOT**;

(5) Defendant Governing Council of Shambhala Mountain Center's Motion to Quash [157] is **DENIED AS MOOT**;

(6) Plaintiff's Discovery Motion [159] is **DENIED AS MOOT**;

(7) Various Defendants' Motion to Quash [162] is **DENIED AS MOOT**; and

(8) The Clerk is **ORDERED** to enter judgment in favor of Defendants.

Dated at Denver, Colorado this 24th day of November, 2021.

FOR THE COURT:
JEFFREY P. COLWELL, CLERK

By: s/Stacy Libid
Stacy Libid, Deputy Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

September 02, 2022

Philip A. Bralich
2525 Arapahoe Avenue, Unit E4-163
Boulder, CO 80302

RE: 21-1416, Bralich v. Gayner, et al
Dist/Ag docket: 1:20-CV-03800-RMR-STV

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: Peter Doherty
Janette L. Ferguson
Cathleen H. Heintz
Jamey W. Jamison
Jessica P. Marsh
Megan Elizabeth Rettig
Gregory Scott Rich
Mark A. Sares

CMW/jjh

Appendix "D"

FILED
United States Court of Appeal
Tenth Circuit

September 2, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PHILIP A. BRALICH,

Plaintiff - Appellant,

v.

MICHAEL GAYNER; SHAMBHALA MOUNTAIN CENTER; MEMBERS OF THE SHAMBHALA BOARD; MEMBERS OF THE SHAMBHALA INT'L CARE AND CONDUCT COMMITTEE; SHAMBHALA MOUNTAIN CENTER CARE AND CONDUCT OFFICERS; CHARLES G. LIEF; JOY VALANIA; BETSY RAILLA; DAN PETERSON; CHRISTIE CASHMAN; JUDITH A. SIMMER-BROWN; TIMOTHY QUIGLEY; ERIC SPIEGEL; GWIN STEWART; KATHY STIER; KATHY KINCAID; DEFENSE LANGUAGE INSTITUTE AND FOREIGN LANGUAGE CENTER; KELLY FINEY; BERKELEY SHAMBHALA CENTER; SAN FRANCISCO SHAMBHALA CENTER; BARRY A. SULLIVAN, Esq.; MARTHA RZASA; SUSAN COATES; THE GOVERNING COUNCIL OF SHAMBHALA MOUNTAIN CENTER; BOULDER SHAMBHALA CENTER; SEATTLE SHAMBHALA CENTER; MILWAUKEE SHAMBHALA CENTER; MEMBERS OF THE COUNCIL OF MAKYI RABJAN,

Defendants - Appellees.

No. 21-1416
(D.C. No. 1:20-CV-03800-RMR-STV)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ**, **KELLY**, and **HOLMES**, Circuit Judges.

Dr. Philip Bralich, proceeding pro se[1] appeals the dismissal of his claims with prejudice for failure to file a complaint that complied with Fed. R. Civ. P. 8. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

In December 2020, Dr. Bralich filed a complaint against over 25 defendants.[2] It alleged various common-law torts and statutory causes of action arising out of events dating back to 1983, but it failed to include specific allegations against specific defendants, to separately identify which legal claims Dr. Bralich was asserting against which defendant, or to otherwise detail how each individual

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Because Dr. Bralich proceeds pro se, we construe his arguments liberally, but we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

[2] The precise number of intended defendants is unclear because, in places, Dr. Bralich listed as defendants "Members," or "Officer(s)" of different committees or organizations. *See* R., vol. 1 at 33–34.

defendant harmed him. Dr. Bralich filed an amended and then a second amended complaint, each of which had the same deficiencies as the first.

Two of the defendants filed a motion to suspend the deadlines to file a responsive pleading, to set a status conference, and to establish a briefing schedule. Over Dr. Bralich's objections, the magistrate judge granted the motion. Dr. Bralich then filed a motion for leave to file a third amended complaint.[3] This proposed amended complaint listed at least 45 defendants[4] and invoked dozens of federal and state statutes. Although the proposed third amended complaint was more verbose than the original and first two amended complaints, it still presented only broad, unspecific allegations directed at a large number of people going back decades.

The magistrate judge issued an amended recommendation that the court deny the motion for leave to amend. The magistrate judge also sua sponte recommended dismissal with prejudice of the second amended complaint under Fed. R. Civ. P. 41(b), denial of all pending motions as moot, and entry of judgment for the defendants. The district court overruled Dr. Bralich's objections, adopted the

[3] Dr. Bralich labeled this motion as a motion to file a second amended complaint, but he had already filed amended complaints on December 28, 2020, and January 8, 2021, so the district court was correct to number the complaints as it did.

[4] As with Dr. Bralich's original complaint, the precise number of intended defendants was unclear because of multiple instances in which he listed multiple individuals—such as "John/Jane Doe (1)-(20)" or "Governing Board(s) of Shambhala Mountain Center, Inc."—as a single defendant. *See* R. vol. 3 at 21 (order granting motion to dismiss); *id.* vol. 1 at 217–18 (proposed third amended complaint).

recommendation in full, dismissed the second amended complaint, and entered judgment for the defendants. This appeal followed.

DISCUSSION

"We review dismissals under Rule 41(b) for abuse of discretion." *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007). Likewise, we review for abuse of discretion denials of motions for leave to amend, *Gohier v. Enright*, 186 F.3d 1216, 1218 (10th Cir. 1999), and "trial procedure applications (including control of the docket and parties)," *United States v. Nicholson*, 983 F.2d 983, 988 (10th Cir. 1993) (internal quotation marks omitted).

We review de novo whether a complaint complies with Fed. R. Civ. P. 8. *Gohier*, 186 F.3d at 1218. "[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated." *Nasious*, 492 F.3d at 1163. This basic level of specificity is necessary to "permit[] the defendant[s] sufficient notice to begin preparing [their] defense and the court sufficient clarity to adjudicate the merits." *Id.*

Dr. Bralich takes issue with the district court's conclusion that his second and proposed third amended complaint did not comply with Rule 8, but we agree with its

determination that they failed to include the requisite "short and plain statement of the claim showing that [Dr. Bralich] is entitled to relief." Fed. R. Civ. P. 8(a)(2). We reject Dr. Bralich's suggestion that the court erroneously applied a heightened pleading standard when it reviewed his claims. Neither the second amended complaint nor the proposed third amended complaint adequately explained what he claimed each defendant did to him and what specific legal right each defendant allegedly violated. And we discern no abuse of discretion in the court's denial of his motion for leave to amend in light of his repeated failures to file a complaint that stated a claim for relief. *See Gohier*, 186 F.3d at 1218 ("A proposed amendment is futile if the complaint, as amended, would be subject to dismissal . . . for failure to state a claim." (internal citation omitted)).

We note that the magistrate judge expressly weighed the five factors set forth in *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir.1992), in recommending dismissal of the complaint with prejudice, and the district court adopted the magistrate judge's reasoning.[5] Dr. Bralich does not challenge the district court's assessment of those factors.

---

[5] Courts must consider these factors before a dismissal with prejudice under Fed. R. Civ. P. 41(b). *See* 492 F.3d at 1162. The *Ehrenhaus* factors are

> (1) the degree of actual prejudice to the defendant; (2) the amount of interference with the judicial process; (3) the culpability of the litigant; (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions.

Finally, we reject Dr. Bralich's challenges to the magistrate judge's authority to hold status conferences. The rules of civil procedure plainly authorize status conferences such as those the magistrate judge held in this case. *See* 28 U.S.C. § 636(b)(1)(A) (authorizing a district judge to designate a magistrate judge to hear and determine any pretrial matter except for certain dispositive motions); *see also* Fed. R. Civ. P. 16(a)(2) ("In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as . . . establishing early and continuing control so that the case will not be protracted because of lack of management."); D.C. Colo. L. Civ. R. 72.1(a) ("Except as restricted by these rules, a magistrate judge may exercise all powers and duties authorized by federal statutes, regulations, and the Federal Rules of Civil Procedure."); 72.1(c)(1) ("On reference or order by a district judge, a magistrate judge may . . . conduct pretrial conferences"). And Dr. Bralich offers no cogent basis to conclude the magistrate judge abused his discretion in holding them here, much less an argument for reversal of the dismissal order based on the holding of status conferences.

Dr. Bralich's remaining contentions do not alter our conclusion that the district court appropriately dismissed his claims and entered judgment for the defendants.

Id. (ellipsis and internal citations and quotation marks omitted).

CONCLUSION

We affirm the judgment of the district court. We deny Dr. Bralich's motion for leave to file supplemental evidence.

Entered for the Court

Jerome A. Holmes
Circuit Judge

Philip A. Bralich, Ph.D.
2525 Arapahoe Avenue, E4-163
Boulder, CO 80302
Telephone: (831)641-9610
Pro Se Petitioner

THE UNITED STATES SUPREME COURT

PHILIP A. BRALICH, PH.D., Pro Se Petitioner, v. MICHAEL GAYNER, EXECUTIVE DIRECTOR, SHAMBHALA MOUNTAIN CENTER, MEMBERS OF THE SHAMBHALA BOARD, MEMBERS OF SHAMBHALA INT'L CARE AND CONDUCT COMMITTEE, MEMBERS OF THE COUNCIL OF MAKYI RABJAN, SHAMBHALA MOUNTAIN CENTER CARE AND CONDUCT OFFICERS, THE GOVERNING COUNCIL OF SHAMBHALA MOUNTAIN CENTER, CHARLES G. LIEF, JOY VALANIA, BETSY RAILLA, BOULDER SHAMBHALA CENTER, SEATTLE SHAMBHALA CENTER, DAN PETERSON, CHRISTY CASHMAN, JUDITH SIMMER-BROWN, TIMOTHY QUIGLEY, ERIC SPIEGEL, GWIN STEWART, KATHY SPIER, KATHY KINKAID, DEFENSE LANGUAGE INSTITUTE AND FOREIGN LANGUAGE CENTER, KELLY FINEY, MILWAUKEE SHAMBHALA CENTER, BERKELEY SHAMBHALA CENTER, SAN FRANCISCO SHAMBHALA CENTER, BARRY A. SULLIVAN, ESQ., SUSAN COATES, MARTHA RZASA. Defendants.	CERTIFICATE OF SERVICE.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing documents, the Petition for a Writ of Certiorari to the United States Supreme Court, the Certificate of Word Count, the Application for Leave to Proceed In Forma Pauperis, and this Certificate

of Service was duly mailed via the United States Postal Service to the following parties at their last known addresses of record via U.S. Mail.

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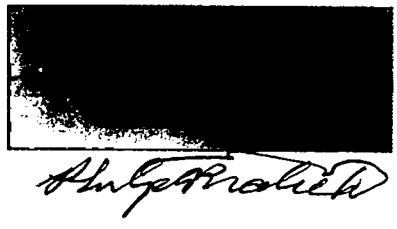
DATED: Monterey, CA, the 12th day of October, 2022.



/s/Philip A. Bralich
Philip A. Bralich, Ph.D.
Pro Se Petitioner

No. _____

In the Supreme Court of the United States

Philip A. Bralich, Ph.D.,

Pro Se Petitioner,

v.

Gayner, et al,

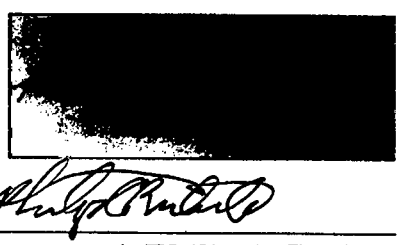
Respondents.

On a Petition for a Writ of Certiorari to
the Supreme Court of the United States.

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33.1(h), I certify that the Petition for a Writ Certiorari in Bralich v. Gayner et al (Case No. 21-cv-01416) from the United States Court of Appeals for the Tenth Circuit was prepared using Century 12-point typeface and contains 7,242 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d). This certificate was prepared in reliance on the word count function of the word-processing system used to prepare the document. I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,



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Executed on September 12, 2022