

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DIEGO VELASQUEZ, :
Plaintiff, :
 :
v. : C.A. No. 22-457-MSM
 :
JUAN MORALES; DANIEL RIVERA; :
XAVIER PEREZ; and DIEGO SANCHEZ, :
Defendants. :

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

This is the third case filed in 2022 in this Court by *pro se* Plaintiff Diego Velasquez, a citizen of Rhode Island who resides in Providence, pertaining to events allegedly occurring in and near the building where Plaintiff resides.¹ Like his first two cases, Plaintiff’s complaint was accompanied by an *in forma pauperis* (“IFP”) application, which triggers preliminary screening pursuant to 28 U.S.C. § 1915 (e)(2)(B). ECF No. 2. The IFP motion has been referred to me for report and recommendation. For the reasons that follow, I recommend that the case be summarily dismissed for lack of federal subject matter jurisdiction, for failure to state a claim and as malicious, with a caution that Plaintiff is now at risk that the Court may enjoin him from filing further civil actions except with leave from the Chief Judge.

Plaintiff’s first complaint was against his purported landlord and was summarily dismissed for lack of federal subject matter jurisdiction because the only possible basis for jurisdiction was diversity pursuant to 28 U.S.C. § 1332 and Plaintiff and the named defendant clearly resided in and therefore were citizens of Rhode Island. Velasquez v. Marte, C.A. No. 22-

¹ Also in 2022, Plaintiff initiated three other civil matters; these are not related to what is in issue in the three cases referenced above. They are: Velasquez v. Flores, 22-cv-073WES; Velasquez v. U.S. Superior Court, 22-cv-167 MSM; and Velasquez v. Smith, 22-cv-448-SJM-AKJ.

74WES, 2022 WL 613279, at *1-2 (D.R.I. Mar. 2, 2022), adopted by Text Order (D.R.I. Mar. 14, 2022) (“Velasquez I”). This determination was affirmed by the First Circuit. Velasquez v. Marte, No. 22-1214, 2022 WL 4360946 (1st Cir. June 7, 2022). Plaintiff’s second complaint, against the same defendant but alleging that he lived not in Rhode Island but in the Caribbean, Wisconsin or Maine, was dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(ii) for failure to state a claim and as malicious *inter alia* in light of gratuitously offensive allegations. Velasquez v. Tapia, C.A. No. 22-324WES, 2022 WL 13679097, at *1-2 (D.R.I. Oct. 21, 2022), adopted by Text Order (D.R.I. Nov. 14, 2022) (“Velasquez II”).²

On December 27, 2022, Plaintiff filed the third case, this time against individuals alleged to be other tenants in the building in which he resides. The pleading contains no claim arising under federal law and represents that all of the named Defendants “live in the basement below me.” ECF No. 1 at 2. Therefore, like Velasquez I, this case must be summarily dismissed for lack of subject matter jurisdiction because Plaintiff and all Defendants are residents of Rhode Island. The pleading further suffers from the substantive defect that resulted in the dismissal of Velasquez II in that, taking its allegations as true, drawing all inferences in Plaintiff’s favor and liberally construing the pleading in light of Plaintiff’s *pro se* status, it utterly fails to state any plausible federal or state law claim. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972) (per curiam) (stating *pro se* filings are held “to less stringent standards than formal pleadings drafted by lawyers”). This pleading also contains gratuitously offensive statements about Defendants, similar to what the Court found to be malicious in Velasquez II. ECF No. 1 at 1-2 (e.g., Defendants are variously “Lier, . . . Poor Bastard, Satanic Dwarf, . . . jerk off, . . . POOR and UGLY, . . . satanic black bastard”).

² In the interest of judicial efficiency, I incorporate and do not replicate here the content and applicable law as laid out in Velasquez I and Velasquez II.

Based on the foregoing, I recommend that Plaintiff's complaint be summarily DISMISSED without prejudice because the Court lacks subject matter jurisdiction and/or, pursuant to 28 U.S.C. § 1915(e)(2)(B), be DISMISSED with prejudice because the pleading fails to state a claim and is malicious. I further recommend that Plaintiff's IFP motion be denied as moot. Finally, I hereby caution Plaintiff that the pattern of filing established by these three complaints puts him at risk that the Court will enjoin him from initiating any new civil action, except with the prior approval of the Chief Judge of this District. See Plante v. U. S. Dep't of Interior, CA No. 14-519 S, 2015 WL 631197, at *1-2 (D.R.I. Feb. 12, 2015) (enjoining plaintiff from filing additional complaints without prior court approval due to "the trigger-happy manner in which Plaintiff initiates patently frivolous actions in this Court and his demonstrated willingness to reassert the same frivolous claims against the same or similar defendants").

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
January 9, 2023