

SCANNED

DLD-135

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-3328

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EL AEMER EL MUJADDID,  
Appellant

v.

ANDREW BREWER; JOSH ROWBOTTOM; BRIAN FERGUSON; GREGG PERR;  
SUSAN GRAUBART; COREY AHART; MARION KARP; DENNIS P. MCINERNEY;  
WESTAMPTON TOWNSHIP COMMITTEE

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. Civil Action No. 1-18-cv-14021)  
District Judge: Honorable Robert B. Kugler

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Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or  
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6  
March 5, 2020  
Before: RESTREPO, PORTER, and SCIRICA, Circuit Judges

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**JUDGMENT**

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This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on March 5, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered October 4, 2019, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszeit  
Clerk

Dated: April 9, 2020

PATRICIA S. DODSZUWEIT

TELEPHONE NO.  
215-597-2995

CLERK

OFFICE OF THE CLERK



UNITED STATES COURT OF APPEALS  
21400 UNITED STATES COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA, PA 19106-1790  
Website: [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov)

April 9, 2020

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RE: El Aemer El Mujaddid v. Andrew Brewer, et al

Case Number: 19-3328

District Court Case Number: 1-18-cv-14021

ENTRY OF JUDGMENT

Today, **April 09, 2020** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very Truly Yours,

s/ Patricia S. Dodszuweit

Clerk

By: s/ Desiree,  
Case Manager  
267-299-4252



DLD-135

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-3328

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EL AEMER EL MUJADDID,  
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v.

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March 5, 2020  
Before: RESTREPO, PORTER, and SCIRICA, Circuit Judges

(Opinion filed: April 9, 2020)

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OPINION\*

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PER CURIAM

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

After receiving a traffic citation, Appellant El Aemer El Mujaddid filed suit in New Jersey Superior Court against the Westampton Township committee and several Westampton Township officers, administrators, and judges. The defendants removed the 285-paragraph complaint to the United States District Court for the District of New Jersey. After the District Court denied El Mujaddid's motion to remand the complaint to state court, El Mujaddid filed motions for appointment of counsel which were denied by the Magistrate Judge. He also filed a motion to amend his complaint. After the defendants moved to dismiss the initial removed complaint, El Mujaddid asked to withdraw the motion to amend and moved to file another amended complaint. The District Court dismissed the initial removed complaint as it did not comport with Federal Rule of Civil Procedure 8(a), an issue the Court raised sua sponte.<sup>1</sup> According to the District Court, the complaint did not contain a "short and plain statement of the claim," but instead alleged "legal conclusions, devoid of requisite factual support." El Mujaddid v. Brewer, No. 18-14021 (D.N.J. Apr. 1, 2019). The Court provided El Mujaddid 14 days to file a motion to amend the complaint consistent with Rule 8.

El Mujaddid filed a timely motion to amend the complaint with a proposed amended complaint. The proposed amendment repeated the same allegations that were made in the original complaint. Although the amended complaint, like the original complaint, is difficult to follow, El Mujaddid seems to have alleged that he was involved

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<sup>1</sup> The Order also dismissed as moot El Mujaddid's motions for leave to file an amended complaint, motion for preliminary injunction, and motion for sanctions, as well as the defendants' motion to dismiss.

in an automobile accident with a third party not named in this suit. The named officers filled out a police report detailing the situation, which El Mujaddid claimed was inaccurate. Later, El Mujaddid received a traffic citation for careless driving based on the accident. Without any justifying details, El Mujaddid stated that the officers discriminated against him because of his ethnicity and falsified the reports. He further claimed that the officers did not have probable cause to issue the traffic citation, that they did not properly serve the citation, and that he was forced to appear before a municipal court based on allegedly false charges. El Mujaddid purported to make claims under 42 U.S.C. §§ 1983, 1985, and 1986, the First, Fourth, Thirteenth, and Fourteenth Amendments, the Civil Rights Acts of 1866 and 1875, the New Jersey Civil Rights Act, and the Constitution of New Jersey.

The District Court, noting that the proposed amended complaint did not cure the deficiencies addressed in the previous order, denied the motion to amend. El Mujaddid timely appealed. In this Court, he filed a motion for leave to file an overlength motion for summary action, a related motion for summary action, a motion for appointment of counsel, a motion for an injunction pending appeal, and two motions to consolidate.<sup>2</sup> For the reasons stated below, we will affirm the judgment of the District Court.

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<sup>2</sup> In his first motion to consolidate, El Mujaddid sought to consolidate this appeal with two other appeals from cases arising from the same traffic citation but with different claims against different defendants. The Clerk granted the first motion in part and denied it in part, consolidating the other two appeals, but leaving this appeal to proceed separately. In the motion before us (for which El Mujaddid has submitted a “corrected version”), El Mujaddid seeks to consolidate this appeal with three other appeals, including the two already-consolidated appeals from the previous motion.

We have jurisdiction under 28 U.S.C. § 1291. We construe El Mujaddid's pro se allegations liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). We may summarily affirm on any basis supported by the record if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. We review both the District Court's dismissal of a complaint under Rule 8 and the denial of a motion to amend the complaint for abuse of discretion. See In re: Westinghouse Sec. Litig., 90 F.3d 696, 702 (3d Cir. 1996); Bechtel v. Robinson, 886 F.2d 644, 647 (3d Cir. 1989).

Rule 8(a) requires a pleading to contain "a short and plain statement of the grounds for the court's jurisdiction" and "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1), (2). Each averment must be "simple, concise, and direct." Id. at 8(d)(1). "Taken together," Rules 8(a) and 8(d)(1) "underscore the emphasis placed on clarity and brevity by the federal pleading rules." In re: Westinghouse Sec. Litig., 90 F.3d at 702 (citation omitted). A district court may sua sponte dismiss a complaint for failure to comply with Rule 8 when the complaint is "so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995) (quotations omitted).

We agree with the District Court that El Mujaddid's original complaint was anything but "simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). It was so excessively voluminous and unfocused as to be unintelligible. In addition, despite the length of the complaint and proposed amendment, El Mujaddid did not plead any facts showing that he



was entitled to relief. See id. at 8(a)(2). Though he expressed displeasure at the alleged misinformation contained in the police report after his car accident and the traffic citation he was issued, there does not seem to be any indication in the complaint of a viable state or federal claim. We simply do not see any factual averments showing that the Westampton officials were engaged in race- or nationality-based discrimination, nor do we perceive any other constitutional violations based on the issuance of a traffic citation for careless driving or El Mujaddid's appearance before a municipal court. Though the complaint is replete with legal-sounding verbiage, it contains mostly conclusory statements with no factual bases.<sup>3</sup> The District Court's dismissal of the original complaint was thus proper.

Moreover, the District Court did not abuse its discretion in denying El Mujaddid's motion to amend the complaint. The order denying the original complaint made clear that El Mujaddid was required to plead a short and plain statement of the claim, more than just legal conclusions and vague assertions. However, the proposed amended complaint did not cure the deficiencies noted in the order. In fact, El Mujaddid sought in his motion to amend to add three new defendants and another constitutional claim regarding the alleged suspension of his driver's license. The proposed amended complaint was not significantly more "simple, concise, and direct" than the original

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<sup>3</sup> For example, as the District Court noted, El Mujaddid claimed that he was "legally subjected to conditions of slavery," and that the defendants "conspired to frame him for careless driving in a conspiracy to deny him equal protection under the law because he is a Moor," engaged in a "Jim Crow revenue scheme to gain a... \$200.00 debt," and "distorted the even-handed pursuit of justice," all without factual support.

complaint. Fed. R. Civ. P. 8(d)(1). Over the course of the litigation, El Mujaddid attempted to file three different amended complaints, none of which were drafted in accordance with Rule 8. The District Court need not have entertained another complaint containing only meandering and conclusory allegations.

Accordingly, because this appeal presents no substantial question, we will affirm the judgment of the District Court.<sup>4</sup> See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. El Mujaddid's motions for summary action,<sup>5</sup> appointment of counsel, injunction pending appeal, and consolidation are denied.

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<sup>4</sup> El Mujaddid also appeals the denial of his motions for appointment of counsel and motion for reconsideration. Because El Mujaddid did not appeal those orders, issued by a Magistrate Judge, to the District Court, he has waived his right to object to them. See 28 U.S.C. § 636(b)(1); United Steelworkers of Am., AFL-CIO v. N.J. Zinc Co., 828 F.2d 1001, 1005 (3d Cir. 1987).

<sup>5</sup> El Mujaddid's motion for leave to file an overlength motion for summary action is granted.

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

<p>EL AEMER EL MUJADDID,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ANDREW BREWER, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p>Civil No. 18-14021 (RBK/AMD)</p> <p><b>OPINION</b></p>
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**Kugler**, United States District Judge:

This matter is before the Court on Plaintiff El Aemer El Mujaddid’s motion to remand and relief from judgment or order. (Doc. No. 4.) For the reasons below, Plaintiff’s motions are **DENIED**.

**I. BACKGROUND**

The Third Circuit recently summarized the relevant facts in this matter. *See In re Mujaddid*, No. 18-cv-3756, 2019 WL 360052, at \*1 (3d Cir. Jan. 29, 2019). As the Third Circuit explained, Plaintiff El Aemer El Mujaddid filed a complaint in the Superior Court of New Jersey, Law Division, Burlington County, against numerous defendants relating to a traffic citation he received. *Id.* Mujaddid alleged, among other things, causes of action under 42 U.S.C. §§ 1983, 1985, and 1986 for the deprivation of his constitutional rights. *Id.* It appears that Mujaddid claimed his procedural and substantive due process rights had been violated, and that his arrest and criminal prosecution violated federal law. *Id.*

The matter was transferred to the Law Division, Camden County, in July 2018, and an amended complaint was filed on August 1, 2018. *Id.* Defendants Andrew Brewer, Josh Rowbottom, Brian Ferguson, Gregg Perr, Susan Graubert, Corey Ahart, Marion Karp, and Westampton Township (collectively, “removing Defendants”) removed the case to this Court on September 19, 2018 based on this Court’s original jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). (Doc. No. 1-1.) The Notice of Removal did not mention whether Defendant Judge Dennis McInerney joined in or consented to the removal. *Id.* The Court thus issued an Order to Show Cause (Doc. No. 12) as to why removal was proper, and removing Defendants timely responded. (Doc. No. 14.)

Plaintiff now opposes the removal and asks the Court to remand the case to state court. (Doc. No. 4 (“Pl.’s Br.”).) Invoking Federal Rule of Civil Procedure 60, Plaintiff also asks this Court to “vacate the Order setting an initial conference for 10/23/2018,” which Magistrate Judge Donio entered on September 19, 2019. (Pl.’s Br. at 17.)

## **II. DISCUSSION**

“The removability of a legal matter is determined from the plaintiff’s pleadings at the time of removal.” *Costa v. Verizon New Jersey, Inc.*, 936 F. Supp. 2d 455, 458 (D.N.J. 2013) (citing *Am. Fire & Cas. Co. v. Finn*, 341 U.S. 6, 14 (1951)). Under 28 U.S.C. § 1441(a), a defendant may remove an action filed in state court to that federal court with original jurisdiction over the action. Defendants bear the burden of showing that there is federal subject matter jurisdiction in an action removed to federal court under 28 U.S.C. § 1441. *See Samuel–Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004).

Here, Defendants properly removed this matter based on the Court’s original jurisdiction. Despite Plaintiff’s assertions to the contrary, the Complaint raises causes of action asserting that

Plaintiff's civil rights were violated under the United States Constitution. For example, the caption of the removed Complaint notes that Plaintiff seeks relief under 42 U.S.C. §§ 1983, 1985, and 1986, and other portions of the document explicitly state that there have been violations of Plaintiff's "civil rights, including procedural due process, substantive due process, [and] equal protection rights," among other things. (Doc. No. 1-1, Ex. B at p. 4, 6 of 26.) Plaintiff also brings a *Monell* claim. (*Id.* at p. 21 of 26.) Indeed, the Third Circuit's recent decision in this matter confirms this Court's federal question jurisdiction. *See In re Mujaddid*, No. 18-cv-3756, 2019 WL 360052, at \*1 (3d Cir. Jan. 29, 2019) (stating that Plaintiff alleged "causes of action under 42 U.S.C. §§ 1983, 1985, and 1986 for the deprivation of his constitutional rights" as well as apparent claims that Plaintiff's "procedural and substantive due process rights had been violated, and that his arrest and criminal prosecution violated federal law").<sup>1</sup>

Plaintiff's arguments in seeking remand fall flat. First, Plaintiff contends that the Court lacks diversity jurisdiction and that the amount in controversy requirement in diversity cases is not met. (Pl.'s Rep. Br. at 1). But such claims are of no moment because the removing Defendants properly removed this matter based on this Court's federal question jurisdiction.

Second, Plaintiff contends that remand is appropriate because Defendant Judge Dennis McInerney did not consent to the removal. (Pl.'s Rep. Br. at 1.) Although the rule of unanimity ordinarily requires all defendants to join in the removal petition, an exception arises "when a non-resident defendant has not been served at the time the removing defendants file their petition." *Lewis v. Rego Co.*, 757 F.2d 66, 68 (3d Cir. 1985). In response to the Court's Order to Show Cause on this issue, the removing defendants certified that Judge McInerney was not properly served in

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<sup>1</sup> Insofar as Plaintiff asserts state law claims, they appear to arise from the same "common nucleus of operative fact," and are appropriate under this Court's supplemental jurisdiction. *See* 28 U.S.C. § 1367; *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966).

this case (Doc. No. 13), and thus need not join in the removal. Regardless, Plaintiff has waived any challenge on this issue, as he did not object to this alleged defect within 30 days of removal. *See Green Tree Servicing LLC v. Dillard*, 88 F. Supp. 3d 399, 401 n.2 (D.N.J. 2015) (“A violation of the rule of unanimity, however, constitutes a procedural defect subject to waiver if the plaintiff fails to object within 30 days.”). This matter was removed on September 19, 2018; Plaintiff, however, did not raise any rule of unanimity issue until he states that he discussed it with Magistrate Judge Donio “during the Joint Discovery Plan,” on October 23, 2018. (Doc. No. 6.) Nor did Plaintiff raise the alleged defect to this Court until Plaintiff filed his reply brief on October 29, 2018 in connection with his motion to remand. (Doc. No. 9.)

Third, Plaintiff contends that removal was not timely filed within 30 days after receipt of service by email and mail. (Pl.’s Br. at 7; *see also* Pl.’s Rep. Br. at 1); 28 U.S.C. § 1446(b)(1). In support of this contention, Plaintiff alleges that he served hard copies of the required papers by mail to an individual named George Saponaro, whose website states that he is the Solicitor of Westampton Township. (Pl.’s Br. at 6.) But aside from the fact that Plaintiff does not specify when this alleged service occurred, the removing Defendants have certified that Mr. Saponaro is not the Westampton Solicitor and has not represented the Township since 2015. (Def.’s Br. at Ex. A.) Thus, Mr. Saponaro is not a proper party to receive service on the Township’s behalf.

In further support of his claim that removal was not timely, Plaintiff contends that an uninterested party sent “hard copy and email service” to the New Jersey Division of Law on behalf of several defendants. (Pl.’s Br. at 7.) According to the page in the record that Plaintiff cites in making that assertion, the third party served those documents by mail on August 27, 2018. (Doc. No. 1-1, Ex. C.) And according to the attachment to the removing defendants’ brief, the email to Saponaro occurred on August 21, 2018. (Defs.’ Br. at Ex. B.) Even assuming that service on the

New Jersey Division of Law and email service to Saponaro was proper, the corresponding removal on September 19, 2019 still fell within 30 days of both dates. Thus, the removal was not untimely.

Finally, Plaintiff claims that removal is not proper because “this matter is not solely nor generally an action brought under the Civil Rights Acts,” but instead, “the caption of the complaint clearly provides that this is an Action in Lieu of Prerogative Writs” under state law. (Pl.’s Br. at 3–4.) But as the Third Circuit’s decision recently recognized, Plaintiff asserts violations of federal law, and thus presents a matter removable based on this Court’s federal question jurisdiction.

### III. CONCLUSION

For the foregoing reasons, Plaintiff’s motion to remand is **DENIED**. Plaintiff’s additional request that this Court vacate Judge Donio’s Order of September 19, 2018 setting an initial conference for October 23, 2018 (Doc. No. 2) under Federal Rule of Civil Procedure 60 is **DENIED AS MOOT**.

Dated: 2/27/2019

/s/ Robert B. Kugler  
ROBERT B. KUGLER  
United States District Judge