IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

SUNDARI K. PRASAD,

Plaintiff,

v. Civil Action No. **3:17CV39**

CITY OF RICHMOND, *et al.*,

Defendants.

MEMORANDUM OPINION

Sundari K. Prasad, a Virginia inmate proceeding *pro se* and *in forma pauperis*, filed this 42 U.S.C. § 1983 action.[1] The matter is before the Court for evaluation pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A.

I. Preliminary Review

Pursuant to the Prison Litigation Reform Act ("PLRA") this Court must dismiss any action filed by a prisoner if the Court determines the action (1) "is frivolous" or (2) "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2); *see* 28 U.S.C. § 1915A. The first standard includes claims based upon "an indisputably meritless legal theory," or claims where the "factual contentions are clearly baseless." *Clay v. Yates*, 809 F. Supp. 417, 427 (E.D. Va. 1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)), *aff'd*, 36 F.3d 1091 (4th Cir.

[1] The statute provides, in pertinent part:

> Every person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . .

42 U.S.C. § 1983.

1994). The second standard is the familiar standard for a motion to dismiss under Fed. R. Civ. P. 12(b)(6).

"A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin,* 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356 (1990)). In considering a motion to dismiss for failure to state a claim, a plaintiff's well-pleaded allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993); *see also Martin*, 980 F.2d at 952. This principle applies only to factual allegations, however, and "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

The Federal Rules of Civil Procedure "require[ ] only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (second alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Plaintiffs cannot satisfy this standard with complaints containing only "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Id.* (citations omitted). Instead, a plaintiff must allege facts sufficient "to raise a right to relief above the speculative level," *id.* (citation omitted), stating a claim that is "plausible on its face," *id.* at 570, rather than merely "conceivable." *Id.* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable

for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp.*, 550 U.S. at 556). In order for a claim or complaint to survive dismissal for failure to state a claim, the plaintiff must "allege facts sufficient to state all the elements of [his or] her claim." *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003) (citing *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002); *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)). Lastly, while the Court liberally construes *pro se* complaints, *Gordon v. Leeke,* 574 F.2d 1147, 1151 (4th Cir. 1978), it will not act as the inmate's advocate and develop, *sua sponte*, statutory and constitutional claims that the inmate failed to clearly raise on the face of his or her complaint. *See Brock v. Carroll*, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

II. Prasad's Complaint

The action proceeds on Prasad's Particularized Complaint ("Complaint," ECF No. 12). In her Complaint, Prasad states:[2]

> The City of Richmond violated my civil rights, namely, Anthony Mijares and the RVA Adult Expo in various different ways . . . .
>
> I was hired by Anthony Mijares for the RVA Adult Expo to write a press release and hire talent, and be a public relations representative (for television appearances, magazine write-ups, etc. all years) for the event. I gave Mijares an initial quote that he agreed upon and a contract—he never paid as agreed, [but] took advantage of my name and logo and advantage of my sponsor company (Hustler Magazine). [He] libeled [and] slandered me, [] and continued to use my likeness, name, image, PR write-up, appearance on television, and sponsor company as well as a parody of me "The Perfect Sun" to advertise his event, violating [my] trademark and never paid royalties, or hotel fees, or anything promised for [the] event.

(Compl. 1.)

[2] Court corrects the capitalization and punctuation and omits the emphasis in quotations from Prasad's Complaint. The Court also omits the internal numbering within Prasad's claims.

From what the Court can legibly discern, Prasad's claims for relief are:

Claim One: "[The] City of Richmond allowed Anthony Mijares to violate 2257 laws. Anthony Mijares violated Prasad's rights as a performer and did not pay her, violating all 2257 laws." (*Id.*)

Claim Two: "Mijares violate[d] Article I Bill of Rights Constitution of VA (1971) any citizen may freely speak, write, and publish his [sentiments] on all subjects—being responsible for abuse of that right. Defamational words were said . . . that harmed Prasad [and] led to loss of revenue [and] emotional damages." (*Id.* at 2.)

Claim Three: "Mijares [and the] RVA Adult Expo did not keep the rule of 'peaceably' assembling. One could argue whether sexual events are peaceable where videos are sold that contain sexual violence—and fetish [and] BDSM adult performers were in attendance that were 'violent' and abusive that harmed Prasad emotionally [and] her PTSD—she is due a redress of her grievances." (*Id.*)

Claim Four: "Mijares has to be held responsible for the abuse of the right of not peaceably assembling [and] defamation of [Prasad's] character to the extent of having a performer parody her as 'Perfect Sun.' Violation of trademark . . . . Performer was Caucasian—racism implied . . . ." (*Id.*)

Claim Five: "Mijares displayed racism as he did not pay Prasad (i.e. Sun Karma) due to defamation of character . . . [and] racism of 10th Amendment . . . ." (*Id.* at 3)

Claim Six: "When Mijares still used ([and] his Expo) [Prasad's] press releases, YouTube videos, etc. year after year and did not pay royalties, etc . . . he violated [the] 5th Amendment. [He] violated [the 5th Amendment by] taking her property 'her money' . . . ." (*Id.*)

Claim Seven: "Mijares, when repeatedly asked for [Prasad's] funds kept denying her her rights per her status – a 14th amend. violation and 13th . . . ." (*Id.*)

Prasad alleges libel, slander, and defamation, a violation of trademark law under 15 U.S.C § 1051(D)(1),[3] and violations of the Fifth,[4] Ten,[5] Thirteenth,[6] and Fourteenth[7] Amendments.

[3] Although Prasad presumably intends to allege trademark infringement in violation of federal trademark law, the statutory provision she cites states a necessary requirement for an application for federal registration of a trademark. *See* 15 U.S.C. § 1051(d)(1) (West 2018).

(*Id.* at 2–3.) Prasad seeks declaratory and injunctive relief, as well as monetary damages. (*Id.* at 2–4.)

III. Analysis

It is both unnecessary and inappropriate to engage in an extended discussion of Prasad's theories for relief. *See Cochran v. Morris*, 73 F.3d 1310, 1315 (4th Cir. 1996) (emphasizing that "abbreviated treatment" is consistent with Congress's vision for the disposition of frivolous or "insubstantial claims" (citing *Neitzke v. Williams*, 490 U.S. 319, 324 (1989))). Prasad's 42 U.S.C. § 1983 claims will be dismissed because Prasad fails to allege facts upon which this Court may infer a legitimate cause of action. However, because Prasad's allegations are best understood as a claim for breach of contract, the Court will dismiss her state law claims without prejudice.

A. Prasad fails to allege facts that indicate Anthony Mijares was acting under color of state law

In order to state a viable claim under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him or her of a constitutional right or of a right conferred by a law of the United States. *See Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998) (citing 42 U.S.C. § 1983). The "under color of state

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[4] "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ." U.S. Const. amend. V.

[5] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

[6] "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII.

[7] "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

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