

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN CAFIERO

Plaintiff,

-vs-

DOUG CUSTER, a/k/a DOUG EVIL,

Defendant.

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: Civil Action No. 2008-cv-0202
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS “COMPLAINT
FOR COUNTER SUIT”**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiff John Cafiero respectfully submits this memorandum of law in support of his motion to dismiss (the “Motion to Dismiss”) Defendant Doug Custer’s so-called “Complaint for Counter Suit.”

I. INTRODUCTION

Defendant Custer improperly attempts to invoke the jurisdiction of this Court in furtherance of his personal vendetta against Mr. Cafiero. Defendant’s so-called “Complaint for Counter Suit” is nothing more than rambling, disjointed invective about how Mr. Cafiero somehow deprived Defendant of his supposedly rightful place in the entertainment industry. Evidently, Defendant has been obsessing over this envious delusion for some time. Attached as Exhibit 10 of the “Complaint for Counter Suit” is a document entitled “Official Literary Essay,” which is a twenty-two page diatribe of baseless attacks on Mr. Cafiero that largely tracks the allegations of the “Complaint for Counter Suit.” This Court certainly should not allow itself to be used as a vehicle for Defendant to pursue his delusional obsession with Mr. Cafiero.

Indeed, the accusations of the “Complaint for Counter Suit” are a vitriolic character assassination of Mr. Cafiero without any basis in law or fact which, if not summarily dismissed, would be highly damaging to Mr. Cafiero’s professional reputation. In essence, the “Complaint for Counter Suit” is a response—based only on Defendant’s distorted and self-serving perspective—to the allegations of Mr. Cafiero’s complaint for copyright infringement and defamation. While Defendant’s contrived accusations against Mr. Cafiero to divert attention from his own unlawful conduct ultimately will be demonstrated as completely frivolous and baseless, the “Complaint for Counter Suit” is, in any event, devoid of any cognizable claim for relief. Accordingly, the dismissal of Defendant’s “Complaint for Counter Suit” is mandated under Fed. R. Civ. P. 12(b)(6). Defendant should not be permitted to waste Mr. Cafiero’s and this Court’s time and resources with further delusional and self-serving diatribes that have no legal merit or factual basis.

II. ARGUMENT

A. The “Complaint for Counter Suit” Fails to State a Claim Upon Which Relief can be Granted

Rule 8(a) of the Federal Rules of Civil Procedure requires that a complaint include a “short and plain statement of the claim showing that the plaintiff is entitled to relief” and “giv[ing] the defendant fair notice of what the ...claim is and the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 127 S.Ct. 1955, 1964 (2007). Under the Supreme Court’s clarification of the Rule 12(b)(6) standard in *Twombly*, to survive a motion to dismiss, a complaint must contain sufficient “[f]actual allegations...to raise a right to relief above the speculative level.” *Twombly*, 127 S. Ct. at 1965; *see also Taormina v. Nextel Partners Inc.*, Civ. Act. No. 05-454J, 2007 WL 4560352, at *1 (W.D. Pa. Dec. 20, 2007) (noting that even a pro se plaintiff has the obligation to present factual allegations sufficient to raise a right to relief above the speculative

level). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 127 S. Ct. at 1964-65. The complaint must provide enough factual detail to raise a “reasonable expectation” that discovery will corroborate the allegations as distinguished from “a pleader’s ‘bare averment that he wants relief and is entitled to it.’” *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (quoting *Twombly*, 127 S.Ct. at 1965 n.3). The failure to plead each essential element of his or her legal claim mandates dismissal of a complaint pursuant to Rule 12(b)(6). *Edgar v. Avaya, Inc.* 503 F.3d 340, 349 (3d Cir. 2007).

Even though Mr. Custer is proceeding in this case as a pro se litigant, he is not excused from complying with the Federal Rules of Civil Procedure and its pleading requirements. *See Gagliardi v. Kratzenberg*, 404 F. Supp. 2d 858, 861 (W.D. Pa. 2005) (holding that a complaint drafted by a pro se litigant must comply with the pleading requirements of the Federal Rules of Civil Procedure); *Secureinfo Corp. v. Bukstel*, No. Civ. A. 03-679, 2003 WL 21961381, at *4-5 (E.D. Pa. July 10, 2003) (granting motion to dismiss defendant’s “counterclaims” for failure to comply with the Federal Rules of Civil Procedure because “Defendant cannot be excused from wholesale violations of the pleading rules.”). Indeed, a court is not “license[d] to excuse or overlook procedural shortcomings in pleadings submitted by those who choose to represent themselves.” *Gagliardi*, 404 F. Supp. 2d at 861; *see also McNeil v. U.S.*, 113 S.Ct. 1980, 1984 (1993) (noting that “we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.”); *Ruggery v. RSJ Dev., L.L.P.*, Civ. Act. No. 3:05-412, 2007 WL 1598998, at *5 (W.D. Pa. June 1, 2007)

(citing *McNeil* and noting that the court cannot excuse a pro se's failure to follow "rudimentary procedural rules.").

All complaints (or counterclaims), whether filed by a pro se litigant or an attorney, must contain sufficient factual allegations that afford the defendant fair notice as to the claims against which he must defend. *See Rhett v. New Jersey State Superior Court*, 260 Fed. Appx. 513, 515-16 (3d Cir. 2008) (affirming district court's dismissal with prejudice of pro se plaintiff's "incomprehensible" complaint which lacked any "short and plain statement of either the jurisdictional grounds or [plaintiff's] substantive grounds for relief"); *Eisenstein v. Ebsworth*, 148 Fed. Appx. 75, 77 (3d Cir. 2005) (affirming dismissal of complaint filed by pro se plaintiff because the "complaint was incomprehensible and failed to succinctly set forth the factual basis for the claims and the legal cause of action on which the claims were based."). Moreover, a complaint should be dismissed when it "is so confusing and unintelligible that no party could possibly understand or reply to it." *In re Hudson*, No. Civ. A. 05-1611, 2006 WL 2380784, at *1 (W.D. Pa. Aug. 16, 2006) (citations omitted) (dismissing pro se complaint with prejudice because it was "wholly incomprehensible" and court could not "decipher any federal claim, let alone expect defendant to respond to [the] pleading."); *Jaffe v. Exec. Dinceton H.U.P.*, No. Civ. A. 00-4202, 2000 WL 1230470, at *1 (E.D. Pa. Aug. 24, 2000) (dismissing pro se complaint containing "about nine pages of handwritten, unnumbered and largely incomprehensible rambling" for failure to comply with Rule 8(a)); *O'Diah v. Philadelphia Gas Works*, No. Civ. A. 95-5168, 1995 WL 541798, at *2 (E.D. Pa. Sept. 7, 1995) (dismissing pro se complaint and holding that complaint contained a "rambling, disjointed, somewhat fanciful account of alleged incidents, with no factual support" that did not meet the standards of Rule 8(a)); *King v. Fayette County*, 92 F.R.D. 457, 458 (W.D. Pa. 1981) (dismissing pro se complaints and holding that

complaints were deficient under Rule 8(a) because they were “so confusing and vague that no party can possibly understand and reply to them.”).

Defendant’s “Complaint for Counter Suit” is clearly defective under the foregoing pleading standards. The “Complaint for Counter Suit” is a mishmash of twenty-three pages of muddled and largely incoherent allegations supplemented with sixteen equally irrelevant (yet voluminous) attachments. The allegations generally attempt to respond to the paragraphs of Mr. Cafiero’s complaint, although Defendant repeatedly devolves into extraneous and impertinent attacks on Mr. Cafiero—the very type of baseless character assassination that caused Mr. Cafiero to seek relief from the Court in the first instance. Significantly, no “count” or “claim for relief” is expressly pled in the “Complaint for Counter Suit.” Nor are the required elements pled for any particular cause of action recognized under the law. While the terms “breach of contract” and “infringement” are randomly and inappropriately thrown around in various paragraphs of the “Complaint for Counter Suit,” stripped of Defendant’s malicious rhetoric, there is no allegation of any conduct by Mr. Cafiero that could fall under either of these generic labels. With specific regard to the former, there is no obligation under any contract that Mr. Cafiero is alleged to have breached. And, with specific regard to the latter, Defendant has not alleged any protectible right that Mr. Cafiero supposedly violated through any conduct alleged in the “Complaint for Counter Suit.”¹

¹ Moreover, while Mr. Cafiero is unable to speculate as to the conceivable basis for a claim of infringement, any such claim based on acts prior to October 10, 2005 would be barred under the Copyright Act’s three year statute of limitations. *See* 17 U.S.C. § 507(b). Similarly, any purported breach of contract claim based on the circumstances surrounding the release signed by Defendant with respect to the “Misfits Re-Animated” program in or around 1996 and/or Mr. Cafiero’s production of the program in or around 1997 would be barred under the four year statute of limitations applicable to written contracts under Pennsylvania law. *See* 42 Pa.C.S.A. § 5525(a)(8).

Thus, even if each of the over eight-six paragraphs (with multiple subparts) set forth in Defendant's "Complaint for Counter Suit" were taken as true (for these purposes only, as Mr. Cafiero otherwise disputes essentially all of those allegations), no cognizable legal claim is stated which would entitle Mr. Custer to relief of any sort. Rather, the "Complaint for Counter Suit" is a rambling and delusional account of incidents that Mr. Custer has constructed without any factual support. The federal courts should not and cannot be used to perpetrate such personal vendettas. *See Matthews v. Postmaster Gen.*, No. Civ. A. 98-2166, 1999 WL 232013, at *8 (D. N.J. April 12, 1999) (noting that "federal courts should not facilitate individual vendettas" or be used to "exact some sort of revenge" for personal disputes). Accordingly, the "Complaint for Counter Suit" should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

B. At a Minimum, Defendant Should Be Required to Provide a More Definite Statement of the Claims He Is Attempting to Assert Against Mr. Cafiero Under Fed. R. Civ. P. 12(e)

Assuming *arguendo* this Court does not dismiss the "Complaint for Counter Suit" in its entirety, at a minimum, Defendant should be required to provide a more definite statement of the claims he is attempting to assert against Mr. Cafiero pursuant to Fed. R. Civ. P. 12(e). Rule 12(e) provides that "[a] party may move for a more definite statement of a pleading . . . which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). A motion pursuant to Rule 12(e) should be granted where the pleading is unintelligible and, therefore, the responding party cannot be expected to frame a responsive pleading. *See Maremont Corp. v. Classic Distribs., Inc.*, No. Civ. A. 97-CV-5137, 1999 WL 391487, at *2 (E.D. Pa. June 7, 1999) (granting Rule 12(e) motion where counterclaim lacked even basic allegations to which plaintiff could reasonably expect to respond).

This certainly is the case here. As previously discussed, the pleading consists of eighty-six multi-part, rambling factual averments totaling twenty-three incomprehensible pages. The “Complaint for Counter Suit” is unintelligible as it fails to contain any basic allegations that would permit Mr. Cafiero to frame a responsive pleading including any relevant affirmative defenses to the extent Mr. Custer asserts cognizable legal claims, which he does not. Because Mr. Cafiero is unable to prepare a meaningful responsive pleading to the “Complain for Counter Suit,” Mr. Cafiero requests that this Court enter an order pursuant to Fed. R. Civ. P. 12(e) requiring Mr. Custer to provide an intelligible, more definite statement of the claims he is attempting to assert in this action.

IV. CONCLUSION

For all the foregoing reasons, Mr. Cafiero’s motion to dismiss Defendant’s “Complaint for Counter Suit” should be dismissed with prejudice under Fed. R. Civ. P. 12(b)(6) or, at a minimum, Defendant should be required to provide a more definite statement pursuant to Fed. R. Civ. P. 12(e).

Respectfully submitted,

/s/ Christopher M. Verdini
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Dated: November 4, 2008

Attorneys for Plaintiff John Cafiero

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS “COMPLAINT FOR COUNTER SUIT” was served on this 4th day of November, 2008, by United States mail, postage prepaid, on the following:

Doug Custer
293 Main Street
Osterburg, Pennsylvania 16667

/s/ Christopher M. Verdini