

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA :  
 :  
 v. : CIVIL ACTION  
 : No. 99-2155  
 :  
 METROPOLITAN LIFE INSURANCE :  
 COMPANY, et al. :

O'Neill, J. April , 2000

**MEMORANDUM**

Plaintiff Maximo Justo Guevara is a pro se plaintiff who has been granted leave to proceed in forma pauperis in this action. To date Mr. Guevara has filed ten suits that have also been assigned to me as related to this action,<sup>1</sup> three others that were originally assigned to other judges of this District but have since been reassigned to me,<sup>2</sup> and five others that were assigned to other judges but have since been dismissed.<sup>3</sup> All of these suits appear to assert similar claims arising out of the same set of underlying facts. Because this state of affairs is prima facie evidence of a serious abuse of the in forma pauperis statute, I have undertaken a review of all of the cases before me in an effort to conserve judicial resources while protecting Mr. Guevara's substantive rights and saving all parties from unnecessary litigation expenses. For the reasons stated below, I will dismiss all of Mr. Guevara's cases without prejudice except for this action

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<sup>1</sup> See Civil Actions Nos. 99-2153, 99-2157, 99-2231, 00-117, 00-477, 00-836, 00-1625, 00-1626, 00-1822, and 00-1823.

<sup>2</sup> See Civil Actions Nos. 00-838, 00-1213, and 00-2047.

<sup>3</sup> See Civil Actions Nos. 99-2154, 99-2230, 00-0116, 00-837, and 00-840.

and Mr. Guevara will be granted leave to file a single amended complaint that incorporates all his claims except as provided herein.

It is impossible to summarize the procedural posture and asserted claims of Mr. Guevara's numerous lawsuits; however, they all derive from a common set of facts. Mr. Guevara was employed by MetLife as a Certified Financial Planner until he was terminated in October 1994. The stated reason for his termination was his failure to pay for toll calls made from his place of employment. However, Mr. Guevara believes he was terminated because of racial animus. Sometime after his termination, one of Mr. Guevara's former clients made a claim against MetLife alleging that Mr. Guevara had recommended that she invest approximately \$40,000 of her \$60,000 retirement account in a high-risk general partnership which later became insolvent. After arbitration proceedings, MetLife paid the former client the full \$40,000 plus legal fees. It is unclear from the prolix pleadings whether MetLife was aware of this allegedly improper behavior at the time of Mr. Guevara's termination.

Mr. Guevara later took a position with Merrill Lynch, but was terminated shortly thereafter because he allegedly failed to disclose his criminal record from many years before. However, Mr. Guevara again believes that he was terminated because of racial animus.

Later still, the National Association of Securities Dealers ("NASD") fined Mr. Guevara and barred him from any future employment with NASD members. It is unclear from the pleadings whether the NASD's actions were taken in response to the allegedly improper behavior at MetLife, Merrill Lynch, or both. Mr. Guevara claims that the NASD violated its own rules and due process in those proceedings.

Based on these underlying facts, Mr. Guevara has asserted a long laundry list of claims that range from the obvious (e.g., violations of Title VII and breach of contract) to the unlikely-though-plausible (e.g., defamation and intentional infliction of emotional distress) to the bizarre (e.g., loss of consortium, “libel by cartoon,” and violations of Fed. R. Civ. P. 8(a) and 11 in state court proceedings). Similarly, the list of defendants includes the obvious (MetLife, Merrill Lynch, and the NASD), but also includes virtually every individual employed by those entities that Mr. Guevara had any interaction with during the course of these events.

The size and breadth of the pleadings is astounding. Eight of the complaints that were originally assigned to me span a combined 813 pages, 3350 separately numbered paragraphs, and 225 counts. Not surprisingly, the complaints contain pages and pages of wholly irrelevant information. One example, picked at random, is the averment in this action that “plaintiff was so happy to have passed the General Securities Series #7 exam . . . that plaintiff, after having passed the test, immediately went down the street to the Basilica of Sts. Peter and Paul Church and gave thanks to God.” See Complaint ¶ 61.

Also quite disturbing is Mr. Guevara’s apparent belief that every response to his pleadings by an adverse party gives rise to a new cause of action against the opposing party’s attorneys and/or warrants sanctions against those attorneys. For example, Civil Action No. 00-1823 claims that the attorneys for certain adverse parties committed malicious prosecution, abuse of civil process, and violations of Fed. R. Civ. P. 11 when they asserted counterclaims against Mr. Guevara in a state court action that arose out of these same underlying facts. In this case, Mr. Guevara has moved for sanctions against the defendants’ attorneys because they allegedly “fraudulently misrepresented” to the Court that they need additional time to answer the 248 page,

1029 paragraph, seventy-six count complaint.

As the Court of Appeals has observed, “[w]hen Congress opened the door to in forma pauperis petitions, it was concerned that the removal of the cost barrier might result in a tidalwave of frivolous or malicious motions filed by person who gave no pause before crossing the threshold of the courthouse door.” McTeague v. Sosnowski, 617 F.2d 1016, 1019 (3d Cir. 1980). Based on Mr. Guevara’s actions to date, I must conclude that the tidalwave has begun.

It is clear that severe action is necessary to conserve judicial resources and protect the dozens of defendants that Mr. Guevara has named from unnecessary litigation expenses and undue harassment; however, it is equally clear that Mr. Guevara deserves an opportunity to assert his claims and a fair hearing on them if they survive defense motions. Therefore, I will order the dismissal without prejudice of all of Mr. Guevara’s actions currently before me except for this case and Mr. Guevara will be granted leave to amend the complaint in this case within 20 days, incorporating, except as provided below, all of his claims against all parties deriving from the facts the described above.<sup>4</sup>

Authority to take this drastic action lies in 28 U.S.C. § 1915(d), the provision of the in forma pauperis statute that empowers a court to dismiss a case sua sponte if it is “satisfied that the action is frivolous or malicious.” It is clear that “an IFP complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under the authority of section 1915(d).” Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988). See also Horsey v. Asher, 741 F.2d 209, 213 (8th Cir. 1984) (a complaint may be dismissed under §

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<sup>4</sup> If necessary, the individual claims can later be severed pursuant to Fed. R. Civ. P. 42(b).

1915(d) if it is “plainly part of a longstanding pattern of abusive and repetitious lawsuits.”); Washington v. Reno, No. 95-5062, 1995 WL 376742, at \*1 (6th Cir. June 22, 1995) (“[A] complaint is malicious under § 1915(d) if it is repetitive or evidences an intent to vex defendants or abuse the judicial process by relitigating claims decided in prior cases.”); Blake v. Bentsen, No. 95-2227, 1995 WL 428694, at \*2 (E.D.N.Y. July 11, 1995) (“[D]uplicative or repetitious litigation of virtually identical causes of action is subject to dismissal under § 1915(d) as malicious.”).

I have considered other courses of action to deal with Mr. Guevara’s tidalwave of filings. In some cases, outright dismissal of the claims with prejudice may be appropriate. However, I fear that, given his track record to date, Mr. Guervera may simply refile the dismissed claims in this or some other court or barrage the Court of Appeals with numerous frivolous appeals. I also considered the possibility of requiring Mr. Guevara to ask for leave before filing any new motions in the existing cases or before filing any new cases. I have decided that that is too drastic a measure at this time, but I may revisit that option if Mr. Guervera’s practices continue. Finally, I also considered the possibility of sanctioning Mr. Guevara under Fed. R. Civ. P. 11(c), a provision that he himself has cited numerous times. Since many of Mr. Guevara’s filings were likely made for an “improper purpose” within the meaning of Rule 11(b)(1), sanctions may be appropriate. However, to their credit, none of the defendants have moved for sanctions to date, and assessing sanctions against an in forma pauperis plaintiff (although I have done that in the past) is a measure that I would have to consider very carefully.

I will also take the unusual step of offering some words of guidance to Mr. Guevara regarding the amended complaint which he will be granted leave to file. Normally, I would be

reluctant to offer such guidance to a party, particularly if I could not be equally helpful to the opposing parties. However, I believe that this step is appropriate here because Mr. Guevara is a pro se plaintiff who obviously has had no formal legal training. In addition, this advice hopefully will help Mr. Guevara to refine and narrow his claims, which will ultimately aid the defendants as well by making the claims more manageable for the purposes of defending against them.

First, the tone of Mr. Guevara's filings is inappropriate. He has been too quick to rely on insulting and inflammatory characterizations of the defendants and their counsel. Mr. Guevara should understand that what I will consider is the factual averments of his pleadings, but not the adjectives. Such characterizations must not appear in the amended pleading.

Second, the sheer length of the pleadings to date has been inappropriate. Rule 8(a) merely requires a "short and plain" statement of the grounds for relief, and Rule 8(e) requires that each averment of a pleading "shall be simple, concise, and direct." In other words, Mr. Guevara need not plead the contents of every event and conversation he has had in connection with these events, and obviously should not include irrelevant averments. The amended pleading must conform to Rule 8(a) and, where appropriate, Rule 9(b).<sup>5</sup>

Third, the previously filed complaints may have been jurisdictionally deficient. The jurisdiction of federal district courts is generally limited to federal questions, i.e., claims that

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<sup>5</sup> Rule 9(b) requires that all averments of fraud or mistake be plead with particularity, and Mr. Guevara has plead a number of counts that sound in fraud. The particularity requirement is more exacting than the general Rule 8(a) standard, but still does not require the prolix pleadings that Mr. Guevara has filed to date. I note that I have had two recent opportunities to describe the requirements of Rule 9(b) pleading. See Waris v. Staff Builders, No. 96-1969, 1999 WL 179745 (E.D. Pa. Mar. 4, 1999) (O'Neill, J.); Smith v. Berg, No. 99-2133, 1999 WL 1081065 (E.D. Pa. Dec. 1, 1999) (O'Neill, J.). These slip opinions are available to all litigants before this Court from the central library for the U.S. Court of Appeals for the Third Circuit.

arise “under the Constitution, laws, or treaties of the United States.” See 28 U.S.C. § 1331. Mr. Guevara makes federal constitutional claims and Title VII claims that are federal questions, but the vast majority of his claims arise under state law. There is no independent jurisdictional basis for these state claims because there clearly is no diversity of citizenship under 28 U.S.C. § 1332. Therefore, if the federal claims do not survive, then dismissal of the state claims will likely be appropriate under 28 U.S.C. § 1367(c).

Fourth, there is reason to believe that these federal claims may not survive. Mr. Guevara had made a host of federal constitutional claims, but has not alleged any action by the state or federal government. Generally, constitutional protections do not apply to private parties; therefore, these claims will likely be dismissed unless some state action is alleged other than in conclusory language. Similarly, Mr. Guevara appears to make out prima facie claims under Title VII, but these claims may fail because Mr. Guevara did not bring a charge with the EEOC or receive a right to sue letter. See generally 42 U.S.C. §§ 2000e-5(e)(1) and 2000e-5(f)(1).

Finally, the doctrine of res judicata bars the relitigation of claims between parties that have previously been fully and fairly adjudicated on the merits. Five of Mr. Guevara’s lawsuits have previously been dismissed by other judges, and three of those dismissals were with prejudice.<sup>6</sup> Judge Katz dismissed all of Mr. Guevara’s claims against the NASD. Those claims included the NASD’s alleged violation of its own rules in the disciplinary proceedings, as well as

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<sup>6</sup> Judge Kauffman and the late Judge Gawthrop dismissed cases brought by Mr. Guevara without prejudice and with leave to amend. See Guevara v. Kutzer, No. 99-2230, slip op. (E.D. Pa. May 20, 1999) (Gawthrop, J.); Guevara v. Holland, No. 00-837, slip op. (E.D. Pa. Feb. 22, 2000) (Kauffman, J.). Although Mr. Guevara did not amend his complaint in either case, res judicata does not attach to either of those Orders. Therefore, if otherwise appropriate Mr. Guevara may plead those claims in his amended complaint in this action.

Title VII, ADEA, and PHRA claims. See Guevara v. Nat'l Ass'n of Sec. Dealers, Inc., No. 99-2154, (E.D. Pa. Apr. 4, 2000) (Katz, J.). Judge Katz also dismissed Mr. Guevara's Title VII, ADEA, and PHRA claims against American International Group, Inc. See Guevara v. Am. Int'l Group, Inc., No. 00-116 (E.D. Pa. Apr. 4, 2000) (Katz, J.). Similarly, Judge Kelly dismissed Mr. Guevara's legal malpractice claim against David C. Brooks, Esq. for lack of subject matter jurisdiction. See Guevara v. Brooks, 84 F. Supp.2d 628 (E.D. Pa. 2000). Res judicata clearly attaches to those final judgments; therefore, Mr. Guevara cannot repeat those claims against those defendants in his amended complaint.

In reading Mr. Guevara's filings one thing is clear; he obviously believes that he has been treated unfairly by many parties. I cannot tell at this point whether he has stated a cause of action, or, if so, whether a legal remedy is available to redress the alleged unfairness. However, I can assure Mr. Guevara that, like all parties before me, he will be treated fairly in these proceedings. I hope that he will help me reach that goal by taking the admonishments in this Memorandum seriously. Fed. R. Civ. P. 12(f) gives a court the authority to sua sponte strike "any redundant, immaterial, impertinent, or scandalous matter" from any pleading. I will not hesitate to invoke this Rule to strike all or part of Mr. Guevara's amended complaint or to dismiss it with prejudice if my advice is not accepted and acted upon by him.

Appropriate Orders follow.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	
v.	:	CIVIL ACTION
	:	No. 99-2155
	:	
METROPOLITAN LIFE INSURANCE	:	
COMPANY, et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the accompanying Memorandum, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE and plaintiff is granted 20 days to amend.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 99-2153
	:	
UNION CENTRAL LIFE INSURANCE	:	
COMPANY, et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 99-2157
	:	
MERRILL LYNCH, et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 99-2231
	:	
SECURITIES AMERICA, et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 00-117
	:	
CAESAR'S HOTEL & CASINO	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	
v.	:	CIVIL ACTION
	:	No. 00-477
	:	
METROPOLITAN LIFE INSURANCE	:	
COMPANY, et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 00-836
	:	
LEE KIM & PAC, P.C.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 00-838
	:	
BRIAN P. McVAN	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	
v.	:	CIVIL ACTION
	:	No. 00-1213
	:	
NATIONAL ASSOCIATION OF SECURITIES	:	
DEALERS, INC., et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 00-1625
	:	
NATIONAL ASSOCIATION OF SECURITIES	:	
DEALERS, INC., et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 00-1626
	:	
NATIONAL ASSOCIATION OF SECURITIES	:	
DEALERS, INC., et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 00-1822
	:	
METROPOLITAN LIFE INSURANCE	:	
COMPANY, et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 00-1823
	:	
DANIEL J. BRENNAN, et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAXIMO JUSTO GUEVARA	:	
	:	CIVIL ACTION
v.	:	No. 00-2047
	:	
ELIZABETH F. MARTINI, et al.	:	

**ORDER**

AND NOW, this            day of April, 2000, for the reasons stated in the Memorandum and Order of this date filed in Guevara v. Metropolitan Life Ins. Co., et al., No. 99-2155, it is hereby ORDERED that the complaint is DISMISSED WITHOUT PREJUDICE.

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Thomas N. O'Neill, Jr., J.