

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLIFFORD CHARLES TYLER,

Plaintiff,

No. 12-00523

v

HON. GORDON J. QUIST

ERIC HOLDER, UNITED STATES
DEPARTMENT OF JUSTICE, BUREAU OF
ALCOHOL, TOBACCO, FIREARMS, and
EXPLOSIVES, B. TODD JONES, THOMES E.
BRANDON, FEDERAL BUREAU OF
INVESTIGATION, ROBERT S. MUELLER,
III, UNITED STATES OF AMERICA, KRISTE
KIBBEY ETUE, HILLSDALE COUNTY
SHERIFF'S DEPARTMENT, STAN W.
BURCHARDT, RICK SNYDER,

Defendant.

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**DEFENDANTS COL. KRISTE KIBBEY ETUE AND GOVERNOR RICK
SNYDER'S BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS**

CONCISE STATEMENT OF ISSUES PRESENTED

1. Under Fed R Civ Proc 12(b)(6), a complaint must include sufficient factual matter to state a claim to relief that is plausible on its face. Plaintiff named Col. Etue and Governor Snyder as defendants to this action challenging a federal statute, but includes no allegations asserting that they did anything to act contrary to his rights. Must Col. Etue and Governor Snyder be dismissed from this case because Plaintiff has failed to state a claim against these defendants?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority:

Ashcroft v. Iqbal, 556 U.S. 662, 677-78; 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 564, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

Edelman v. Jordan, 415 U.S. 651, 667-668; 94 S. Ct. 1347; 39 L. Ed. 2d 662 (1974).

Fed. R. Civ. Proc. 12(b)(6).

STATEMENT OF FACTS

The following facts are alleged in Plaintiff's complaint, and will be relied upon for purposes of this motion. Plaintiff alleges that he was involuntarily committed to a mental hospital in 1986. Plaintiff claims that his commitment was due to depression following his divorce and the belief that he might attempt suicide. Plaintiff disputes that this event in his past has any bearing on his current mental state.

In February of 2011, Plaintiff attempted to purchase a firearm. Plaintiff alleges that the Hillsdale County Sherriff denied his request. When he asked for an explanation, Plaintiff was informed that federal law prevented him from owning a firearm due to his prior commitment to a mental institution. Plaintiff now seeks to challenge the constitutionality of 18 U.S.C. 922(g), which provides that it is unlawful for person who have been adjudicated mentally defective or who have been committed to a mental institution to possess a firearm.

In addition to various federal law enforcement officers and the Hillsdale sheriff, Plaintiff's Complaint also names the head of the Michigan State Police, Col. Kriste Kibbey Etue, and the Governor of the State of Michigan, Rick Snyder ("the state defendants"). The state defendants are named in their individual and official capacities. But Plaintiff's Complaint includes no factual allegations referring to these two defendants, other than to identify them as state officials charged with enforcing the law. (R1, Complaint, p 5, ¶14, 17). Plaintiff alleges three counts in his complaint, but only Count III appears to be directed at the state defendants. Count III alleges that the state defendants violated his rights under Equal

Protection and Due Process clauses of the Fourteenth Amendment, but does not allege any that they took any action against him under the challenged statute, or that they threatened any such action. Plaintiff does not challenge any state law or policy, and his claims are limited to the application of a federal statute by other law enforcement agencies. Plaintiff's prayer for relief does not include any claim for money damages against the state defendants. (R1, p 13-14). Col. Etue and Governor Snyder now move for the complaint against them to be dismissed for failure to state a claim.

ARGUMENT

- I. **Under Fed R Civ Proc 12(b)(6), a complaint must include sufficient factual matter to state a claim to relief that is plausible on its face. Plaintiff named Col. Etue and Governor Snyder as defendants to this action challenging a federal statute, but includes no allegations asserting that they did anything to act contrary to his rights. Plaintiff has failed to state a claim against these defendants, and Col. Etue and Governor Snyder must be dismissed from this case.**

A cause of action fails to state a claim upon which relief may be granted when it lacks "plausibility in th[e] complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 564, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). Plaintiff is not required to include detailed factual allegations, but must provide more than "an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* at 678. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not

do." *Twombly*, 550 U.S. at 555. Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557. It must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.* at 570. "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. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Twombly*, 550 U.S. at 556. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* at 557.

In this case, Plaintiff is plainly relying on labels and conclusions as far as his Complaint concerns the state defendants. He has not made any factual allegations against the state defendants beyond the naked assertion that they head state agencies that are charged with enforcing the law. Such an allegation is devoid any factual content that allows the court to draw any inference that the state defendants are liable for the misconduct alleged. Indeed, there is no allegation of misconduct—or any conduct at all—by either Col. Etue or Governor Snyder. Plaintiff's allegations do not go further than to merely allege that the state defendants are obligated to obey the federal law, and Plaintiff does not allege that the state defendants have taken any action against him in furtherance of the challenged statute.

Moreover, were Plaintiff to prevail in his challenge to the federal statute in this case, it is not clear how Plaintiff would be entitled to relief from either of the state defendants. Plaintiff has not made allegations showing that any prospective injunctive relief is appropriate or required against Col. Etue or Governor Snyder. In *Edelman v. Jordan*, 415 U.S. 651, 667-668; 94 S. Ct. 1347; 39 L. Ed. 2d 662 (1974), the Supreme Court described “prospective injunctive relief” as requiring state officials to conform their future conduct to the constitution as determined by the courts. But Plaintiff does not allege that the state defendants have done anything in the past to interfere with his right to own a firearm, and so there is no need to enjoin these state officials to conform their future conduct to the constitution. Because the state defendants have not done anything to restrain Plaintiff’s constitutional rights in the past, they have not engaged, or even threatened to engage, in any unconstitutional conduct that would require a remedy. Any request for injunctive relief against the state defendants would be purely speculative, and no more necessary for Plaintiff to obtain relief than an injunction directing—by name—every law enforcement officer and agency in the state to observe Plaintiff’s rights in the future. Plaintiff has not stated a claim for prospective injunctive relief against the state defendants.

In summary, Plaintiff has not made any allegations identifying what the state defendants have done to violate his rights. Plaintiff has simply failed to allege that Col. Etue and Governor Snyder have done anything, in either their individual or official capacities, to violate his rights under the Fourteenth Amendment.

Plaintiff has, therefore, failed to state a claim against the state defendants; they are entitled to a dismissal from this action.

CONCLUSION AND RELIEF REQUESTED

For these reasons, Defendants Col. Kriste Kibbey Etue and Governor Rick Snyder respectfully request this Honorable Court grant their motion and dismiss the claims against them, together with any other relief the Court determines to be appropriate under the circumstances.

Respectfully submitted,

Bill Schuette
Attorney General

/s/ Erik A. Grill
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Dated: August 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing as well as via US Mail to all non-ECF participants.

/s/ Erik A. Grill

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