

Cherniack was working with the defendant and essentially withheld certain disclosures that she was supposed to review with the plaintiff's son as part of the criminal case. *Id.* at 3-4. Apparently, a tape was included with those disclosures, and the plaintiff's son did not get to hear the tape until a few days prior to trial.¹ *Id.*

With respect to the court's jurisdiction over this action, the plaintiff did not complete the section of the form complaint requiring her to identify the asserted basis for subject-matter jurisdiction. *Id.* at 2-3. Nonetheless, it appeared that she was attempting to invoke this court's diversity jurisdiction insofar as she was asserting state-law claims for fraud and legal malpractice and had indicated that all of the parties had addresses in the Commonwealth of Pennsylvania. *Id.* at 1-4. Because it appeared that the parties were not completely diverse and the amount in controversy did not exceed \$75,000, the court entered an order on October 25, 2016, which (1) granted the application to proceed *in forma pauperis*, and (2) required the plaintiff to show cause why the court should not dismiss the action without prejudice for lack of subject-matter jurisdiction. *See* Order, Doc. No. 2. The order also informed the plaintiff of the court's specific concern with respect the court lacking subject-matter jurisdiction and required that she had until November 8, 2016, to respond to the order to show cause. *Id.* at 2-3 & n.2.

On November 8, 2016, the court received a handwritten letter from the plaintiff.² Regrettably, this letter does not discuss subject-matter jurisdiction at all. Instead, the letter serves as the plaintiff's plea that the court should not dismiss the action because she has a meritorious claim against the defendant. The plaintiff also remarks that because the defendant is

¹ The plaintiff does not state what relief she seeks from Ms. Cherniack.

² It appears that the clerk of court's office received the letter on November 7, 2016. Although this document has yet to be entered on ECF, the court has returned it to the clerk of court for docketing. The court has copied the letter and attached it to this opinion for ease of reference.

a “Top Highly Name Known Lawyer,” if the court dismisses her case she would interpret the dismissal as “an act of [b]ias.”

As previously explained to the plaintiff, this court has the authority and the duty to examine the issue of subject-matter jurisdiction *sua sponte*. See Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *Group Against Smog and Pollution, Inc. v. Shenango, Inc.*, 810 F.3d 116, 122 n.6 (3d Cir. 2016) (explaining that “an objection to subject matter jurisdiction may be raised at any time [and] a court may raise jurisdictional issues *sua sponte*”). As also explained to the plaintiff, she has the burden to establish federal jurisdiction in this case because she is the party “asserting its existence.” See *Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 105 (3d Cir. 2015) (citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006)).

Based on the allegations in the complaint, the only possible basis for subject-matter jurisdiction over the plaintiff’s state law claims is 28 U.S.C. § 1332(a)(1), which grants a district court subject-matter jurisdiction over a case in which “the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” *Id.* Section 1332(a)(1) requires “‘complete diversity between all plaintiffs and all defendants,’ even though only minimal diversity is constitutionally required. This means that, unless there is some other basis for jurisdiction, ‘no plaintiff [may] be a citizen of the same state as any defendant.’” *Lincoln Ben. Life Co.*, 800 F.3d at 104 (quoting *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005) and *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 419 (3d Cir. 2010) (internal footnotes omitted)).

Regarding the citizenship of the parties in this case, the plaintiff alleges that the parties have addresses in the Commonwealth of Pennsylvania. See Complaint at 1-2. Thus, it appears

that the parties are not completely diverse. Concerning the amount in controversy, the only sought-after damages in the complaint is the return of the \$5,000 that the plaintiff paid to the defendant. Therefore, it also appears that the plaintiff has not satisfied the amount-in-controversy requirement. Accordingly, as it does not appear that the parties are diverse and the plaintiff has not satisfied the amount-in-controversy requirement, she has not demonstrated that the court has diversity jurisdiction under section 1332(a)(1).³

The plaintiff has failed to satisfy her burden of establishing federal court jurisdiction over this action and the court must dismiss the action without prejudice. The plaintiff may attempt to pursue her claims against the defendant and Ms. Cherniack in an appropriate state court.

A separate order follows.

BY THE COURT:



EDWARD G. SMITH, J.

³ Although the court has analyzed subject-matter jurisdiction under only section 1332(a)(1), the plaintiff does not appear to assert a federal claim that would confer jurisdiction under 28 U.S.C. § 1331 or any other federal statute. To the extent that she is seeking to raise a civil rights claim under 42 U.S.C. § 1983 (she includes a passing reference to a violation of rights when she discusses the claim against Ms. Cherniack), her claims would fail to state a claim upon which relief could be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii) (requiring the court to dismiss a complaint if it fails to state a claim upon which relief could be granted); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that for a complaint to survive dismissal, it must contain “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face” (quotations omitted)). In this regard, and after viewing the complaint liberally because the plaintiff is proceeding *pro se*, she has not and cannot assert a section 1983 claim against these defendants because “a suit under § 1983 requires the wrongdoers to have violated federal rights of the plaintiff, and that they did so while acting under color of state law.” *Groman v. Township of Manalapan*, 47 F.3d 628, 638 (3d Cir. 1995). Neither of the defendants are state actors and nothing in the complaint provides a basis for concluding that the plaintiff’s rights were violated. *See Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 277 (3d Cir. 1999) (“Attorneys performing their traditional functions will not be considered state actors solely on the basis of their position as officers of the court.”). Furthermore, to the extent that the plaintiff is asserting that the defendants violated her son’s rights, she lacks standing to raise claims based on harm to her son. *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) (“A federal court’s jurisdiction . . . can be invoked only when the plaintiff himself has suffered some threatened or actual injury resulting from the putatively illegal action.” (citation and internal quotation marks omitted); *see also Beauchamp v. Chichester Sch. Dist.*, No. CIV. A. 05-4141, 2005 WL 3110822, at *2-3 (E.D. Pa. Nov. 17, 2005) (holding, in case involving a minor child, that the parents lacked standing to bring individual claims when only allegations pertained to purported violations of their son’s rights).

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To ~~whom~~ it 16-5131

Concerns the District Court
this I Ramona Acosta
I am responding back to
your court for the letter
I recievd from your
Office asking me show
reason my case should
not be dismiss I feel
and I hope and pray this
case will not be dismiss
Because Jack Mcman is a
Highly ^{name} known lawyer
and I feel if this case
shouldnt be dismiss because
I hire Jack and gave
Jack 5,000 dollars what
he ask me to represent
my son Jaine and not fault
long after I gave him
money to represent my son
he started not showing up
like he told my ^{son} because
was going to show every
time my ^{son} had to show
up the 5,000 papers that
was standing here by

Self in front of
 the Judge I didn't
 keep him ~~Carrie~~ 5000 dollars
 to Jack Because I have
 money like that I am
 poor person I live on
 fix income once a month
 I gave Jack money to
 represent my son he
 didnt put up his end
 my son sat waiting in jail
 for almost 1 year and
 2 months untill month ~~is~~
 half before his trial We
 had to fire him I feel
 if he knew he wasnt
 not going to do any
 thing or represent my son
 right I would rather
 he had not taken my
 money and do me
 wrong But this
 way scam me out of
 my money that I put
 up for my son
 just here

3

So I ask you
please dont dismiss
this cause Be^{cause} it was
Really unfair on Jack
part How he think's
he^{can} scam me out money
~~not done~~ and^{not} Be Held
accountable to Return
my money^{back} in which He
did nothing he promise my
son So I Really
feel if this case is throw
out Jack feels that he
can do this to anybody
and get away? Because Like
I said he a top Highly name
Knowⁿ Layer and if get
Dismiss I would take this
case as an act of Bias

Well this all for now
untill your court

make a decision

Thank you

Very much

from Ramona Acosta

Smoothie
Blue Berries
Honey
Yogurt
Stevia Seed

now
just
decision
for
next month
Romania