

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

DAVID JONATHAN TULIS,)

Plaintiff,)

v.)

FLEXIBILITY CAPITAL, MARY)
CHEADLE, FUNDING METRICS LLC,)
TBF FINANCIAL LLC, and JAMES B.M.)
HOOPER,)

Defendants.)

Case No. 1:24-cv-240

Judge Travis R. McDonough

ORDER

Plaintiff David Jonathan Tulis initiated this action on July 18, 2024, alleging state-law usury and fraud claims against Defendants Flexibility Capital, Mary Cheadle, Funding Metrics LLC, TBF Financial LLC, and James B.M. Hooper. (*See* Doc. 1.) Additionally, Tulis’s initial complaint alleged that the Court has subject matter jurisdiction over this case “because of diversity of jurisdiction of the parties under 28 U.S.C. [§] 1332,” and because “the amount of money at issue exceeds \$75,000.” (*Id.* at 4.) Tulis further alleged that: (1) “Flexibility is headquartered in New York”; (2) “Lendini is in Pennsylvania”; (3) “TBF Financial is based in Illinois”; and (4) “Debt collector attorneys are in Tennessee — Mary Cheadle is in Nashville and Knight & Hooper in Chattanooga.” (*Id.*)

On July 19, 2024, the Court entered a show-cause order regarding jurisdiction, noting that, based on Tulis’s own allegations, there is no basis to exercise jurisdiction because section 1332 requires complete diversity between the plaintiff and each defendant. (Doc. 7.) Tulis

responded to the show-cause order and filed an amended complaint. (Docs. 12, 13.) In his response and his amended complaint, he claims that the Court has subject-matter jurisdiction under 28 U.S.C. § 1331 under the Racketeer Influenced and Corrupt Organizations Act of 1970 (“RICO”), 18 U.S.C. § 96 *et seq.* (Doc. 12, at 2; Doc. 13, at 4.) In his amended complaint, Tulis also alleges that the Court has subject-matter jurisdiction under § 1331: (1) “under the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*; (2) because it “has authority to administer disputes over commercial activity subject to the U.S. congress via U.S. const. art. 1, sect. 8”; and (3) because he “asserts his rights under the federal 14th amendment seeking equal protection against unequal protection of federal rights by the [S]tate of Tennessee.” (Doc. 13, at 4–5.) Tulis, however, does not assert any claims against Defendants under these federal statutes; rather, his amended complaint still only asserts state-law usury and fraud claims. (*See generally id.*) Alternatively, in the event “the court determines it does not have a controversy under the federal issue requirement, . . . [Tulis] asks to salvage his action by severing dispensible [sic] nondiverse parties Mary Cheadle and Knight & Hooper PLLC, based in Tennessee,” which “would leave Flexibility (New York), Lendini (Pennsylvania), TBF (Illinois) and plaintiff (Tennessee) in the action meeting 28 U.S.C. § 1332 for full diversity to allow the case to proceed.” (Doc. 12, at 2.)

Although Tulis’s amended complaint does not plead a federal cause of action necessary to confer jurisdiction under 28 U.S.C. § 1331, a plaintiff may “drop a nondiverse and dispensable party from litigation in order to achieve diversity.” *Soberay Mach. & Equip. Co. v. MRF Ltd., Inc.*, 181 F.3d 759, 763 (6th Cir. 1999). Crediting Tulis’s representation that Defendants Mary Cheadle and Knight & Hooper PLLC are not indispensable parties, the Court construes Tulis’s response to its show-cause order as a request to dismiss these parties such that the Court has

jurisdiction over this matter pursuant to 28 U.S.C. § 1332. Accordingly, the Court **GRANTS** Tulis's request to voluntarily dismiss Defendants Mary Cheadle and Knight & Hooper PLLC.

Tulis also requests additional time to effectuate service on the remaining defendants, representing that he did not know whether the Court would accept his amended complaint. (Doc. 14.) Tulis's request for additional time to serve Defendants is **GRANTED**. Tulis shall serve Defendants and file proof of service on or before **January 6, 2025**. Tulis is hereby **ON NOTICE** that failure to comply with this order may result in this action being dismissed without prejudice.

SO ORDERED.

/s/ Travis R. McDonough

TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE