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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Plaintiff

**LEE KENWORTHY as the administrator
of the ESTATE OF SHAYLING
KENWORTHY and LEE KENWORTHY,
individually,**

vs.

Defendants

**LYNDHURST POLICE DEPARTMENT;
POLICE OFFICER PHILLIP REINA, in
his individual capacity; POLICE
OFFICER HAGGERTY, in his individual
capacity, LYNDHURST POLICE
OFFICER PHILLIP REINA, in his
individual capacity; SERGEANT
RICHARD PIZZUTI, in his individual
capacity; LYNDHURST TOWNSHIP
AMBULANCE SQUAD; TOWNSHIP OF
LYNDHURST; ROBERT MARTIN; ANN
MARTIN; RICHARD ANDERSON;
LAUREN ANDERSON; HOUSING
AUTHORITY OF BERGEN COUNTY;
ADAPT PHARMA—Distributor of
Naloxene**

CASE NO. 2:18-cv-12822- MCA-JAD

CIVIL ACTION

**MOTION RETURN DATE:
DECEMBER 17, 2018**

**BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT
PURSUANT TO *FED. R. CIV. P.* 12(b)(1)**

Gregory J. Irwin, Esq.
Of Counsel

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On the Brief

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PRELIMINARY STATEMENT

Plaintiff Lee Kenworthy (“Plaintiff”) brings this action as the husband of the late Shayling Kenworthy (“Decedent”) and administrator *ad prosequendum* of her estate. This brief is filed in support of a Motion to Dismiss Plaintiff’s Complaint pursuant to *Fed. R. Civ. P.* 12(b)(1) based on lack of subject matter jurisdiction.

Plaintiff and Decedent rented an apartment in a house owned by Defendants Robert and Ann Martin (collectively “the Martin Defendants”) and Defendants Richard and Lauren Anderson (collectively “the Anderson Defendants”). Plaintiff contends that conditions in the apartment caused Decedent to suffer an asthma attack that led to her death. Plaintiff also alleges that other defendants such as the responding police officers and ambulance squad contributed to her demise. Additionally, Plaintiff makes claims against the alleged manufacturer of Naloxene which he alleges was administered to Decedent.

Plaintiff now brings this case *pro se* in federal district court. This Court, however, does not have jurisdiction to hear this case. This matter does not fall into any of categories of cases in which Congress has conferred jurisdiction upon the district courts. Plaintiff’s Complaint does not allege a claim under the United States Constitution or a federal statute so as to provide “federal question” jurisdiction. Nor can this Court hear this case under “diversity of citizenship”

jurisdiction become the requisite complete diversity among the parties is lacking. Furthermore, although Plaintiff claims that this Court has jurisdiction because there is a United States government defendant, such is not the case. Finally, case does not arise in any of the other situations in which Congress has conferred jurisdiction upon the federal district court.

Since this Court has no jurisdiction to hear this case, it is respectfully submitted that this case must be dismissed with prejudice.

STATEMENT OF FACTS

Plaintiff brings this action as the husband of Decedent and administrator ad prosequendum of her estate. *See* Exhibit “A”¹, The Parties and Facts Common to All Counts, ¶ 1.

I. Plaintiff’s Allegations

Plaintiff and Decedent rented an apartment from the Martin Defendants and the Anderson Defendants. *See* Exhibit “A”, Statement of Claim, ¶ 1. Plaintiff alleges that the apartment was in disrepair when it was rented and was full of “animal fur, feces and urine” that Decedent was allergic to. *See id.*, ¶ 2. He also alleges that he and Decedent repeatedly complained about these conditions but the Martin Defendants and the Anderson Defendants refused to correct them. *See id.*, ¶ 3. Plaintiffs further alleges, among other things, that “defendants” filed false charges against Plaintiff, Decedent and their family in order to make Plaintiff and Decedent “remain silent” and pay rent in advance. *See id.*, ¶ 5.

Plaintiff alleges that on August 17, 2016, he and Decedent were in the process of moving out of the apartment when Decedent suffered an asthma attack “due to the deteriorating conditions of the apartment.” *See* Exhibit “A”, Statement of Claim, ¶ 6. Decedent was eventually pronounced dead at Meadowlands Medical

¹ Attached to the Certification of Gregory J. Irwin, Esq. which accompanies this brief.

Center. *See id.*, ¶ 10. Plaintiff's principle claim against that the Martin Defendants and the Anderson Defendants were that they were negligent in "failing to provide a clean apartment free of animal fee, feces and urine, decedent was caused to suffer pain, asthma attacks, on August 17, 2016, her death." *See* Exhibit "A", First Count, ¶ 7.

Plaintiff also makes claims against the other defendants. Plaintiff alleges that Defendant Lyndhurst Police Department wrongfully failed to file charges against Defendant Robert Martin for his alleged threats of retaliation and other alleged conduct. *See* Exhibit "A", Statement of Claim, ¶ 4. Plaintiff also claims that "All Public Entities and Public Individual Defendants" wrongfully failed to assist Decedent thereby causing her pain, suffering and death. *See* Exhibit "A", Second Count.

In addition, Plaintiff alleges that individual officers of the Defendant Lyndhurst Police Department deprived Plaintiff and Decedent of rights under the New Jersey Constitution and *N.J.S.A.* 10:6-2, the New Jersey Civil Rights Act. *See* Exhibit "A", Third Count, ¶¶ 1-3. He also alleges that the police officers engage falsified evidence and report in addition to engaging in misconduct. *See id.*, ¶¶ 4-5. Plaintiff also claims that the police officers were negligent in administering Naloxene to Decedent and that they were improperly trained in the use of Naloxene. *See id.*, ¶¶ 6-8.

Plaintiff also alleges that the Defendant Housing Authority of Bergen County was negligent in failing to inspect and approve “the house as a government subsidized approved home as require by law.” *See* Exhibit “A”, Fourth Count, ¶ 1. He further alleges that Defendant failed to properly train officers and medical personal in administering Naloxene. *See* Exhibit “A”, Fifth Count, ¶ 1.

In his complaint, Plaintiff makes no claim under the United States Constitution or any federal statute. *See* Exhibit “A.”

II. Citizenship of the Parties

Plaintiff is a resident of Whiting, New Jersey. *See* Exhibit “A”, cover page.

Plaintiff’s Complaint indicates that all but one of the defendants reside, work or are headquartered in New Jersey. Defendant Lyndhurst Police Department is headquartered in Lyndhurst New Jersey. *See* Exhibit “A”, The Parties and Facts Common to All Counts, ¶ 2. According to Plaintiff’s Complaint, Defendant Police Officer Philip Reina, Defendant Police Officer Haggerty, Defendant Chief James O’Connor and Defendant Sergeant Richard Pizzuti are employed by Defendant Lyndhurst Police Department. *See id.*, ¶¶ 2-6. Defendant Lyndhurst Police Ambulance Squad is headquartered in Lyndhurst, New Jersey. *See id.*, ¶ 7. Defendant Township of Lyndhurst is headquartered in Lyndhurst, New Jersey. *See id.*, ¶ 8. The Martin Defendants reside in Waldwick, New Jersey. *See id.*, ¶ 7.

Defendant Housing Authority of Bergen Count is headquartered in Hackensack, New Jersey. *See id.*, ¶ 10.

The only defendant that is apparently not a citizen of New Jersey is Defendant Adapt Pharma which is headquartered in Radnor, Pennsylvania. *See* Exhibit “A”, The Parties and Facts Common to All Counts, ¶ 11.

III. Alleged Basis of Jurisdiction

In his Complaint, Plaintiff claims that this Court has jurisdiction over this matter based on the inclusion of a United States government defendant. *See* Exhibit “A”, Basis of Jurisdiction. None of the defendants in this action, however, is such a defendant. *See* Exhibit “A”, The Parties and Facts Common to All Counts, ¶¶ 1-11.

IV. This Motion

This Motion to Dismiss is filed on behalf of the Martin Defendants in lieu of an answer under *Fed. R. Civ. P.*, 12(b)(1) based on lack of subject matter jurisdiction.

ARGUMENT

I. THIS COURT HAS NO SUBJECT MATTER JURISDICTION OVER THIS CASE.

The federal courts have limited jurisdiction that is strictly defined by Congress. *Huber v. Taylor*, 519 F. Supp. 2d 542, 554 (W.D. Pa. 2007), *rev'd. on other gds.*, 532 F.3d 237 (3d Cir. 2008); *see also Bowles v. Russell*, 551 U.S. 205, 212-213, 127 S. Ct. 2360, 2365, 168 L. Ed. 2d 96, 104, 2007 (2007). Therefore, it is a "bedrock principle that federal courts have no jurisdiction without statutory authorization." *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 553, 125 S. Ct. 2611, 2617, 162 L. Ed. 2d 502, 517 (2005).

The Supreme Court has observed that:

The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U.S.C. §§ 1331 and 1332. Section 1331 provides for "federal-question" jurisdiction, § 1332 for "diversity of citizenship" jurisdiction. A plaintiff properly invokes § 1331 jurisdiction when she pleads a colorable claim "arising under" the Constitution or laws of the United States. *See Bell v. Hood*, 327 U.S. 678, 681-685, 66 S. Ct. 773, 775-777, 90 L. Ed. 939, 942-945 (1946). She invokes § 1332 jurisdiction when she presents a claim between parties of diverse citizenship that exceeds the required jurisdictional amount, currently \$ 75,000. *See* § 1332(a).

Arbaugh v. Y & H Corp., 546 U.S. 500, 513, 126 S. Ct. 1235, 1244, 163 L. Ed. 2d 1097, 1109 (2006).

A. Federal Question Jurisdiction.

The allegations in Plaintiff's Complaint make no claim arising under the Constitution and laws of the United States to so as to confer jurisdiction on this Court under 28 U.S.C. § 1331. The complaint alleges a claim under the New Jersey State Constitution (*see* Exhibit "A", Third Count, ¶¶ 1-3) but contains no claim under the federal Constitution. Similarly, the Complaint alleges a claim against *N.J.S.A. 10:6-2*, the New Jersey Civil Rights Act. (*see* Exhibit "A", Third Count, ¶¶ 1-3) but makes no claim under a federal statute.

B. Diversity of Citizenship Jurisdiction

28 U.S.C. § 1332(a), which provides for diversity of citizenship" jurisdiction requires complete diversity between citizens of different states. *See e.g. Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89, 126 S. Ct. 606, 613, 163 L. Ed. 2d 415, 424-425 (2005). Complete diversity requires that, in cases with multiple plaintiffs or multiple defendants, no plaintiff be a citizen of the same state as any defendant. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 419 (3d Cir. 2010) *citing See Exxon Mobil Corp. v. Allapattah Servs. Inc.*, *supra*, 545 U.S. at 553, 125 S. Ct. at 2617, 162 L. Ed. 2d 517 and *Kaufman v. Allstate N.J. Ins. Co.*, 561 F.3d 144, 148 (3d Cir. 2009).

Here, as indicated by Plaintiff's Complaint, Plaintiff and all but one of the defendants are citizens of New Jersey. *See* Exhibit "A", Cover Page; *Id.*, The

Parties and Facts Common to All Counts. ¶¶ 1-11. Defendant Adapt Pharma is evidently a citizen of Pennsylvania. *See id.*, ¶ 1.1 Since Plaintiff is a citizen of the same state (i.e. New Jersey) as most of the defendants, complete diversity does not exist. Consequently, this Court has no jurisdiction under 28 *U.S.C.* § 1332.

C. Jurisdiction Where the United States is a Defendant

Under 28 *U.S.C.* § 1342, a federal district court has subject matter jurisdiction where the United States is a defendant.

In his Complaint, Plaintiff claims that this Court has jurisdiction over this matter based on the inclusion of a United States government defendant. *See* Exhibit “A”, Basis of Jurisdiction. None of the defendants in this action, however, is such a defendant. *See* Exhibit “A”, The Parties and Facts Common to All Counts, ¶¶ 1-11. Therefore, this Court has no jurisdiction under 28 *U.S.C.* § 1342.

D. Jurisdiction Under 28 U.S.C. § 1343.

Under 28 *U.S.C.* § 1343, a federal district court has subject matter jurisdiction in civil rights actions to:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in

section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Although this action is arguably a civil rights action in part since Plaintiff makes allegations under *N.J.S.A.* 10:6-2, the New Jersey Civil Rights Act. (*see* Exhibit “A”, Third Count, ¶¶ 1-3), Plaintiff does not make any allegations under the United States Constitution, 42 *U.S.C.* § 1985 or any other federal statute. Therefore, 28 *U.S.C.* § 1343 does not confer subject matter jurisdiction on this Court in this matter.

E. Other Sections of Title 28 of the United States Code.

28 *U.S.C.* § 330 through §1369 confer subject matter jurisdictions on federal district court in a myriad of situations including those discussed above. Without discussion each section *ad nauseam*, it is respectfully submitted that none of the remaining section confer subject matter jurisdiction on this court in this matter.

II. THE MARTIN DEFENDANTS RELY ON ARGUMENTS MADE IN SUPPORT OF CO-DEFENDANTS' MOTION TO DISMISS.

A Motion to Dismiss has been filed on behalf of Defendants Lyndhurst Police Department, Officer Philip Reina, Police Officer Haggerty, Lyndhurst Chief of Police James O'Conner, Sergeant Richard Pizzuti, Lyndhurst Township Ambulance Squad and the Township of Lyndhurst (collectively "the Lyndhurst Defendants"). The undersigned adopts the arguments of the Lyndhurst Defendants in support of their Motion to Dismiss in addition to the arguments asserted above insofar as they apply to Plaintiff's Complaint against Martin Defendants.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Court lacks jurisdiction over this matter and accordingly, Plaintiff's Complaint must be dismissed in its entirety with prejudice.

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Dated: November 15, 2018