

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ALEXANDER MCARTHUR,
Plaintiff,

v.

SALVATION ARMY & NAVY,
Defendant.

No. 3:20-cv-1024 (SRU)

ORDER ON MOTION TO DISMISS

Alexander McArthur (“McArthur”) filed this action against the Salvation Army & Navy in 2020, alleging that he was discriminated against on the basis of religion when he was asked to leave the Salvation Army store in Hamden, Connecticut. The defendant has moved to dismiss the complaint in full.

For the following reasons, the motion to dismiss is **granted**.

I. Standard of Review

A motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) is designed “merely to assess the legal feasibility of a complaint, not to assay the weight of evidence which might be offered in support thereof.” *Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc.*, 748 F.2d 774, 779 (2d Cir. 1984) (quoting *Geisler v. Petrocelli*, 616 F.2d 636, 639 (2d Cir. 1980)).

When deciding a motion to dismiss pursuant to Rule 12(b)(6), a court must accept the material facts alleged in the complaint as true, draw all reasonable inferences in favor of the plaintiffs, and decide whether it is plausible that plaintiffs have a valid claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007); *Leeds v. Meltz*, 85 F.3d 51, 53 (2d Cir. 1996).

Under *Twombly*, “[f]actual allegations must be enough to raise a right to relief above the speculative level,” and assert a cause of action with enough heft to show entitlement to relief and “enough facts to state a claim to relief that is plausible on its face.” 550 U.S. at 555, 570; *see also Iqbal*, 556 U.S. at 679 (“While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.”). The plausibility standard set forth in *Twombly* and *Iqbal* obligates a plaintiff to “provide the grounds of his entitlement to relief” through more than “labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555 (cleaned up). Plausibility at the pleading stage is nonetheless distinct from probability, and “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of [the claims] is improbable, and . . . recovery is very remote and unlikely.” *Id.* at 556 (cleaned up).

II. Factual Allegations

On the morning of January 1, 2019, the Salvation Army had a sale, offering a 50% discount on all clothes. Compl., Doc. No. 1. McArthur was unable to take advantage of the sale because he was asked to leave the store by the manager, who told him not to talk about Jesus or Lucifer in the store. *Id.* McArthur told the manager that he could talk about Jesus or Lucifer if he wanted; the manager replied, “not in this store.” *Id.* McArthur suggested that the store manager call the police and at that point was asked to leave the store. *Id.* McArthur used to shop at the store every month. *Id.*

III. Discussion

McArthur appears to bring claims under the Revenue Sharing Act, 31 U.S.C. § 6711 (and specifically to cite to section (b)(3) of the statute). That statute provides, in relevant part: “[n]o person in the United States shall be excluded from participating in, be denied the benefits of, or

be subject to discrimination under, a program or activity of a unit of general local government because of race, color, national origin, or sex if the government receives a payment under this chapter.” 31 U.S.C. § 6711(a). Under subsection (b) of the statute,

[t]he following prohibitions and exemptions also apply to a program or activity of a unit of general local government if the government receives a payment under this chapter:

...

(3) A prohibition against discrimination because of religion, or an exemption from that prohibition, under the Civil Rights Act of 1964 or title VIII of the Act of April 11, 1968 (popularly known as the Civil Rights Act of 1968).

31 U.S.C. § 6711(b)(3). Section 6716 affords a private right of action “if a unit of general local government, or an officer or employee of a unit of general local government acting in an official capacity, engages in a practice prohibited by this chapter.” *See also* § 6716 (b) (requiring exhaustion of administrative remedies before filing a claim in federal court). As relevant here, a “unit of general local government means... a county, township, city, or political subdivision of a county, township, or city, that is a unit of general local government as determined by the Secretary of Commerce for general statistical purposes.” 31 U.S.C. § 6720.

In the case at bar, McArthur includes no facts to suggest that he has been subjected to discrimination under “a program or activity of a unit of general local government” receiving funds under Title 31, but merely alleges that he was asked to leave the Salvation Army secondhand store because of the religious statements he made. 31 U.S.C. § 6711; *see also Conklin v. Robinson*, 2021 U.S. Dist. LEXIS 42514, at *7 (W.D. Pa. Mar. 5, 2021) (dismissing claim raised under section 6711 where plaintiff did not “allege any defendant is a government entity [or] whether they receive funds under Chapter 67 of Title 31”); *Jackson v. Rosen*, 2020 U.S. Dist. LEXIS 113024, at *17 (E.D. Pa. June 26, 2020) (dismissing claim brought under section 6711 where plaintiff failed to identify how “allegations of discrimination relate to the

programs identified in § 6701 or amount to a violation of § 6711”). Moreover, McArthur offers no arguments in response to the defendant’s motion to dismiss that would support his claim, arguing only that the defendant has refused to be held accountable for the inconvenience to which he was subjected. *See* Doc. No. 19. As a result, McArthur has failed to set forth a cognizable claim.

McArthur additionally makes reference to penal code § 646.9 (e), which appears to be a California criminal statute prohibiting harassment. Cal. Penal Code § 646.9(e). All of the events described in the complaint, however, appear to have taken place in Connecticut and therefore the provisions of the California penal code do not apply. Finally, although McArthur references Title 42 Chapter 21 of the United States Code, he does not further specify which provision of the Code the defendant allegedly violated, nor does he provide additional information on how the defendant may have done so. That reference alone is therefore insufficient to set forth a cognizable claim.

IV. Conclusion

For the foregoing reasons, the motion to dismiss is **granted** with prejudice with respect to McArthur’s claims under section 646.9(e) and section 6711, and without prejudice with respect to his claim under Title 42 Chapter 21. McArthur may file an amended complaint within **twenty-one (21) days**. Should McArthur choose to file an Amended Complaint, I will conduct an initial review pursuant to 28 U.S.C. § 1915 prior to directing service of the Amended Complaint on the defendant. If McArthur chooses not to amend his pleadings, I will direct the clerk to enter judgment for the defendants and close this case.

So ordered.

Dated at Bridgeport, Connecticut, this 25th day of March 2022.

/s/ STEFAN R. UNDERHILL
Stefan R. Underhill
United States District Judge