

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                            |   |                             |
|----------------------------|---|-----------------------------|
| OTIS MICHAEL BRIGEFORTH,   | ) |                             |
|                            | ) |                             |
| Plaintiff,                 | ) |                             |
|                            | ) |                             |
| v.                         | ) | Civ. Action No. 12-1387-GMS |
|                            | ) |                             |
| STATE OF DELAWARE, et al., | ) |                             |
|                            | ) |                             |
| Defendants.                | ) |                             |

**MEMORANDUM**

The plaintiff, Otis Michael Bridgeforth (“Bridgeforth”), filed this lawsuit pursuant to 42 U.S.C. § 1983.<sup>1</sup> (D.I. 2.) He appears *pro se* and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 4.) Bridgeforth also seeks discovery. (D.I. 5.) The court now proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915.

**I. BACKGROUND**

On November 5, 2012, Bridgeforth appeared for a schedule criminal trial in State Court. The State’s witness did not appear. Bridgeforth requested a speedy trial, and his motion was granted in part and denied in part. The prosecutor requested a continuance and, it appears, the matter was continued to January 2013. Bridgeforth alleges that his rights were violated. He seeks an investigation, dismissal of the matter, compensatory damages, and injunctive relief. The named defendants are the State of Delaware, the New Castle County Court of Common Pleas Judicial Committee, the Delaware Department of Justice (collectively “State defendants”), and

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<sup>1</sup>Pursuant to 42 U.S.C. § 1983, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

the City of Wilmington and the Wilmington of Police Department (together “municipal defendants”).

## II. STANDARD OF REVIEW

This court must dismiss, at the earliest practicable time, certain *in forma pauperis* actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to a *pro se* plaintiff. *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because Bridgeforth proceeds *pro se*, his pleading is liberally construed and his complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. at 94 (citations omitted).

An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915(e)(2)(B)(i), a court may dismiss a complaint as frivolous if it is “based on an indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. *Neitzke*, 490 at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); *see, e.g., Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate’s pen and refused to give it back).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6)

standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. § 1915, the court must grant Bridgeforth leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The assumption of truth is inapplicable to legal conclusions or to “[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements.” *Id.* at 678. When determining whether dismissal is appropriate, the court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the factual and legal elements of a claim are separated. *Id.* The court must accept all of the complaint’s well-pleaded facts as true, but may disregard any legal conclusions. *Id.* at 210-11. Second, the court must determine whether the facts alleged in the complaint are sufficient to show that Bridgeforth has a “plausible claim for relief.”<sup>2</sup> *Id.* at 211. In other words, the complaint must do more than allege Bridgeforth’s entitlement to relief; rather it must “show” such an entitlement with its facts. *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than a mere possibility of

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<sup>2</sup>A claim is facially plausible when its factual content allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “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.*

misconduct, the complaint has alleged - but it has not shown - that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 678 (quoting Fed. R. Civ. P. 8(a)(2)).

### **III. DISCUSSION**

#### **A. Eleventh Amendment Immunity**

The State of Delaware, the New Castle County Court of Common Pleas Judicial Committee, and the Delaware Department of Justice are immune from suit. The Eleventh Amendment protects states and their agencies and departments from suit in federal court regardless of the kind of relief sought. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). “Absent a state’s consent, the Eleventh Amendment bars a civil rights suit in federal court that names the state as a defendant.” *Laskaris v. Thornburgh*, 661 F.2d 23, 25 (3d Cir. 1981) (citing *Alabama v. Pugh*, 438 U.S. 781 (1978)).

The State has not waived its immunity from suit in federal court, and although Congress can abrogate a state’s sovereign immunity, it did not do so through the enactment of 42 U.S.C. § 1983. *Brooks-McCollum v. Delaware*, 213 F. App’x 92, 94 (3d Cir. 2007) (unpublished) (citations omitted). Moreover, there is no mention of the State defendants other than to name them as defendants. The claims against the State defendants have no arguable basis in law or in fact. They are frivolous and will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

#### **B. Municipal Liability**

Also named are municipal defendants the City of Wilmington and Wilmington of Police Department. A municipality may only be held liable under § 1983 when the “execution of a

government's policy or custom. . . inflicts the injury." *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990).

While a government policy is established by a "decisionmaker possessing final authority," a custom arises from a "course of conduct. . . so permanent and well settled as to virtually constitute law." *Andrews*, 895 F.2d at 1480 (citing *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978)). Accordingly, a plaintiff seeking to recover from a municipality must (1) identify an allegedly unconstitutional policy or custom, (2) demonstrate that the municipality, through its deliberate and culpable conduct, was the "moving force" behind the injury alleged; and (3) demonstrate a direct causal link between the municipal action and the alleged deprivation of federal rights. *Board of the County Comm'rs v. Brown*, 520 U.S. 397, 404 (1997).

Bridgeforth has not pled any elements that point to the imposition of municipal liability. Indeed, the complaint contains absolutely no allegations against the municipal defendants. Absent any allegation that a custom or policy established by the City of Wilmington directly caused harm to Bridgeforth, his § 1983 claim cannot stand.

The claims against the municipal defendants are frivolous and will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

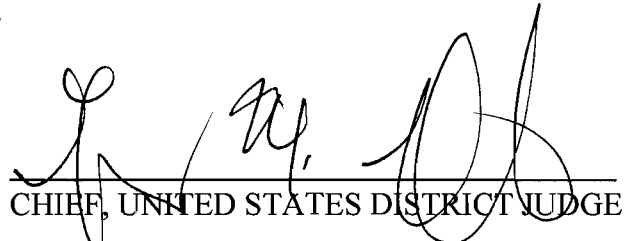
#### **IV. CONCLUSION**

For the above reasons, the court will dismiss the complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Amendment of the claim would be futile. *See Alston v. Parker*, 363 F.3d 229 (3d Cir. 2004); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 111 (3d Cir. 2002);

*Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976). The pending motion for discovery (D.I. 5) will be denied as moot.

An appropriate order will be entered.

Jan 14, 2013  
Wilmington, Delaware

  
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CHIEF, UNITED STATES DISTRICT JUDGE