

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

OTIS MICHAEL BRIDGEFORTH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. Action No. 13-1577-GMS
	)	
LAB CORP OF DELAWARE, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM**

The plaintiff, Otis Michael Bridgeforth (“Bridgeforth”), filed this lawsuit on September 19, 2013, pursuant to “362, 375, 410 for discrimination related to race, sex, religion, age, color.” (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.) The court now proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915.

**I. BACKGROUND**

Named as defendants are Lab Corp of Delaware, Dr. Karlo Magart, and Dr. Capuano. Bridgeforth alleges that on or before February 2013, the defendants falsified medical records when they misdiagnosed Bridgeforth with a sexually transmitted disease. Bridgeforth alleges that he is inoculated and immune from virus and bacterial infection and that his use of an asthma inhalant and pain reliever at the time of the misdiagnosis should have been considered. Finally Bridgeforth alleges that he remains negative for sexually transmitted diseases.

Bridgeforth alleges the acts of the defendants violated his rights under the Eighth Amendment to the United States Constitution, that the defendants committed medical malpractice, that he sustained personal injury, and that defendants committed false claims and

antitrust violations. He seeks one hundred million dollars and the records removed from his medical file.

## II. STANDARD OF REVIEW

This court must dismiss, at the earliest practicable time, certain *in forma pauperis* and 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) (*in forma pauperis* actions). 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>1</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>1</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)).

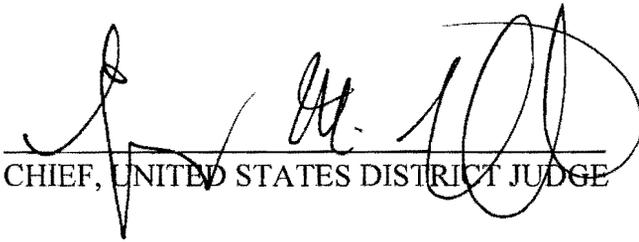
**III. DISCUSSION**

Bridgeforth filed his complaint pursuant to 362 Medical Malpractice, 375 False Claims Act, and 410 Antitrust, all of which are nature of suit codes contained in the Civil Cover Sheet. He also invokes the Eighth Amendment to the United States Constitution which forbids cruel and unusual punishment. The complaint, however, fails to state a claim under the Eighth Amendment. In addition, allegations are conclusory and, in this court’s experience, do not state a plausible claim for relief. Finally, the court does not have diversity pursuant to 28 U.S.C. § 1332 as the parties are not diverse. Therefore, the court will dismiss the complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

**IV. CONCLUSION**

For the above reasons, the court will dismiss the complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Amendment is futile.

An appropriate order will be entered.

  
CHIEF, UNITED STATES DISTRICT JUDGE

Dec 10, 2013  
Wilmington, Delaware