**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: January 12, 2015)**

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| **HAKEEM PELUMI** | : | |
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| **V.** | : | **C.A. No. PC 10-3875** |
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| **CITY OF WOONSOCKET, alias John Doe; THOMAS BRUCE, alias John Doe in his official capacity as Treasurer for the City of Woonsocket; THOMAS S. CAREY, alias John Doe, individually and in his official capacity as the Chief of Police for the City of Woonsocket; RICHARD FINNEGAN, alias John Doe, individually and in his official capacity as the Bail Commissioner for the State of Rhode Island; EDWARD DOURA, alias John Doe, individually and in his capacity as Patrol and Arraigning Officer for the City of Woonsocket; JOHN DOE (1), alias John Doe, individually and in his official capacity as a Patrol Officer for the City of Woonsocket** | : | |

## DECISION

**VAN COUYGHEN, J.** Before the Court is a Motion for Summary Judgment filed by Defendants City of Woonsocket,[1] Thomas Bruce (Mr. Bruce), in his official capacity as Treasurer of the City of Woonsocket; Thomas S. Carey (Mr. Carey), individually and in his official capacity as Chief of Police for the City of Woonsocket; and Edward Doura (Mr. Doura), individually and in his capacity as Patrol and Arraigning Officer for the City of Woonsocket (collectively, Defendants).[2] Also before the Court is a Motion to Dismiss the Complaint and a

[1] Defendant Richard Finnegan has joined in the Defendants' Motion for Summary Judgment. Thus, where relevant, the Court's rulings with respect to Defendants' Motion for Summary Judgment also apply to Mr. Finnegan.

[2] In the caption of his Amended Complaint, Plaintiff names Mr. Carey and Mr. Doura in their

separate Motion for Summary Judgment filed by Defendant Richard Finnegan (Mr. Finnegan), individually and in his capacity as Bail Commissioner for the State of Rhode Island.[3] Mr. Finnegan additionally seeks attorneys' fees and costs. Jurisdiction is pursuant to Super. R. Civ. P. 12(b)(6), Super. R. Civ. P. 56, and G.L. 1956 § 8-2-14.

## I

## Facts and Travel

The genesis of this litigation is the July 3, 2007 arrest of Plaintiff Hakeem Pelumi, pro se, for disorderly conduct in violation of G.L. 1956 § 11-45-1. See Defs.' Ex. C. On July 4, 2007, Plaintiff appeared before Mr. Finnegan for a bail hearing at the Woonsocket Police Station. See id; Aff. of Richard Finnegan at 2. On July 23, 2007, Plaintiff's plea of nolo contendere to the underlying charge was entered. See Crim. Compl. As a result, he received a six-month suspended sentence with probation and was ordered to pay court costs. Id.

On March 21, 2008, Plaintiff filed a Complaint, C.A. No. 08-105ML, pro se, in the

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individual and official capacities. However, in the body of the Amended Complaint, Plaintiff only states that Mr. Carey is being sued in his official capacity. See Am. Compl. at ¶ 4 ("The Defendants [sic], THOMAS CAREY is sued herein in his capacity as the Chief of Police for the City of Woonsocket . . ."). With respect to Mr. Doura, Plaintiff does not allege that he was acting in his individual capacity; rather, he states that he "at all times material hereto [was] [a] duly appointed employee[] and acting police officer[] of the City of Woonsocket . . . ." (Am. Compl. at ¶ 8).

It is well established that "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity." Kentucky v. Graham, 473 U.S. 159, 165-66 (1985) (emphasis in original). The fact that Mr. Carey and Mr. Doura are named in the body of the Amended Complaint only in their official capacities, the Court concludes that Mr. Carey and Mr. Doura are not being sued in their individual capacities, despite the Amended Complaint's caption to the contrary.

[3] Although the caption of the original Complaint named Defendant Richard Finnegan in his individual and official capacities, it failed to name him individually in the body of that document. On May 22, 2014, the Court granted Plaintiff Hakeem Pelumi's previously-filed Motion to Amend the Complaint. The Amended Complaint now names Defendant Finnegan in his individual capacity in the body of the Complaint as well as in the caption; consequently, Mr. Finnegan is being sued both in his official and individual capacities.

United States District Court for the District of Rhode Island against the State of Rhode Island and the Rhode Island District Court Administrator for Rhode Island District Court, Sixth Division. See Defs.' Ex. E. In his complaint, Plaintiff asserted that Mr. Finnegan, who was not named as a party, willfully and intentionally took money from him on July 4, 2007, in violation of 42 U.S.C. § 1983; 18 U.S.C. § 242; and article 1, section 5 of the Rhode Island Constitution. See Defs.' Ex. E. at 1.

In addition to C.A. No. 08-105ML, Plaintiff, pro se, had seven separate complaints pending in the federal court. Therefore, on Apri1 4, 2008, United States District Court Magistrate Judge Lincoln D. Almond issued a Consolidated Report and Recommendation for Summary Dismissal Pursuant to 28 U.S.C. § 1915(e) of all seven cases.[4] See Defs.' Ex. F. With respect to C.A. No. 08-105ML, the Magistrate Judge recommended dismissal for failure to state a viable claim under 42 U.S.C. § 1983.[5] See Defs.' Ex. F. at 9. He then recommended that "[i]n view of the absence of any viable federal claims, [Plaintiff's] state constitutional claim is not viable in federal court due to the absence of diversity jurisdiction." Id.

On April 17, 2008, before the District Court acted upon the Magistrate Judge's recommendation, Plaintiff amended his Complaint in C.A. No. 08-105ML. See Defs.' Ex. G. In doing so, he omitted his federal criminal allegations and substituted the Rhode Island District

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[4] The Plaintiff proceeded in forma pauperis in the United States District Court for the District of Rhode Island. Section 28 U.S.C. § 1915(e) provides, in pertinent part:

> "(2) . . . the court shall dismiss the case at any time if the court determines that—
>
> . . .
>
> "(B) the action or appeal—
>
> "(i) is frivolous or malicious;
>
> "(ii) fails to state a claim on which relief may be granted; or
>
> "(iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e).

[5] The allegations contained in Plaintiff's federal court case are virtually identical to the ones contained in the instant case before this Court.

Court Administrator with the Rhode Island District Court, Sixth Division. See Defs.' Ex. G. The Plaintiff also added Mr. Finnegan, individually and in his official capacity as Bail Commissioner for the City of Woonsocket, the City of Woonsocket, and the Woonsocket Police Department as party defendants. Id.

On May 30, 2008, Magistrate Judge Almond issued a Second Consolidated Report and Recommendation for Summary Dismissal Pursuant to 28 U.S.C. § 1915(e). See Defs.' Ex. H.[6] The Magistrate Judge again recommended dismissal of the federal claims in C.A. No. 08-105ML for failure to state a viable claim, observing that Plaintiff "had adequate remedies under state law[,]" because he could have tried "to pursue a criminal action . . . [or] a common law tort claim for conversion." Id. at 9. On June 30, 2008, United States District Court Chief Judge Lisi adopted the Reports and Recommendations previously issued by the Magistrate Judge in full and dismissed the Amended Complaint in that action. See Defs.' Ex. I. On the same day, the federal court entered a Judgment reflecting the dismissal of the Amended Complaint. See id. Plaintiff appealed the ruling and, on March 4, 2009, the United States First Circuit Court of Appeals affirmed the judgment. See Defs.' Ex. J.

On June 1, 2009, Plaintiff, pro se, filed C.A. No. 09-257ML in federal court against the State of Rhode Island; the City of Woonsocket; Michael Houle, in his capacity as Chief of the Woonsocket Police Department; and Richard Finnegan, individually and in his official capacity as Bail Commissioner. See Defs.' Ex. K. The Plaintiff again accused Mr. Finnegan of stealing his money during the July 4, 2007 bail hearing and, again, he alleged that defendants had committed various state and federal civil rights violations. See id. Magistrate Judge Almond

[6] Apparently, Plaintiff also amended other unrelated complaints that previously were before the court; consequently, Magistrate Judge Almond again consolidated the matters for his Second Consolidated Report and Recommendation for Summary Dismissal Pursuant to 28 U.S.C. § 1915(e). See Defs.' Ex. H.

consolidated C.A. No. 09-257ML with four unconnected complaints filed by Plaintiff, pro se, and issued a Consolidated Report and Recommendation for Summary Dismissal Pursuant to 28 U.S.C. § 1915(e) on June 16, 2009. See Defs.' Ex. L.

In his Report and Recommendation, the Magistrate Judge concluded that the "newly filed Complaints" (including C.A. No. 09-257ML ) were barred under the doctrine of res judicata and he recommended that they "be DISMISSED with prejudice." See Defs.' Ex. L. at 5 and 7. On August 6, 2009, Chief Judge Lisi "adopt[ed] the Report and Recommendation in its entirety" and dismissed all of the Complaints. (Defs.' Ex. M at 2.) Plaintiff appealed and, on October 13, 2009, the United States First Circuit Court of Appeals dismissed Plaintiff's appeal "[s]ubstantially for the reasons given in the thorough Second Consolidated Report and Recommendation of Magistrate Judge Almond . . . ." See Defs.' Ex. N.

On July 1, 2010, Plaintiff filed the instant action, pro se. The Amended Complaint contains six counts. Count I asserts a claim of negligence against the Defendants.[7] Count II, entitled "Negligence," alleges an intentional tort committed by Defendants. Count III, entitled "Deprivation," appears to allege that Defendants committed theft. Counts IV, V, and VI assert 42 U.S.C. § 1983 claims against Defendant Thomas Carey, Woonsocket Police Officers, and the City of Woonsocket, respectively. Additional facts will be supplied in the analysis portion of

[7] Count 1 of the original Complaint contains a parenthetical handwritten addition which states "(FINNEGAN THEFT)[;]" however, the Amended Complaint omits any such reference. Compare Compl. at 3 with Am. Compl. at 3 Regardless of how the term "FINNEGAN THEFT" possibly may have been construed as an allegation with respect to Count I of the original Complaint, that possibility was waived due to Plaintiff's omission of the term in the Amended Complaint. See DiBattista v. State, 808 A.2d 1081, 1088 n.6 (R.I. 2002) (deeming waived an allegation that subsequently was excluded from amended complaint "[b]ecause the filing of the amended complaint superceded the original pleading . . . ."); see also Greenfield Hill Invs., LLC v. Miller, 934 A.2d 223, 225 (R.I. 2007) (declaring that "an amended complaint filed with an accompanying motion to amend the original complaint is the legally operative document").

this Decision as needed.

## II

## Analysis

### A

### The Defendants' Motion for Summary Judgment

In their Motion for Summary Judgment, a Motion that has been adopted and joined by Defendant Finnegan, the Defendants assert that Plaintiff's action is barred under the doctrine of res judicata because the United States District Court for the District of Rhode Island previously dismissed two actions that raised substantially similar allegations to those raised in the present case. They further contend that Plaintiff has failed to set forth a valid cause of action.

#### 1

#### Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it '"is a drastic remedy and should be cautiously applied."' Steinberg v. State, 427 A.2d 338, 339–40 (1981) (quoting Ardente v. Horan, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). When ruling on a motion for summary judgment, the preliminary question before the court is whether there is a genuine issue as to any material fact which must be resolved. R.I. Hosp. Trust Nat'l Bank v. Boiteau, 119 R.I. 64, 376 A.2d 323 (1977); O'Connor v. McKanna, 116 R.I. 627, 359 A.2d 350 (1976).

The moving party is the one who "bears the initial burden of demonstrating the absence of questions of material fact." Mills v. State Sales, Inc., 824 A.2d 461, 467 (R.I. 2003). To satisfy that burden, the moving party may "submit[] evidentiary materials, such as interrogatory answers, deposition testimony, admissions, or other specific documents, and/or point[] to the

absence of such items in the evidence adduced by the parties." Id. It is only when "the moving party satisfies this initial burden[] [that] the nonmoving party then must identify any evidentiary materials already before the court or present its own evidence demonstrating that factual questions remain." Id. If an examination of the parties' pleadings, affidavits, admissions, answers to interrogatories, and other similar matters, viewed in the light most favorable to the opposing party, reveals no genuine issue of material fact, the suit is ripe for summary judgment. R.I. Hosp. Trust Nat'l Bank, 119 R.I. at 66, 376 A.2d at 324; Harold W. Merrill Post. No. 16 Am. Legion v. Heirs-at-Law, Next-of-Kin and Devisees of Smith, 116 R.I. 646, 360 A.2d 110 (1976).

The party who opposes a summary judgment motion "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see also McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006). It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rather, Super. R. Civ. P. 56 "requires the nonmoving party to go beyond the [unverified] pleadings" and present some type of evidentiary material in support of its position. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Although inferences may be drawn from underlying facts contained in material before the trial court, neither vague allegations and conclusory statements, nor assertions of inferences not based on underlying facts will suffice. First Nat'l Bank of Boston v. Slade, 379 Mass. 243, 246, 399 N.E.2d 1047, 1050 (Mass. 1979).

**2**

**Res Judicata**

Counts IV, V, and VI of the Amended Complaint assert 42 U.S.C. § 1983 claims against Mr. Carey, Woonsocket Police Officers, and the City of Woonsocket, respectively. Defendants assert that these claims, as well as all of the state claims, are barred under the doctrine of res judicata.

Recently, our Supreme Court comprehensively addressed the doctrine of res judicata in Reynolds v. First NLC Fin. Servs., LLC, 81 A.3d 1111 (R.I. 2014). In that case, the Court specifically discussed whether "res judicata precluded a party from relitigating in state court issues that had already been litigated in [federal court]." Id. at 1116. It concluded that where "a claim had been disallowed in [a] bankruptcy proceeding, [and] the federal district court entered an order of confirmation, . . . res judicata precluded the relitigation of the matter in a state court proceeding." Id. (citing DiSaia v. Capital Indus., Inc., 113 R.I. 292, 298, 320 A.2d 604, 607 (1974)). In so ruling, the Court issued a cogent guideline for determining whether a case is barred by the res judicata doctrine that is worthy of quoting here in full:

> "Res judicata, or claim preclusion, bars the relitigation of all issues that were tried or might have been tried in an earlier action. Usually asserted in a subsequent action based upon the same claim or demand, the doctrine precludes the relitigation of all the issues that were tried or might have been tried in the original suit, as long as there is (1) identity of parties, (2) identity of issues, and (3) finality of judgment in an earlier action.
>
> "Determining whether there is identity of parties requires resolving whether the parties to this second action are identical to or in privity with the parties involved in the [prior action]. A party to an action has been defined as [a] person who is named as a party to an action and subjected to the jurisdiction of the court * * *. Further, [p]arties are in privity when there is a commonality of interest between the two entities and when they sufficiently represent each other's interests.
>
> "The second requirement necessary to apply the doctrine of

> res judicata is identity of issues. In determining the scope of the issues to be precluded in the second action, we have adopted the broad transactional rule. In accordance with that rule, res judicata precludes the relitigation of all or any part of the transaction, or series of connected transactions, out of which the [first] action arose.
>
> "Finally, the application of res judicata requires that there be finality of judgment in the earlier action. The burden is upon the party asserting res judicata to prove that the prior judgment on which it is relying was final." Reynolds, 81 A.3d at 1115-16 (internal citations and quotations omitted).

In the instant matter, the Court first observes that Magistrate Judge Almond specifically found that there was an identity of the parties between the previous two federal actions. See Defs.' Ex. L at 7) ("Comparing the suits, Plaintiff has sued substantially the same parties in the later filed case[] as he did in [the] case[] that [was] dismissed by this Court.") The defendants in the second federal court action consisted of the State of Rhode Island; the City of Woonsocket, through its Treasurer, Carol Touzin; the Woonsocket Police Department; Michael Houle as Chief of the Woonsocket Police Department, and Mr. Finnegan, individually and in his official capacity as Bail Commissioner. (See Defs.' Ex. K.) In the present case, the named Defendants consist of the City of Woonsocket; Thomas Bruce, in his official capacity as Treasurer for the City of Woonsocket; Thomas S. Carey, in his official capacity as Chief of Police for the City of Woonsocket; Edward Doura, individually and in his capacity as Patrol and Arraigning Officer for the City of Woonsocket;[8] and Mr. Finnegan, individually and in his official capacity as Bail Commissioner for the State of Rhode Island. It is clear from the foregoing that the parties in the instant action either are identical to the previous parties or are in privity with the City of Woonsocket, which was a named defendant in all of the actions. See e.g. Huntley v. State, 63

[8] Although the caption names Mr. Carey and Mr. Doura in their individual capacities, because there are no claims against them individually in the body of the Amended Complaint, the Court previously has concluded that they only are being sued in their official capacities. See footnote 2, supra.

A.3d 526, 531 (R.I. 2013) ("[W]here defendants are all members of state government or employees of the Attorney General's office, they are clearly in privity with the named defendant State of Rhode Island.") Consequently, the Court concludes that the identity of parties element of res judicata is satisfied.

The Court next will determine whether there was a sufficient identity of issues for purposes of res judicata. It is undisputed that Plaintiff's claims arose out of the same series of transactions; namely, his July 2007 arrest and subsequent arraignment. As a result, the Court is satisfied that there is a sufficient identity of issues under the broad transactional rule. See Reynolds, 81 A.3d at 1116 (stating that the broad transactional rule "precludes the relitigation of all or any part of the transaction, or series of connected transactions, out of which the [first] action arose"). Accordingly, the Court concludes that there is a sufficient identity of issues under the doctrine of res judicata.

Finally, the Court must determine whether there was a final judgment on the merits of Plaintiff's claims in federal court. In his original complaint in federal court, C.A. No. 08-105ML, Plaintiff alleged violations of 42 U.S.C. § 1983, 18 U.S.C. § 242, and article 1, section 5 of the Rhode Island Constitution. See Defs.' Ex. E. Magistrate Judge Almond recommended dismissal of the complaint for failure to state a viable claim because "damages are not recoverable under Section 1983 against a state and a state employee in his or her official capacity because they do not constitute 'persons' within the meaning of the statute." Defs.' Ex. F at 9 (citing Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989)). Magistrate Judge Almond further recommended that "[i]n view of the absence of any viable federal claims, Pelumi's state constitutional claim is not viable in federal court due to an absence of diversity jurisdiction." Id.

Before the federal district court acted upon the recommendation, Plaintiff amended the complaint in his first federal court action to name Mr. Finnegan as a defendant, both individually and in his official capacity. See Defs.' Ex. G. The amended complaint again alleged violations of 42 U.S.C. § 1983 in addition to "Civil Rights Violation[s]" of the United States and Rhode Island Constitutions. See Defs.' Ex. G at 3-4. Thereafter, Magistrate Judge Almond issued a "SECOND CONSOLIDATED REPORT AND RECOMMENDATION FOR SUMMARY DISMISSAL PURSUANT TO 28 U.S.C. § 1915(e)" in which he stated that "even if Mr. Finnegan did intentionally steal money from Pelumi, that alone would not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment, as long as adequate post-deprivation state-law remedies exist." See Defs.' Ex. H at 9 (citing Palmer v. Hudson, 468 U.S. 517, 530-35 (1984); Hadfield v. McDonough, 407 F.3d 11, 19-20 (1st Cir. 2005)). Magistrate Judge Almond further found that:

> "Pelumi had adequate remedies under state law. He could have, for example, attempted to pursue a criminal action by filing a police report, and he could have pursued a common law tort claim for conversion. For these reasons, there is no viable claim under § 1983 . . . Accordingly, Pelumi's Amended Complaint . . . must be DISMISSED." Id.

The federal district court adopted the recommendation in full and dismissed the amended complaint. See Defs.' Ex. I. On March 4, 2009, the United States First Circuit Court of Appeals entered a judgment summarily affirming the district court's dismissal. See Defs.' Ex. J.

In his second federal court action, C.A. No. 09-257ML, Plaintiff once again asserted that his federal and state constitutional rights had been violated and that defendants had violated 42 U.S.C. § 1983. See Defs.' Ex. K. Magistrate Judge Almond found that the allegations in this new complaint were "sufficiently identical to those presented in the first . . . Complaint[]" such that "res judicata precludes Plaintiff from relitigating the claims presented in the [second]

Complaint[.]" Defs.' Ex. L at 6-7. Accordingly, he recommended dismissal of the complaint "with prejudice." Id. at 7 (emphasis added). Thereafter, the District Court "adopt[ed] the Report and Recommendation in its entirety." See Defs.' Ex. M. (Emphasis added.) On October 13, 2009, the United States First Circuit Court of Appeals entered a judgment in which it declared: "Substantially for the reasons given in the thorough Second Consolidated Report and Recommendations of Magistrate Judge Almond, entered May 30, 2008, and subsequently adopted by the district court, this appeal is sua sponte summarily dismissed." See Defs' Ex. N.

In light of the foregoing, the Court concludes that there were final judgments in both of Plaintiff's federal court actions. The Court also concludes that the first of those final judgments (C.A. No. 08-105ML) went to the merits of Plaintiff's 42 U.S.C. § 1983 federal claims; consequently, he was permanently precluded from pursuing any subsequent 42 U.S.C. § 1983 claims in either federal or state court. As a result, the Court concludes that the federal court properly dismissed the second federal court complaint, with prejudice, on res judicata grounds and further concludes that Plaintiff's 42 U.S.C. § 1983 claims in the instant matter are precluded for the same reason.

However, with respect to Plaintiff's state claim in C.A. No. 08-105ML, the federal court did not reach the merits of that claim; rather, the state claim was dismissed by reason of a lack of diversity jurisdiction. When the federal court later dismissed C.A. No. 09-257ML on grounds of res judicata, it was silent as to the effect, if any, that such dismissal might have on Plaintiff's state claims in that case.

The Defendants, however, contend that even if the merits of the state claim in the Plaintiff's first federal court action was not reached, the dismissal of Plaintiff's second federal court action, "with prejudice," operated as an adjudication on the merits of his state claims in that

case. Consequently, they maintain that res judicata precludes Plaintiff from bringing state claims in the instant action.

Our Supreme Court has declared that "[a] dismissal, with prejudice, constitutes a final judgment on the merits." Lennon v. Dacomed Corp., 901 A.2d 582, 592 (R.I. 2006). However, Rule 41 of the Rhode Island Superior Court Rules of Civil Procedure provides:

> "Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits." Super. R. Civ. P. 41(b)(3).

Thus, in the res judicata context, "[i]f the first suit was dismissed for defect of pleadings, or parties, or a misconception of the form of proceeding, or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit." Costello v. United States, 365 U.S. 265, 286 (1961); see also Kulinski v. Medtronic Bio-Medicus, Inc., 112 F.3d 368, 373 (8th Cir. 1997) ("[W]hen a dismissal is for 'lack of jurisdiction,' the effect is not an adjudication on the merits, and therefore the [res judicata] bar does not arise."); Guzowski v. Hartman, 849 F.2d 252, 256 n.5 (6th Cir. 1988) ("The dismissal of a claim for lack of jurisdiction, though, is not a dismissal on the merits and thus has no res judicata effect."). Indeed, even in cases where a dismissal for lack of jurisdiction purportedly is granted "with prejudice," a subsequent suit is not barred. See Kulinski, 112 F.3d at 373 (stating "plaintiff's second suit was not barred by the dismissal of his first suit despite its label 'with prejudice' because it did not reach the merits") see also Sch. Comm. of North Providence v. North Providence Fed'n of Teachers, Local 920, Am. Fed'n of Teachers (AFL-CIO), 122 R.I. 105, 108, 404 A.2d 493, 495 (1979) (holding that the "with prejudice" portion of the dismissal of a complaint for insufficiency of process was unwarranted

because it was not an adjudication of the merits).

With respect to justiciability, a "complaint's dismissal without prejudice for lack of subject matter jurisdiction would preclude plaintiff from bringing another claim on the same jurisdictional basis, but [that does] not preclude 'the same claim under a different theory and jurisdictional basis.'" Sandy Lake Band of Mississippi Chippewa v. United States, 714 F.3d 1098, 1104 (8th Cir. 2013) (quoting Kulinski, 112 F.3d at 373). Thus, "[a] second complaint cannot command a second consideration of the same jurisdictional claim." Sandy Lake Band of Mississippi Chippewa, 714 F.3d at 1104 (quoting 18 James Wm. Moore et al., Moore's Federal Practice § 132.03[5][c] (3d ed. 2013)).

In the instant matter, Defendants assert that the federal court's dismissal of Plaintiff's second federal court action, with prejudice, operated as an adjudication on the merits of his state claims in that case. This Court disagrees.

The record reveals that Magistrate Judge Almond specifically stated that he was recommending dismissal of Plaintiff's state claim in C.A. No. 08-105ML due to lack of federal diversity jurisdiction. See Defs.' Ex. F at 9 (recommending dismissal of state constitutional claim "due to the absence of [any federal] diversity jurisdiction"). The Magistrate Judge later observed that Plaintiff "had adequate remedies under state law." See Defs.' Ex. H. The Magistrate Judge's recommendations were adopted by the district court and upheld by the circuit court. See Defs.' Exs. I and J.

When Magistrate Judge Almond later recommended dismissal of C.A. No. 09-257ML, he did not address Plaintiff's state claims. However, considering that Plaintiff's 42 U.S.C. § 1983 claims were barred by res judicata, the federal court once again would not have had federal diversity jurisdiction to consider Plaintiff's state claims in that action. Even assuming that the

dismissal with prejudice on res judicata grounds actually did apply to the state claims, it only would have been for purposes of precluding the same claims in federal court on jurisdictional grounds. It is clear, however, that Plaintiff's state claims never have been adjudicated on their merits

In light of the foregoing, the Court concludes as a matter of law that the doctrine of res judicata precludes Plaintiff's 42 U.S.C. § 1983 claims (Counts IV, V, and VI of the Amended Complaint). The Court further concludes as a matter of law that the doctrine of res judicata does not operate as a bar to Plaintiff from filing his state claims in Superior Court. Consequently, the Court grants Defendants' Motion for Summary Judgment with respect to Counts IV, V, and VI on grounds that these counts are precluded under the doctrine of res judicata. However, Counts I, II, and III are not precluded under the doctrine of res judicata; thus, the Court denies the Motion for Summary Judgment with respect to these claims.

**3**

**The State Claims**

The Defendants also contend that Plaintiff has failed to state any valid causes of action in his suit.[9] To begin with, they maintain that because the state claims are directed against "defendants," it is unclear as to which specific Defendants are addressed in the allegations.[10] In addition, they contend that the negligence claim must fail because it does not set forth the necessary elements of the claim.

Rhode Island "utilizes a liberal pleading rule, and 'has recognized the sufficiency of

[9] Considering that Counts IV, V, and VI already are precluded under the doctrine of res judicata, the Court need only address this contention with respect to Counts I, II, and III (the state claims).
[10] The City of Woonsocket Defendant also asserts that Count I is not directed against them because it contains the term "Finnegan Theft." However, as previously noted, this particular issue was waived because it was not included in the Amended Complaint. See footnote 7, supra.

complaints even when the claims asserted within those complaints lack specificity.'" Andrade v. Perry, 863 A.2d 1272, 1279 (R.I. 2004) (quoting Konar v. PFL Life Ins. Co., 840 A.2d 1115, 1118 (R.I. 2004)). Here, Defendants contend that it is unclear as to which specific Defendants are being sued because Plaintiff simply names "the Defendants" rather than directing the claims against specific Defendants. However, given our liberal pleading rule, the fact that the stated claims do not name specific defendants but, instead, are directed towards "Defendants" as a whole, is sufficient for the Court to conclude that Plaintiff is suing all of the Defendants with respect to Counts I, II, and III. Consequently, the Court concludes that this particular allegation has no merit.

**(i)**

**Count I**

The Defendants assert that Count I is directed only against Mr. Finnegan because of the hand-written notation of "Finnegan Theft." Specifically, they state: "'Finnegan Theft' is not directed against the instant defendants." (Mem. of Law in Supp. of Defs. City of Woonsocket, Thomas Bruce, Thomas S. Carey and Edward Doura's Mot. for Summ. J. at 8) (Mem. of Law in Supp. of Defs. Mot. for Summ. J.) As previously noted, however, Plaintiff did not add this notation to his Amended Complaint; thus, its significance, if any, was waived when Plaintiff replaced the original Complaint with the Amended Complaint. See DiBattista, 808 A.2d at 1088 n.6 (deeming an allegation to be waived when it subsequently was excluded from an amended complaint "[b]ecause the filing of the amended complaint superceded the original pleading . . . ."). Consequently, the Court will examine Count I as it presently is set forth in the Amended Complaint.

Count I, which Plaintiff characterizes as a claim for negligence, states in pertinent part:

> "The Plaintiff [sic] damages are a direct and proximate result of the [] Defendants [sic] negligence; **WHEREFORE,** THE plaintiff respectfully requests this Honorable Court award COMPENSATORY DAMAGES, in his favor against the Defendants; severally or jointly and severally, . . . ." (Am. Compl. at ¶ 13.)

The Defendants assert that "other than damages, none of the necessary elements for a negligence claim are alleged by Mr. Pelumi, namely duty, breach, and causation." Mem. of Law in Supp. of Defs. Mot. for Summ. J. at 9. As a result, they contend that summary judgment should be granted on the negligence claim.

Our Supreme Court has declared that "[t]o properly set forth 'a claim for negligence, a plaintiff must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage.'" Phelps v. Hebert, 93 A.3d 942, 946 (R.I. 2014) (quoting Brown v. Stanley, 84 A.3d 1157, 1161–62 (R.I. 2014)). However, "a defendant cannot be held liable under any theory of negligence unless the defendant owes a duty to the plaintiff." Id. (internal quotations omitted) (emphasis added).

It is well settled that "[w]hether a legal duty exists in any given case is a question of law for the court." Phelps, 93 A.3d at 946; see also Wyso v. Full Moon Tide, LLC, 78 A.3d 747, 750 (R.I. 2013) ("Although we have frowned upon the disposition of negligence claims by summary judgment, the existence of a duty is nonetheless a question of law."). In the event that a duty does not exist, "'the trier of fact has nothing to consider and a motion for summary judgment must be granted [because] [t]he existence of a duty of care is a legal question reserved for the trial justice, not for the jury.'" Id. (quoting Holley v. Argonaut Holdings, Inc., 968 A.2d 271, 274 (R.I. 2009); Banks v. Bowen's Landing Corp., 522 A.2d 1222, 1225 (R.I. 1987)); see also Phelps, 93 A.3d at 946 ("If the court finds that no duty exists, 'the trier of fact has nothing to

consider and a motion for summary judgment must be granted.'") (quoting Gushlaw v. Milner, 42 A.3d 1245, 1252 (R.I. 2012)).

In establishing the existence of a duty, the Court must bear in mind that "there is no set formula for finding a legal duty, [and that] such a determination must be made on a case-by-case basis." Phelps, 93 A.3d at 946. In so determining, the Court must assess "all relevant factors, including the relationship of the parties, the scope and burden of the obligation to be imposed upon the defendant, public policy considerations, and notions of fairness." Id. Most importantly, it is "[o]nly when a party properly overcomes the duty hurdle in a negligence action is he or she entitled to a factual determination on each of the remaining elements: breach, causation, and damages." Wyso, 78 A.3d at 750.

In Count I, the purported negligence claim, Plaintiff has failed to allege, much less establish, a legally cognizable duty owed to him by Defendants. As such, he has failed to overcome the duty hurdle in his negligence claim and is not entitled to a factual determination on the remaining elements. See id. Indeed, none of the factual allegations or legal assertions contained in Count I remotely supports a negligence claim. Plaintiff has not alleged a duty, he has not alleged a breach of duty nor alleged that any breach proximately caused him an injury. See Phelps, 93 A.3d 946 (setting forth the required elements for a negligence claim). By simply describing the claim as one for negligence does not make it so. See Peerless Ins. Co., v. Viegas, 667 A.2d 785, 789 (R.I. 1995) ("The fact that the allegations in [a] complaint are described in terms of 'negligence' is of no consequence. A plaintiff, by describing his or her cat to be a dog, cannot simply by that descriptive designation cause the cat to bark."). In view of these deficiencies, the Court concludes that there exists no valid negligence claim for this Court to consider. As a result, the Court grants Defendants' Motion for Summary Judgment with respect

to Count I of the Amended Complaint.

**(ii)**

**Count II**

The Plaintiff has characterized Count II as a claim for negligence. However, the language contained in the body of that claim reveals that Plaintiff is alleging intentional conduct on the part of Defendants. Specifically, Count II alleges in pertinent part:

> "15. At all material time, the Defendants knew or should have known that their conduct or words would place the Plaintiff in reasonable apprehension of injury;
> . . .
> "18. As a direct and proximate result of the Defendants [sic] conduct or words, the Plaintiff suffered Fright, Humiliation, and the likes, as well as any physical illness, which may result from them in addition to the prior alleged damages.
> "19. Defendants had no justification for causing Plaintiffs [sic] apprehension; Plaintiff alternatively alleges Defendants used unreasonable and unnecessary conduct or words under the facts and circumstances and otherwise in disproportion to the Plaintiffs [sic] conduct, if any;
> "20. The Defendants [sic] conduct or words were otherwise malicious, willful, reckless, and/or wicked as to amount to a criminality." (Am. Compl. at ¶¶ 15-20.)

In their Motion for Summary Judgment, Defendants contend that they are entitled to summary judgment because "[n]o specific conduct or words are described or alleged in this count and it is unclear as to which 'defendants' the allegations are addressed or what conduct or words are being referred to by Mr. Pelumi." (Mem. of Law in Supp. of Defs. Mot. for Summ. J. at 8.) However, in the general allegations portion of his Amended Complaint, which portion was incorporated by reference into Count II, Plaintiff alleged the following conduct and/or words:

> "On July 4, 2007, inside Woonsocket Police Station, in the City of Woonsocket, State of Rhode Island, Defendant Richard Finnegan, a white man, and the Bail Commissioner for the City of Woonsocket, unlawfully, willfully, negligently, and discriminatingly stole money from the Plaintiff, Hakeem Pelumi, a

> black man, in broad daylight while other 'officers' are watching and laughing, during a bail hearing." (Am. Compl. at ¶ 10.)

While not the most artfully drafted document, a liberal reading of Count II reveals that Plaintiff appears to be alleging a claim for intentional infliction of emotional distress.

This jurisdiction has "recognized a cause of action for the intentional infliction of emotional distress, and in doing so, [it] adopted the standard set forth in § 46 of the Restatement (Second) Torts." Swerdlick v. Koch, 721 A.2d 849, 862 (R.I. 1998). For liability to be imposed upon a defendant for intentional infliction of emotional distress, the following elements must be satisfied: "(1) the conduct must be intentional or in reckless disregard of the probability of causing emotional distress, (2) the conduct must be extreme and outrageous, (3) there must be a causal connection between the wrongful conduct and the emotional distress, and (4) the emotional distress in question must be severe." Id.

In addition to the foregoing elements, there must be "at least some proof of medically established physical symptomatology for . . . intentional . . . infliction of mental distress[.]" Id. at 863. The purpose of this requirement is "to safeguard against bogus or exaggerated emotional-damage claims[.]" Hawkins v. Scituate Oil Co., 723 A.2d 771, 773 (R.I. 1999) (declaring that "plaintiffs seeking to recover a monetary award for the tortious infliction of emotional distress must establish, among other elements, that they experienced physical symptoms of their alleged emotional distress, and that expert medical testimony supports the existence of a causal relationship between the putative wrongful conduct and their injuries"); cf. Magnett v. Pelletier, 488 F.2d 33, 35 (1st Cir. 1973) (acknowledging that a plaintiff who proves purely mental suffering in a civil rights action may be entitled to compensatory damages).

With respect to the requirement that "a plaintiff must show 'extreme and outrageous conduct on the part of the defendant[,]'" (Jalowy v. Friendly Home, Inc., 818 A.2d 698, 707 (R.I.

2003)) (quoting DiBattista v. State, 808 A.2d 1081, 1088 (R.I. 2002)), our Supreme Court has declared:

> "It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" Jalowy, 818 A.2d at 707 (quoting Swerdlick, 721 A.2d at 863; Restatement (Second) Torts § 46 cmt. d, at 73)).

For Defendants to prevail on their Motion for Summary Judgment with respect to Count II, they must demonstrate that there exist no genuine issues of material fact which must be resolved regarding the elements referenced above. In so demonstrating, Defendants "bear[] the initial burden of demonstrating the absence of questions of material fact . . . by 'submitting evidentiary materials, such as interrogatory answers, deposition testimony, admissions, or other specific documents, and/or pointing to the absence of such items in the evidence adduced by the parties.'" Mills v. State Sales, Inc., 824 A.2d 461, 467 (R.I. 2003) (quoting Heflin v. Koszela, 774 A.2d 25, 29 (R.I. 2001)). However, Defendants have not made any such demonstration, nor have they offered any evidence on this issue. Instead, they have asserted that they are entitled to summary judgment because Plaintiff has failed to allege or describe any conduct or words against them.

Although not artfully drafted, Plaintiff has alleged intentional infliction of emotional distress in Count II in his Amended Complaint. More specifically, he has alleged that Defendants' "conduct or words were otherwise malicious, willful, reckless, and or wicked . . .

[,]" and that such conduct or words have caused him harm, including "Fright, Humiliation, and the likes, as well as any physical illness . . . ." (Am. Compl. at ¶¶ 15-20.) Defendants have not produced any competent evidence to challenge such allegations; consequently, they have not satisfied their burden of demonstrating the absence of genuine issues of material fact on this issue. Accordingly, based upon the record before the Court, Defendants' Motion for Summary Judgment must be denied with respect to Count II.

**(iii)**

**Count III**

The Plaintiff characterizes Count III of the Amended Complaint as a claim for "Deprivation." Specifically, he asserts:

> "22. At all material times, the Defendant [sic] knew or would have known that their conduct would result in an offensive deprivation of or trauma upon the Plaintiff, either directly or indirectly by setting in force certain events which in their ordinary course were likely to result in an offensive deprivation of or trauma upon the Plaintiff.
> "23. At all material times, the Defendants [sic] conduct did result in an offensive deprivation of or trauma upon the Plaintiff." (Am. Compl. at ¶¶ 22-23.)

In their Motion for Summary Judgment, Defendants have alleged that with respect to Count III, "it is unclear which defendants this count is directed toward or the legal basis for this count, although it appears to be based on 42 USC § 1983." (Mem. of Law in Supp. of Defs.' Mot. for Summ. J. at 8.) However, as previously stated, the fact that Count III names "Defendants," means that the claim is directed against all of the Defendants in this matter. Furthermore, although Defendants suggest that the legal basis for Count III is based upon 42 U.S.C. § 1983, the characterization of the claim as one for "Deprivation," as well as the language in Count III and in the body of the Amended Complaint—that Mr. Finnegan "unlawfully,

willfully, negligently, and discriminatingly stole money from the Plaintiff" in the presence of police officers—would suggest otherwise. See Am. Compl. at ¶¶ 10 and 21-25.

The term deprivation is defined as: "**1a.** The act or an instance of depriving; loss. **b.** The condition of being deprived; privation." The American Heritage Dictionary of the English Language 488 (5th ed. 2011). The term deprived is defined as: "**1.** To take something away from; . . . **2.** To keep from possessing or enjoying; deny." Id. Thus, the Court concludes that a liberal reading of Count III reveals that Plaintiff is asserting a civil action for larceny.[11]

Section 9-1-2 of the Rhode Island General Laws, entitled "Civil liability for crimes and

[11]Although it is conceivable that Count III could be construed as a claim for conversion, in general, the tort of conversion relates to the taking of chattel rather than of money. See Montecalvo v. Mandarelli, 682 A.2d 918, 928 (R.I. 1996) (defining conversion as the "intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel") (quoting Restatement (Second) Torts § 222(A)(1) (1965)). However, "[m]oney, where specifically identifiable, is usually regarded as a form of property subject to conversion. [Nevertheless,] . . . the question of whether money can be the subject matter of an action for conversion generally depends on whether the defendant is under any obligation to deliver specific money to the plaintiff." DeChristofaro v. Machala, 685 A.2d 258, 263 (R.I. 1996) (discussing a claim for conversion in the context of a contract dispute) (citing Larson v. Dawson, 24 R.I. 317, 318, 53 A. 93, 94 (1902)). Furthermore, "recovery for conversion requires a previous demand and refusal." Ludwig v. Kowal, 419 A.2d 297, 303 (R.I. 1980) (observing "that proof of demand and refusal even incident to an action for conversion is necessary only when a defendant rightfully obtained possession of the property").

In the present case, there is no allegation that the money in question was specifically identifiable or that Defendants were under any obligation to deliver it to Plaintiff. Indeed, the Amended Complaint reveals that Plaintiff is alleging that Defendants had no right to take the disputed money in the first instance; thus supporting this Court's reading of Count III as one for theft. As further support for this conclusion, our Supreme Court has declared that:

> "It has never been [the law] in this State that a tort action could be maintained for money had and received, even though the person receiving the same has negligently and fraudulently refused to pay over the same to the person to whose use it was received, or has even converted it to his own use; except, at any rate, as provided by statute, after the commencement of a criminal prosecution." DeChristofaro, 685 A.2d at 264.

Consequently, the Court will treat Count III as a claim for civil larceny.

offenses," provides:

> "Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender, and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made; and whenever any person shall be guilty of larceny, he or she shall be liable to the owner of the money or articles taken for twice the value thereof, unless the money or articles are restored, and for the value thereof in case of restoration." G.L. 1956 § 9-1-2.

It is well settled that "[w]hen the language of the statute is clear and unambiguous, it is [the Court's] responsibility to give the words of the enactment their plain and ordinary meaning." Peloquin v. Haven Health Ctr. of Greenville, LLC, 61 A.3d 419, 425 (R.I. 2013). However, the plain meaning approach, so-called, "is not the equivalent of myopic literalism, and it is entirely proper for [the Court] to look to the sense and meaning fairly deducible from the context." Id. The ultimate goal of statutory construction "is to give effect to the purpose of the act as intended by the Legislature[;] [however,] under no circumstances will this Court construe a statute to reach an absurd result." Id.

Section 9-1-2 permits a plaintiff to "recover civil damages for injury to his or her estate that results from the commission of a crime or offense, irrespective of whether charges have been filed against the offender." Morabit v. Hoag, 80 A.3d 1, 4 (R.I. 2013) (emphasis added). To prevail in such a claim, the plaintiff "is required to prove his [or her] case by a preponderance of the evidence." Cady v. IMC Mortg. Co., 862 A.2d 202, 215 (R.I. 2004).

Section 9-1-2 provides "for simple damages in all cases and for double damages only in a case based on the crime of larceny." Da Costa v. Rose, 70 R.I. 163, 167-68, 37 A.2d 794, 796 (1944). Although the statute is remedial in nature, "it is clearly punitive in its provision for double damages and limits such damages to a case where the defendant was guilty of larceny."

Id. at 168, 37 A.2d at 796. As a result, "the legislature did not intend that a defendant could be found guilty of larceny in the first instance in a civil action under the statute and on a mere preponderance of the evidence." Id. at 168, 37 A.2d at 797. Unless a plaintiff can prove that the defendant is '"guilty of larceny' by proof of a conviction or of an admission of guilt in some criminal proceedings . . . the plaintiff is not entitled to recover double damages." Id. (Emphasis in original.)

It is clear from the foregoing that a plaintiff is not permitted to recover double damages for larceny without first showing that the defendant is "guilty of larceny." Sec. 9-1-2. However, there is nothing in the statute that would preclude a plaintiff from recovering simple damages for larceny in the same manner that he or she can recover simple damages for other crimes or offenses; namely, by proving liability under a preponderance of the evidence standard. Likewise, it would not be a defense to any such action that a criminal complaint has not been brought for larceny. See § 9-1-2 (stating "it shall not be any defense to such action that no criminal complaint for the crime or offense has been made"). Consequently, the Court concludes that the legal basis for Count III is one for larceny for which, if proved by a preponderance of the evidence, would entitle Plaintiff to recover $100, which was the value of the property allegedly taken from him.[12]

In their Motion for Summary Judgment with respect to Count III, Defendants alleged that Plaintiff failed to properly name the parties and failed to state a proper legal basis for the claim. Both of these allegations fail for the reasons set forth above. Defendants have not alleged, nor

[12] The Court observes that had Plaintiff brought a claim for conversion, likewise, his damages would have been limited solely to the value of the property that allegedly was taken. See Goodbody & Co. v. Parente, 116 R.I. 437, 440 n.2, 358 A.2d 32, 33 n.2 (1976) ("Customarily the measure of damages in conversion is the fair market value of the property at the time of the conversion." (citing Jeffrey v. Am. Screw Co., 98 R.I. 286, 291, 201 A.2d 146, 150 (1964)).

have they produced, any competent evidence to satisfy their burden of demonstrating the absence of genuine issues of material fact on this issue. Accordingly, based upon the record before the Court, Defendants' Motion for Summary Judgment must be denied with respect to Count III.

**B**

**Defendant Finnegan's Motion to Dismiss**

In addition to joining the City of Woonsocket Defendants' Motion for Summary Judgment, Defendant Finnegan has filed a Super. R. Civ. P. 12(b)(6) Motion to Dismiss the entire claim on grounds that he is immune from suit under the doctrine of judicial immunity. In addition, Mr. Finnegan has filed a Motion for Summary Judgment, which Motion will be addressed in Part C of this Section below.

**1**

**Standard of Review**

It is axiomatic that the "sole function of a motion to dismiss is to test the sufficiency of the complaint." Multi-State Restoration, Inc. v. DWS Props., LLC, 61 A.3d 414, 416 (R.I. 2013) (quoting Laurence v. Sollitto, 788 A.2d 455, 456 (R.I. 2002)). Accordingly, "[w]hen ruling on a Rule 12(b)(6) motion [to dismiss], the trial justice must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff's favor." Id. Thereafter, "[t]he motion may then only be granted if it appears beyond a reasonable doubt that a plaintiff would not be entitled to relief under any conceivable set of facts * * *." Id. at 417 (internal quotations omitted).

Our Supreme Court has declared that "[t]he policy behind these liberal pleading rules is a simple one: cases in our system are not to be disposed of summarily on arcane or technical grounds." Hendrick v. Hendrick, 755 A.2d 784, 791 (R.I. 2000) (citing Haley v. Town of

Lincoln, 611 A.2d 845, 848 (R.I. 1992)). In making a Super. R. Civ. P. 12(b)(6) determination, the court "assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs." Giuliano v. Pastina, Jr., 793 A.2d 1035, 1036 (R.I. 2002) (quoting Martin v. Howard, 784 A.2d 291, 297-98 (R.I. 2001)).

**2**

**Judicial Immunity**

Mr. Finnegan asserts that he is immune from suit under the doctrine of judicial immunity because, during the pertinent time, he was acting in his capacity as a Bail Commissioner for the City of Woonsocket. In response, Plaintiff contends that judicial immunity does not protect Mr. Finnegan from theft or from intentional acts that result from that alleged theft.

The judicial immunity doctrine was "developed at common law as a shield intended to protect judges from civil suits for damages for actions taken in their judicial capacity." Estate of Sherman v. Almeida, 747 A.2d 470, 473 (R.I. 2000). The core principle underlying this doctrine is "that judicial decision-making 'must be engaged in * * * freely, independently, and untrammeled by the possibilities of personal liability.'" Id. at 474 (quoting Calhoun v. City of Providence, 120 R.I. 619, 631, 390 A.2d 350, 356 (1978)). In accordance with this principle, "[c]ourts have consistently held that judicial immunity is an immunity from suit, not just an immunity from an ultimate assessment of damages." Estate of Sherman, 747 A.2d at 474 (citing Mireles v. Waco, 502 U.S. 9, 11 (1991)).

Judicial immunity applies regardless of "'however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.'" Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986) (quoting Cleavinger v. Saxner, 474 U.S. 193, 199-200 (1985)). As such, "judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual

trial." Id. In fact, it "applies 'even when the judge is accused of acting maliciously and corruptly' because it was not established 'for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.'" Estate of Sherman, 747 A.2d at 474 (quoting Pierson v. Ray, 386 U.S. 547, 554 (1967)). Thus, while "it may be unpalatable at times, particularly where the judge is obviously corrupt, the official conduct of a judge of this state is immune from suit." Estate of Sherman, 747 A.2d at 474.

Notwithstanding the foregoing, the Court observes that the doctrine of judicial immunity is not absolute and that there are "two sets of circumstances" in which judicial immunity may be defeated:

> "First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Forrester v. White, 484 U.S., at 227-229; Stump v. Sparkman, 435 U.S. at 360. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Id. at 356-357; Bradley v. Fisher, 13 Wall. at 351." Mireles, 502 U.S. at 11-12.

The determination of "whether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Id. at 12 (quoting Stump, 435 U.S. at 362). However, "[i]f judicial immunity means anything, it means that a judge 'will not be deprived of immunity because the action he took was in error . . . or was in excess of his authority.'" Mireles, 502 U.S. at 12-13 (quoting Stump, 435 U.S. at 356). Therefore, "the relevant inquiry is the 'nature' and 'function' of the act, not the 'act itself.' In other words, [the court] look[s] to the particular act's relation to a general function normally performed by a judge . . . ." Mireles, 502 U.S. at 13 (quoting Stump, 435 U.S. at 362).

A bail commissioner is "a justice of the peace authorized to set and take bail under G.L. 1956 § 12-10-2[.]" City of Warwick v. Adams, 772 A.2d 476, 477 (R.I. 2001). As such, "bail commissioners serve an important function in controlling the District Court's caseload by accepting [misdemeanor] pleas [of not guilty] as authorized by § 12-10-2 outside of the normal court day." Id. at 479.

G.L. 1956 § 12-10-2(d) establishes the guidelines applicable to justices of the peace. It provides, in pertinent part:

> "The fee for the justices of the peace shall be fifty dollars ($50.00) paid by each individual who appears before him or her; provided, that when a special session is requested between the hours of 11:00 p.m. and 8:00 a.m., the fee shall be arranged between the defendant and the justice of the peace but shall not exceed two hundred dollars ($200). Justices of the peace shall have immunity for any actions taken pursuant to the provisions of this section." Sec. 12-10-2(d) (emphasis added).

It is clear from the foregoing that, as a bail commissioner, Mr. Finnegan enjoyed judicial immunity pursuant to § 12-10-2(d) when he presided over Plaintiff's July 4, 2007 arraignment. It also is clear that the statute authorized Mr. Finnegan to charge Plaintiff a fee for his services as bail commissioner.

In Estate of Sherman, the plaintiff brought an action against various defendants arising out of the criminal activity of a former Superior Court justice. Estate of Sherman, 747 A.2d at 471. Seven of the complaint's fourteen counts were leveled against the former justice; however, only one count was brought against him in his official capacity. Id. at 475 n.4. The Supreme Court's review of the case was limited strictly to that particular count, which had alleged that the former justice, who previously had been convicted for bribery, had "corruptly and maliciously sold justice" to an attorney who had appeared before him in court. Id. at 472. After discussing the doctrine of judicial immunity, the court acknowledged that although

> "it may be appealing superficially to abrogate the doctrine of judicial immunity in this case, [such a course of action] could well give rise to a new category of lawsuits against judges acting in their official capacity that would have to be defended based on allegations of unlawful purchase or sale of justice." Id at 475.

Thus, while specifically stating that it was not condoning the former justice's criminal conduct, the Court concluded that it "must nonetheless continue to uphold the fundamental bedrock principle that our judicial officers are not liable in suit for actions taken in their judicial capacity." Id. Accordingly, the Court held that the doctrine of judicial immunity shielded a judge for acts undertaken in his or her official capacity, even when those acts result in criminal convictions for bribery and corruption. Id.

In the present case, Plaintiff alleges that on July 4, 2007, as he was about to be released on bail at the Woonsocket Police Station, Mr. Finnegan stole money from him and that, in the process, Mr. Finnegan committed the tort of intentional infliction of emotional distress and is liable for larceny. See Am. Compl. Plaintiff has sued Mr. Finnegan both in his official capacity as Bail Commissioner for the State of Rhode Island and in his individual capacity. Id.

It is undisputed that on July 4, 2007, Plaintiff appeared before Bail Commissioner Finnegan for a bail hearing after having been arrested and charged with disorderly conduct. Section 12-10-2(d) specifically provides that Justices of the Peace/Bail Commissioners have judicial immunity for any actions taken pursuant to that section. See § 12-10-2(d) ("Justices of the peace shall have immunity for any actions taken pursuant to the provisions of this section.") For Mr. Finnegan to be held liable, therefore, his actions must fall into one of the exceptions to the judicial immunity doctrine; namely, that his conduct either was a "nonjudicial action[]" or that it was "taken in a complete absence of all jurisdiction." Mireles, 502 U.S. at 11-12.

The Court finds that as Bail Commissioner for the City of Woonsocket, Mr. Finnegan had

jurisdiction to conduct the July 4, 2007 bail hearing at issue in this case. The Court also finds that Mr. Finnegan was authorized to charge a fee in performance of his judicial functions. Sec. 12-10-2(d). Notwithstanding Plaintiff's allegations, this Court finds that Mr. Finnegan's actions constituted judicial conduct and, thus, are shielded from civil liability under the judicial immunity doctrine. See Estate of Sherman, 747 A.2d at 474 (holding allegation of corrupt and malicious selling of justice by former justice who was criminally convicted for his actions was nevertheless shielded by the doctrine of judicial immunity).[13]

In light of the foregoing, the Court concludes that the doctrine of judicial immunity applies to all of the claims set forth against Mr. Finnegan, both in his official and in his individual capacities. Consequently, the Court grants Mr. Finnegan's Super. R. Civ. P. 12(b)(6) Motion to Dismiss the Amended Complaint in its entirety.[14]

**C**

**Rule 11 Sanctions**

Mr. Finnegan has filed a Motion for Summary Judgment on grounds that the Amended Complaint violates Super. R. Civ. P. 11 (Rule 11). Essentially, Mr. Finnegan asserts that Plaintiff's action is frivolous under Rule 11 because Magistrate Judge Almond previously had found Plaintiff's federal complaint against Mr. Finnegan to be frivolous. Consequently, he contends, the Court should grant summary judgment in his favor.

Rule 11 provides, in pertinent part:

[13] The Court observes that the doctrine of judicial immunity only protects a judge from civil liability. It does not protect a judge from criminal conduct. Plaintiff had the option of pursuing criminal charges against Mr. Finnegan; apparently, however, he chose not to pursue that avenue.

[14] Assuming Counts I, IV, V, and VI of the Amended Complaint had survived Defendants' Motion for Summary Judgment, nevertheless, those Counts would have been dismissed under the doctrine of judicial immunity as they pertained to Mr. Finnegan.

> Every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record . . . A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper . . . The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." Rule 11 (emphasis added).

Pursuant to Rule 11, trial courts have wide-ranging authority "'to impose sanctions against attorneys for advancing claims without proper foundation[.]"' Pleasant Mgmt., LLC v. Carrasco, 918 A.2d 213, 216 (R.I. 2007) (quoting Michalopoulos v. C & D Restaurant, Inc., 847 A.2d 294, 300 (R. I. 2004)). Furthermore, "a trial justice has discretionary authority to formulate what he or she considers to be an appropriate sanction, but must do so in accordance with the articulated purpose of the rule: 'to deter repetition of the harm, and to remedy the harm caused.'" Pleasant Mgmt., LLC, 918 A.2d at 217 (quoting Michalopoulos, 847 A.2d at 300). However, "Rule 11 should not be used to raise issues of legal sufficiency that more properly can be disposed of by a motion to dismiss or a motion for a more definite statement or a motion for summary judgment." Dome Patent L.P. v. Permeable Techs., Inc., 190 F.R.D. 88, 90 (W. Dist. N.Y. 1999) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1336 at 97 (2d ed. 1990)).

Mr. Finnegan asserts that the instant action violates Rule 11 as frivolous because Magistrate Judge Almond had found Plaintiff's claims in C.A. No. 08-105ML to be frivolous. However, the Magistrate Judge's recommendation did not make any such finding. Instead, he recommended dismissal of Plaintiff's 42 U.S.C. § 1983 claims in C.A. No. 08-105ML after finding that they failed to state a claim. See Defs.' Ex. H. Notably, however, the Magistrate Judge did not make any findings with respect to the merits of Plaintiff's state claim. Indeed, he specifically found that Plaintiff "had adequate remedies under state law." Id. at 9 (stating Plaintiff "could have, for example, attempted to pursue a criminal action by filing a police report, and he could have pursued a common law tort claim for conversion").

Thus, the fact that Magistrate Judge Almond never addressed Plaintiff's state claims necessarily means that he did not find those claims to be frivolous, as alleged by Mr. Finnegan. However, even assuming that Plaintiff's claims were frivolous, Rule 11 would not be the proper vehicle for disposing of the case. See Dome Patent L.P., 190 F.R.D. at 90 (cautioning against using Rule 11 to test the legal sufficiency of a case). Thus, the Court denies Mr. Finnegan's Motion for Summary Judgment with respect to his request for Rule 11 sanctions on grounds that the case is frivolous.

## III

## Conclusion

In light of the foregoing analysis, this Court grants Defendants' Motion for Summary Judgment as to Counts I, IV, V, and VI of the Amended Complaint, but denies the Motion for Summary Judgment as to Counts II and III for failure to satisfy their burden of demonstrating the absence of genuine issues of material fact. The Court grants Mr. Finnegan's Super. R. Civ. P. 12(b)(6) Motion to Dismiss the Amended Complaint based upon the doctrine of judicial

immunity. The Court denies Mr. Finnegan's Motion for Summary Judgment with respect to his request for Rule 11 sanctions.

Counsel for the Defendants shall submit an appropriate order for entry.

**RHODE ISLAND SUPERIOR COURT**
***Decision Addendum Sheet***

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| **TITLE OF CASE:** | **Pelumi v. City of Woonsocket, at al.** |
| **CASE NO:** | **PC 10-3875** |
| **COURT:** | **Providence County Superior Court** |
| **DATE DECISION FILED:** | **January 12, 2015** |
| **JUSTICE/MAGISTRATE:** | **Van Couyghen, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Hakeem Pelumi, pro se** |
| **For Defendant:** | **Arthur M. Read, II, Esq.**<br>**Krista J. Schmitz, Esq.** |