APPX.

A

*AMENDED ALD-255 July 16, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **19-3894**

AARON J. BRESSI, Appellant

VS.

TRACY MCCLOUD, et al.

(M.D. Pa. Civ. No. 4-18-cv-01345)

Present: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

Submitted are:

(1) By the Clerk for possible dismissal due to a jurisdictional defect;

(2) By the Clerk for possible dismissal under 28 U.S.C. §1915(e)(2)(B) or for possible summary action under 3rd Cir. L.A.R. 27.4 and Chapter 1 0.6 of the Court's Internal Operating Procedures;

(3) Appellant's argument in support of appeal; and

(4) *Appellant's motion for the appointment of counsel, filed August 7, 2020

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing appeal is dismissed for lack of jurisdiction because the appeal was not taken from a final order. Under 28 U.S.C. § 1291, this Court generally has jurisdiction over only "final decisions" of the district courts. A final decision is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Elliott v. Archdiocese of New York, 682 F.3d 213, 219 (3d Cir. 2012). Under Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949), certain collateral

orders are immediately appealable as "practically" final. However, the denial of motions to amend a complaint or for appointment of counsel are neither final decisions nor immediately appealable collateral orders. In re Kelly, 876 F.2d 14 (3d Cir. 1989); Smith-Bey v. Petsock, 741 F.2d 22, 26 (3d Cir. 1984). Furthermore, Cape May Greene does not apply here because this is not a situation involving "a premature notice of appeal, filed after disposition of some of the claims before a district court, but before entry of final judgment, [that ripens] upon the court's disposal of the remaining claims." See ADAPT of Phila. v. Phila. Hous. Auth., 433 F.3d 353, 361-62 (3d Cir. 2006) (summarizing Cape May Greene). In any event, Appellant has perfected an appeal from the final order in this case, and in that appeal he may challenge these or any other orders. C.A. Nos. 20-1077 & 20-1758, consolidated.

Finally, Appellant's motion for appointment of counsel is denied as moot for purposes of the current appeal. However, the motion for counsel will be separately considered in Appellant's appeal (C.A. Nos. 20-1077 & 20-1758) from the final order in this case.

By the Court,

s/ *Peter J. Phipps*
Circuit Judge

Dated: October 14, 2020

kr/cc: Aaron J. Bressi

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT
CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
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PHILADELPHIA, PA 19106-1790
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October 14, 2020

Aaron J. Bressi
Rockview SCI
Box A
Bellefonte, PA 16823

RE: Aaron Bressi v. Tracy McCloud, et al
Case Number: 19-3894
District Court Case Number: 4-18-cv-01345

ENTRY OF JUDGMENT

Today, **October 14, 2020** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ Kirsi
Case Manager
267-299-4947

cc: Mr. Peter J. Welsh, Clerk

APPX.

B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AARON J. BRESSI,	No. 4:18-CV-01345
Plaintiff,	(Judge Brann)
v.	(Magistrate Judge Saporito)
TRACY MCCLOUD, *et al.*,	
Defendants.	

ORDER

NOVEMBER 19, 2019

Currently pending before the Court are Aaron J. Bressi's motions for reconsideration of, and objections to, Magistrate Judge Joseph F. Saporito's orders denying Bressi's motion to appoint counsel and denying as moot his motion to file an amended complaint, and Bressi's motion to stay the case pending a ruling on those motions.[1] Bressi has not met the high burden necessary to grant reconsideration, and his motions for reconsideration will therefore be denied.[2] As a necessary corollary, Bressi's motion to stay this matter will be denied as moot.

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1 Docs. 30, 37, 40, 41, 43.

2 To properly support a motion for reconsideration, a party must demonstrate "at least one of the following: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *In re Vehicle Carrier Servs. Antitrust Litig.*, 846 F.3d 71, 87 (3d Cir. 2017) (ellipsis and internal quotation marks omitted).

Accordingly, **IT IS HEREBY ORDERED** that:

1. Bressi's motions for reconsideration (Docs. 40, 41) are **DENIED**. To the extent that the motions may be construed as objections to Magistrate Judge Saporito's Orders, those objections are **OVERRULED**;

2. Bressi's motion to place this matter in abeyance (Doc. 43) is **DENIED** as moot; and

3. Bressi may file objections to Magistrate Judge Saporito's Report and Recommendation on or before December 16, 2019.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge

APPX.

C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

AARON J. BRESSI, #MC9898, Plaintiff, v. TRACY MCCLOUD, et al., Defendants.	CIVIL ACTION NO. 4:18-cv-01345 (BRANN, J.) (SAPORITO, M.J.)

REPORT AND RECOMMENDATION

This is a federal civil rights action, commenced by the filing of a *pro se* complaint, signed and dated by the plaintiff, Aaron J. Bressi, on June 25, 2018. (Doc. 1.) At the time of filing, the plaintiff was incarcerated at SCI Rockview, a state prison facility located in Centre County, Pennsylvania. He has been granted leave to proceed *in forma pauperis* in this action. The original complaint has been superseded by an amended complaint, signed and dated by the plaintiff on February 25, 2019, and filed as a matter of course, *see* Fed. R. Civ. P. 15(a)(1). (Doc. 31.) The matter is now before us for screening pursuant to 28 U.S.C. § 1915A(a), 28 U.S.C. § 1915(e)(2)(B), and 42 U.S.C. § 1997e(c).

I. LEGAL STANDARD

Under 28 U.S.C. § 1915A, the Court is obligated to screen a civil

complaint in which a prisoner is seeking redress from a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a); *James v. Pa. Dep't of Corr.*, 230 Fed. App'x 195, 197 (3d Cir. 2007). The Court must dismiss the complaint if it is "frivolous" or "fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(b)(1). The Court has a similar obligation with respect to actions brought *in forma pauperis* and actions concerning prison conditions. *See* 28 U.S.C. § 1915(e)(2)(B)(i); *id.* § 1915(e)(2)(B)(ii); 42 U.S.C. § 1997e(c)(1). *See generally Banks v. Cty. of Allegheny*, 568 F. Supp. 2d 579, 587–89 (W.D. Pa. 2008) (summarizing prisoner litigation screening procedures and standards).

An action is "frivolous where it lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Thomas v. Barker*, 371 F. Supp. 2d 636, 639 (M.D. Pa. 2005). To determine whether it is frivolous, a court must assess a complaint "from an objective standpoint in order to determine whether the claim is based on an indisputably meritless legal theory or clearly baseless factual contention." *Deutsch v. United States*, 67 F.3d 1080, 1086 (3d Cir. 1995) (citing *Denton v. Hernandez*, 504 U.S. 25, 34 (1992)); *Thomas*, 371 F.

Supp. 2d at 639. Factual allegations are "clearly baseless" if they are "fanciful," "fantastic," or "delusional." *See Denton*, 504 U.S. at 32–33. "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." *Id.* at 33. A district court is further permitted, in its sound discretion, to dismiss a claim "if it determines that the claim is of little or no weight, value, or importance, not worthy of serious consideration, or trivial." *Deutsch*, 67 F.3d at 1089.

The legal standard for dismissing a complaint for failure to state a claim under § 1915A(b)(1), § 1915(e)(2)(B)(ii), or § 1997e(c) is the same as that for dismissing a complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Brodzki v. Tribune Co.*, 481 Fed. App'x 705, 706 (3d Cir. 2012) (per curiam); *Mitchell v. Dodrill*, 696 F. Supp. 2d 454, 471 (M.D. Pa. 2010); *Banks*, 568 F. Supp. 2d at 588. "Under Rule 12(b)(6), a motion to dismiss may be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds the plaintiff's claims lack facial plausibility." *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir.

2011) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)). In deciding the motion, the Court may consider the facts alleged on the face of the complaint, as well as "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Although the Court must accept the fact allegations in the complaint as true, it is not compelled to accept "unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation." *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (quoting *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)). Nor is it required to credit factual allegations contradicted by indisputably authentic documents on which the complaint relies or matters of public record of which we may take judicial notice. *In re Washington Mut. Inc.*, 741 Fed. App'x 88, 91 n.3 (3d Cir. Sept. 25, 2018); *Sourovelis v. City of Philadelphia*, 246 F. Supp. 3d 1058, 1075 (E.D. Pa. 2017); *Banks*, 568 F. Supp. 2d at 588–89.

II. DISCUSSION

In his amended complaint, Bressi has grouped his claims into sixteen separate sets, mostly concerning the criminal proceedings that

led to his current incarceration or the conditions of his confinement since his arrest or conviction. For relief, he seeks an award of $1 million in damages, plus injunctive relief—namely, that each defendant be fired and barred from future public service employment, and that each defendant be compelled to undergo a mental evaluation.

A. Claim Set #1: CYS Employees

In his first set of claims, Bressi asserts a § 1983 claim against two employees of Northumberland County Children & Youth Services ("CYS"). He alleges that he contacted CYS employees Tracy McCloud and Brittany Duke multiple times in July, August, and September 2016, with complaints about the welfare of his three children while in the custody of their mother and her boyfriend. He alleges that McCloud and Duke declined to investigate or follow-up on his complaints unless they first received a police incident report. Bressi further alleges that he made additional complaints to McCloud and Duke about the welfare of the youngest child while he was incarcerated between October 2016 and December 2017, but McCloud told him there was nothing she or Duke could do.

Bressi fails to state a cognizable § 1983 claim against these

defendants. "[T]here is no constitutional right to the investigation or prosecution of another." *Sanders v. Downs*, 420 Fed. App'x 175, 180 (3d Cir. 2011) (per curiam). Moreover, to the extent that Bressi, a non-lawyer, seeks to assert a violation of due process on behalf of his minor children, he is not permitted to do so in federal litigation. *See Osei-Afriyie v. Med. Coll. of Pa.*, 937 F.2d 876, 882–83 (3d Cir. 1991) (non-lawyer not permitted to represent his minor children). Even if he could, "the Due Process Clause of the Fourteenth Amendment . . . does not transform every tort committed by a state actor into a constitutional violation." *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 202 (1989). "As a general proposition, a state's failure to protect an individual against private violence does not constitute a violation of due process." *Nicini v. Morra*, 212 F.3d 798, 806 (3d Cir. 2000) (citing *DeShaney*, 489 U.S. at 202). In particular, we note that the plaintiff's children were not in foster care or any other form of state custody, but in the custody of their natural mother, and thus the CYS defendants, McCloud and Duke, had no constitutional duty to protect them. *See DeShaney*, 489 U.S. at 201 ("That the State once took temporary custody of Joshua does not alter the analysis, for when it returned him to his father's custody, it placed

him in no worse position than that in which he would have been had it not acted at all; the State does not become the permanent guarantor of an individual's safety by having once offered him shelter."); *McComb v. Wambaugh*, 934 F.2d 474, 478 (3d Cir. 1991) ("The distinction between harm inflicted by a state agent and injury caused by a private individual is critical.") (injury inflicted by mother); *see also Nicini*, 212 F.3d at 807 (injury inflicted by mother); *Costobile-Fulginiti v. City of Philadelphia*, 719 F. Supp. 2d 521, 527–28 (E.D. Pa. 2010) (injury inflicted by mother).

Accordingly, it is recommended that Claim Set #1, asserted against defendants McCloud and Duke, be dismissed for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Claim Set #2: Probation Officers

In his second set of claims, Bressi asserts § 1983 claims against four employees of the Northumberland County Adult Probation and Parole Department ("Probation Department"). He alleges that Probation Department employee Ronald McClay harassed him and threatened to throw him in jail multiple times between August 2016 and September 2016. On September 30, 2016, Bressi alleges that McClay and fellow

Probation Department employees Matthew Narcavage, Dan Shoop, and Jill Henrich accompanied Coal Township police officers when they arrested Bressi at his home. Bressi alleges that McClay, Narcavage, and Shoop transported him to the Coal Township police station and joined police officers in verbally harassing him while he was in a holding cell. Bressi alleges that Narcavage conspired with one of the police officers in filing a fabricated criminal charge against Bressi for terroristic threats directed at Narcavage.

To the extent Bressi has alleged verbal harassment and threats, it is well established that "allegations of verbal harassment and threats are insufficient to state a civil rights claim under § 1983." *Bressi v. Brennen*, Civil Action No. 4:17-cv-01742, 2018 WL 3596861, at *9 (M.D. Pa. July 6, 2018) (quoting *Murry v. Oakland Cty. Probation*, No. 2:09-CV-011395, 2009 WL 1259722, at *3 (E.D. Mich. Apr. 29, 2009)), *report and recommendation adopted by* 2018 WL 3584687 (M.D. Pa. July 26, 2018); *see also Mercer v. Green Haven Corr. Facility*, No. 94 CIV. 6238(DLC), 1998 WL 85734, at *4 (S.D.N.Y. Feb. 27, 1998) ("Verbal harassment and name calling without appreciable injury fail to allege a constitutional violation.").

To the extent Bressi has alleged false arrest, false imprisonment, or malicious prosecution in connection with his arrest on September 30, 2019, and the ensuing criminal prosecution, such claims are barred by the favorable termination rule articulated by the Supreme Court of the United States in *Heck v. Humphrey*, 512 U.S. 477 (1994), or they are meritless. *See Bressi*, 2018 WL 3596861, at *7–*9 (recommending dismissal of the very same claims against police officers arising out of the very same arrest and prosecution).[1] These claims lack any arguable basis in law and should be dismissed as legally frivolous and for failure to state a claim. *Saunders v. Bright*, 281 Fed. App'x 83, 85 (3d Cir. 2008) (per curiam); *Ruth v. Richard*, 139 Fed. App'x 470, 471 (3d Cir. 2005) (per curiam); *Boykin v. Siena House Gaudenzia Program*, 464 F. Supp. 2d 416, 424 (M.D. Pa. 2006).

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[1] We note that, following a jury trial, Bressi was found guilty of aggravated assault, terroristic threats (two counts), stalking, reckless endangerment, and related offenses, and he was sentenced to serve an aggregate term of four to eight years in prison. His conviction and sentence were subsequently affirmed on appeal by the Superior Court of Pennsylvania, and Bressi has filed a petition for allocatur in the Supreme Court of Pennsylvania, which remains pending. *See Commonwealth v. Bressi*, Docket No. CP-49-CR-0001513-2016 (Northumberland Cty. (Pa.) C.C.P. judgment entered Nov. 20, 2017), *aff'd*, No. 1887 MDA 2017, 2019 WL 1125670 (Pa. Super. Ct. Mar. 12, 2019), *petition for allocatur filed*, Docket No. 258 MAL 2019 (Pa. filed Apr. 6, 2019).

Accordingly, it is recommended that Claim Set #2, asserted against defendants McClay, Narcavage, Shoop, and Henrich, be dismissed as legally frivolous and for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), and 28 U.S.C. § 1915(e)(2)(B)(ii).

C. Claim Set #3: Officers Kechem, Adams, and Lapotsky

In the caption of his amended complaint, Bressi has indicated that his third set of § 1983 claims is against Coal Township police officers Terry Kechem, Patrolman Adams, and Christopher Lapotsky. The body of his amended complaint, however, omits Claim Set #3 altogether, alleging no facts whatsoever regarding these defendants. Accordingly, we find that this set of claims is clearly based on an indisputably meritless legal theory and baseless factual contentions, and thus they should be dismissed as legally and factually frivolous. *See Unum v. Expert Witness*, Civil Action No. 3:14-2332, 2015 WL 136384, at *8 (M.D. Pa. Jan. 7, 2015); *Marano v. Matty*, Civ. A. No. 86-5222, 1986 WL 13482, at *1 (E.D. Pa. Nov. 25, 1986); *see also Hudson v. City of McKeesport*, 244 Fed. App'x

519, 522 (3d Cir. 2007) (affirming dismissal as frivolous).[2]

D. Claim Sets #4, #5, and #8: Judicial Defendants

In his fourth, fifth, and eighth sets of claims, Bressi has alleged that two state magisterial district judges, Hon. John Gembic III and Hon. Benjamin Apfelbaum, and two common pleas court judges, Hon. Charles Saylor and Hon. Paige Rosini, deprived him of his due process rights in connection with two separate criminal proceedings, and that unspecified county court clerks subsequently denied him his right to access courts by refusing to respond to his correspondence requesting copies of papers filed in these criminal proceedings.

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[2] In his original complaint, Bressi asserted due process claims against these officers based on a malicious prosecution theory, seeking to hold them liable for a citation he received in the mail charging him with the summary offense of disorderly conduct, based on allegedly fabricated facts. In January 2019, shortly before filing his amended complaint in this action, Bressi sought leave to amend his complaint in another action to add this same set of claims to that case. *See* Proposed Second Amended Complaint (Doc. 57), at 27–31, *Bressi v. Brennen*, Case No. 4:17-cv-01742 (M.D. Pa. pleading docketed Jan. 30, 2019). Ultimately, leave to amend was denied as futile because these claims are *Heck*-barred. *See* Amended Order (Doc. 72), *Bressi v. Brennen*, Case No. 4:17-cv-01742 (M.D. Pa. Aug. 5, 2019); *see also Commonwealth v. Bressi*, Docket No. MJ-08303-NT-0001084-2016 (Northumberland Cty. (Pa.) Magis. Dist. Ct. filed Sept. 13, 2016).

1. Claims Against Judges

Bressi alleges that, in September 2016, Judge Gembic coerced him into pleading guilty to a summary offense by threatening him with jail time if he proceeded to trial. Based on the allegations of the amended complaint, this appears to be the case of *Commonwealth v. Bressi*, Docket No. MJ-08303-NT-0001084-2016 (Northumberland Cty. (Pa.) Magis. Dist. Ct. judgment entered Sept. 13, 2016). Bressi claims that the evidence adduced by the prosecution was falsified. Nevertheless, Bressi pleaded guilty on September 13, 2016, he was sentenced to pay a fine, and he did not take an appeal from his conviction and sentence.

Bressi further alleges that, on September 30, 2016, Judge Gembic conducted a preliminary arraignment in another case and unreasonably imposed a $50,000 bail requirement. Later, in October 2016, Judge Gembic and the prosecuting attorney both recused themselves from the case for a conflict of interest, and the matter was transferred to another state magisterial district judge, Judge Apfelbaum, who conducted Bressi's preliminary hearing on November 22, 2016. Bressi alleges various defects or errors in the conduct of that preliminary hearing. Based on the allegations of the amended complaint, this appears to be

the case of *Commonwealth v. Bressi*, Docket No. MJ-08304-CR-0000484-2016 (Northumberland Cty. (Pa.) Magis. Dist. Ct. filed Sept. 30, 2016).[3] Bressi claims that the evidence adduced by the prosecution was falsified. Nevertheless, these charges were bound over to the Court of Common Pleas, where Bressi alleges that Judges Saylor and Rosini then denied several pretrial motions and made evidentiary and procedural rulings in violation of his constitutional rights. Following a jury trial, Bressi was found guilty of aggravated assault, terroristic threats (two counts), stalking, reckless endangerment, and related offenses, and he was sentenced to serve an aggregate term of four to eight years in prison. His conviction and sentence were subsequently affirmed on appeal by the Superior Court of Pennsylvania, and Bressi has filed a petition for allocatur in the Supreme Court of Pennsylvania, which remains pending. *See Commonwealth v. Bressi*, Docket No. CP-49-CR-0001513-2016 (Northumberland Cty. (Pa.) C.C.P. judgment entered Nov. 20, 2017), *aff'd*, No. 1887 MDA 2017, 2019 WL 1125670 (Pa. Super. Ct. Mar. 12,

[3] Prior to Judge Gembic's recusal and transfer of the case to Judge Apfelbaum, it was docketed as *Commonwealth v. Bressi*, Docket No. MJ-08303-CR-0000557-2016 (Northumberland Cty. (Pa.) Magis. Dist Ct. filed Sept. 30, 2016).

2019), *petition for allocatur filed*, Docket No. 258 MAL 2019 (Pa. filed Apr. 6, 2019).

These claims are barred pursuant to the favorable termination rule articulated by the Supreme Court of the United States in *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the Supreme Court held that, where judgment in favor of a plaintiff in a § 1983 action for damages would necessarily imply the invalidity of the plaintiff's criminal conviction or sentence, the plaintiff must first demonstrate "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254." *Id.* at 486–87. In *Wilkinson v. Dotson*, 544 U.S. 74 (2005), the Supreme Court reaffirmed this rule and broadened it to encompass equitable remedies as well, holding that "a state prisoner's § 1983 action is barred (absent prior invalidation)—no matter what the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate the invalidity of confinement or its

duration." *Wilkinson*, 544 U.S. at 81–82.

Bressi has failed to demonstrate that these convictions or sentences have been invalidated. Accordingly, under *Heck*, Bressi's federal civil rights claims against Judge Gembic, Judge Apfelbaum, Judge Saylor, and Judge Rosini arising out of these criminal proceedings are not cognizable under 42 U.S.C. § 1983. *See Brogan v. Tunkhannock Twp.*, 302 F. Supp. 3d 670, 675 & n.3 (M.D. Pa. 2018); *Kokinda v. Breiner*, 557 F. Supp. 2d 581, 592–93 (M.D. Pa. 2008); *cf. Kossler v. Crisanti*, 564 F.3d 181, 187–88 & n.4 (3d Cir. 2009) (en banc) (affirming district court decision applying *Heck* to conviction for summary offense). As such, these claims lack any arguable basis in law and should be dismissed as legally frivolous and for failure to state a claim. *Saunders*, 281 Fed. App'x at 85; *Ruth*, 139 Fed. App'x at 471; *Boykin*, 464 F. Supp. 2d at 424.

In the alternative, we note that Bressi's claims against the four state court judges are also barred by the doctrine of absolute judicial immunity. "A judicial officer in the performance of his duties has absolute immunity from suit and will not be liable for his judicial acts." *Azubuko v. Royal*, 443 F.3d 302, 303 (3d Cir. 2006) (per curiam). "Like other forms of official immunity, judicial immunity is immunity from suit, not just

from ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (per curiam). "[S]o long as (1) the judge's actions are taken in his judicial capacity (determined by the nature of the acts themselves) and (2) the judge has some semblance of jurisdiction over the acts, he will have immunity for them." *Mikhail v. Kahn*, 991 F. Supp. 2d 596, 660 (E.D. Pa. 2014) (citing *Gallas v. Supreme Court of Pa.*, 211 F.3d 760, 768–69 (3d Cir. 2000); *see also Mireles*, 502 U.S. at 11–12. Indeed, "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978) (quoting *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351 (1871)). "This immunity applies even when the judge is accused of acting maliciously and corruptly . . . ." *Pierson v. Ray*, 386 U.S. 547, 554 (1967). "Although unfairness and injustice to a litigant may result on occasion, 'it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.'" *Mireles*, 502 U.S. at 12 (quoting

Bradley, 80 U.S. (13 Wall.) at 347).

Based on the allegations of the complaint, viewed in the light most favorable to the plaintiff, these claims *exclusively* concern judicial acts taken by Judge Gembic, Judge Apfelbaum, Judge Saylor, and Judge Rosini in their roles as state court judges presiding over Bressi's criminal proceedings, and none of the alleged acts were taken in the complete absence of all jurisdiction. *See Mireles*, 502 U.S. at 12–13; *Gallas*, 211 F.3d at 768–69; *Mikhail*, 991 F. Supp. 2d at 660. Thus, Bressi's claims for damages must be dismissed on immunity grounds. Any claims for injunctive relief similarly must be dismissed. *See* 42 U.S.C. § 1983 (generally prohibiting injunctive relief against judicial officers); *Ball v. Butts*, 445 Fed. App'x 457, 458 (3d Cir. 2011) (per curiam) (holding that a request for injunctive relief "was subject to dismissal [for failure to state a claim] because such relief is not available against 'a judicial officer for an act . . . taken in such officer's judicial capacity'"); *Azubuko*, 443 F.3d at 303–04 ("In 1996, Congress amended 42 U.S.C. § 1983 to provide that 'injunctive relief shall not be granted' in an action brought against 'a judicial officer for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief

was unavailable.'").

Under the circumstances presented, these claims are clearly based on an indisputably meritless legal theory and thus should be dismissed as legally frivolous and for failure to state a claim. *See Neitzke*, 490 U.S. at 327 (noting that claims against defendants who are clearly immune from suit are "based upon an indisputably meritless legal theory"); *Ball*, 445 Fed. App'x at 458 (dismissing appeal as frivolous based on judicial immunity).[4]

Accordingly, it is recommended that Claim Sets #4, #5, and #8,

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[4] We note that Bressi's claims against Judge Gembic (and other defendants) concerning his felony aggravated assault proceedings were also the subject of earlier litigation. *See generally Bressi v. Gembic*, Civil Action No. 4:17-cv-01405, 2018 WL 3596859 (M.D. Pa. July 2, 2018) (recommending dismissal of very same claims as frivolous and for failure to state a claim), *report and recommendation adopted by* 2018 WL 3584694 (M.D. Pa. July 26, 2018), *aff'd per curiam*, 752 Fed. App'x 113 (3d Cir. Feb. 8, 2019), *petition for certiorari filed*, No. 18-9489 (U.S. filed May 21, 2019). Although the same claims were disposed of on the merits in that case, *see Gibson v. Pa. Pub. Util. Comm'n*, No. 1:15-cv-00855, 2015 WL 3952777, at *3 (M.D. Pa. June 18, 2015) (noting that dismissal as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i) has res judicata effect for future *in forma pauperis* suits), we have declined to consider application of the doctrine of res judicata in light of the plaintiff's petition for a writ of certiorari pending before the Supreme Court of the United States, particularly when other grounds for dismissal are so clearly present. *See Bailey v. Ness*, 733 F.2d 279, 281–82 (3d Cir. 1984) (noting conflicting Pennsylvania state and federal case law with respect to the finality of state court judgments while an appeal is pending).

against Judges Gembic, Apfelbaum, Saylor, and Rosini, be dismissed as legally frivolous and for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), and 28 U.S.C. § 1915(e)(2)(B)(ii).

2. Claims Against County Court Clerks

In addition, Bressi alleges that, since March 2018, unspecified county court clerks have failed to respond to correspondence in which he has requested copies of papers related to these criminal proceedings.

Prisoners have a constitutional right of access to the courts under the First and Fourteenth Amendments. *See Lewis v. Casey*, 518 U.S. 343, 346 (1996). To make out an access to courts cause of action, the plaintiff must allege sufficient facts showing that: (1) he suffered an actual injury; and (2) there is no other remedy that can compensate for the injury. *Monroe v. Beard*, 536 F.3d 198, 205 (3d Cir. 2008); *Oliver v. Fauver*, 118 F.3d 175, 177–78 (3d Cir. 1997). Actual injury is the loss of an opportunity to pursue a nonfrivolous or arguable claim. *Monroe*, 536 F.3d at 205 (citing *Christopher v. Harbury*, 536 U.S. 403, 415 (2002)). The plaintiff must set forth the underlying claim with such sufficient detail to demonstrate that it is not frivolous and more than a hopeful possibility.

Christopher, 536 U.S. at 416. His complaint must also describe the remedy that has been lost. *Id.*

Here, Bressi has failed to identify the predicate claim or the "need for relief otherwise unattainable." *Id.* at 418. He has not alleged any actual injury resulting from the clerks' failure to supply him with any papers. For example, he has not alleged that he has been unable to perfect or proceed with an appeal or other claim because the clerks have failed to respond to his correspondence. Indeed, notwithstanding the clerks' failure to respond, Bressi was able to appeal his felony conviction to both the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania. With respect to his earlier conviction for the summary offense of disorderly conduct, that conviction was final and the time for appeal or for filing a petition for collateral relief had expired long before the alleged intransigence of the county clerks began in March 2018.

Accordingly, it is recommended that this claim, asserted against unspecified county court clerks, be dismissed for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B)(ii).

E. Claim Set #6: Prosecuting Attorneys

Bressi has asserted the same claims against the assistant district attorneys who prosecuted the felony criminal case against him, Michael Toomey and Michael Seward. Bressi generally alleges prosecutorial misconduct by both Toomey and Seward, and he specifically alleges that Toomey "illegally" amended the charges against Bressi to add a felony aggravated assault charge despite having previously recused himself from the case due to a conflict of interest.

For the same reasons stated above with respect to the judicial defendants, Bressi's claims against these two prosecutors are barred by *Heck*'s favorable termination rule. *See Brogan*, 302 F. Supp. 3d at 675 & n.3; *Kokinda*, 557 F. Supp. 2d at 592–93; *cf. Kossler*, 564 F.3d at 187–88 & n.4. As such, these claims lack any arguable basis in law and should be dismissed as legally frivolous and for failure to state a claim. *Saunders*, 281 Fed. App'x at 85; *Ruth*, 139 Fed. App'x at 471; *Boykin*, 464 F. Supp. 2d at 424.

In the alternative, to the extent Bressi seeks damages from Toomey or Seward, his claims are barred by absolute prosecutorial immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); *Walker v. City of*

Philadelphia, 436 Fed. App'x 61, 62 (3d Cir. 2011) (per curiam); *Kulwicki v. Dawson*, 969 F.2d 1454, 1463–64 (3d Cir. 1992). Under the circumstances presented, Bressi's damages claims are clearly based on an indisputably meritless legal theory and thus should be dismissed as legally frivolous and for failure to state a claim. *See Newton v. City of Wilmington*, 206 F. Supp. 3d 947, 954 (D. Del. 2016) (dismissing damages claims against prosecutors as frivolous); *Figueroa v. Clark*, 810 F. Supp. 613, 615 (E.D. Pa. 1992) (same); *Clark v. Zimmerman*, 394 F. Supp. 1166, 1175–76 (M.D. Pa. 1975) (same).

Accordingly, it is recommended that Claim Set #6, against prosecuting attorneys Toomey and Seward, be dismissed as legally frivolous and for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), and 28 U.S.C. § 1915(e)(2)(B)(ii).

F. Claim Set #7: Court Reporter

In his seventh set of claims, Bressi alleges that Jill Fry, a court reporter, falsified the transcript of his jury trial for felony aggravated assault and related offenses.

For the same reasons stated above with respect to the judicial

defendants, Bressi's claim against the court reporter is barred by *Heck*'s favorable termination rule. *See Brogan*, 302 F. Supp. 3d at 675 & n.3; *Kokinda*, 557 F. Supp. 2d at 592–93. As such, this claim lacks any arguable basis in law and should be dismissed as legally frivolous and for failure to state a claim. *Saunders*, 281 Fed. App'x at 85; *Ruth*, 139 Fed. App'x at 471; *Boykin*, 464 F. Supp. 2d at 424.

Moreover, we note that

> parties do "not have a constitutional right to a totally accurate transcript." An error in a trial transcript does not amount to a constitutional violation unless the inaccuracy "adversely affected the outcome of the criminal proceeding."

DeBerry v. Younes, 725 Fed. App'x 87, 88 (3d Cir. 2018) (per curiam) (quoting *Tedford v. Hepting*, 990 F.2d 745, 747 (3d Cir. 1993)) (citation omitted). Since Bressi's criminal proceedings are still pending before the Supreme Court of Pennsylvania at this time, he cannot meet that standard. *See id.*

Accordingly, it is recommended that Claim Set #7, against court reporter Fry, be dismissed as legally frivolous and for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), and 28 U.S.C.

§ 1915(e)(2)(B)(ii).

G. Claim Set #9: Snyder County Prison Officials

In his ninth set of claims, Bressi alleges that, since February 2018, the Warden of Snyder County Prison has failed to respond to correspondence in which he has requested copies of documents related to his intake processing at the jail on September 30, 2016. Bressi alleges that he has unsuccessfully requested that the Warden or other county prison staff provide him with copies of sign-in logs to demonstrate that Officer Brennen and Officer Purcell of the Coal Township police department were the individuals who transported him to Snyder County Prison that night, and a copy of the results of a drug test administered to Bressi upon intake to demonstrate that he was not on drugs that day. Bressi alleges that this information is "very, very[] important" to a separate federal civil rights action against Brennen, Purcell, and a third Coal Township police officer. Based on the allegations of the amended complaint, this appears to be the case of *Bressi v. Brennen*, Case No. 4:17-cv-01742 (M.D. Pa. filed Sept. 26, 2017).

As previously noted, prisoners have a constitutional right of access to the courts under the First and Fourteenth Amendments. *See Lewis*,

518 U.S. at 346 (1996). To make out an access to courts cause of action, the plaintiff must allege sufficient facts showing that: (1) he suffered an actual injury; and (2) there is no other remedy that can compensate for the injury. *Monroe*, 536 F.3d at 205; *Oliver*, 118 F.3d at 177–78. Actual injury is the loss of an opportunity to pursue a nonfrivolous or arguable claim. *Monroe*, 536 F.3d at 205. The plaintiff must set forth the underlying claim with such sufficient detail to demonstrate that it is not frivolous and more than a hopeful possibility. *Christopher*, 536 U.S. at 416. His complaint must also describe the remedy that has been lost. *Id.*

Here, Bressi has failed to identify the predicate claim or the "need for relief otherwise unattainable." *Id.* at 418. He has not alleged any actual injury resulting from prison officials' failure to supply him with the requested documents. In particular, we note that he has failed to allege any facts to demonstrate that his claims in the *Brennen* case are arguable and not frivolous. The bulk of his claims in that case were dismissed with prejudice in July 2018. *See Bressi v. Brennen*, Civil Action No. 4:17-cv-01742, 2018 WL 3596861 (M.D. Pa. July 6, 2018), *report and recommendation adopted by* 2018 WL 3584687 (M.D. Pa. July 26, 2018). The sole remaining claim, for excessive force, has recently been

recommended for dismissal with prejudice for failure to state a claim. *See* Report and Recommendation (Doc. 73), *Bressi v. Brennen*, Case No. 4:17-cv-01742 (M.D. Pa. Aug. 5, 2019). Moreover, the information Bressi sought from the Warden of Snyder County Prison does not appear to have any relevance whatsoever to the remaining excessive force claim in the *Brennen* case.

Accordingly, it is recommended that Claim Set #9, against the Warden and unspecified staff of Snyder County Prison, be dismissed for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B)(ii).

H. Claim Set #10: Public Defenders

In his tenth set of claims, Bressi asserts § 1983 civil rights claims against a series of court-appointed public defenders—Edward Greco, Michael Suiders, James Best, Vince Rovito, Rachael Glasoe, and Amy Stoak[5]—who represented him in state court felony criminal proceedings.

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[5] Bressi was also represented by public defender Peter Kay, whom he has previously sued in a separate federal civil rights action, *Bressi v. Gembic*, Civil Action No. 4:17-cv-01405, 2018 WL 3596859 (M.D. Pa. July 2, 2018) (recommending dismissal of very same claims as frivolous and for failure to state a claim), *report and recommendation adopted by* 2018 WL 3584694 (M.D. Pa. July 26, 2018), *aff'd per curiam*, 752 Fed. App'x

(continued on next page)

These claims against his own criminal defense counsel are non-cognizable under 42 U.S.C. § 1983 and thus frivolous.

The "under color of state law" element of § 1983 excludes from its reach "merely private conduct, no matter how discriminatory or wrongful." *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982). A county public defender, the public defender's office, and the assistant public defenders employed by it are not state actors for purposes of § 1983. *See Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981) ("[A] public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding."); *Gannaway v. Prime Care Med., Inc.*, 652 Fed. App'x 91, 95 (3d Cir. 2016) (per curiam) (county public defender's office and its employees); *Pelier v. Kalinowski*, Civil Action No. 3:16-CV-02095, 2017 WL 2643422, at *3–*4 (M.D. Pa. May 15, 2017) (assistant public defender and county public defender's office), *report and recommendation adopted by* 2017 WL 2643260 (M.D. Pa. June 19, 2017).

Under the circumstances presented, these claims are clearly based

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113 (3d Cir. Feb. 8, 2019), *petition for certiorari filed*, No. 18-9489 (U.S. filed May 21, 2019).

on an indisputably meritless legal theory and thus should be dismissed as legally frivolous and for failure to state a claim. *See Dorn v. Aguilar*, 645 Fed. App'x 114, 115 (3d Cir. 2016) (per curiam) (dismissing appeal concerning § 1983 claims against public defender as frivolous); *Cardone v. Ryan*, 215 Fed. App'x 153, 154 (3d Cir. 2007) (per curiam) (same); *Winters v. Devecka*, 130 Fed. App'x 612, 613 (3d Cir. 2005) (per curiam) (same); *Newton*, 206 F. Supp. 3d at 954–55 (dismissing § 1983 claims against public defender as frivolous).

Accordingly, it is recommended that Claim Set #10, against public defenders Greco, Suiders, Best, Rovito, Glasoe, and Stoak, be dismissed as legally frivolous and for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), and 28 U.S.C. § 1915(e)(2)(B)(ii).

I. Claim Sets #11, #12, #13, and #14: Prosecution Witnesses

In his eleventh, twelfth, thirteenth, and fourteenth sets of claims, Bressi seeks to hold various private individuals liable for violation of his constitutional rights under 42 U.S.C. § 1983. He claims that each of ten witnesses falsely reported him to police or falsely testified in court. He claims that all of them participated in a conspiracy with Coal Township

police, prosecutors, and Judge Gembic to fabricate the criminal case against him.

In Claim Set #11, Bressi alleges that Kimberly Rickert, mother of his three children, physically attacked him on several occasions since March 2011, and that she or her family members routinely call police to submit false reports of wrongdoing by Bressi. In addition, Bressi alleges that Rickert provided false court testimony during felony criminal proceedings against him.

In Claim Set #12, Bressi alleges that, in August 2016, Cathy Duzick, Michael Fantagrosse, and Jennifer Fantagrosse called the police and falsely reported that Bressi had assaulted Rickert, despite not having seen the incident personally. (Bressi claims that it was Rickert who assaulted him.) Bressi alleges that he received a citation in the mail about a week later. In addition, Bressi alleges that Duzick and the Fantagrosses provided false court testimony about the incident at a preliminary hearing before Judge Gembic.

In Claim Set #13, Bressi alleges that, in August 2015, his neighbor, Jeffery Leach, started a verbal argument with Bressi and destroyed items of Bressi's personal property. Bressi alleges that Leach's mother,

Ginger Stienheart, called the police and falsely reported that Bressi had started a fight with her son. Bressi alleges that he received two citations in the mail about a week later. In addition, Bressi alleges that Ginger Stienheart and her husband, Richard Stienheart, provided false court testimony about the incident in summary proceedings before Judge Gembic.

In Claim Set #14, Bressi alleges that Denise Carnuccio, Jeffery Long, and Tyler Mummy all provided false court testimony regarding the circumstances leading up to his arrest on September 30, 2016. All three testified as eyewitnesses to an incident in which they described Bressi as having rammed his car into Rickert's; Bressi claims that it was Rickert who rammed her car into his repeatedly, and that these three witnesses all fabricated their accounts.

As we have previously noted, the "under color of state law" element of § 1983 excludes from its reach "merely private conduct, no matter how discriminatory or wrongful." *Blum*, 457 U.S. at 1002. "[M]erely complaining to the police does not convert a private party into a state actor for purposes of liability under § 1983," nor does offering witness testimony. *Rozell v. Hanjaras*, Civil Action No. 3:11-CV-914, 2014 WL

198806, at *7 (M.D. Pa. Jan. 15, 2014). Moreover, to the extent that Bressi's claims are based on their testimony in court, these defendants are entitled to absolute immunity as court witnesses. *See Briscoe v. LaHue*, 460 U.S. 325, 345–46 (1983); *DeBerry*, 725 Fed. App'x at 88.

Bressi attempts to plead around this defect by alleging generally that each of these witnesses conspired with police, prosecutors, and judges to fabricate the various criminal charges against Bressi. These are not well-pleaded allegations of fact but, rather, unsupported conclusions of law. *See Loftus v. Se. Pa. Transp. Auth.*, 843 F. Supp. 981, 986 n.8 (E.D. Pa. 1994) ("A general allegation of conspiracy without a statement of the facts is an allegation of a legal conclusion and insufficient itself to constitute a cause of action.") (quoting *Black & Yates, Inc. v. Mahogany Ass'n, Inc.*, 129 F.2d 227, 231 (3d Cir. 1941)). To properly plead a conspiracy, a plaintiff must present "'enough factual matter (taken as true) to suggest that an agreement was made,' in other words, 'plausible grounds to infer an agreement.'" *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 178 (3d Cir. 2010) (quoting *Twombly*, 550 U.S. at 556); *Rittenhouse Entm't, Inc. v. City of Wilkes-Barre*, 861 F. Supp. 2d 470, 481 (M.D. Pa. 2012). Specifically, the plaintiff "must set forth

allegations that address the period of the conspiracy, the object of the conspiracy, and the certain actions of the alleged conspirators taken to achieve that purpose." *Fox Rothschild*, 615 F.3d at 179; *Rittenhouse*, 861 F. Supp. 2d at 482. The bald assertion here that the various private defendants acted in concert with state actors is a legal conclusion not entitled to the assumption of truth, and therefore must be disregarded in the absence of well-pleaded factual allegations to plausibly support that conclusion. *See Fox Rothschild*, 615 F.3d at 178; *Rittenhouse*, 861 F. Supp. 2d at 482.

Accordingly, it is recommended that Claim Sets #11, #12, #13, and #14, against private individuals Rickert, Duzick, Michael Fantagrosse, Jennifer Fantagrosse, Richard Stienheart, Ginger Stienheart, Jeffery Leach, Denise Carnuccio, Jeffery Long, and Tyler Mummy, be dismissed for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B)(ii).

J. Claim Set #15: Unwelcome Correspondence

In his fifteenth set of claims, Bressi alleges that, between July 2017 and January 2018, a former girlfriend, Kimberly Seddon, and her daughter, Chasity Seddon, wrote multiple "harassing and threatening"

letters and postcards to Bressi while was incarcerated. Once again, the plaintiff seeks recovery from private individuals beyond the reach of § 1983. *See Blum*, 457 U.S. at 1002. Moreover, it is clear from the allegations of his complaint that he has suffered no cognizable harm as a result of this correspondence. Therefore, we find this claim to be both legally and factually frivolous. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Thomas*, 371 F. Supp. 2d at 639; *see also Deutsch*, 67 F.3d at 1089 (holding that a court may dismiss an *in forma pauperis* claim as frivolous "if it determines that the claim is of little or no weight, value, or importance, not worthy of serious consideration, or trivial").

Accordingly, it is recommended that Claim Set #15, against private individuals Kimberly Seddon and Chasity Seddon, be dismissed as legally and factually frivolous, pursuant to 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B)(i).

K. Claim Set #16: Northumberland County Prison Officials

In his sixteenth set of claims, Bressi alleges that three Northumberland County Prison officials—Warden Bruce Kovach, Deputy Warden James Smink, and Counselor Samuel Kranzel—failed to respond appropriately to his grievances and failed to protect him from

the "harassing and threatening" correspondence he received from Kimberly and Chasity Seddon. Bressi further alleges that Smink failed to respond appropriately to his complaints or to remedy matters when he complained that two non-party corrections officers, CO Ashton and CO Ruck, retaliated against him for requesting an inmate grievance form by having him fired from his prison laundry job and, later, removing personal property from Bressi's cell. Bressi also alleges that Smink himself retaliated against Bressi for pestering him with informal requests for reinstatement to his laundry job by "playing games" with Bressi's phone list.

1. Failure to Respond Favorably to Grievances

Bressi alleges that all three jail officials—Kovach, Smink, and Kranzel—failed to appropriately respond to his grievances and informal complaints (both written and oral). When Bressi complained to each of these three officials that he continued to receive harassing and threatening correspondence from the Seddons, each responded in the same fashion, laughing at Bressi and failing to take any action to protect him from the allegedly harassing and threatening correspondence. When Bressi complained to Smink about the allegedly retaliatory conduct by

CO Ashton and CO Ruck, Smink allegedly laughed and said there was nothing he could do.

It is well settled that "[t]he failure of a prison official to act favorably on an inmate's grievance is not itself a constitutional violation." *Lewis v. Wetzel*, 153 F. Supp. 3d 678, 696 (M.D. Pa. 2015); *see also id.* (noting that an inmate has "no inherent constitutional right to an effective prison grievance procedure").

Accordingly, it is recommended that Bressi's claims that defendants Kovach, Smink, and Kranzel failed to respond appropriately to his grievances or complaints be dismissed for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(ii), and 42 U.S.C. § 1997e(c)(1).

2. Failure to Protect Claim

Bressi's claims against these three defendants with respect to the Seddon correspondence may also be construed as a failure-to-protect claim. *See generally Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244–46 (3d Cir. 2013) (discussing a court's obligation to liberally construe *pro se* pleadings and other submissions, particularly when dealing with imprisoned *pro se* litigants).

To establish a failure to protect claim, an inmate must demonstrate that: (1) he is "incarcerated under conditions posing a substantial risk of serious harm;" and (2) the prison official acted with "deliberate indifference" to his health and safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *see also Ostrander v. Horn*, 145 F. Supp. 2d 614, 620 (M.D. Pa. 2001) ("[P]rison officials may only be liable for failing to protect an inmate if the plaintiff shows some pervasive risk of serious harm, and that prison officials displayed deliberate indifference to the danger.").

Here, it is clear from the allegations of the complaint that the plaintiff did not suffer any cognizable harm whatsoever as a result of the unwelcome correspondence from Kimberly and Chasity Seddon—much less any *serious* harm—nor did this correspondence at any time present a pervasive or substantial risk of such harm.

Accordingly, it is recommended that Bressi's claims that defendants Kovach, Smink, and Kranzel failed to protect him from this unwelcome correspondence be dismissed for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(ii), and 42 U.S.C. § 1997e(c)(1).

3. Retaliation Claims

Bressi has asserted First Amendment retaliation claims against these three defendants as well. Bressi alleges that, one weekend in November 2017, non-parties Ashton and Ruck destroyed some of his personal property in a cell search. He alleges that when he requested a grievance, the officers told him he would be fired from his prison laundry job for doing so. Bressi alleges that he personally informed Deputy Warden Smink on the following Monday, but Smink laughed and told him there was nothing he could do. Bressi alleges that, in January 2018, Ashton and Ruck retaliated further by removing multiple items of personal property from his cell while he was outside. Bressi also alleges that Smink "play[ed] games" with Bressi's phone list in December 2017 and January 2018, removing numbers from the phone list without Bressi's permission, purportedly in retaliation for Bressi's repeated informal requests for reinstatement to his laundry job.

To prevail on a retaliation claim, a prisoner must establish the following elements: (1) constitutionally protected conduct; (2) an adverse action by prison officials that is sufficient to deter a person of ordinary firmness from exercising his constitutional rights; and (3) a causal link

between the exercise of his constitutional rights and the adverse action taken against him. *Mitchell v. Horn*, 318 F.3d 523, 530 (3d Cir. 2003) (internal quotation marks and brackets omitted). Courts must diligently enforce these requirements lest public officials be deterred from legitimate decisions for fear of litigation. *Lauren W. ex rel. Jean W. v. DeFlaminis*, 480 F.3d 259, 267 (3d Cir. 2007). This diligent enforcement does not create a heightened pleading standard, but merely recognizes that courts "should approach prisoner claims of retaliation with skepticism and particular care due to the near inevitability that prisoners will take exception with the decisions of prison officials and the ease with which claims of retaliation may be fabricated." *Alexander v. Forr*, Civil Action No. 3:CV-04-0370, 2006 WL 2796412, at *22 (M.D. Pa. Sept. 27, 2006) (internal quotation marks omitted), *aff'd per curiam*, 297 Fed App'x 102 (3d Cir. 2008).

With respect to the first element, it is beyond dispute that "[t]he filing of grievances is protected under the First Amendment." *Kelly v. York County Prison*, 340 Fed. App'x 59, 61 (3d Cir. 2009) (per curiam). Under some circumstances, informal or oral grievances may also be protected by the First Amendment. *See Mack v. Warden Loretto FCI*, 839

F.3d 286, 298 (3d Cir. 2016).

"With respect to the second element, the termination of prison employment constitutes adverse action sufficient to deter the exercise of First Amendment rights, satisfying the second element of a retaliation claim at this stage of the litigation." *Wisniewski v. Fisher*, 857 F.3d 152, 157 (3d Cir. 2017); *see also Mack*, 839 F.3d at 297. The loss of an inmate's property is also a sufficient adverse action. *See Mincy v. Chmielsewski*, 508 Fed. App'x 99, 104 (3d Cir. 2013) (per curiam).

The alleged "playing [of] games" with Bressi's phone list, however, does not constitute an adverse action sufficient to deter an inmate of ordinary firmness from exercising his constitutional rights. The question before us is whether, based on the allegations of the complaint, the alleged conduct would deter a person of ordinary firmness from engaging in protected conduct. "Normally petty slights, minor annoyances, and simple lack of good manners will not create such deterrence." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68–69 (2006); *cf. Irby v. Cain*, Civil Action No. 13-0327-SDD-RLB, 2014 WL 1028675, at *7 (M.D. La. Mar. 17, 2014) (cancellation of a family visit); *Sowemimo v. Bader*, Civil No. 08-cv-664-WDS, 2009 WL 330024, at *5 (S.D. Ill. Feb. 10, 2009)

(failure to respond to grievances and other written requests) (citing *Burlington N.*); *Reeves v. Jensen*, No. 5:04-cv-194, 2007 WL 1464260, at *4 (W.D. Mich. May 17, 2007) (unrealized threat to deprive inmate of his medications) (citing *Burlington N.*). "Incarceration means that a prisoner's life is controlled by prison officials down to the smallest detail. Minor changes in a prisoner's life lacking a material adverse [e]ffect are just part of the unpleasantness of prison life and ought not support a retaliation claim." *Sowemimo*, 2009 WL 330024, at *5. Fully crediting the plaintiff's factual averments, the alleged conduct with respect to Bressi's phone list had nothing more than trivial or inconsequential effect. *See id.* Based on this, Bressi has failed to plausibly state a retaliation claim with respect to changes made to his phone list.

With respect to the third element, we find that the plaintiff has alleged sufficient facts to allow the Court to draw the reasonable inference that his protected conduct was the motivating factor for the remainder of the alleged retaliatory conduct. The Third Circuit has indicated that a plaintiff's burden regarding element three is very low at the pleading stage. *See Mitchell v. Horn*, 318 F.3d 523, 530 (3d Cir. 2003) (stating that "the word 'retaliation' in [the plaintiff's] complaint

sufficiently implies a causal link between his complaints and the misconduct charges against him"); *see also Mack v. Yost*, 427 Fed. App'x 70, 73 (3d Cir. 2011) (per curiam) (noting that a plaintiff's "burden at the pleading stage is merely to state a prima facie case by alleging that his protected conduct was a 'substantial or motivating factor' for [the adverse action]"); *Bendy v. Ocean Cty. Jail*, 341 Fed. App'x 799, 802 (3d Cir. 2009) ("To state a claim for retaliatory treatment, a complaint need only allege a chronology of events from which retaliation may be inferred.") (internal quotation marks omitted). Here, Bressi has plausibly pleaded a causal link between his request for a grievance form and the subsequent loss of his prison job and personal property: He alleges that non-party correction officers Ashton and Ruck expressly told him that he would lose his job for requesting a grievance form, and in the context of the facts alleged, it is reasonable to infer that their alleged subsequent removal of personal property from Bressi's cell is also causally linked to his protected conduct.

Bressi has not, however, plausibly alleged any personal involvement by defendants Kovach, Smink, or Kranzel in any of the allegedly retaliatory conduct that remains. It is well established that "[c]ivil rights claims cannot be premised on a theory of *respondeat*

superior. Rather, each named defendant must be shown, via the complaint's allegations, to have been personally involved in the events or occurrences which underlie the claim." *Millbrook v. United States*, 8 F. Supp. 3d 601, 613 (M.D. Pa. 2014) (citation omitted). As previously explained by the Third Circuit:

> A defendant in a civil rights action must have personal involvement in the alleged wrongs .... [P]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity.

Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Although a supervisor cannot encourage constitutional violations, a supervisor has "no affirmative duty to train, supervise or discipline so as to prevent such conduct." *Chinchello v. Fenton*, 805 F.2d 126, 133 (3d Cir. 1986).

The complaint fails to allege any personal involvement whatsoever by Warden Kovach or Counselor Kranzel with respect to Bressi's retaliation claims.[6] With respect to Deputy Warden Smink, it is well-

[6] The complaint alleges that Bressi informally complained to both Kovach and Kranzel multiple times regarding the unwelcome correspondence from the Seddons, but there is no allegation that he complained to them about the alleged retaliation.

settled that if a prison official's only involvement is investigating or ruling on an inmate's grievance *after* the incident giving rise to the grievance has occurred, there is no personal involvement on the part of that official. *See Rode*, 845 F.2d at 1208; *see also Brooks v. Beard*, 167 Fed. App'x 923, 925 (3d Cir. 2006) (per curiam) (characterizing such a claim as legally frivolous). "[T]he mere fact that an official receives and reviews a letter or grievance appeal is insufficient to establish personal involvement (*i.e.*, failure to respond or react does not establish that the official endorsed or acquiesced in the conduct at issue)." *Hennis v. Varner*, Civil Action No. 12-646, 2014 WL 1317556, at *9 (W.D. Pa. Mar. 31, 2014); *see also Moore v. Mann*, Civil No. 3:CV-13-2771, 2015 WL 3755045, at *4 (M.D. Pa. June 16, 2015) ("[T]he mere fact that Defendant Wetzel may have learned about Plaintiff's claims through a piece of correspondence . . . is not enough to impute liability to Wetzel. . . . [A]n allegation that an official ignored correspondence from an inmate . . . is insufficient to impose liability on the supervisory official."); *Adderly v. Eidem*, Civil No. 3:CV-11-0694, 2014 WL 643639, at *6 (M.D. Pa. Feb. 19, 2014) ("Simply alleging that an official failed to respond to a letter or request Plaintiff may have sent raising complaints is not enough to

demonstrate they had the requisite personal involvement."). The fact that Bressi spoke directly to Smink about his complaints as well is likewise insufficient to establish personal involvement. *See Rosales v. Kikendall*, 677 F. Supp. 2d 643, 650 (W.D.N.Y. 2010).

Accordingly, it is recommended that Bressi's retaliation claims against defendants Kovach, Smink, and Kranzel be dismissed as legally frivolous and for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), 28 U.S.C. § 1915(e)(2)(B)(ii), and 42 U.S.C. § 1997e(c)(1).

L. Supplemental State Law Claims

Bressi appears to assert various related state-law tort claims as well. But where a district court has dismissed all claims over which it had original jurisdiction, the Court may decline to exercise supplemental jurisdiction over state law claims. 28 U.S.C. § 1367(c)(3). Whether the Court will exercise supplemental jurisdiction is within its discretion. *Kach v. Hose*, 589 F.3d 626, 650 (3d Cir. 2009). That decision should be based on "the values of judicial economy, convenience, fairness, and comity." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). Ordinarily, when all federal law claims have been dismissed and only

state-law claims remain, the balance of these factors indicates that these remaining claims properly belong in state court. *Cohill*, 484 U.S. at 350. Finding nothing in the record to distinguish this case from the ordinary one, the balance of factors in this case "point[s] toward declining to exercise jurisdiction over the remaining state law claims." *See Cohill*, 484 U.S. at 350 n.7. Therefore, it is recommended that Bressi's state-law claims be dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3).

M.Leave to Amend

The Third Circuit has instructed that if a civil rights complaint is vulnerable to dismissal for failure to state a claim, the district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002). Based on the allegations of the complaint, it is clear that amendment would be futile with respect to almost all of Bressi's claims, many of which we find to be legally or factually frivolous. It is not so clear, however, that amendment would be futile with respect the plaintiff's retaliation claims, nor is there any basis to believe that amendment on this count would be inequitable. It is therefore recommended that Bressi be granted leave to file a second amended complaint, *limited to his*

retaliation claims only, within a specified time period following dismissal of his amended complaint.

III. PLRA "THREE STRIKES" WARNING

The plaintiff is hereby notified that a prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915,

> if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

If this recommended disposition is adopted by the presiding United States District Judge, and the plaintiff fails to file a second amended complaint, the dismissal of this action as frivolous and for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), § 1915(e)(2)(B)(ii), and § 1915A(b)(1) and 42 U.S.C. § 1997e(c)(1) will constitute a "strike" under 28 U.S.C. § 1915(g), and the accumulation of additional strikes may bar the plaintiff from proceeding *in forma pauperis* in later cases absent a showing of imminent danger. *See generally Byrd v. Shannon*,715 F.3d 117, 126 (3d Cir. 2013) (articulating Third Circuit standard for

application of § 1915(g) "three strikes" rule).

IV. RECOMMENDATION

For the foregoing reasons, it is recommended that:

1. All claims against defendants Tracy McCloud, Brittany Duck, unspecified county court clerks, the Warden of Snyder County Prison, unspecified staff of Snyder County Prison, Kimberly Rickert, Cathy Duzick, Michael Fantagrosse, Jennifer Fantagrosse, Jeffery Leach, Ginger Stienheart, Richard Stienheart, Denise Canuccio, Jeffery Long, and Tyler Mummy be **DISMISSED** for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B)(ii);

2. All claims against defendants Ronald McClay, Matthew Narcavage, Dan Shoop, Jill Henrich, Hon. John Gembic III, Hon. Benjamin Apfelbaum, Hon. Charles Saylor, Hon. Paige Rosini, Michael Toomey, Michael Seward, Jill Fry, Edward Greco, Michael Suiders, James Best, Vince Rovito, Rachael Glasoe, and Amy Stoak be **DISMISSED** as legally frivolous or for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), and 28 U.S.C. § 1915(e)(2)(B)(ii);

3. All claims against defendants Terry Kechem, Patrolman Adams, Christopher Lapotsky, Kimberly Seddon, and Chasity Seddon be **DISMISSED** as legally and factually frivolous, pursuant to 28 U.S.C. § 1915A(b)(1) and 28 U.S.C. § 1915(e)(2)(B)(i);

4. All claims against defendants Bruce Kovach, James Smink, and Samuel Kranzel be **DISMISSED** as legally frivolous or for failure to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1), 28 U.S.C. § 1915(e)(2)(B)(i), 28 U.S.C. § 1915(e)(2)(B)(ii), and 42 U.S.C. § 1997e(c)(1);

5. The plaintiff's state-law tort claims be **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1367(c)(3);

6. The plaintiff be granted leave to file a second amended complaint, *limited to his retaliation claims only*, within a specified period of time following dismissal of the amended complaint;

7. The Clerk be directed to **CLOSE** this case if an amended complaint is not timely filed; and

8. This matter be remanded to the undersigned for further proceedings, if any.

Dated: August 9, 2019

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

AARON J. BRESSI, #MC9898, Plaintiff, v. TRACY MCCLOUD, et al., Defendants.	CIVIL ACTION NO. 4:18-cv-01345 (BRANN, J.) (SAPORITO, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated August 9, 2019. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which

> objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

Dated: August 9, 2019

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

APPX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3894

AARON J. BRESSI,
Appellant

v.

TRACY MCCLOUD, ET AL

(M.D. Pa. Civ. No. 4-18-cv-01345)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ *Peter J. Phipps*
Circuit Judge

Date: March 26, 2021
SLC/cc: Aaron J. Bressi

APPX.

E

#25

kaw

(Page 1) 1st Day of July 2019
Case # 4:18-CV-1345
Attn: Office of the Clerk

Motion: For Appointment of Counsel.

1. I Aaron J. Bressi ask this Honorable United States District Court, to grant my motion and appoint me Counsel under (Local Rule 7.5(c)), against these defendants/criminals in this civil case.

2. I ask this due to the large number of defendants/criminals/corrupt County officials, that are listed in this case and nonstop violated my Constitutional and statutory rights.

3. I ask this also in this motion, due to a attorney Could easily straighten out both (section 1983) claims/suites out, by amending/appending both complaints again if needed. (e.g.) # 2 statement of Complaint on this case, should be part of case 4:17-CV-1742, due to there involvment in some of there violations/crimes were done at the police station.

4, That this Honorable United States District Court already knows, through my Complaint/exhibits as evidence, that this Case/claim is 100% Substantial.

(Page 3) 1st Day of July 2019

Case # 4:18-CV-1345

5. I ask this Honorable Court to grant this motion also, because there is a lot of factual investigation that must be done on my case that I cannot do because I do not have the available funds / am incarserated due to these very dangerous criminals.

6. I ask this Honorable Court to grant this motion also, because the facts of this case depend on the credibility / (believability) of a large number of defendants involved.

7. In general, my case requires me to know very complex legal issues that I myself may not be able to handle, this Honorable Court should willingly grant me this motion and assign / appoint me Counsel / lawyer.

8. See Hodge V. Police Officers, 802 F. 2d 58, 61-62 (2d Cir. 1986) (reaffirming that this Case factors apply to Judicial determinations of appointment of Counsel in this Case).

9. See Maclin V. Freake, 650 F. 2d 885, 887 (7th Cir. 1981) (setting forth the factors for this Honorable Court to Consider the determing to grant this motion, and appoint Counsel in this case).

10. See also Stewart V. McMickens, 677 F. Supp. 226, 227-228 (S.D. N.Y. 1988) (interpreting that this case requires appointment of Counsel, "that this case individualized assessment suggests that this apparently legitimate Case Cannot proceed without this Honorable Court granting me this motion, and appointing me assistance of Counsel / attorney for this case).

Thank you,
Aaron Bressi
7-1-19
Case # 4:18-CV-1345

(Page 1) 4th Day of Aug. 2020
Case # 19-3894, 20-1077, 20-1758
Attn: Office of the Clerk

Motion: For Appointment of Counsel.

1. I Aaron J. Bressi ask this Honorable United States Appeals Court, to grant my motion and appoint me counsel under (Local Rule 7.5(C)), against these defendants/criminals in this civil case.

2. I ask this due to the large number of defendants/criminals/corrupt County officials, that are listed in this case and nonstop violated my Constitutional and Statutory rights.

3. I ask this also in this motion, due to a attorney Could easily straighten out both (section 1983) claims/suites out, by amending/appending both complaints again if needed. (e.g.) # 2 statement of Complaint on this case, should be part of case 4:17-cv-1742, due to there involvment in some of there violations/crimes were done at the police station.

4. That this Honorable United States Appeals Court already knows, through my Complaint/exhibits as evidence, that this Case/claim is 100% Substantial.

5. I ask this Honorable Court to grant this motion also, because there is a lot of factual investigation that must be done on my case that I cannot do because I do not have the available funds / am incarserated due to these very dangerous criminals.

6. I ask this Honorable Court to grant this motion also, because the facts of this case depend on the credibility / (believability) of a large number of defendants involved.

7. In general, my case requires me to know very complex legal issues that I myself may not be able to handle, this Honorable Court should willingly grant me this motion and assign / appoint me Counsel / lawyer.

8. See Hodge V. Police Officers, 802 F. 2d 58, 61-62 (2d Cir. 1986) (reaffirming that this Case factors apply to Judicial determinations of appointment of Counsel in this Case).

9. See Maclin V. Freake, 650 F. 2d 885, 887 (7th Cir. 1981) (setting forth the factors for this Honorable Court to Consider the determing to grant this motion, and appoint Counsel in this case).

10. See also Stewart V. McMickens, 677 F. Supp. 226, 227-228 (S.D.N.Y. 1988) (interpreting that this case requires appointment of Counsel, "that this case individualized assessment suggests that this apparently legitimate Case Cannot proceed without this Honorable Court granting me this motion, and appointing me assistance of Counsel / attorney for this case).

Thank you,
Aaron Bressi
8-4-20
Case # 19-3894, 20-1077, 20-1758

APPX

F

(Page 1) 25th Day of Feb. 2019
Amended Complaint, Case # 4:18-CV-1345
Attn: Office of the Clerk

I Aaron J. Bressi am writing this letter to this Honorable Courts in regards to Case # 4:18-CV-1345. I am asking this Honorable Courts to amend this case under (Fed. R. Civ. P. 15(a)(2)).

I am also letting this Honorable Courts know that, in this amended Complaint, Statement of Complaints 1 through 14 stayed the same as original complaint, with the exception of Statement of Complaint # 3 which was amended to case # 4:17-CV-01742 on the 31st. day of Jan. 2019., and removed from this case.

I Aaron J. Bressi am letting this Honorable Courts know that the newly amended Statement of Complaints to this case are # 15 and # 16, and with (Exhibits A-F) sent as evidence to amend this Complaints to this Case, this Honorable Courts should

grant this amendment under a (matter of Law).

I Aaron J. Bressi am also amending to this suit, that all government officals / defendants claims will be brought against them in there official Capacity, and also in there individual Capacity. And of course all claims brought against the civilians listed in this suit will be individual Capacity only.

Thank you,
Aaron Bressi
2-25-19

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

AARON J. BRESSI, #MC9898,

Plaintiff,

v.

TRACY MCCLOUD, et al.,

Defendants.

CIVIL ACTION NO. 4:18-cv-01345

(BRANN, J.)
(SAPORITO, M.J.)

ORDER

This matter comes before the Court on the *pro se* plaintiff's letter-motion for leave to file an amended complaint in this matter. (Doc. 15.) *See generally Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244–46 (3d Cir. 2013) (discussing a court's obligation to liberally construe *pro se* pleadings and other submissions, particularly when dealing with imprisoned *pro se* litigants). He has attached a complete copy of his proposed amended complaint to the letter-motion. (Doc. 15-1; Doc. 15-2; Doc. 15-3; Doc. 15-4.)

Rule 15(a) of the Federal Rules of Civil Procedure allows a party to amend a pleading *once* as a matter of course (*i.e.*, without leave of court) within 21 days after serving it, or within 21 days after service of a responsive pleading or motion under Rule 12(b), (3), or (f). *See* Fed. R.

Civ. P. 15(a)(1). The plaintiff has not previously filed an amended complaint. The defendants have not filed an answer to the complaint, nor a motion under Rule 12(b), (e), or (f).

Accordingly, **IT IS HEREBY ORDERED THAT**:

1. The plaintiff's letter-motion for leave to amend (Doc. 15) is **DENIED as MOOT**;

2. The Clerk shall **DOCKET** the proposed amended complaint (Doc. 15-1; Doc. 15-2; Doc. 15-3; Doc. 15-4) as the plaintiff's amended complaint, filed by the plaintiff as a matter of course under Fed. R. Civ. P. 15(a)(1); and

3. The Clerk shall **ADD** Kimberly Seddon, Chasity Seddon, Warden Bruce Kovach, Deputy Warden James Smink, and Counselor Samuel Kranzel as party-defendants to this action.

Dated: August 5, 2019

Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

APPX.

G

(Page 1) 9th Day of Nov. 2020

Case No. 19-3894

Attn: Office of the Clerk

United States Court
of Appeals

Aaron J. Bressi — Plaintiff

V.

Tracy McCloud, et al. - Defendants

Case No. 19-3894

District Court Case No. 4:18-CV-1345

Petition: For a rehearing
on the entry of Judgment.

1. I Aaron J. Bressi Petition this Honorable United States Court of Appeals for a rehearing on the entry of Judgment on this case, due to this Honorable Appeals Court disregarded the facts between truth and error regarding Civil proceedure rules of both the District Court and Appeals Court.

Also, that the Honorable District Court majorly erred on this entire case/Appeal, that this appeal was in fact a final decision from a/the District Court Judge. (Please See) Copy of District Court order (Doc. 51), that pretains to this case/appeal. (See Also) Elliott V. Archdiocese of New York, 682 F.3d 213, 219 (3d Cir. 2012).

2. I ask this Honorable Appeals Court to grant this petition for a rehearing, due to I wish to seek a review of this Honorable Appeals Court decision on this case/ appeal, So that this Honorable Appeals Court can take a closer/ better look at the (final decision) from (Doc. 40), (Doc. 41), and (Doc. 43), that the Honorable District Court erred upon when ruling on in this order/ Case/ appeal. (Please See) In re Vehicle Carrier Servs. Antitrust Litig., 846 F.3d 71, 87 (3d Cir. 2017).

3. I also ask this Honorable Appeals Court to grant this petition for a rehearing, So this Honorable Court when taking a closer/ better look/ review of all appealed filings in this order, to take into Consideration all Federal Rules of Civil Proceedure throughout both Courts.

And that the Honorable District Court also erred when ruling on (Doc. 25). (Please See) Montgomery V. Pinchak, 294 F.3d 492, 499 (3d Cir. 2002). (Also See) Smith-Bey V. Petsock, 741 F.2d 22, 26 (3d Cir. 1984).

Thank you,
Aaron Bressi
(11-9-20)
Case No. 19-3894

(Page 5) 9th Day of Nov. 2020
Case No. 19-3894

Attn: Office of the Clerk

(Proof of Service)

I Aaron J. Bressi have not Served any of the defendants listed in this Case a copy of this petition for a rehearing on the entry of Judgment on this case/appeal.

The reason for this is the District Court did not/ erred to Serve any defendants listed in this Case, and due to the Certificate of Service rules of this Honorable Appeals Court, I have not yet been required to Serve any defendants any legal documents by this Honorable Appeals Court.

Thank you,
Aaron Bressi
(11-9-20)
Case No. 19-3894