

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

(609) 989-2182

CHAMBERS OF
FREDA L. WOLFSON
CHIEF JUDGE

CLARKSON S. FISHER FEDERAL
BUILDING & U.S. COURTHOUSE
402 EAST STATE STREET
TRENTON, NEW JERSEY 08608

LETTER ORDER

June 7, 2019

Andra Amir Hayes
207 Wardell Place
Long Branch, NJ 07740
Pro Se

Mario J. Delano
Campbell, Foley, LRR, ESQS.
601 Bangs Avenue
Asbury Park, NJ 07712

RE: Andra Amir Hayes v. George Cieri, *et al.*
Civ. Action No.: 18-9524

Litigants:

This matter has been opened to the Court by Defendants George Cieri, J.M.C., James Carton, and David A. Lipari ("Defendants"), through their counsel, Mario J. Delano, Esq., on a Motion to dismiss *pro se* Plaintiff Andra Amir Hayes' ("Plaintiff") Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

The following factual allegations are taken from Plaintiff's *pro se* form Complaint and are accepted as true for the purposes of this motion. On December 31, 2017, at "9:30 or 10:00 PM,"

Plaintiff alleges that he was pulled over for an unspecified reason by Officer Lipari “without any probable cause.” Complaint, (“Compl.”), 3. Subsequently, Plaintiff’s “license was taken,” and Officer Lipari allegedly informed him of an outstanding warrant for his arrest, in connection with an “unpaid fine.” *Id.* According to Plaintiff, Officer Lipari noticed a marijuana scent during the vehicle stop, and he proceeded to search Plaintiff’s car, although no drugs were found. *Id.* Upon arresting Plaintiff, Officer Lipari also performed a search of his person, during which the officer allegedly “groped [Plaintiff’s] genitals,” causing Plaintiff to shout. During the search, Officer Lipari allegedly found contraband and an item in Plaintiff’s pocket which he purchased from a tobacco shop, and is referenced in the Complaint as a “bat.” *Id.* Plaintiff claims that he was ultimately issued two “driving tickets although [he] did not fit the legal definition of driving and a complaint for paraphernalia.” *Id.*

On an unspecified date and location, Plaintiff alleges that he “went to court” and accepted a plea deal. *Id.* Upon exiting the courtroom “to set up [a] payment plan,” Plaintiff alleges that Officer Lipari approached him and demanded a sample of his DNA. *Id.* However, Plaintiff objected “because that wasn’t a part of the plea deal,” and he then requested to speak with the municipal court judge Cieri. *Id.* An altercation between Officer Lipari and Plaintiff ensued, during which Officer Lipari allegedly resorted to “street thug tactics” by “shoving,” “threatening,” and “roughly” escorting Plaintiff “downstairs into the booking area.” *Id.* Plaintiff alleges that Officer Lipari informed Plaintiff that he had no “rights” and that he could neither speak with his attorney nor Judge Cieri. *Id.* According to Plaintiff, he was held for approximately twenty minutes before he was eventually allowed to speak with Judge Cieri, but only after Officer Lipari first spoke with Judge Cieri. *Id.* The meeting which eventually occurred between Plaintiff and Judge Cieri resulted

in the removal of “[Plaintiff’s] plea deal,” subsequent to which Judge Cieri “set a trial date.” *Id.* Plaintiff does not indicate the outcome of his trial, or otherwise state the outcome of the municipal court charges.

On May 21, 2018, Plaintiff filed this action against Defendants, in which he brings the following violations: (a) “right to travel”; (b) “freedom of movement rights”; (c) “Fifth Amendment rights”; and (d) the “inherent biblical rights as afforded to [him] according to the holy tanak.” *Id.*, 4. On May 30, 2018, this Court granted Plaintiff’s application to proceed *in forma pauperis*, subsequent to which, on November 6, 2018, Defendants moved for dismissal of Plaintiff’s Complaint. Although Plaintiff’s response to the Motion was due on November 19, 2018, or approximately seven months ago, he failed to file opposition. In light of his *pro se* status, the Court entered an Order on May 8, 2019, wherein Plaintiff was instructed to file opposition within fourteen days, or Defendants’ Motion would be deemed unopposed. However, the allotted time period has expired, without Plaintiff having filed opposition or otherwise communicated with the Court.

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a claim “for failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). When reviewing a motion to dismiss, courts must first separate the factual and legal elements of the claims, and accept all of the well-pleaded facts as true. *See Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009). All reasonable inferences must be made in the plaintiff’s favor. *See In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 314 (3d Cir. 2010). In order to survive a motion to dismiss, the plaintiff must provide “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v Twombly*, 550 U.S. 544, 570 (2007). In that connection, this standard

requires the plaintiff to show “more than a sheer possibility that a defendant has acted unlawfully,” but does not create as high of a standard as to be a “probability requirement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Moreover, while the Court is aware of Plaintiff’s *pro se* status and the liberal reading to which his pleading is entitled, Plaintiff is not, nonetheless, relieved of his obligation to allege sufficient factual allegations to support a cognizable legal claim, in order to survive a dismissal motion. *See, e.g., Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002).

As a preliminary matter, although defendant Carton is a named defendant, no specific allegations are asserted against him in the Complaint, nor does Plaintiff set forth facts related to his involvement in the instant action. Based on Defendants’ representations, however, defendant Carton serves as the municipal prosecutor in Allenhurst, New Jersey. Therefore, to the extent that Plaintiff intends to assert a cause of action against defendant Carton, which arises from his prosecutorial role, defendant Carton is entitled to the protections of immunity. *See Munchinski v. Solomon*, 747 Fed. Appx. 52, 56 (3d Cir. 2018) (“In order to protect prosecutorial independence and discretion, a prosecutor is entitled to absolute immunity from suit for actions taken in his role as an advocate for the state.”) (citing *Odd v. Malone*, 538 F.3d 202, 207-08 (3d Cir. 2008)); *see also Caldwell v. Vineland Police Dep’t*, No. 08-4102, 2011 U.S. Dist. LEXIS 45840, at *4 (D.N.J. April 28, 2011) (“The Eleventh Amendment protects states and their agencies and departments from suits in federal court regardless of the type of relief sought.”) (citing *Pennhurst State School v. Halderman*, 465 U.S. 89, 100 (1984)). Accordingly, the Court dismisses defendant Carton from the instant action for failure to state a claim.

In addition, the factual allegations against Judge Cieri are minimal, and the conduct of

which Plaintiff complains was performed while he was presiding over, what appears to be, Plaintiff's plea hearing. Indeed, because Plaintiff solely discusses the actions which Judge Cieri took while he was acting in a judicial capacity, he, too, is entitled to the protections of immunity from suit. *Figueroa v. Blackburn*, 208 F.3d 435, 443 (3d Cir. 2000) (holding that, "judges of courts of limited jurisdiction," including municipal court judges, "are entitled to the protection of the doctrine of judicial immunity[.]"); *Rojas v. City of New Brunswick*, No. 04-3195, 2008 U.S. Dist. LEXIS 57974, at *42 (D.N.J. June 4, 2008); *Capogrosso v. Supreme Court of N.J.*, 588 F.3d 180, 184 (3d Cir. 2009) ("A judicial officer in the performance of his duties has absolute immunity from suit and will not be liable for his judicial acts.") (quotations and citation omitted). Therefore, Judge Cieri is dismissed from this action.

Finally, Plaintiff does not allege a cognizable cause of action against Officer Lipari. More specifically, without referencing any legal authority, Plaintiff generally alleges that his "right to travel," his "freedom of movement rights," and his "inherent biblical rights" have been violated. These are not proper claims. Moreover, in the Complaint, Plaintiff bases these alleged violations on the unspecified "use of a forged document"; however, he neither provides a description of the alleged document, nor does he assert any additional factual allegations in connection with the purported forgery. To the extent that Plaintiff's claims are viable under the law, his failure to allege any information to support his claims is fatal on this motion. *Morse v. Lower Merion School Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (holding that a court need not accept a *pro se* plaintiff's "bald assertions" or "legal conclusions."); *see also Cade v. Newman*, 422 F. Supp. 2d 463, 465 (D.N.J. 2006). And, while Plaintiff alleges an additional claim under the Fifth Amendment, which establishes the privilege against self-incrimination, he has in no way asserted how Officer Lipari

infringed upon his Fifth Amendment rights.

Even under a liberal reading of his Complaint, the Court cannot discern what claims Plaintiff intends to bring from the events which allegedly occurred during both the initial traffic stop, and the altercation between Plaintiff and Officer Lipari at the municipal courthouse. Indeed, Plaintiff has failed to provide a sufficient level of specificity in connection with either of these alleged incidents, particularly since Plaintiff's factual allegations, in this regard, are confined to a few handwritten paragraphs. In the absence of any additional information, this Court cannot discern a cognizable cause of action from the limited facts which are alleged in the Complaint, without resorting to speculation. *GE Group Life Assur. Co. v. Turner*, No. 05-342, 2009 U.S. Dist. LEXIS 3971, at *5 n.2 (W.D. Pa. Jan. 21, 2009) ("While a court may provide a generous construction of the filings of a *pro se* litigant, a court certainly cannot treat the party with any special dispensation, or become that litigant's advocate.") (citation omitted); *see also Caldwell v. Atl. County Animal Shelter*, No. 08-4101, 2009 U.S. Dist. LEXIS 67659, at *6 (D.N.J. Aug. 4, 2009).

Accordingly, while Plaintiff has failed to assert a viable cause of action in his pleadings, in light of his *pro se* status, Plaintiff is provided with leave to amend the Complaint as to Officer Lipari, within 20 days from the date of this Order. *Peeples v. Fed. Bureau of Prisons*, No. 10-0457, 2010 U.S. Dist. LEXIS 63820, at *1 (M.D. Pa. June 28, 2010) (holding that, "[t]he District Court must avoid dismissing a *pro se* claim for lack of specificity and failure to fill out every element of a claim where the plaintiff might be able to cure the defects by amending the complaint.") (citing *Urrutia v. Harrisburg County Police Dept.*, 91 F.3d 451 (3d Cir. 1996)); *Hernandez v. Unknown Officer*, No. 10-0332, 2011 U.S. Dist. LEXIS 9875, at *1 n.1 (M.D. Pa. Feb. 2, 2011) (citation

omitted). In the event that Plaintiff fails to amend the Complaint, the Clerk of Court shall close this case.

IT IS HEREBY ORDERED that Defendants' Motion to dismiss is **GRANTED**; Plaintiff is provided with leave to amend the Complaint as to Officer Lipari, within 20 days from the date of this Order. Plaintiff is cautioned that, in the event that he fails to file an amended complaint, this action will deemed closed.

SO ORDERED

/s/ Freda L. Wolfson
Freda L. Wolfson
U.S. Chief District Judge

LAW OFFICES

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June 11, 2019

(Via email only)
Qual-Lynx
100 Decadon Drive
Egg Harbor Twp., NJ 08234
Attn: Laura Sable

Re: Hayes, Andra Amir v. Cieri, George, Carton James and
Lipari, David
Claim No.: 2019149342
Our File No. 26-39,197-MJD

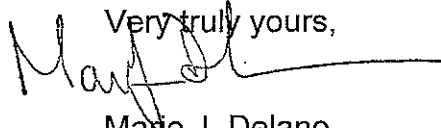
Dear Ms. Sable:

Enclosed herewith please find a copy of the courts written opinion in this matter.

As you will recall, we filed a motion to dismiss the complaint for failure to state a claim upon which relief may be granted several months ago. The plaintiff, appearing pro se, did not file an answer to the motion, despite his being ordered to do so by the court on May 8, 2019. He was advised by the court the failure to do so would result in the motion being decided, unopposed. As you can see from the attached order, the judge has found that the complaint as to Judge Cieri and prosecutor, Carton are dismissed, as their actions (if any) had nothing to do with the plaintiff's allegations. Likewise, the complaint against Ofc. Lipari is also dismissed for failure to assert a cause of action, however, the plaintiff is given 20 days to amend the complaint to cure the defects. Failure to do so will result in the court's deeming the matter closed.

We will continue to keep you advised of developments as they occur. I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "Mario J. Delano", with a long horizontal line extending to the right.

Mario J. Delano

MJD/cl

Enc.

George Cieri, Esq.

James Carton IV, Esq.

Officer David Lipari,