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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JAMIE CHRISTOPHER MAY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:19-cv-0101-MHH-TMP
	)	
JASON BELLENGER, et al.,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

The plaintiff has filed a *pro se* amended complaint asserting claims under 42 U.S.C. § 1983, *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), the Federal Tort Claims Act, and numerous other state and federal statutes and regulations. (Doc.'s 9 & 10). The plaintiff names the following defendants in the amended complaint: Nurse Practitioner Jason Ballenger; "Mental Health at the Jefferson County Jail;" the United States of America, "International;" the State of Alabama; William "Bill" Pate; Metro PC; AT&T; and Trans Union. (Doc. 9 at 2, 3, 4, 8, & 9). The plaintiff seeks compensatory damages and injunctive relief. (Doc. 10 at 4-5). In accordance with the usual practices of this court and 28 U.S.C. § 636(b)(1), the complaint was referred to the undersigned magistrate judge for a

preliminary report and recommendation. *See McCarthy v. Bronson*, 500 U.S. 136 (1991).

I. Standard of Review

The Prison Litigation Reform Act, as partially codified at 28 U.S.C. § 1915A, requires this court to screen complaints filed by prisoners against government officers or employees. The court must dismiss the complaint or any portion thereof that it finds frivolous, malicious, seeks monetary damages from a defendant immune from monetary relief, or which does not state a claim upon which relief can be granted. Id. Moreover, the court may sua sponte dismiss a prisoner's complaint prior to service. See 28 U.S.C. § 1915A(a).

Under § 1915A(b)(1) and § 1915(e)(2)(B)(i), a claim may be dismissed as "frivolous where it lacks an arguable basis in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim is frivolous as a matter of law where, inter alia, the defendants are immune from suit or the claim seeks to enforce a legal right that clearly does not exist. (*Id*. at 327).

Moreover, a complaint may be dismissed pursuant to 28 U.S.C. § 1915A (b)(1) for failure to state a claim upon which relief may be granted. A review on this ground is governed by the same standards as dismissals for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Jones v. Bock, 549 U.S. 199, 215 (2007). In order to state a claim upon which relief may

be granted, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). That is, "[f]actual allegations must be enough to raise a right to relief above the speculative level" and must be a "'plain statement' possess[ing] enough heft to 'show that the pleader is entitled to relief.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007) (alteration incorporated). But "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." (*Id.*) Similarly, when a successful affirmative defense, such as a statute of limitations, appears on the face of a complaint, dismissal for failure to state a claim is also warranted. *Jones v. Bock*, 549 U.S. at 215.

Pro se pleadings "are held to a less stringent standard than pleadings drafted by attorneys" and are liberally construed. *Boxer X v. Harris*, 437 F.3d 1107, 1110 (11th Cir. 2006). However, they still must allege factual allegations that "raise a right to relief above the speculative level." *Saunders v. Duke*, 766 F.3d 1262, 1266 (11th Cir. 2014) (internal quotation marks omitted).

II. Factual Allegations:

The amended complaint, which is nearly illegible, names eight seemingly unconnected defendants, invokes numerous state and federal statutes without explanation regarding their relevance to the action, and presents largely

incomprehensible claims which appear to involve fanciful allegations. (Doc.'s 9 & 10). As best as can be determined from the rambling complaint, the plaintiff alleges he is an agent for the CIA, that certain mobile phone carriers allowed a private individual to place a "spy app" on his phone (which then subjected him to "electronic surveillance" and resulted in his being a victim of "Tort for Financial Gain," or identity theft), and that the various defendants, after having been notified of the "tort claim," failed to remedy the situation on his behalf. (*Id*.). Included in the plaintiff's fantastical assertions is that he has "credentials or clearance" with the "CIA, FBI, ATF, DEA, NSA, HLS, DOD, Customs, and Secret Service" (doc. 9 at 3); that he is apparently the subject of a "FISA report" (*Id*.);[1] that he maintains "trusted credentials from several countries" (*Id*.); that he has been subjected to "electronic surveillance" for a long period of time and that such surveillance "causes a skin condition known to the CDC" (*Id*. at 10); and that he is entitled to obtain the "FISA report" to determine who is conducting the electronic surveillance (doc. 10 at 4). In addition to compensatory damages from any "Department or Agency involved," the plaintiff would also "like to see Jefferson County get and utilize software that shows when someone is under Electronic Training 'Hoax,'" and he "thinks every patrol car should be added with the software & hardware to detect someone under Electronic Monitor." (*Id*. at 4-5).

[1] The plaintiff is ostensibly referring to the Foreign Intelligence Surveillance Act, 18 U.S.C. § 1801, *et seq*.

III. Analysis:

As stated above, this court is charged with the responsibility to pre-screen prisoner cases and dismiss any actions that are frivolous, malicious, or fail to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A. The Supreme Court has held that in conducting such a review, this court has "not only the authority to dismiss a claim based upon an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). Furthermore, in conducting a preliminary review under the *in forma pauperis* statute, courts are not bound to "accept without question the truth of the plaintiff's allegations." (*Id*. at 32). Therefore, "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); *see also Neitzke*, supra; and *Martinez v. United States*, 192 Fed.Appx. 839 (11th Cir. 2006). This court therefore has authority to dismiss a complaint in which the plaintiff has set forth claims "describing fantastic or delusional scenarios." *Denton*, 504 U.S. at 32. Such is the case in the present action, and the court cannot justify requiring a response from the defendants to the fanciful allegations alleged in the amended complaint.

Furthermore, the complaint contains no factual allegations plausibly linking the defendants to any constitutionally suspect activities. In order to state a claim under § 1983, the complaint must "state with some minimal particularity how overt acts of the defendant[s] caused a legal wrong." *Douglas v. Yates*, 535 F.3d 1316, 1322 (11th Cir. 2008). In other words, even if reasonable jurists could disagree as to the frivolousness of the plaintiff's allegations, the complaint fails to pass the plausibility test set forth by the Supreme Court in *Iqbal*, supra, which holds that a complaint must contain sufficient factual matter to state a claim for relief that is "plausible on its face." 566 U.S. at 678. The Court explained that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (*Id*.). In other words, the allegations made by the plaintiff must nudge the claim "across the line from conceivable to plausible." (Id. at 680) (*quoting Twombly*, 550 U.S. at 570). Viewed in light of the above parameters, the court cannot reasonably infer from the complaint that the defendants are liable for violating the plaintiff's constitutional rights.[2]

[2] Other problems arise with regard to any constitutional claims the plaintiff may have attempted to assert, including the fact that he names a private individual and private corporations, which normally cannot be held liable under § 1983 absent some showing of conspiracy with state actors, or a contractual obligation in which the corporation takes on the duties of the state and a constitutional violation occurs as the result of corporate policy or custom.

IV. Recommendation

Accordingly, for the reasons stated above, the magistrate judge RECOMMENDS that this action be **DISMISSED WITHOUT PREJUDICE** as frivolous, pursuant to 28 U.S.C. § 1915A(b)(1).

V. Notice of Right to Object

The plaintiff may file specific written objections to this report and recommendation. The plaintiff must file any objections with the Clerk of Court within fourteen (14) calendar days from the date the report and recommendation is entered. Objections should specifically identify all findings of fact and recommendations to which objection is made and the specific basis for objecting. Objections also should specifically identify all claims contained in the complaint that the report and recommendation fails to address. Objections should not contain new allegations, present additional evidence, or repeat legal arguments.

Failing to object to factual and legal conclusions contained in the magistrate judge's findings or recommendations waives the right to challenge on appeal those same conclusions adopted in the district court's order. In the absence of a proper objection, however, the court may review on appeal for plain error the unobjected to factual and legal conclusions if necessary in the interests of justice. 11th Cir. R. 3-1.

On receipt of objections, a United States District Judge will review *de novo* those portions of the report and recommendation to which specific objection is made and may accept, reject, or modify in whole or in part, the undersigned's findings of fact and recommendations. The district judge also may refer this action back to the undersigned with instructions for further proceedings.

The plaintiff may not appeal the magistrate judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. The plaintiff may only appeal from a final judgment entered by a district judge.

The Clerk is DIRECTED to mail a copy of the foregoing to the plaintiff.

DONE this 28th day of March, 2019.

T. MICHAEL PUTNAM
UNITED STATES MAGISTRATE JUDGE