



complaints filed by prisoners against “a governmental entity or officer or employee of a governmental entity” and to dismiss such complaints, or any portions thereof, for the same reasons as those set forth in § 1915(e)(2)(B). “The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B) and § 1915A is identical to the legal standard used when ruling on a Rule 12(b)(6) motion.” *Hodge v. Murphy*, 808 F. Supp. 2d 405, 408 (D.R.I. 2011).

When reviewing a motion filed under Rule 12(b)(6), courts “accept well-pleaded facts as true and draw all reasonable inferences from those facts in favor of the plaintiff.” *Figueroa v. Rivera*, 147 F.3d 77, 80 (1st Cir. 1998). “To survive a motion to dismiss, 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) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “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 addition, the complaint “must allege facts linking each defendant to the grounds on which that particular defendant is potentially liable.” *Redondo Waste Sys., Inc., v. López-Freytes*, 659 F.3d 136, 140 (1st Cir. 2011). Because Mr. Johnson appears pro se, the court “read[s] his complaint with an extra degree of solicitude.” *Rodi v. Ventetuolo*, 941 F.2d 22, 23 (1st Cir. 1991).

## **II. Suits Against Wyatt Employees**

Mr. Johnson filed suit under 28 U.S.C. § 1983 against Wyatt employees. Case law in the U.S. District Court for the District of Rhode Island has two different viewpoints regarding actions against Wyatt employees. See *Campbell v. Donald W. Wyatt Det. Ctr.*, C.A. No. 08-368-S, 2008 WL 5232729, at \*2 n.2 (D.R.I. 2008). Some judges have held that those suits should be

brought pursuant to 28 U.S.C. § 1983 because Wyatt employees are state actors. *See Mathew v. Central Falls Det. Facility Corp.*, C.A. No. 09-253-S, 2011 WL 6056713, \*7-8 (D.R.I. Sept. 30, 2011)(Smith, J); *Caldwell v. Donald Wyatt Det. Facility*, C.A. No. 10-15-ML, 2010 WL 2636101 (D.R.I. June 29, 2010) (Lisi, J.)(adopting Report and Recommendation of Magistrate Judge Hagopian); *LaCedra v. Donald W. Wyatt Det. Facility*, 334 F. Supp. 2d 114, 140-142 (D.R.I. 2004)(Lagueux, J.). Another judge found that those suits should be brought under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), because Wyatt employees are federal agents. *See Sarro v. Cornell Corrections., Inc.*, 248 F. Supp. 2d 52, 58 (D.R.I. 2003)(Torres, J.). The First Circuit Court of Appeals has not addressed the issue. Because the same outcome would result in this case, this Court does not need to decide at this time which analysis is appropriate for constitutional violations alleged at Wyatt.

### **III. Allegations**

In the complaint, Mr. Johnson alleges that the mailroom staff at Wyatt destroyed pictures that were sent to him, and Warden Murphy refused to reprimand them. (ECF No. 1 at 3.) Mr. Johnson believes that the mailroom staff kept the pictures “to lust on [his] lady friends an[d] fianc[é] pictures in negligee.” *Id.* Mr. Johnson describes the loss of his pictures as “negligence” and he seeks summary judgment from this Court. *Id.* at 3.

According to an exhibit, Mr. Johnson alleges that he was sent a package with legal materials and pictures; the box was opened; the box was returned to sender without some of the pictures. (ECF No. 1-1 at 6.) Another exhibit indicates that Mr. Johnson was told that some pictures were taken and destroyed because they were contraband. (ECF No. 1-1 at 7.) Mr. Johnson contends that because he was no longer housed at Wyatt, the alleged contraband material either should have been returned to the sender or held for thirty days. *Id.* at 1-2.

Mr. Johnson claims that Wyatt “policy states that if the pictures are displaying nudity, teddies, or sheer nightgowns will be contraband [] and returned back to sender, at detainee expense.” *Id.* at 2. Mr. Johnson also claims that Wyatt policy indicates that the property should have been held for thirty days. *Id.* A Grievance Form states that if Mr. Johnson signs a settlement and release form, then Wyatt will reimburse Mr. Johnson for five 4-by-6 prints at \$.19 each and one postage stamp at \$.25 for a total of \$1.40. *Id.* at 6. The final page submitted as an exhibit is captioned Detainee Request Form, but the content is illegible. *Id.* at 7.

#### **IV. Analysis**

Because the First Circuit has not spoken on the issue, this Court will address Mr. Johnson’s allegations under both § 1983 and *Bivens*. Under either rubric, the complaint fails to state a claim.

##### **a. § 1983**

“Section 1983 requires three elements for liability: deprivation of a right, a causal connection between the actor and the deprivation, and state action.” *Sanchez v. Pereira-Castillo*, 590 F.3d 31, 41 (1st Cir. 2009).

Mr. Johnson’s allegations are analyzed against the defendants in their individual capacities only because “[a] damages suit against an official in an official capacity is tantamount to a suit against the entity of which the official is an agent (the jail), and there is no claim here that the entity followed a policy or custom of deliberate indifference.” *Burrell v. Hampshire County*, 307 F.3d 1, 7 (1st Cir. 2002).

The Fourteenth Amendment says that state officials may not deprive persons of property without ‘due process of law.’ U.S. Const. amend. XIV. The process due depends on the circumstances. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976). The cases distinguish sharply between deprivations caused by “random, unauthorized” conduct of state officials, and deprivations caused by conduct “pursuant to established state procedure.” *See*

*Hudson v. Palmer*, 468 U.S. 517, 532, 104 S.Ct. 3194, 3203, 82 L.Ed.2d 393 (1984). For the former, the state is not automatically liable; in the latter case there may be liability where the state policy approves or directs the conduct but falls below constitutional standards.

*Watson v. Caton*, 984 F.2d 537, 540-541 (1<sup>st</sup> Cir. 1993).

In this instance, the discarding of photographs that Wyatt deemed inappropriate without returning them to the sender clearly falls in the latter case of a random and unauthorized conduct by the prison official and therefore does not give rise to a constitutional violation. “We conclude that the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.” *Daniels v. Williams*, 474 U.S. 327, 328 (1986).

Furthermore, Wyatt afforded Mr. Johnson an opportunity to be heard on his allegation of deprivation of his rights. “Accordingly, we hold that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available.” *Hudson v. Palmer*, 468 U.S. 517, 533 (1984).

This Court therefore holds that Mr. Johnson’s constitutional rights were not deprived under these circumstances as alleged in his Complaint and therefore under a §1983 analysis his complaint should be dismissed.

***b. Bivens***

The Court now turns to an analysis of Mr. Johnson’s claim under *Bivens*.

*Bivens* establishes, as a general proposition, “that victims of a constitutional violation perpetrated by a federal actor may sue the offender for damages in federal court despite the absence of explicit statutory authorization for such suits.” *Ruiz Rivera v. Riley*, 209 F.3d 24, 26 (1st Cir. 2000)(quoting *Wright v. Park*, 5 F.3d 586, 589 n. 4 (1st Cir.1993)) (internal quotation mark omitted). This implied cause of action is the federal analog to § 1983 suits against state officials. *Iqbal*, 129 S.Ct. at 1948. “The purpose of *Bivens* is to deter individual

federal officers from committing constitutional violations.” *Chiang v. Skeirik*, 582 F.3d 238, 243 (1st Cir. 2009) (quoting *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 70, 122 S.Ct. 515, 151 L.Ed.2d 456 (2001)) (internal quotation marks omitted).

*Soto-Torres v. Fraticelli*, 654 F.3d 153, 157-158 (1st Cir. 2011).

The First Circuit in ruling on a claim similar to that asserted by Mr. Johnson stated as follows:

Assuming that the specific allegedly wrongful acts occurred, none of them supports a *Bivens* claim. While the appropriation of Chiang's papers might conceivably support a claim for monetary recovery on some sort of takings theory (if the appropriation was authorized) or an order directing the return of the papers (if the appropriation was unauthorized), we fail to see how the appropriation of Chiang's papers—whether authorized or unauthorized—could support a *Bivens* claim. See *Wilkie v. Robbins*, 551 U.S. 537, 555, 127 S.Ct. 2588, 168 L.Ed.2d 389 (2007) (no *Bivens* claim where alternative remedies available).

*Chiang v. Skeirik*, 582 F.3d 238, 244 (1st Cir. 2009).

The substantive analysis of a *Bivens* claims, in this instance, is the same as the analysis under § 1983. See *Abate v. Southern Pacific Transp. Co.*, 993 F.2d 107, 110 n.14 (5<sup>th</sup> Cir. 1993) (“*Bivens* is the federal counterpart of § 1983. In effect, it extends the protections afforded by § 1983 to parties injured by federal actors not liable under § 1983.”); *Kreines v. U.S.*, 959 F.2d 834, 837 (9th Cir.1992) (“A *Bivens* suit differs from a § 1983 suit only in that a federal, rather than a state, defendant is sued.”)

Because the analysis that found no § 1983 violation applies to Mr. Johnson’s *Bivens* claim, this Court must dismiss his complaint under *Bivens* as well.

## **Conclusion**

Regardless of whether Mr. Johnson’s allegations are reviewed under § 1983 or *Bivens*,

the complaint “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii). The Complaint is therefore DISMISSED and his Motion for IFP status (ECF No. 2) is DENIED AS MOOT.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "John J. McConnell, Jr." with a stylized flourish at the end.

John J. McConnell, Jr.  
United States District Judge

January 30, 2013