

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

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PARRISH CHASE,  
Plaintiff,

v.

KENNETH WALKER, et al.,  
Defendants.

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C. A. No. 12-58-M

**MEMORANDUM AND ORDER**

JOHN J. MCCONNELL, JR., United States District Judge.

Plaintiff Parrish Chase, an inmate at the Adult Correctional Institutions (the “ACI”) in Cranston, Rhode Island, has brought an Amended Complaint (“Complaint”) seeking declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983 and related statutes. (ECF No. 5.) The Complaint names eight defendants: three members of the R.I. Parole Board: Kenneth Walker, Victoria Almeida, and Nancy Garcia-Ponte (“the Parole Board”); Matthew Degan, the Administrator of the Parole Board; three R.I. Department of Corrections employees: Director Ashbel T. Wall, II, Norbert Lachmann, and Kim Avedisian; and Governor Lincoln Chafee in his official capacity.

This Court has screened the Complaint pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A and finds that Counts I, II, III and VII do state claims upon which relief may be granted, but that Counts IV, V, VI, VIII, IX and X fail to do so.<sup>1</sup> The Court’s reasoning is outlined below.

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<sup>1</sup> Plaintiff has also filed an application to proceed *in forma pauperis* (“IFP application”). (ECF No. 2.) The IFP application will be addressed in a separate Memorandum and Order.

## **I. LEGAL ANALYSIS**

In essence, Mr. Chase challenges the policies and procedures of the Parole Board as they relate to his request for parole. He alleges his constitutional rights to due process were violated because the Parole Board denied him the opportunity to: rebut its decision; present witnesses; challenge evidence; be advised of the evidence against him; have an adversarial proceeding before the Parole Board; appeal the Parole Board's decision; meaningfully have his petition considered because he fell into a certain pre-determined category of crimes; and know the Parole Board's reason for denying his parole. Mr. Chase also makes a claim based on the denial of a public records request and for damages.

### **A. Screening under § 1915(e)(2) and § 1915A**

In connection with proceedings *in forma pauperi*, § 1915(e)(2) permits dismissal of a case at any time if the Court determines that the action, *inter alia*, "is frivolous or malicious" or otherwise "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B) (2006). Similarly, § 1915A directs courts to screen prisoner complaints filed against a governmental entity, officer, or employee and dismiss the complaint, or any portion thereof, for reasons identical to those set forth in § 1915(e)(2). 28 U.S.C. § 1915A(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. *See Fridman v. City of New York*, 195 F. Supp. 2d 534, 538 (S.D.N.Y. 2002); *Pelumi v. Landry*, Dkt. No. 08-107 ML, 2008 WL 2660968, at \*2 (D.R.I. June 30, 2008). In making this determination, the Court must accept a plaintiff's allegations as true and construe them in the light most favorable to plaintiff. *Figueroa v. Rivera*, 147 F.3d 77, 80 (1st Cir. 1998). Mr. Chace has filed this Complaint pro se, and although the Court must review pleadings of a

*pro se* plaintiff liberally, *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), the Court need not credit bald assertions or unverifiable conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “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.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); see Fed. R. Civ. P. 8(a)(2). Put another way, a plaintiff “must allege sufficient facts to show that he has a plausible entitlement to relief.” *Sanchez v. Pereira-Castillo*, 590 F.3d 31, 41 (1st Cir. 2009).

### **B. Review of Claims**

The Court reviews Mr. Chase’s claims to determine if they allege facts in support of a plausible claim that Defendants deprived him of a constitutional or federal statutory right. Based on due process, his claims attack certain Parole Board policies and procedures as applied to him, including that he was given insufficient reason and rationale for his denial (Count I), that the date that he is eligible for reconsideration is unduly long (four years in his instance, instead of 6-months applied to others) (Count II), that the hearing afforded him was insufficient because the outcome was pre-determined (Count III), and that the Parole Board’s reliance on the “serious nature of the offense” violates his constitutional rights because he is therefore punished twice and such pre-determination violates his due process rights (Count VII).

While the Court recognizes the tremendous discretion federal courts give to state parole boards, a parole boards’ actions do not escape judicial review in all instances. “While we have every confidence that the board carries out its duties faithfully according to statutory direction, we do not believe that it should be entirely exempt from judicial review.” *State v. Ouimette*, 367 A.2d 704, 710 (R.I. 1976). The R.I. Supreme Court went on to point out that:

to satisfy minimum standards of due process, accompanying any parole denial should be a statement of reasons sufficient to enable

a reviewing court to determine if parole has been denied for permissible reasons. The grounds for the decision and the underlying factors supporting those grounds should be the essential elements of the statement of reasons.

*Id.*

While the R.I. Supreme Court decision in *Ouimette* does not control the Court's federal constitutional analysis, the Court agrees with that analysis of the Parole Board's charge in satisfying a prisoner's due process rights. The Court is in no way pre-determining the validity of Mr. Chase's claims or allegations; however, at this stage of the pre-service screening proceedings, the Court believes that Mr. Chase's claims in Counts I, II, III, and VII against the Parole Board deserve to proceed for full consideration.

As to the remaining claims in Counts IV, V, VI, VIII, and IX, Mr. Chase fails to set forth sufficient facts to plausibly support any legally recognizable claims. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). In Counts IV and V, Mr. Chase claims that his insufficient parole hearing was based on economic discrimination and "unequal application of criteria/decisions" because he avers that other inmates were afforded the process that he was not. The Court finds that Mr. Chase's claims on this ground are based on unverifiable conclusions and thus are dismissed as unsupported.

Mr. Chase's claims in Count XIII, essentially requesting punitive damages, and his final prayer for nominal, compensatory and punitive damages, are dismissed because "parole board members are entitled to absolute immunity from liability for damages in a § 1983 action for actions taken within the proper scope of their official duties." *Johnson v. R.I. Parole Bd. Members*, 815 F.2d 5, 8 (1st Cir. 1987). Mr. Chase has failed to provide any details demonstrating that any of the Parole Board defendants acted outside the scope of their duties. Therefore, Count XIII is dismissed.

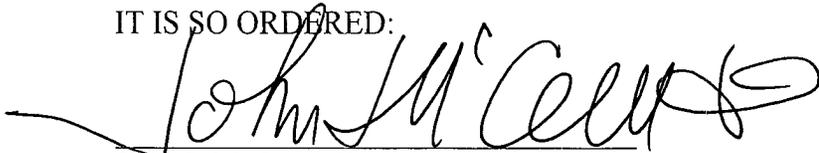
In Count IX, Mr. Chase avers that his public records requests were denied in violation of the Access to Public Records Act and due process. He fails to set forth the details of these denials such that the Court cannot determine whether he states a plausible claim of an APRA violation. Nevertheless, because the Court finds that certain of Mr. Chase's claims survive this § 1915 review and he can make these requests within the bounds of permissible discovery, this Count is dismissed as moot.

As to Count X, Mr. Chase makes no allegations of specific actions by Mr. Degnan, Mr. Wall, Mr. Lachmann, Ms. Avedesian, and Governor Chafee other than the claims in Count IX that this Court has dismissed upon this § 1915 review. Moreover, neither Mr. Wall nor Governor Chafee has vicarious liability in their capacities as director of RIDOC or Governor of the State of Rhode Island. *See Sanchez*, 590 F.3d at 49 (stating that, although supervisory officials may be liable on the basis of their own acts or omissions, such officials “may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*” (citing *Iqbal*, 556 U.S. at 675)); *Grajales v. Puerto Rico Ports Auth.*, No. 11-1404, 2012 WL 2126116, at \*5 (1st Cir. June 13, 2012) (“supervisory liability under section 1983 cannot arise solely on the basis of *respondeat superior*.”) Therefore, based on the Court's ruling as to Counts IX and X, no viable claims remain against Mr. Degnan, Mr. Wall, Mr. Lachmann, Ms. Avedesian and Governor Chafee. Those claims are DISMISSED.

**II. CONCLUSION**

The Court finds that Mr. Chase has not demonstrated entitlement to any relief on Counts IV, V, VI, VIII, IX and X and therefore those Counts and Defendants Mr. Wall, Mr. Lachmann, Ms. Avedesian, Mr. Degnan, and Governor Chafee are DISMISSED. Mr. Chase may proceed against the remaining three defendants for injunctive relief on Counts I, II, III and VII.

IT IS SO ORDERED:

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", written over a horizontal line.

John J. McConnell, Jr.  
United States District Judge

July 2, 2012