

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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| _____ |) | |
| PARRISH CHASE, |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 12-49-M |
| |) | |
| AMERICAN CIVIL LIBERTIES |) | |
| UNION, et al. |) | |
| Defendants. |) | |
| _____ |) | |

MEMORANDUM AND ORDER

The State Defendants¹ have moved to dismiss (ECF No. 75) the Plaintiff's, Parrish Chase, Amended Complaint (ECF Nos. 41 and 47 collectively) or, in the alternative, moved for an order granting summary judgment in their favor. Because the Court finds the Defendants' arguments persuasive, their motion to dismiss is GRANTED.

I. BACKGROUND

Mr. Chase, an inmate at the Rhode Island Adult Correctional Institute (the "ACI"), has filed six cases in this Court in the last two years.² Mr. Chase's Amended Complaint in this case arises out of an alleged breach of the settlement agreement reached in *Palmigiano v. Sundlun*, C.A. Nos. 74-0172-L and 75-0032-L, (the "*Palmigiano* Settlement Agreement"), stipulations related thereto, and more specifically, the 2007 Stipulation. That settlement agreement was made between the Plaintiff Class (of which Mr. Chase was a member) and the State of Rhode Island. Later agreed-to stipulations were added to update the agreement, in order to address the conditions of confinement at various Rhode Island prison facilities that resulted in protracted litigation

¹ The State Defendants are: Thomas Mongeau, Bernard Jackvony, Ashbel T. Wall, II, Patricia Coyne-Fague, Robert McCutcheon, David McCauley, Donna Collins, Stephen Boyd, Kirk Kaszyck, Joseph Jankowski, Michael Lanowy, and Todd Amaral (collectively, the "Defendants")

² 11-cv-586-ML, 12-cv-45-M, 12-cv-58-M, 12-cv-63-L, 12-cv-112-ML.

beginning in the 1970's. The *Palmigiano* Settlement Agreement dictated restrictions on overcrowding, medical care, environmental health and safety, and security, among other issues at the ACI.

Mr. Chase has filed a nineteen count Amended Complaint against fourteen defendants and "John Does." Broadly construed and interpreted, Mr. Chase's Amended Complaint alleges violations of his civil rights due to overcrowding at the ACI and more specifically the John Moran Facility; the maintenance of a deficient law library; illegal and improper policies relating to the law library; and termination of his prison employment as a law clerk in retaliation for grievances filed. Mr. Chase also alleges negligence by the Rhode Island Criminal Justice Oversight Committee ("RICJOC") and legal malpractice by Defendant Alvin J. Bronstein and the American Civil Liberties Union. Mr. Chase seeks declaratory and injunctive relief and compensatory and punitive damages.

Significantly, this is Mr. Chase's third attempt to file claims he alleges relate to *Palmigiano*, the *Palmigiano* Settlement Agreement, and the 2007 Stipulation. On December 9, 2011 in his 11-cv-586-ML case, the Magistrate Judge recommended dismissal of Mr. Chase's complaint because of procedural failures under Rules 8, 18, and 20 of the Federal Rules of Civil Procedure. (*Chase v. Chafee*, C.A. No 11-cv-586-ML, ECF No. 3.) The District Judge affirmed his recommendation. (*Id.*, ECF No. 6.) Despite another attempt to make similar allegations knowing the deficiencies that the Court has noted in past complaints, Mr. Chase's Amended Complaint in this action fails to state any claims upon which relief can be granted.

II. STANDARD OF REVIEW

To survive a motion to dismiss for failure to state a claim, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). The Court must accept Mr. Chase’s allegations as true and construe them in the light most favorable to him. *Gargano v. Liberty Int’l Underwriters*, 572 F.3d 45, 48 (1st Cir. 2009). “[T]he form and sufficiency of a statement of a claim for relief under Rule 8(a)(2) may be tested by a motion to dismiss for failure to state a claim upon which relief can be granted....” *Remexcel Managerial Consultants, Inc. v. Arlequin*, 583 F.3d 45, 49 n. 3 (1st Cir. 2009) (quoting Charles Alan Wright and Arthur R. Miller, *5 Federal Practice and Procedure* § 1203.)

Because Mr. Chase is pro se, the Court holds his Amended Complaint to a less stringent standard than if any attorney drafted it. *Dutil v. Murphy*, 550 F.3d 154, 158 (1st Cir. 2008). A pro se complaint is “read liberally.” *Pavilonis v. King*, 626 F.2d 1075, 1078 (1st Cir. 1980) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)). Nevertheless, the Court’s “duty to be ‘less stringent’ with pro se complaints does not require [the Court] to conjure up unpled allegations.” *McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979) (quoting *Hurney v. Carver*, 602 F.2d 993, 995 (1st Cir. 1979)). The Court need not credit bald assertions or unverifiable conclusions. *Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996). Moreover, a plaintiff’s pro se status does not excuse him from complying with procedural rules. *See Instituto de Educacion Universal Corp. v. U.S. Dep’t of Educ.*, 209 F.3d 18, 24 n. 4 (1st Cir. 2000).

III. ANALYSIS

The Defendants³ assert that Mr. Chase’s Amended Complaint violates Rule 8 and 18 of

³ While only the State Defendants filed the motion currently before the Court, because the Court finds that the same arguments would apply to the claims against the other defendants, namely the ACLU and Mr. Bronstein, the Court will consider whether a *sua sponte* dismissal of Mr. Chase’s claims against those defendants is appropriate. *Gonzalez-Gonzalez v. United States*, 257 F.3d 31, 37 (1st Cir. 2001) (On review of a district court’s *sua sponte* dismissal, “[i]f it is crystal clear that the plaintiff cannot prevail and that amending the complaint would be futile, then a *sua sponte*

the Federal Rules of Civil Procedure. They assert that the Amended Complaint does not procedurally comply with the Rules because it does not contain a short and plain statement of the claims presented and asserts unrelated claims against different defendants. These procedural shortcomings, they argue, merit the Amended Complaint's dismissal at this early stage of the litigation.

This Court agrees. "A district court has the power to dismiss a complaint when a plaintiff fails to comply with the Federal Rules of Civil Procedure, including Rule 8(a)(2)'s 'short and plain statement' requirement." *Kuehl v. FDIC*, 8 F.3d 905, 908 (1st Cir. 1993). Mr. Chase's Amended Complaint is not simple, concise, or direct. Rule 8 of the Federal Rules of Civil Procedure requires that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief. *See* Fed. R. Civ. P. 8(a)(2). The purpose of this rule is to give the defendant fair notice of what the claim is and the grounds upon which it rests. *Twombly*, 550 U.S. at 555. While a complaint need not contain detailed factual allegations, Mr. Chase's "obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.*

Specifically, this Court finds that Mr. Chase relies on conclusory and argumentative statements of fact and fails to plead the basic elements of his claims or any facts to support those claims.⁴ Counts One through Three all relate to Mr. Chase's dissatisfaction with the 2007 Stipulation and population increases at the Moran facility. In asserting his dissatisfaction, he challenges the validity of the 2007 Stipulation while at the same time conceding the parties

dismissal may stand.").

⁴ For the sake of this discussion, the Court attempted to describe the bases for each of Mr. Chase's Nineteen Counts, despite the rambling and argumentative nature of the allegations.

agreed to it and that he was represented by counsel.⁵ Counts Four and Five allege Mr. Chase's dissatisfaction with the RICJOC and relate to population increases at the Moran facility. Counts Eleven and Twelve relate to his employment in the law library and contradict one another, in that Mr. Chase alleges that he was terminated by two different individuals. Counts Eight, Nine, Eighteen, and Nineteen, which all relate to shortcomings in the grievance policy, are based on conclusory statements and contradicted by the voluminous exhibits Mr. Chase himself appended to the Amended Complaint. For instance, Mr. Chase alleges "deliberative indifference" and "deprivation of due process" for inadequacy in the grievance policy but at the same time refers this Court to grievances he made on matters that are clearly outside the scope the grievance system. He makes these allegations without actually identifying the grievances the system failed to address or indicating when he allegedly filed them and what response was or was not provided to those grievances. In Count Ten, Mr. Chase summarily concludes without identifying any perceived factual support that his attorney in the *Palmigiano* settlement was somehow deficient in his counsel. These bare allegations are not enough to state a claim under Rule 12(b)(6).

Additionally, Mr. Chase alleges numerous constitutional violations and deprivation of various property interests without providing factual basis or defining the interest at stake and what that interest or right is based upon. For example, Count Six alleges a conspiracy but fails to plead facts sufficient to support a claim for conspiracy and relies only on conclusory statements.

⁵ Even beyond his Amended Complaints' procedural deficiencies, the Court is bound to dismiss this case because Mr. Chase is bound by the 2007 Stipulation. Mr. Chase is a member of the Plaintiff Class as defined by the *Palmigiano* Settlement Agreement, as he is incarcerated at the ACI and has been since 2005. At the time the 2007 Stipulation was negotiated, presented, and approved by the *Palmigiano* Court, Mr. Chase was represented by counsel. Mr. Chase puts forth no evidence and does not allege that he objected to the 2007 Stipulation once executed. Because Mr. Chase was adequately represented and because he failed to object to the 2007 Stipulation or opt out of the Class, he is bound by the terms of the *Palmigiano* settlement and subsequent 2007 Stipulation.

Count Seven alleges that the deficiencies in the law library prevented him from being able to adequately prepare his case, but fails to allege that the deficient library caused him actual harm. In fact, the Court notes that Mr. Chase's Amended Complaint, while factually and procedurally deficient, does not appear to suffer from a lack of legal resources. Mr. Chase's misappropriation of funds claim in Count Thirteen is factually lacking and merely concludes that Defendants misappropriated funds that should have been used to purchase computers and other supplies. Count Fourteen purports to make a claim under the Americans with Disabilities Act, alleging that an unidentified disability prevents Mr. Chase from "out-racing" other prisoners to the law library's typewriter. This claim fails to identify the factual basis or how those facts meet the required elements of an ADA claim. Counts Fifteen through Seventeen allege a deficient law library and a lack of access to the courts and are repetitive of Count Seven, but fail to add any factual basis to that claim. Moreover, the claims are based upon conclusory statements and speculation of harm rather than actual harm.

In light of the fact that Mr. Chase has filed this type of complaint recently, and the same was dismissed in a Report and Recommendation that detailed its procedural shortcomings, this Court is compelled to dismiss this Amended Complaint on the same grounds. Mr. Chase has attempted unsuccessfully to bring this complaint on at least two prior occasions; he cannot rely on his naiveté or pro se status as means around the pleading requirements. *See Chase v. Chafee, et al.*, CA 11-586-ML (D.R.I. December 9, 2011). In the prior case, Mr. Chase brought a complaint against forty-eight defendants and asserted seventy-six claims. Similar to the case at bar, Mr. Chase brought claims against the attorney for the Plaintiff Class in *Palmigiano*, the RICJOC, and various Department of Corrections officials and corrections officers. Moreover, Mr. Chase raised the same issues including inadequacy of the law library; the State's non-

compliance with certain settlement agreements; attorney malpractice; and various forms of retaliation for grievance filing. While dismissal based on Rule 8 is a drastic remedy, this Court takes this action in large part because of the explicit warning the Magistrate Judge gave Mr. Chase in his previously filed and dismissed action.

The First Circuit has upheld a district court's dismissal for noncompliance with Rule 8 based on a complaint that was "confused, ambiguous, vague, or otherwise unintelligible." *Miranda v. U.S.*, 105 Fed. Appx. 280, 281 (1st Cir. 2004) (quoting *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir.1988)). Recognizing that the Court's decision to dismiss the complaint was harsh, the First Circuit nevertheless affirmed that decision, finding the complaint "prolix, disjointed, replete with legal conclusions, and [] often difficult if not impossible to tell [to what] [] the allegations relate...." *Miranda*, 105 Fed. Appx. at 281; see 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1281, at 522 (2d ed. 1990)("Unnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage").

Moreover, Mr. Chase attempts to raise unrelated claims of breach of contract, bad faith, a defective advisory committee, conspiracy, retaliation, various acts of due process violations and legal malpractice, as well as allegations of a deficient law library against fourteen named defendants in violation of Federal Rule of Civil Procedure Rule 18. While Rule 18(a) permits a plaintiff to bring multiple claims against a defendant in a single action, "it does not permit the joinder of unrelated claims against different defendants." *Spencer v. Bender*, CA No. 08-11528-RGS, 2010 WL 1740957, at *2 (D.Mass. Apr. 28, 2010) (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)). Certainly, many of the named defendants are state agents, but the similarity ceases there. A number of the counts alleged against the State Defendants name only one, two or

three of the fourteen named defendants; Mr. Chase is not alleging all nineteen counts against all fourteen named defendants. Moreover, the Court finds that “[t]he overdose of fact-laden surplusage in the second amended complaint places an ‘unjustified [and unduly prejudicial] burden’ on Defendants because, in order for them to respond, they would be ‘forced to select relevant material from a mass of verbiage.’” *Peabody v. Griggs*, C.A. No. 08-243-ML, 2009 WL 3200686, at *10 (D.R.I. Oct. 06, 2009) (citation omitted). This Court, therefore, is compelled to dismiss Mr. Chase’s action. In light of that decision, Mr. Chase’s Motion to Defer Summary Judgment until Afforded Discovery (ECF No. 104) is denied as moot.

IV. CONCLUSION

For the reasons stated, Mr. Chase’s Motion to Defer Summary Judgment until Afforded Discovery (ECF No. 104) is DENIED as moot and Defendants’ Motion to Dismiss (ECF No. 75) is GRANTED as to all Defendants and all Counts.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", written in a cursive style. The signature is positioned above a horizontal line.

John J. McConnell, Jr.
United States District Judge
December 13, 2012