UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

NOEL L. BROWN, CEO of Kings Realty Mgmt. LLC, *et al.*, Plaintiffs	)	CIVIL ACTION NO. 3:18-CV-155
	)	(MANNION, D.J.)
v.	)	(ARBUCKLE, M.J.)
WAYNE COUNTY, PENNSYLVANIA, *et al.*, Defendants	)	

REPORT AND RECOMMENDATION

I. INTRODUCTION

Plaintiff Noel L. Brown ("Plaintiff"), who was convicted in state court, now sues in federal court on behalf of himself, his family, and his business, alleging constitutional violations against individuals involved in his arrest, his criminal trial, and his confinement in prison. On January 11, 2018, Plaintiff, a state prisoner and the "CEO of King Realty Management, LLC," initiated this *pro se* civil rights action by filing a Complaint in the Eastern District of Pennsylvania. Along with Plaintiff, Sheron A. Chambers, Dryah K. Brown, Neija M. Brown, and Nyia N. Brown were listed as plaintiffs.[1] On January 23, 2018, this action was transferred to the Middle District of Pennsylvania. Presently before the Court are three (3) Motions to Dismiss (Doc. 41, Doc. 44, Doc. 49). For the reasons that follow, I RECOMMEND that all

[1] These plaintiffs have been terminated from the case. I explain each termination later in this Report.

three Motions to Dismiss be GRANTED, the remaining claims be DISMISSED pursuant to 28 U.S.C. § 1915A, and Plaintiff be GRANTED leave to amend his Complaint.

II. FACTUAL BACKGROUND

In the Complaint, Plaintiff makes the following allegations:

A. CLAIMS RELATED TO PLAINTIFF'S MAY 2015 ARREST

Plaintiff makes a series of allegations about events that transpired on or around May 29, 2015—the date he was charged with simple assault and harassment in Monroe County. *Commonwealth v. Brown*, MJ-43304-CR-0000110-2015. On July 10, 2015, the charges were dismissed. *Id.*

Plaintiff alleges that, on May 29, 2015, Pennsylvania State Police Officers from the Fern Ridge Barracks arrested Plaintiff without a warrant; illegally searched Plaintiff's home; and illegally searched Plaintiff's business. (Doc. 4, p. 9, ¶ 8). Plaintiff does not identify the individual officers who made the arrest or conducted the searches.

B. CLAIMS RELATED TO PLAINTIFF'S JUNE 2016 ARREST & COURT PROCEEDINGS

Plaintiff makes a series of allegations about events that transpired on or around June 30, 2016, in Wayne and Monroe Counties. Although Plaintiff names both Wayne County and Monroe County as defendants in this case, the only involvement of the county itself appears to be that certain events occurred there. Plaintiff has

alleged wrongdoing by certain Wayne County employees (Defendants Krempasky, Bishop, and Rivardo of Wayne County), but does not set forth any theory as to how Wayne County is liable for the acts allegedly undertaken by the county employees. Plaintiff does not name any Monroe County employee as a defendant.

Plaintiff's claims appear to arise from a June 30, 2016 arrest and prosecution on the charges of: interference with custody of children (count 1); dissemination of photo/film of child sex acts (count 2); corruption of minors (count 3); selling or furnishing alcohol to minors (count 4); trafficking in minors (count 5); and unlawful restraint of minor/not parent—involuntary servitude (count 6). *Commonwealth v. Brown*, No. CP-64-CR-0000258-2016 (Pa. Ct. of Com. Pl. 2016). Plaintiff was found guilty of counts one through five after a two-day trial which began on November 7, 2016. *Id.* Count six was dismissed. *Id.* Plaintiff was sentenced on February 3, 2017. *Id.*

On some unspecified date, non-party employees of Monroe County interviewed Plaintiff's children while they were at school without notifying Plaintiff—the custodial parent. (Doc. 4, p. 9, ¶ 10).

On June 30, 2016, two Pennsylvania State Police Officers assigned to the Honesdale Barracks (Defendants Palmer and Brown) searched Plaintiff's home, as well as a locked office located inside Plaintiff's home and seized certain property that belonged to Plaintiff. *Id.* at p. 6, ¶ 1. It is not clear from the face of Plaintiff's

complaint whether the search was conducted with a warrant, or whether the property seized was then used as evidence against Plaintiff during his criminal trial.[2]

Plaintiff alleges that he was arrested by two Pennsylvania State Police Officers assigned to the Swiftwater Barracks in Monroe County (Defendants O'Brien, Diehl) without being provided a *Miranda* warning. *Id.* at p. 8, ¶ 5. Plaintiff alleges that, upon his arrest he was transported to the "wrong judicial district," by Defendants Palmer, Brown, Jezercak, and Yeager (from the Honesdale Barracks), and Defendants O'Brien and Diehl (from the Swiftwater Barracks). Plaintiff does not identify where he was transported or why he believes it was the wrong judicial district.

Plaintiff also names the District Attorney's Office of Wayne County as a defendant. His claim against the office relates to conduct of Attorney Janine Edwards—who is *not* named as a defendant in this case—during Plaintiff's July 18, 2016 preliminary hearing, and in statements made in the Commonwealth's August

[2] The State Court Docket sheet associated with Plaintiff's criminal case shows that Plaintiff filed Motions for Return of Property on November 14, 2016 and November 30, 2016. *Commonwealth v. Brown*, CP-64-CR-0000258-2016 (Pa. Ct. Com. Pl.). Plaintiff's Motions were denied in State Court on February 6, 2017. *Id.* Plaintiff filed a third Motion for Return of Property on February 13, 2017. *Id.* It was denied on February 14, 2017. *Id.* It is not clear whether the property that Plaintiff requested be returned was the same property he alleges was improperly seized by Defendants Palmer and Brown.

25, 2016 response to Plaintiff's omnibus pretrial motion. *Id.* at p. 7, ¶ 3; *see also Commonwealth v. Brown*, No. CP-64-CR-0000258-2016 (Pa. Ct. of Com. Pl.).

The Wayne County Public Defender's Office assigned an attorney to represent Plaintiff. On November 7, 2016—the first day of Plaintiff's criminal trial—Plaintiff asked his appointed attorney to subpoena several witnesses. (Doc. 4, p. 8, ¶ 6). The appointed attorney did not comply with Plaintiff's request. *Id.*

One witness who apparently did testify at trial is Defendant Jacer, a Days Inn employee who, according to the Complaint, incorrectly identified Plaintiff as a hotel guest. *Id.* at p. 8, ¶ 7. Plaintiff names both Defendant Jacer, and his employer, Defendant Days Inn Tannersville Hotel, as defendants.

Last, Plaintiff alleges that, on the final day of his criminal trial, an employee of the Wayne County Sheriff's Office (Defendant Krempasky) attempted to corrupt the jury. *Id.* at p. 7, ¶ 3. It is not clear from Plaintiff's complaint what actions Defendant Krempasky took in his attempt to corrupt the jury.

C. Claims Related to Plaintiff's Pretrial Detention at Wayne County Correctional Facility

Before his trial, Plaintiff was housed at the Wayne County Correctional Facility. He makes several allegations that he was mistreated at this facility.

Plaintiff alleges that he was served either the wrong food, or dangerously undercooked food on July 23, 2016 and August 9, 2016. *Id.* at p. 10, ¶¶ 11, 12. Plaintiff has a vegan diet. Although this food made Plaintiff violently ill, his requests

to see a dietitian and physician were denied. *Id.* at p. 10, ¶ 13. On October 2, 2016, Plaintiff was taken to the medical department because he was suffering from frequent dizziness, headaches, abdominal pain, vomiting, diarrhea, and blackouts. *Id.* at p. 11, ¶ 15. Plaintiff asked to be transported to the hospital. *Id.* His request was denied. *Id.* Plaintiff does not identify which Wayne County Correctional Facility employees provided the wrong or undercooked food, refused his requests for medical treatment, or refused his request to be taken to a hospital.

Plaintiff also alleges that he was physically mistreated while at Wayne County Correctional Facility awaiting trial. On August 2, 2016, Plaintiff alleges that Defendant Rivardo escorted Plaintiff to his cell, asked Plaintiff to strip, and conducted a body cavity search. *Id.* at p. 10, ¶ 14. Plaintiff also alleges that, on October 14, 2016, he was "Savagely Beating [sic] and Tazed [sic], held in an illegal choke hold, cuffed in an illegal manner, causing Plaintiff to Urinate Blood, Swelling of both Plaintiff Hands." *Id.* at p. 11, ¶ 17. Plaintiff does not identify who administered this beating.

Plaintiff also alleges that employees at Wayne County Correctional Facility interfered with Plaintiff's ability to file institutional grievances. Plaintiff alleges that, on October 4, 2016, Defendant Bishop told Plaintiff to stop filing grievances. *Id.* at p. 11, ¶ 16. Three days later Plaintiff asked an unidentified prison employee for a

grievance form, but the prison employee refused to give him one. *Id.* Later that day, Plaintiff was denied food. *Id.* Plaintiff does not identify who denied him food. *Id.*

D. CLAIMS RELATED TO PLAINTIFF'S INCARCERATION AT SCI CAMP HILL

For some period, Plaintiff was housed at SCI Camp Hill. Plaintiff makes a series of allegations regarding the poor treatment he received there. Although he does identify specific individuals in some of these allegations (Corrections Officer B.R. Broone, Corrections Officer Kistler, Corrections Officer Wallace, Sergeant Alvarez, and Secretary John Wetzel), the only Defendants named in his Complaint are SCI Camp Hill and the Pennsylvania Department of Corrections.

Specifically, Plaintiff alleges that while at SCI Camp Hill: Correction Officer Broone intentionally served him a non-vegan meal, *Id.* at p. 12, ¶ 18; an unnamed prison employee served him a non-vegan meal designed to look like a vegan meal on October 16, 2017, *Id.* at p. 13, ¶ 21; someone forced him to "do DNA," *Id.* at p. 12, ¶ 19; he was denied access to the law library, *Id.*; and on September 20, 2017, Corrections Officers Kistler and Wallace, Sergeant Alvarez, and an inmate searched through Plaintiff's legal materials and took some unspecified items, *Id.* at p. 12, ¶ 20.

E. CLAIMS RELATED TO PLAINTIFF'S POST OFFICE BOX

In July 2016, the Defendant Post Office changed the number of Plaintiff's post office box without his consent. *Id.* at p. 9; ¶ 9. Plaintiff does not assert any specific legal claim, he merely requests monetary damages for the inconvenience. *Id.*

III. PROCEDURAL HISTORY

On January 11, 2018, Plaintiffs Sheron A. Chambers, Noel Brown, Dryah Brown, Neija Brown, and Nyia Brown filed a Complaint (Doc. 1) in the Eastern District of Pennsylvania. Together with this Complaint, Plaintiff filed a Motion requesting leave of Court to proceed *in forma pauperis*. (Doc. 5). In his Complaint, Plaintiff named the following twenty-three (23) Defendants:

(1) Wayne County Pennsylvania;

(2) P.S.P. Honesdale Barracks;

(3) Sharon Palmer, T.P.R. of Honesdale Barracks;

(4) Michael Brown, C.P.L. of Honesdale Barracks;

(5) Michael Jezercak, C.P.L. of Honesdale Barracks;

(6) Robert Yeager, T.P.R. of Honesdale Barracks;

(7) Sheriff Department of Wayne County;

(8) Sergeant Krempasky, of Wayne County Sheriff Department;

(9) Public Defender's Office of Wayne County;

(10) District Attorney Office of Wayne County;

(11) Wayne County Correctional Facility;

(12) Kevin Bishop, Warden of Wayne County Correctional Facility;

(13) Lt. Rivardo of Wayne County Correctional Facility;

(14) Monroe County, Pennsylvania;

(15) PSP Swiftwater Barracks;

(16) Tom O'Brien, T.P.R. of Swiftwater Barracks;

(17) T.P.R. Diehl of Swiftwater Barracks

(18) Days Inn Tannersville Hotel;

(19) Camilo Jacer, Manager of Days in Tannerville Hotel;

(20) P.S.P. Fern Ridge Barracks;

(21) Brodheadsville Post Office of Monroe County Penn;

(22) Department of Corrections, Commonwealth of Pennsylvania;

(23) State Correctional Institution, Camp Hill.

(Doc. 4).

The matter was transferred to the Middle District of Pennsylvania on January 17, 2018. (Doc. 2). On June 11, 2018, Plaintiff paid the required filing fee. Plaintiff's Motion to proceed *in forma pauperis* was denied as moot. (Doc. 12).

On April 10, 2019, I issued an Order (Doc. 14) directing Plaintiffs Sheron Chambers, Dryah Brown, Neija Brown, and Nyia Brown to each either file a completed motion requesting leave of court to proceed in forma pauperis or each pay

the required $400.00 filing fee on or before May 10, 2019. Plaintiffs Sheron Chambers, Dryah Brown, Neija Brown, and Nyia Brown either did not file the correct application to proceed in forma pauperis or did not file an application at all. On May 20, 2019, I issued a Report and Recommendation, recommending that the claims asserted by Plaintiffs Neija Brown and Nyia Brown be dismissed. (Doc. 28). On July 12, 2019 I issued another Report and Recommendation, recommending that all claims asserted by Plaintiffs Sheron Chambers and Dryah Brown be dismissed. (Doc. 39). Judge Mannion adopted both of my Report and Recommendations and dismissed the claims filed by Neija Brown, Nyia Brown, Sheron Chambers, and Dryah Brown – terminating these plaintiffs from the case. (Doc. 38, Doc. 58).

On July 19, 2019, Defendants Kevin Bishop, District Attorney Office of Wayne County, Krempasky, Public Defenders Office of Wayne County, Rivardo, Sheriff Department of Wayne County, Wayne County, and Wayne County Correctional Facility filed a Motion to Dismiss (Doc. 41) and Brief in Support (Doc. 42).

On July 24, 2019, Defendants Department of Corrections and SCI Camp Hill filed a Motion to Dismiss (Doc. 44). On August 1, 2019, Defendants Michael Brown, Michael Jezercak, Tom O'Brien, PSP Fernrige Barracks, PSP Honesdale Barracks, PSP Swiftwater Barracks, Sharon Palmer, TPR Diehl of Swiftwater Barracks, and Robert Yeager filed a Motion to Dismiss (Doc. 49). On August 7, 2019, Defendants

Michael Brown, Department of Corrections, Michael Jezercak, Tom O'Brien, PSP Fernrige Barracks, PSP Honesdale Barracks, PSP Swiftwater Barracks, Sharon Palmer, SCI Camp Hill, TPR Diehl of Swiftwater Barracks, and Robert Yeager filed a Brief in Support (Doc. 55) regarding their Motions to Dismiss.[3]

In response to Defendants' Motions to Dismiss, Plaintiff filed a Brief in Opposition (Doc. 60) on August 19, 2019 and another Brief in Opposition (Doc. 65) on October 30, 2019.

Defendants' Motions to Dismiss are now ripe for disposition. For the reasons below, I recommend that Defendants' Motions to Dismiss be granted.

IV. LEGAL STANDARDS

A. MOTION TO DISMISS STANDARD

A motion to dismiss tests the legal sufficiency of a complaint. It is proper for the court to dismiss a complaint in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure only if the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When reviewing a motion to dismiss, the court "must accept all factual allegations in the complaint as true, construe the complaint in the light most favorable to the plaintiff, and ultimately determine

[3] Although these Defendants filed separate Motions to Dismiss (Doc. 44, Doc. 49), they filed a joint Brief in Support (Doc. 55) and raise arguments related to each of these eleven defendants in this Brief.

whether Plaintiff may be entitled to relief under any reasonable reading of the complaint." *Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010). In review of a motion to dismiss, a court must "consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the [plaintiff's] claims are based upon these documents." Id. at 230.

In deciding whether a complaint fails to state a claim upon which relief can be granted, the court is required to accept as true all factual allegations in the complaint as well as all reasonable inferences that can be drawn from the complaint. *Jordan v. Fox Rothchild, O'Brief & Frankel, Inc.*, 20 F.3d 1250, 1261 (3d Cir. 1994). These allegations and inferences are to be construed in the light most favorable to the plaintiff. *Id.* The court, however, "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). Further, it is not proper to "assume that the [plaintiff] can prove facts that [he] has not alleged." *Associated Gen. Contractors of Cal. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983).

"A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, a complaint must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. *Id.* To

determine the sufficiency of a complaint under the pleading regime established by the Supreme Court, the court must engage in a three-step analysis:

> First, the court must take note of the elements a plaintiff must plead to state a claim. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, where they are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.

Santiago v. Warminister Twp., 629 F.3d 121, 130 (3d Cir. 2010) (quoting *Iqbal*, 556 U.S. at 675, 679). "In other words, a complaint must do more than allege the plaintiff's entitlement to relief" and instead must "'show' such an entitlement with its facts." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009).

As the Court of Appeals has observed:

> The Supreme Court in *Twombly* set forth the "plausibility" standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955. A complaint satisfies the plausibility standard when the factual pleadings "allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S.Ct. at 1949 (citing *Twombly*, 550 U.S. at 556, 127 S.Ct. 1955). This standard requires showing "more than a sheer possibility that a defendant has acted unlawfully." *Id.* A complaint which pleads facts "merely consistent with" a defendant's liability, "stops short of the line between possibility and plausibility of 'entitlement of relief.'" *Id.* (citing *Twombly*, 550 U.S. at 557, 127 S.Ct. 1955).

Burtch v. Millberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011).

V. ANALYSIS

A. PLAINTIFF CANNOT PROCEED *PRO SE* ON BEHALF OF HIS REAL ESTATE COMPANY

Plaintiff appears to have filed this action, in part, on behalf of Kings Realty MGMT, LLC. Plaintiff is not allowed to represent the interests of a business entity as a *pro se* litigant. If he wishes to do so, he must hire an attorney.

> Appearances in federal court are governed by 28 U.S.C. § 1654, which provides that "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." The United States Supreme Court has interpreted that statute to provide "that a corporation may appear in the federal courts only through licensed counsel." *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 202, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993). Further, the Court held that "the rationale for that rule applies equally to all artificial entities. Thus, save in a few aberrant cases, the lower courts have uniformly held that 28 U.S.C. § 1654 . . . does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney." *Id.* (citations omitted). Indeed, most courts have held that a partnership is not permitted to proceed *pro se*, but rather must be represented by counsel. *See Lattanzio v. COMTA*, 481 F.3d 137, 139–40 (2d Cir. 2007); *Eagle Assocs. v. Bank of Montreal*, 926 F.2d 1305, 1308–09 (2d Cir. 1991); *Phillips v. Tobin*, 548 F.2d 408, 411 (2d Cir.1976) (quoting *Turner v. Am. Bar Ass'n*, 407 F.Supp. 451 (N.D. Tex. 1975)); *S. Stern & Co. v. United States*, 331 F.2d 310, 51 C.C.P.A. 15 (Cust. & Pat. App.1963); *Move Org. v. United States Dep't of Justice*, 555 F.Supp. 684, 693 (E.D. Pa. 1983); *First Amendment Found. v. Brookfield*, 575 F.Supp. 1207 (D.Ill.1983); *but see United States v. Reeves*, 431 F.2d 1187 (9th Cir. 1970).

Ross v. Panteris & Panteris, LLP, No. 12-6096, 2013 WL 5739145, at *8 (D.N.J. Oct. 22, 2013). Any claims Plaintiff brings on behalf of Kings Realty MGMT, LLC

should be dismissed. I also note that from the Complaint it is not clear if the company suffered any harm.

B. LACK OF PERSONAL INVOLVEMENT

A number of Plaintiff's claims fail due to lack of personal involvement by Defendants. "Section 1983 imposes civil liability upon any person who, acting under the color of state law, deprives another individual of any rights, privileges, or immunities secured by the Constitution or laws of the United States." *Shuman v. Penn Manor Sch. Dist.*, 422 F.3d 141, 146 (3d Cir. 2005). Liability in a § 1983 action is personal in nature, and to be liable, a defendant must have been personally involved in the wrongful conduct. In other words, defendants are "liable only for their own unconstitutional conduct." *Barkes v. First Corr. Med., Inc.*, 766 F.3d 307, 316 (3d Cir. 2014), *rev'd on other grounds sub nom. Taylor v. Barkes*, 135 S.Ct. 2042 (2015). Respondeat superior cannot form the basis of liability. *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005). "Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence." *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). As this Court has explained:

> This personal involvement can be shown where a defendant personally directs the wrongs, or has actual knowledge of the wrongs and acquiesces in them. [*Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir.1988)]; *A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center*, 372 F.3d 572, 586 (3d Cir.2004) (noting that "a supervisor may be personally liable under § 1983 if he or she participated in violating

> the plaintiff's rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced in his subordinates' violations"). Actual knowledge "can be inferred from circumstances other than actual sight." *Baker v. Monroe Twp.*, 50 F.3d 1186, 1194 (3d Cir.1995). Acquiescence is found "[w]here a supervisor with authority over a subordinate knows that the subordinate is violating someone's rights but fails to act to stop the subordinate from doing so, the factfinder may usually infer that the supervisor 'acquiesced' in (i.e., tacitly assented to or accepted) the subordinate's conduct." *Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1294 (3d Cir.1997).

Festa v. Jordan, 803 F. Supp. 2d 319, 325 (M.D. Pa. 2001) (Caputo, J.) (internal footnote omitted).

For the reasons explained herein, to the extent Plaintiff alleges a claim under 42 U.S.C. § 1983 against the following Defendants, these claims should be dismissed due to a lack of personal involvement: Wayne County; Pennsylvania Department of Corrections; SCI Camp Hill; Wayne County Correctional Facility; PSP Honesdale Barracks; PSP Swiftwater Barracks; PSP Fern Ridge Barracks; Wayne County Sheriff Department; Wayne County District Attorney's Office; Wayne County Public Defender's Office; Warden Kevin Bishop of Wayne County Correctional Facility; and Lieutenant Rivardo of Wayne County Correctional Facility.[4]

[4] Plaintiff's claims against Defendant Monroe County should also be dismissed due to lack of personal involvement. I address Plaintiff's claims against Defendant Monroe County later in this Report, because Defendant Monroe County was not a moving defendant as to any of the Motions to Dismiss.

1. Plaintiff fails to Plead a Cognizable § 1983 Claim Against Wayne County

Plaintiff names Wayne County as a defendant in this case. Plaintiff also makes allegations against the following individual county employees: Defendants Krempasky, employed by the Wayne County Sheriff's Department; Defendant Bishop, employed by the Wayne County Correctional Facility; and Defendant Rivardo, employed by the Wayne County Correctional Facility. However, Plaintiff has not articulated any theory of liability as to why Defendant Wayne County is liable for the alleged unconstitutional acts of Defendants Krempasky, Bishop, or Rivardo. Therefore, Plaintiff's § 1983 claims against Defendant Wayne County should be dismissed.

2. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against the Pennsylvania Department of Corrections

Plaintiff names the Pennsylvania Department of Corrections ("Defendant DOC") as a defendant in this case. He does not, however, name any employee of Defendant DOC as a defendant.[5] Further, Plaintiff has not alleged why Defendant DOC is liable for the alleged unconstitutional acts of its employees. Plaintiff's § 1983 claim against Defendant DOC should be dismissed.

[5] Plaintiff does allege that Secretary Wetzel failed to respond to Plaintiff's letters. Secretary Wetzel, however, is not named as a defendant in this case.

3. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against SCI Camp Hill

Plaintiff names SCI Camp Hill as a defendant in this case. Plaintiff mentions several SCI Camp Hill employees in his Complaint (Corrections Officer B.R. Broone, Corrections Officer Kistler, Corrections Officer Wallace, Sergeant Alvarez), but he does not name any of these individuals as one of the twenty three (23) named defendants in this action. Plaintiff does not articulate why Defendant SCI Camp Hill is liable for the acts of its employees under § 1983. Plaintiff's claims against Defendant SCI Camp Hill should be dismissed.

4. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against the Wayne County Correctional Facility

Plaintiff names the Wayne County Correctional Facility ("Defendant WCCF") as a defendant in this case. Plaintiff also names two employees of Defendant WCCF as defendants in this case (Defendants Bishop and Rivardo). Plaintiff makes no allegations as to why Wayne County Correctional Facility is liable for the allegedly unconstitutional acts of Defendants Bishop and Rivardo. Therefore, Plaintiff's § 1983 claims against Defendant WCCF should be dismissed.

5. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against the PSP Honesdale Barracks

Plaintiff names the PSP Honesdale Barracks as a defendant in this case. Plaintiff also names four Pennsylvania State Police Officers stationed at the Honesdale Barracks as defendants (Defendants Palmer, Brown, Jezercak, and

Yeager). Plaintiff makes no allegations as to why Defendant PSP Honesdale Barracks are liable for the allegedly unconstitutional acts of the officers stationed there. Therefore, Plaintiff's § 1983 claims against Defendant PSP Honesdale Barracks should be dismissed.

6. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against the PSP Swiftwater Barracks

Plaintiff names the PSP Swiftwater Barracks as a defendant in this case. Plaintiff also names two Pennsylvania State Police Officers stationed at the Swiftwater Barracks as defendants (Defendants O'Brien and Diehl). Plaintiff makes no allegations as to why Defendant PSP Sweetwater Barracks is liable for the allegedly unconstitutional acts of the officers stationed there. Therefore, Plaintiff's § 1983 claims against Defendant PSP Sweetwater Barracks should be dismissed.

7. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against the PSP Fern Ridge Barracks

Plaintiff names the PSP Fern Ridge Barracks as a defendant in this case. He alleges that officers at Defendant PSP Fern Ridge Baracks illegally arrested him and searched his home and business in May 2015. Plaintiff does not, however, identify which individual officers engaged in these allegedly unconstitutional acts or explain why Defendant PSP Fern Ridge Barracks is responsible for the actions of the officers involved. Therefore, Plaintiff's § 1983 claims against Defendant PSP Fern Ridge Barracks should be dismissed.

8. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against the Wayne County Sheriff's Department

Plaintiff names the Wayne County Sheriff's Department as a defendant in this case. He also alleges claims against one Sheriff's Department employee who served as a bailiff during Plaintiff's 2016 criminal trial (Defendant Krempasky). Plaintiff alleges that Defendant Krempasky engaged in unspecified conduct that corrupted the jury. He does not, however, explain why he believes Defendant Wayne County Sheriff's Department is liable under § 1983 for Defendant Krempasky's allegedly unconstitutional acts. Therefore, Plaintiff's § 1983 claims against Defendant Wayne County Sheriff's Department should be dismissed.

9. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against the Wayne County District Attorney's Office

Plaintiff names the Wayne County District Attorney's Office as a defendant in this case. His complaint also includes allegations that Attorney Janine Edwards—who is *not* named as a defendant in this case—made false statements in her capacity as a prosecutor during Plaintiff's 2016 criminal trial. Plaintiff does not articulate why Defendant Wayne County District Attorney's Office should be held liable for the allegedly unconstitutional acts of Attorney Janine Edwards. Furthermore, even if Plaintiff were to name Attorney Edwards as a defendant, she would be entitled to absolute prosecutorial immunity from Plaintiff's claims for damages.

"Although § 1983 purports to subject '[e]very person' acting under color of state law to liability for depriving any other person in the United States of 'rights, privileges, or immunities secured by the Constitution and laws,' the Supreme Court has recognized that § 1983 was not meant to 'abolish wholesale all common-law immunities.'" *Yarris v. Delaware*, 465 F.3d 129, 134-35 (3d Cir. 2006)(quoting *Pierson v. Ray*, 386 U.S. 547, 554 (1967)). There are two kinds of immunity under § 1983: qualified immunity and absolute immunity. *Id.* at 135. Although most public officials are entitled only to qualified immunity, public officials who perform 'special functions' are entitled to absolute immunity. *Id.* (quoting *Butz v. Economou*, 438 U.S. 478, 508 (1978)). "[A]bsolute immunity attaches to those who perform functions integral to the judicial process." *Williams v. Consovoy*, 453 F.3d 173, 178 (3d Cir. 2006). "This immunity was and still is considered necessary 'to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation.'" *McArdle v. Tronetti*, 961 F.2d 1083, 1084 (3d Cir. 1992) (quoting *Butz*, 438 U.S. at 512).

A functional approach is used to determine the immunity of a prosecutor. *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997). "The functions of the prosecutor encompass activities protected by both absolute and qualified immunity." *Kulwicki v. Dawson*, 969 F.2d 1454, 1465 (3d Cir. 1992). The inquiry focuses on the nature of the function performed, not the identity of the actor who performed it, and

"[u]nder this functional approach, a prosecutor enjoys absolute immunity for actions performed in a judicial or 'quasi-judicial' capacity." *Odd v. Malone,* 538 F.3d 202, 208 (3d Cir. 2008). Absolute immunity, however, does not apply to administrative or investigative actions unrelated to initiating or conducting judicial proceedings. *Id.* Prosecutors are shielded by absolute immunity for actions which are intimately associated with the judicial phase of the criminal process. *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). Such activities include activities undertaken while in court as well as selected out-of-court behavior intimately associated with the judicial phases of litigation. *Kulwicki,* 969 F.2d at 1463. The decision to initiate a prosecution is at the core of a prosecutor's judicial role, and a prosecutor is absolutely immune when making such a decision even if he or she acts without a good faith belief that any wrongdoing has occurred. *Id.* at 1463-64. A prosecutor is also entitled to absolute immunity for the preparation and filing of charging documents and arrest warrants. *Kalina,* 522 U.S. at 129. Further, "[t]he 'deliberate withholding of exculpatory information' is included within the 'legitimate exercise of prosecutorial discretion.'" *Yarris,* 465 F.3d at 137 (quoting *Imbler*, 424 U.S. at 431-32 n. 34)). Thus, '[i]t is well settled that prosecutors are entitled to absolute immunity from claims based on their failure to disclose exculpatory evidence, so long as they did so while functioning in their prosecutorial capacity." *Id.*

Plaintiff complains about Attorney Edwards' activities related to his prosecution. Because Attorney Edwards was acting in her prosecutorial capacity with respect to the actions complained of, she is entitled to absolute immunity. Similarly, Defendant Wayne County District Attorney's Office cannot be liable under § 1983 for Attorney Edwards' actions or based on a theory of failure to train or supervise the performance of Attorney Edwards' performance of prosecutorial acts. Therefore, Plaintiff's § 1983 claims against the Wayne County District Attorney's Office should be dismissed.

10. Plaintiff Fails to Plead a Cognizable § 1983 Claim Against the Wayne County Public Defender's Office

Plaintiff names the Wayne County Public Defender's Office ("Defendant Public Defender's Office') as a defendant in this case. He alleges that Defendant Public Defender's Office violated his civil rights when they appointed an incompetent attorney to assist him in his defense during this 2016 criminal trial. He is essentially arguing that Defendant Public Defender's Office is liable for the allegedly constitutionally deficient conduct of an attorney ("Appointed Attorney") it appointed. Plaintiff did not, however, name Appointed Attorney as a defendant in this case. Without naming Appointed Attorney as a defendant, and proving that his conduct was constitutionally deficient, Defendant Public Defender's Office cannot be held liable.

Furthermore, even if Plaintiff had named Appointed Attorney as a defendant, his § 1983 claim would fail because an appointed attorney is not a state actor. Counsel, whether court appointed or privately retained, does not act under color of law when representing clients in a legal capacity. *See Polk County v. Dodson*, 454 U.S. 312, 325, 102 S.Ct. 445, 453, 70 L.Ed.2d 509 (1981) (holding that public defender not acting under color of state law); *Steward v. Meeker*, 459 F.2d 669, 669 (3d Cir. 1972) (holding that privately-retained counsel not acting under color of state law when representing client); *Thomas v. Howard*, 455 F.2d 228, 229 (3d Cir. 1972) (holding that court-appointed pool attorney not acting under color of state law). Therefore, Plaintiff's § 1983 claim against Defendant Public Defender's Office should be dismissed.

C. PLAINTIFF'S CLAIMS THAT HE WAS ILLEGALLY TRANSPORTED TO THE INCORRECT JUDICIAL DISTRICT BY DEFENDANTS PALMER, BROWN, JEZERCAK, AND YEAGER ARE *HECK*-BARRED

In paragraphs two and five of his Complaint, Plaintiff states as follows:

> #2. On June 30, 2016. P.S.P. Honesdale, Troopers T.P.R. Sheron (sic) Palmer, C.P.L. Michael Brown, C.P.L. Michael Jezercak, and T.P.R. Robert Yeager, violated Plaintiffs Mr. Noel Brown Civil Rights and rights of the Accused section #9131 Pennsylvania criminal Rules #518, 519 of Judiciary & Judicial procedure. No persons arrested upon such warrant shall be delivered over to the agency whom the Executive Authority Demanding Him, unless she shall first be taken forth with before a Judge of a Court of Record in the Commonwealth the County in which the Arrest is made, and in which the Accused is in Custody, further-more [sic] if a preliminary Arraignment is conducted and the Defendant does not post bail, the issuing authority who conducted the preliminary arraignment shall commit the defendant to jailin [sic] the

> judicial district in which the defendant was arrested. Rule [sic] 519 state when a defendan [sic] has been arrested without a warrant in a court case, a complaint shall be filed against the defendant and the defendant shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. For the June 30, 2016 Violation of Plaintiffs Noel L. Brown, also the the [sic] kidnapping of the Plaintiff by illegal transport out of the proper Judicial District, by Troopers named in the above complaints.
>
> [P]laintiff now seeks monetary Damages in the Sum of $40,000,000 Plus Punitive Damages in the Sum of $20,000,000.
>
> #5. On June 30, 2016 Swiftwater Barracks State Troopers, Tom O'Brian (sic) and Tpr. Diehl, Arrested Plaintiff in Monroe County with out a Warrant.
>
> The Arrest of Plaintiff Noel L. Brown was done without Plaintiff being Memoranad [sic] by the Arresting Officer. Plaintiff was not taken to the Proper Authority for Processing at the Judicial District in which the Plaintiff was Arrested.
>
> Plaintiff is now seeking $70,000,000 for the Illegal Arrest and clear Violation of his civil and constitutional Rights resulting from his arrest in Monroe County by PSP. Swiftwater State police. Plaintiff also seeks Punitive Damages in the Sum of $70,000,000.

(Doc. 4, pp. 6, 8, ¶¶ 2, 5).

To the extent Plaintiff argues that there were defects in his arrest that would invalidate his conviction, these claims are barred under *Heck v. Humphrey,* 512 U.S. 477 (1994). In *Heck,* the United States Supreme Court held that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a Section 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state

tribunal authorized to make such [a] determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." *Id.* at 486-87, 490 (footnote omitted). "Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.*

The rationale of the Court in *Heck* was based, in part, on a desire to avoid parallel litigation over the issues of probable cause and guilt, to prevent the creation of two conflicting resolutions arising out of the same transaction, and to preclude a convicted criminal defendant from collaterally attacking a conviction through a civil suit. *Royal v. Durison,* 254 F. App'x 163, 165 (3d Cir. 2007). Even if the plaintiff has exhausted available state remedies, his § 1983 cause of action is deferred unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus. *Heck,* 512 U.S. at 489. Plaintiff has not demonstrated that his conviction or sentence has already been invalidated. Plaintiff's claims against Defendants Palmer, Brown, Jezercak, and Yeager fail and should be dismissed.

D. PLAINTIFF'S CLAIM AGAINST DEFENDANT KREMPASKY IS *HECK*-BARRED

In paragraph three of his Complaint, Plaintiff alleges:

> On NOVEMBER 08, 2016, at the Wayne County Court House. Court Room #2, at the trial of Plaintiff Noel Brown, in the Presence of the Jury. Wayne County Sheriff Department, and sergeant Krem-papasky [sic] Sergeant Krempasky works as a Bailiff in the Court Room #2 In the Sheriff attemp [sic] to Corroped [sic] the out-come and Verdict of the Jury, the Sheriff was in charge of at the time of Plaintiffs Trial. Sergeant Krempasky did Commit a Crime against mr. [sic] Noel Brown Plaintiff in this civil action, by her (sic) Allegations of the Commencement of a crime by the Plaintiff, while plaintiff awaits the Verdict of the Jury.
>
> Wayne County Sheriff Sergeant Krempasky Speculations were Prejudice, Slanderous, Libel and a Defraмation [sic] of Plaintiff Charractor [sic] were also Intentional.
>
> Plaintiff now seeks Monetary Damages int the Sum of $20,000,000. Plaintiff also seeks Monetary Damages in the Sum of 20,000,000.

(Doc. 4, p. 7, ¶ 3).

For the same reasons explained in Section V. Subsection C. of this Report, Plaintiff's request for civil damages against Defendant Krempasky related to his conduct during Plaintiff's jury trial is barred by *Heck v. Humphrey*, because a judgment in Plaintiff's favor would imply the invalidity of his criminal sentence.

To the extent that Plaintiff alleges a state tort defamation type claim, the facts alleged are insufficient to state a claim.

E. PLAINTIFF FAILS TO ADEQUATELY PLEAD HIS ILLEGAL SEARCH CLAIMS AGAINST DEFENDANTS PALMER AND BROWN

In paragraph 1 of his Complaint, Plaintiff alleges:

> On June 30, 3016 the home and office of plaintiffs [sic] Business not named in any purpose of warrant and had no approval of search warrant applications filed by the defendants P.S.P Honesdale and T.P.R. Sharon Palmer of the P.S.P. Honesdale, or C.P.L. Michael Brown, also of the Pennsylvania State Police. Offers by way of Forcibly Entry, Entered and conducted an Exploratory Search of Plaintiffs [sic] Office, Desk, Files, Reading Confidential Office Mails, Documents, Etc. The Troopers manner of entry into plaintiffs [sic] Pre-mises, was through a Locked Entry Door clearly marked Office of Kings Realty MGMT LLC. Private Absolutely No Trasspass. [sic] State Troopers removed from the Plaintiffs [sic] Legal Registered Office Computers, several Laptops, cell Phones, other office Equipment Troopers also removed several Patents Drawings filed and un filed with the Patent Office. The illegal Search of Plainitffs [sic] Office compermized [sic] Trademarks, Business Plans, Confidential Client Contracts. Honesdale Troopers removed in Cash the Sum of $77,000. Money was not mentioned in the return of service and Inventory. For the above prejudice and clear violations of plaintiffs Mr. Noel Brown of Kings Realty MGMT llc. #4 amendment of the Constitution of the United States, and the Constitution of the commonwealth of Pennsylvanias Article #1 Declaration of Rights sec#08 Security from Search and Seizures of Plaintiff's Mobile Office Equiptments, namely Plaintiff Samsung Note Book with Black case and #16 GB sim card RF#2DC0q73DM, and #32GB sim card along with the T-Mobile Hot spot Device.

(Doc. 4, p. 6, ¶ 1).

I construe these allegations as a claim that Defendants Palmer and Brown violated Plaintiff's rights under the Fourth Amendment when they searched his home and home office on June 30, 2016. The Fourth Amendment, made applicable to the states by the Fourteenth Amendment, provides that "[t]he right of the people

to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. A search under the Fourth Amendment occurs when the government physically intrudes on one's constitutionally protected areas, *Florida v. Jardines*, 569 U.S. 1, 5 (2013), or invades one's reasonable expectation of privacy. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring); *Kyllo v. United States*, 533 U.S. 27, 33 (2001). Plaintiff alleges that Defendants Palmer and Brown entered and searched his home and business without a warrant. However, a search by law enforcement without a warrant is not automatically illegal. "One well-recognized exception [to the warrant requirement] applies when the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." *Kentucky v. King*, 563 U.S. 452, 460 (2011). As pleaded, Plaintiff has not sufficiently alleged an illegal search and violation of his Fourth Amendment rights. Further, as stated above, Plaintiff, as a *pro se* plaintiff, cannot allege claims on behalf of his business. Thus, Plaintiff's claims against Defendants Palmer and Brown should be dismissed.

F. PLAINTIFF'S CLAIMS AGAINST DEFENDANTS WARDEN BISHOP AND LIEUTENANT RIVARDO OF WAYNE COUNTY CORRECTIONAL FACILITY FAIL

Plaintiff names Warden Bishop and Lieutenant Rivardo (collectively "Supervisory Defendants") as defendants. Supervisory Defendants are prison

officials at WCCF. Plaintiff fails to sufficiently allege that Supervisory Defendants actually took part in the conduct that gave rise to his claim.

Plaintiff alleges that Defendant Warden Bishop told him "not to write anymore Grievance (sic) or Else." (Doc. 4, p. 11, ¶ 16). "Mere threatening language and gestures of a custodial officer do not, even if true, amount to constitutional violations." *Lewis v. Wetzel*, 153 F. Supp. 3d 678, 698 (M.D. Pa. 2015). To state a constitutional claim, the verbal threats must be accompanied by some reinforcing act that "escalated the threat beyond mere words." *Id.* at 698. Regarding Defendant Warden Bishop, Plaintiff has not alleged more than mere words. Without more, Plaintiff has failed to sufficiently allege a constitutional violation. Plaintiff's claim against Defendant Warden Bishop fails and should be dismissed.

Plaintiff alleges that

> At the Wayne county correctional Facility on 08-02-2016 time 14:08 hours Plaintiff was taken by the staff of WCCF. Lt. Rivardo Plaintiff was removed from the Gym and back to Plaintiff Cell In the Housing Unit alone were Plaintiff was force to Stripp (sic) named, WCCF, officers conducted caverty (sic) Search using Threats of being Tazzed (sic).

(Doc. 4, p. 10, ¶ 14).

Plaintiff alleges that Defendant Lieutenant Rivardo was present when Plaintiff was removed from the gym and strip searched. However, it is not clear to what extent Defendant Lieutenant Rivardo was involved in the alleged conduct. Even if Defendant Lieutenant Rivardo was personally involved in the strip search, Plaintiff's

constitutional rights were not violated. An inmate retains some constitutional protection under the Fourth Amendment against unreasonable searches, but this protection is limited to the need to maintain prison security and the inmate's own reduced expectation of privacy. *Bell v. Wolfish*, 441 U.S. 520, 558-60 (1979). A strip search must be conducted in a reasonable manner. *Id.* at 560. Based on Plaintiff's allegations, the strip search does not appear to be done in an unreasonable manner. Further, even if Defendant Lieutenant Rivardo threatened to use a taser on Plaintiff, Plaintiff's claim fails. Threats, without more, are insufficient to establish a constitutional violation. Plaintiff's claims against Defendant Lieutenant Rivardo fail and should be dismissed. Thus, Plaintiff's claims against Supervisory Defendants should be dismissed.

G. PLAINTIFF'S CLAIMS AGAINST DEFENDANTS O'BRIEN AND DIEHL OF PSP SWIFTWATER BARRACKS FAIL

Plaintiff names Pennsylvania State Police Officers O'Brien and Diehl (collectively "Defendant State Troopers") as defendants. Plaintiff alleges that Defendant State Troopers arrested him without a warrant. (Doc. 4. p. 8, ¶ 5). Plaintiff also alleges that the arrest "was done without Plaintiff being Memorandad (sic) by the Arresting Officer," and "Plaintiff was not taken to the Proper Authority for Processing at the Judicial District in which the Plaintiff was Arrested." *Id.*

Plaintiff's claim that he was not "Memorandad" or processed properly fails. It is unclear what Plaintiff is alleging, although I assume he means "Mirandized,"

and he does not allege any injury from this alleged improper process. This claim should be dismissed.

Plaintiff's other claim against Defendant State Troopers is that he was unlawfully arrested. However, Plaintiff's claim fails, because he alleges that the arrest was unlawful simply because Defendant State Troopers did not have a warrant for his arrest. Under the Fourteenth Amendment, an arrest without probable cause is a constitutional violation that may be redressed under § 1983. *See Walmsley v. Philadelphia*, 872 F.2d 546, 551 (3d Cir. 1989) (citing *Patzig v. O'Neil*, 577 F.2d 841, 848 (3d Cir. 1978). In order to successfully make a false arrest claim, a plaintiff must demonstrate that police lacked probable cause to arrest. *Groman v. Twp. of Manalapan*, 47 F.3d 628, 634 (3d Cir. 1995). Plaintiff has not done so. Plaintiff merely alleges that Defendant State Troopers did not have a warrant for his arrest. Plaintiff's claims against Defendant State Troopers fail and should be dismissed.

VI. SCREENING AND DISMISSAL OF PRISONER CLAIMS AGAINST NON-MOVING DEFENDANTS: MONROE COUNTY, DAYS INN TANNERSVILLE HOTEL, CAMILO JACER, AND BRODHEADSVILLE POST OFFICE OF MONROE COUNTY

Under 28 U.S.C. § 1915A, federal district courts must "review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). If a complaint fails to state a claim upon which relief may be granted, the Court must dismiss the complaint.

Of the twenty-three individuals and entities named as defendants in the Complaint, twenty-one are government officials. Furthermore, as summarized above, Plaintiff has raised several claims relating to the conditions of his pre- and post-trial confinement at Wayne County Correctional Facility and SCI Camp Hill. Therefore, the screening provisions of 28 U.S.C. § § 1915A and 42 U.S.C. § 1997e(c)(1) apply in this case even though Plaintiff has paid the filing fee. *See Stringer v. Bureau of Prisons*, 145 F. App'x 751, 752 (3d. Cir. 2005) (noting that Section 1915A(b)(1) is applicable to all prisoner lawsuits regardless of whether the litigant paid the fee all at once or in installments).

This statutory text of both of these statutes mirrors the language of Rule 12(b)(6) of the Federal Rules of Civil Procedure, which provides that a complaint should be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

"Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 677-78 (2009). The statement required by Rule 8(a)(2) must give the defendant fair notice of what the plaintiff's claim is and of the grounds upon which it rests. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Detailed factual allegations are not required, but more is required than labels, conclusions, and a formulaic recitation of the elements of a cause of action. *Bell Atlantic Corp. v.*

Twombly, 550 U.S. 544, 555 (2007). "In other words, a complaint must do more than allege the plaintiff's entitlement to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 211 (3d Cir. 2009). "A complaint has to "show" such an entitlement with its facts." *Id.*

A. PLAINTIFF FAILS TO PLEAD A COGNIZABLE § 1983 CLAIM AGAINST MONROE COUNTY

Plaintiff names Monroe County as a defendant in this case. He does not, however, make any allegation against an individual employed by Defendant Monroe County. He does allege that Defendant Monroe County employees interviewed his children at school, but he does not identify those employees. Since there is no underlying claim against any Defendant Monroe County employee, Plaintiff's § 1983 claim that Defendant Monroe County is liable for the unconstitutional acts of its employees should be dismissed.

B. PLAINTIFF'S CLAIMS AGAINST DEFENDANTS DAYS INN TANNERSVILLE HOTEL AND CAMILO JACER FAIL

Plaintiff names Days Inn Tannersville Hotel and its employee, Camilo Jacer, as defendants (collectively "Hotel Defendants"). Plaintiff alleges that:

> On November 07, 2016, Defendants Camilo Jacer, Manager of also Defendant Days Inn Tannersville. False I.D. Plaintiff as being the Guest that had Rented one of the there (sic) Rooms in the Days Inn Hotel.
>
> The testimony of Manager Camilo Jacer was Intentional Slander Libel and Defamation.

> Plaintiff has never been a Guest at Days Inn Tannersville. Further more Days Inn Tanersville does not have any Evidence to support such Claims.

(Doc. 4, p. 8, ¶ 7).

Hotel Defendants are a private company and a private citizen—not state actors. Although private individuals may nonetheless be liable under § 1983 if they have conspired with or engaged in joint activity with state actors, *see Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980), Plaintiff has not alleged a conspiracy between Hotel Defendants and any state actors. Thus, Hotel Defendants are an improper defendant for a § 1983 claim.

Further, Plaintiff's claim against Defendant Jacer appear to challenge Defendant Jacer's testimony from Plaintiff's criminal trial. This claim is *Heck*-barred. As stated above, "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a Section 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such [a] determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." *Heck*, 512 U.S. at 486-87, 490 (footnote omitted). Plaintiff's claim that Defendant Jacer provided a false identification during his

testimony at Plaintiff's criminal trial is *Heck*-barred because a judgment in Plaintiff's favor on this claim would imply the invalidity of his criminal sentence.

C. DEFENDANT BRODHEADSVILLE POST OFFICE OF MONROE COUNTY

Plaintiff names the Brodheadsville Post Office of Monroe County as a defendant. Plaintiff alleges that:

> Plaintiff Mr. Noel L. Brown, who lives at #221 Frantz Road Brodheadsville PA 18322.
>
> Plaintiff the only owner of Mail Box #115 for over ten year[.] In the month of July 2016[,] Defendant Post Office of Brodheadsvill (sic) 18322, did Change Plaintiff Mail-Box (sic) without concent (sic) from Plaintiff. In doing so Plaintiff Personal and Business Mail were Illegally Obtained by Others.
>
> Brodheadsville Post Office Intentionally made changeses (sic) to Plaintiff mailbox, - Even as Plaintiff had Paid for Services Six Months to a Year.

(Doc. 4, p. 9, ¶ 9).

Because Defendant Brodheadsville Post Office is a federal office, I construe Plaintiff's claim against Defendant Brodheadsville Post Office to be a *Bivens* claim. Although Congress established a damages remedy under 42 U.S.C. § 1983 against state officials for violations of the federal constitution, it did not create an analogous statute for damages against federal officials. In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, however, the Supreme Court "recognized for the first time an implied private action for damages against federal officers alleged to have violated a citizen's constitutional rights." *Corr. Servs. Corp. v.*

Malesko, 534 U.S. 61, 66 (2001). "[A]ctions brought directly under the Constitution against federal officials have become known as '*Bivens* actions.'" *Vanderklok v. United States*, 868 F.3d 189, 198 (3d Cir. 2017).

Government entities are not "persons" and, therefore, not proper defendants in a federal civil rights action. *Hindes v. F.D.I.C.*, 137 F.3d 148, 159 (3d Cir. 1998) (a federal agency is not a "person" subject to § 1983 liability, whether or not it is in an alleged conspiracy with state actors); *see also Accardi v. United States*, 435 F.2d 1239, 1241 (3d Cir. 1970). Thus, *Bivens* claims may not be maintained against federal agencies. *FDIC v. Meyer*, 510 U.S. 471, 485 (1994); *Jaffee v. United States*, 592 F.2d 712, 717 (3d Cir. 1979) ("Because [plaintiff] has sued the Government itself, *Bivens* . . . do[es] not afford him a traversable bridge across the moat of sovereign immunity.").

Plaintiff does not specify who intentionally made changes to his mailbox address—he merely names the Brodheadsville Post Office itself. Defendant Brodheadsville Post Office is not a proper defendant to a *Bivens* claim, because the post office is a federal agency.[6] Thus, the claim against Defendant Brodheadsville Post Office fails and should be dismissed.

[6] The post office is "a self-supporting, independent federal agency." *See* https://about.usps.com/who/profile/.

VII. PLAINTIFF'S RULE 5 MOTION

On August 5, 2019, Plaintiff filed a Motion to Grant Fed.R.Civ. P. 5 (Doc. 52) and a Brief in Support (Doc. 53). Plaintiff appears to be requesting a modification of the service rules. Plaintiff cites to Rule 5(c)(1)(A) of the Federal Rules of Civil Procedure. Rule 5(c)(1)(A) states: "If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that: defendants' pleadings and replies to them need not e served on other defendants." It is unclear what relief Plaintiff is seeking through his Motion. This Motion should be denied.

VIII. LEAVE TO AMEND

Although I conclude that Defendants' Motions to Dismiss should be granted, Plaintiff should be granted leave to amend his Complaint. "District courts are to offer amendment in *pro se* civil rights cases unless doing so would be 'inequitable or futile.'" *Flynn v. Dep't of Corr.*, 739 Fed. Appx. 132, 136 (2018) (quoting *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 251 (3d Cir. 2007)). Plaintiff's Complaint was not screened before it was served. It would be error to not permit Plaintiff an opportunity to amend before granting Defendants' Motions to Dismiss. Plaintiff's claims have deficiencies, but these deficiencies may be cured by amendment. Thus, granting Plaintiff leave to amend would not be inequitable or futile.

IX. RECOMMENDATION

Accordingly, for the foregoing reasons, IT IS HEREBY RECOMMENDED that:

(1) Defendants' Motion to Dismiss (Doc. 41) be GRANTED in full;

(2) Defendants' Motion to Dismiss (Doc. 44) be GRANTED in full;

(3) Defendants' Motion to Dismiss (Doc. 49) be GRANTED in full;

(4) Plaintiff's claims against Defendants Monroe County, Days Inn Tannersville Hotel, Camilo Jacer, and Brodheadsville Post Office be DISMISSED pursuant to 28 U.S.C. § 1915A;

(5) Plaintiff be GRANTED thirty (days) to file an amended complaint;

(6) Plaintiff's Motion Grant Fed.R.Civ. P. 5 (Doc. 52) be DENIED.

Date: January 30, 2020

BY THE COURT

s/William I. Arbuckle
William I. Arbuckle
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

NOEL L. BROWN, CEO of Kings Realty Mgmt. LLC, *et al.*, Plaintiffs	)	CIVIL ACTION NO. 3:18-CV-155
	)	(MANNION, D.J.)
v.	)	(ARBUCKLE, M.J.)
WAYNE COUNTY, PENNSYLVANIA, *et al.*, Defendants	)	

NOTICE OF LOCAL RULE 72.3

NOTICE IS HEREBY GIVEN that any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3 which provides:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions.

Date: January 30, 2020

BY THE COURT

s/William I. Arbuckle
William I. Arbuckle
U.S. Magistrate Judge