UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DAVID MILLER, *Plaintiff,* v. M. BRADY, A. MANTZ, C. BONNER, D. QUINTERO, F. LARKIN and SEASIDE PARK BOROUGH *Defendants.*	Civil Action No. 14-04310 (PGS)(TJB) **ORDER**

WHEREAS, presently pending before the Court are two Motions to Dismiss Plaintiff, *pro se*, David Miller's (hereinafter "Plaintiff"), Complaint in its entirety, one having been filed by Defendants, F. Larkin (hereinafter "Larkin") and the Seaside Park Borough (hereinafter "Municipal Defendants"), and the other having been filed by the individual Seaside Park police officer Defendants, M. Brady, A. Mantz, C. Bonner, and D. Quintero (hereinafter "Individual Defendants") (collectively, "Defendants";

WHEREAS, the Court incorporates herein, by reference, the thorough and detailed recitation, on the record, of the factual circumstances of the instant matter by counsel for the Individual Defendants, which drew directly from Plaintiff's own Complaint as well as various public records appended to the parties' moving papers, and which Plaintiff did not object to or otherwise contradict; *see generally* Plaintiff's Complaint (ECF 1); *see also Pension Ben. Guar. Corp. v. White Consol. Industries, Inc.*, 998 F.2d 1192, 1197 (3d Cir. 1993) ("Courts have defined a public record, for purposes of what properly may be considered on a motion to dismiss, to include criminal case dispositions such as convictions."); *Ferrence v. Township of Hamilton*,

538 F. Supp. 2d 785, 790 (D.N.J. 2008) (observing that, under New Jersey law, "prosecutions for violations of municipal ordinances are criminal in nature") (quoting *State v. DeAngelo*, 396 N.J. Super. 23, 40 (App. Div. 2007)); (*Hannaway v. Yonka Paris*, Civ. No. 07-2392, 2008 WL 4279753, at *5 n.3 (D.N.J. Sept. 15, 2008) (observing that "[documents contained in the record in other court proceedings have been construed as matters of public record"); *Grim v. Pennsbury School District*, Civ. No. 14-04217, 2015 WL 1312482, at *18 n.8 (E.D. Pa. Mar. 24, 2015) (taking "judicial notice of [prior] convictions as part of the public record")

WHEREAS, it bears noting at the outset, that Plaintiff does not challenge the constitutionality of the underlying municipal ordinance that he was alleged to have violated, which violation represents the starting point for a lengthy series of interactions among Plaintiff and the Individual Defendants, multiple Municipal Courts, and at least one Superior Court of the State of New Jersey, resulting in multiple arrests for various violations of New Jersey Vehicle Code provisions and the Orders of several of the aforementioned courts;

WHEREAS, the Court construes Plaintiff's Complaint as instead alleging that Plaintiff was the target of retaliation by all Defendants as a result of his purportedly lawful exercise of his rights guaranteed him under the First Amendment to the United States Constitution;

WHEREAS, on a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), the Court is required to accept as true all allegations in the Complaint and all reasonable inferences that can be drawn therefrom, and to view them in the light most favorable to the non-moving party. *See Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1384 (3d Cir. 1994). "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 Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). While a court will accept well-pleaded allegations as true for the purposes of the motion, it will not accept bald assertions, unsupported conclusions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations. *Iqbal*, 556 U.S. at 678-79; *see also Morse v. Lower Merion School District*, 132 F.3d 902, 906 (3d Cir. 1997). A complaint should be dismissed only if the well-pleaded alleged facts, taken as true, fail to state a claim. *See In re Warfarin Sodium*, 214 F.3d 395, 397-98 (3d Cir. 2000). The question is whether the claimant can prove any set of facts consistent with his or her allegations that will entitle him or her to relief, not whether that person will ultimately prevail. *Semerenko v. Cendant Corp.*, 223 F.3d 165, 173 (3d Cir.), *cert. denied, Forbes v. Semerenko*, 531 U.S. 1149, 121 S. Ct. 1091 (2001). The pleader is required to 'set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist.'" *Kost v. Kozakewicz*, 1 F.3d 176, 183 (3d Cir. 1993) (quoting 5A Wright & Miller, Fed. Practice & Procedure: Civil 2d § 1357 at 340). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff'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, ... Factual allegations must be enough to raise a right to relief above the speculative level, . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact), ..." *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1964-65 (internal citations and quotations omitted);

WHEREAS, in applying the above-referenced standard in determining the present motions, the Court recognizes that *pro se* complaints are to be "liberally construed," and held to

less stringent standards than formal pleadings drafted by lawyers." *See Erickson v. Pardus*, 551 U.S. 89 (2007);

WHEREAS, even construing Plaintiff's Complaint liberally as required, the Court concludes that Plaintiff has failed to allege facts supportive of an entitlement to relief under any theory seemingly advanced by Plaintiff with respect to all Defendants;

WHEREAS, in so holding, the Court observes that Plaintiff's Complaint fails to allege (1) that Larkin had policymaking authority, (2) what action he took that could fairly be said to be policy; and (3) that Larkin had final policy making authority; *see Pembauer v. City of Cincinnati*, 475 U.S. 469, 480 (citing *Monell*, 436 U.S. at 694);

WHEREAS, the Court further observes that Plaintiff's Complaint fails to allege the existence of any municipal policy to which the harms of which he now complains may be attributed, as required in order to sustain his claims for municipal liability under 42 U.S.C. § 1983; *see Santiago v. Warminster Tp.*, 629 F.3d 121, 135 (3d Cir. 2010) (quoting *Monell v. New York City Dep't of Social Svcs.*, 436 U.S. 658, 694 (1978));

WHEREAS, the Court further observes that Plaintiff's Complaint fails to allege that Larkin engaged in any affirmative unconstitutional wrongdoing, and that the United States Supreme Court has held that mere knowledge and acquiescence is insufficient to state a claim for supervisory liability under § 1983; *see Iqbal*, 556 U.S. at 677;

WHEREAS, the Court further observes that "a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Monell*, 436 U.S. at 690;

WHEREAS, the Court observes that, to the extent Plaintiff's § 1983 claims against the Municipal Defendants are predicated on a theory of deficient training of police officers, Plaintiff's Complaint fails to establish that the purported "failure to train amounts to deliberate

indifference to the rights of persons with whom the police come in contact," and that deliberate indifference was the moving force of the violation of Plaintiff's rights; *City of Canton v. Harris*, 489 U.S. 378, 387 (1989);

WHEREAS, the Court observes that, to the extent Plaintiff's § 1983 claims against the Municipal Defendants are predicated upon a theory of inadequate hiring, which imposes upon Plaintiff a standard even more stringent than for inadequate training claims, *Board of County Commissioners v. Brown*, 520 U.S. 397, 415-16 (1997), Plaintiff's Complaint fails to establish that (1) the Municipal Defendants acted with deliberate indifference in hiring the Individual Defendants; and (2) the Individual Officers were "highly likely to inflict the particular injury suffered by the plaintiff." *Id.* at 412;

WHEREAS, finally, the Court concludes that, because the Individual Defendants were in all of their encounters with Plaintiff acting in good faith, reasonable, and pursuant to court orders or warrants issued, the Individuals Defendants engaged in no misconduct that resulted in the harms of which Plaintiff now complains; see *Lucas v. Galloway Tp. Police Department*, Civ. No. 05-3346, 2007 WL 1797659, at *12 (D.N.J. June 20, 2007); *Walzer v. Township of Teaneack*, Civ. No. 05-734, 2007 WL 3244184, at *4 (D.N.J. Oct. 31, 2008);

WHEREAS, the Court further finds that Plaintiff's Complaint, no matter how liberally construed, establishes the requisite causal link between either the initial ordinance violation, or the later actions of the Individual Defendants, and the harms of which he now Complaints, such being fatal to his claims. Simply stated, it is the Court's impression that Plaintiff is the author of his own injury in this matter due to his having persisted in a protracted pattern of willful disregard of both the law and numerous lawful orders of multiple courts to appear and defend the charges levied against him. Indeed, had Plaintiff so appeared, he would have been afforded the

opportunity to then and there raise the First Amendment arguments he has presented for the first time in this matter;

WHEREAS, the Court observes that, beyond not appearing despite the lawful orders of numerous courts to do so, Plaintiff has at no time appealed any of his state court convictions; as such, these convictions have remained undisturbed through the date of the issuance of this Order;

WHEREAS, the Court concludes that, given the incurable deficiencies of Plaintiff's Complaint that the Court has already held to be fatal to his claims, any amendment to Plaintiff's Complaint would be futile; *see U.S. v. Margolis*, Civ. No. 07-4313, 2009 WL 2255336, at *1 (D.N.J. July 28, 2009) (citing *Alvin v. Suzuki*, 227 F.3d 107, 121 (3d Cir. 2000)).

IT IS on this 27th day of March, 2015,

ORDERED that the Municipal Defendants' Motion to Dismiss (ECF 3), as well as the Individual Defendants' Motion to Dismiss (ECF 4) be, and hereby are, GRANTED; and it is further

ORDERED that Plaintiff's Complaint be, and hereby is, DISMISSED WITH PREJUDICE.

Dated: March 27, 2015

PETER G. SHERIDAN, U.S.D.J.