UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

LORENZO EVANS, Plaintiff,	:	
v.	:	C.A. No. 19-279WES
UNITED STATES, ROBERT T. HART, and ANGELA LOVEGROVE, Defendants.	:	

REPORT AND RECOMMENDATION

Patricia A. Sullivan, United States Magistrate Judge.

On May 16, 2019, *pro se* Plaintiff Lorenzo Evans filed a complaint purporting to sue the United States, Warwick Police Sergeant Robert Hart and the "Fair Housing Director" of the Rhode Island Commission for Human Rights ("CHR"), Angela Lovegrove, pursuant to 28 U.S.C. § 1445, based on the alleged passage of a "Bill of Attainder" by the Rhode Island General Assembly in 1997, in violation of Article I, § 10 of the United States Constitution.[1] ECF No. 1 at 3, 4. Plaintiff accompanied his complaint with a motion for leave to proceed *in forma pauperis* ("IFP"). ECF No. 2. The IFP motion has been referred to me pursuant to 28 U.S.C. § 636(b)(1)(A); I find that it is insufficient because Plaintiff avers that he owns "stock," ECF No. 2 at 2, but has not included the required information regarding its value. Without this information, the Court cannot determine whether Plaintiff is eligible to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915(a)(1); this deficiency precludes the granting of the IFP

[1] Because Plaintiff is *pro se*, the Court employs a liberal construction of his pleading. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Instituto de Educacion Universal Corp. v. U.S. Dep't of Educ., 209 F.3d 18, 23 (1st Cir. 2000). For example, the Court assumes Plaintiff intends to rely on U.S. Const. art. I, § 10, which prohibits the states from passing a Bill of Attainder; his complaint names "Art. § 9 [3] Pow. Prohib.," likely a reference to U.S. Const. art. I, § 9, cl. 3, which prohibits Congress from passing Bills of Attainder.

motion until it is cured. Further, because of the IFP application, this case is subject to preliminary screening under 28 U.S.C. § 1915(e)(2)(B).

Screening requires the Court to consider whether the complaint is frivolous, fails to state a claim or seeks monetary relief from a defendant who is immune. Id. The applicable legal standards may briefly be summarized. The Court "shall dismiss" a complaint filed with an IFP motion in reliance on the same legal principles that are used when ruling on a Fed. R. Civ. P. 12(b)(6) motion to dismiss. Hodge v. Murphy, 808 F. Supp. 2d 405, 408 (D.R.I. 2011). That is, a complaint must contain sufficient factual allegations 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 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. A viable complaint must also satisfy Fed. R. Civ. P. 8(a); if the pleading lacks information regarding how the claimant might have a claim against the named defendants, it should be dismissed at screening. Kilby v. Johnson & Wales Univ., No. CA 14-217 ML, 2014 WL 2196942, at *2 (D.R.I. May 27, 2014).

The Court need not linger over Plaintiff's lead defendant, the United States. Apart from listing the United States in his caption, he does not otherwise mention it. The complaint against the United States should be dismissed for failure to state a claim and because its purported joinder is frivolous. Redondo Waste Sys., Inc. v. Lopez-Freytes, 659 F.3d 136, 140 (1st Cir. 2011) (defendant named in case caption but not mentioned in body of complaint "fails the [Iqbal] plausibility test spectacularly").

To the extent that Plaintiff's claim against Sergeant Hart is based on nothing more than the factual allegation that, on April 16, 2019, Sergeant Hart "set a speed trap," and then "pulled over [Plaintiff] in violation to [sic] my protected rights under the 14th amendment," ECF No. 1

at 4, these facts are insufficient plausibly to state a claim for relief under the Fourth or the Fourteenth Amendments, either of which conceivably might be implicated. See Johnson v. Crooks, 326 F.3d 995, 1000 (8th Cir. 2003) (Section 1983 claim alleging Fourteenth/Fourth Amendment violation for traffic stop failed because no facts to prove stop not based on perceived violation, no facts to demonstrate conduct was "conscience-shocking" and no facts to suggest that claimant was deprived of post-deprivation remedy); Austin v. City of Tuskegee, No. CIV A 3:07-cv-754-MHT, 2008 WL 2959762, at *5 (M.D. Ala. June 16, 2008), aff'd sub nom., Austin v. City of Tuskegee, Ala., 335 F. App'x 856 (11th Cir. 2009) (Section 1983 claim that traffic stop violated equal protection failed because it did not allege plaintiff was "similarly situated with other persons who were treated differently" or "that the reason for the differential treatment was based on race"); Ligeri v. Rhode Island, No. CA 07-207 ML, 2007 WL 3072061, at *8 (D.R.I. Oct. 19, 2007) ("the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred"). This aspect of Plaintiff's complaint fails because it does not allege that Sergeant Hart lacked any reason or lawful basis for conducting the stop nor does it allege any other reason for challenging the stop as unconstitutional. Id.

Plaintiff's claim based on being pulled over for speeding also rests on his mysterious allegation that "the Bill of Attainder prevents me from defending myself — period." ECF No. 1 at 4. Read generously, this permits the inference that the Rhode Island General Assembly has passed a law that inflicted punishment on Plaintiff without the benefit of a trial or due process. See United Nuclear Corp. v. Cannon, 553 F. Supp. 1220, 1226-27 (D.R.I. 1982) ("If the act impermissibly designates an individual or an easily identifiable group and then proceeds to punish that person or group, the act is a bill of attainder."). There is little doubt that the

constitutional prohibition against Bills of Attainder would be implicated if Plaintiff is actually named in a legislative enactment that bars him from defending himself from speeding charges. Nixon v. Adm'r of Gen. Servs., 433 U.S. 425, 472 (1977). However, in setting out the basis for his claim that the General Assembly enacted a Bill of Attainder, the complaint is impenetrable.[2] It alleges only that there is a "textbook but cryptic" "enactment," "unanimous[ly] pass[ed]" by the Rhode Island General Assembly called the "John Carpentar Act (1997)." ECF No. 1 at 4. It provides no citation or other information from which the Court or a defendant might ascertain what is meant. The Court's research turned up no enactment of the Rhode Island General Assembly that remotely comports with Plaintiff's description.[3] Without some more coherent citation to what Plaintiff means when he refers to the "Bill of Attainder," it is difficult to see how claims based on it are plausible. And, even if they were, such a claim would not be properly asserted against Sergeant Hart, who is alleged only to have pulled Plaintiff over for speeding; he is accused neither of enacting nor enforcing any Bill of Attainder. Accordingly, I recommend that the Bill of Attainder claim against Sergeant Hart be dismissed.

[2] The Court notes that this case is not the first time Plaintiff has invoked the prohibition against state-enacted Bills of Attainder. In a 2017 argument asking for rehearing en banc before the First Circuit on a habeas petition challenging a subsequent conviction, he argued that he was the victim of a Bill of Attainder. Evans v. Wall, No. 16-1511, Doc. 117165536 (1st Cir. June 9, 2017). This argument was rejected; Plaintiff's petition for writ of certiorari to the Supreme Court was also rejected. Evans v. Wall, No. 16-1511, Doc. 117240927 (1st Cir. Jan. 8, 2018) (order denying petition for rehearing en banc); Evans v. Wall, No. 16-1511, Doc. 117292324 (1st Cir. May 21, 2018) (order denying certiorari).

[3] A decision of the Rhode Island Supreme Court may shed some light on the matter. State v. Oliveira, 774 A.2d 893, 900-02 (R.I. 2001). In Oliveira, the court describes Plaintiff and an individual named John Carpenter as the victims of a 1995 assault with intent to murder (Plaintiff) and first-degree murder (Carpenter); according to the opinion, Plaintiff was targeted by the murderers in retribution for his alleged murder of another individual named Baptista. Id. at 893 n.2. Plaintiff was acquitted of the Baptista murder by a jury verdict returned in 1997. Ferrell v. Wall, 862 F. Supp. 2d 88, 95 n.6 (D.R.I. 2012). Possibly, Plaintiff has conflated the 1997 jury verdict with an alleged 1997 enactment of the General Assembly called the John Carpentar Act. This interpretation is suggested by the public record, which establishes that the verdict acquitting Plaintiff of murder was returned on June 24, 1997. State v. Evans, No. P1-1996-3661BG (R.I. Sup. Ct. June 24, 1997). The Complaint seems to allege that this is the date of the "enactment" Plaintiff claims is a Bill of Attainder.

The gravamen of Plaintiff's claim against the third defendant, Angela Lovegrove, is even more opaque.[4] The complaint suggests that this claim is really part of a family feud in that Ms. Lovegrove is identified in the pleading as the grandmother of Plaintiff's child. Plaintiff also hints, but does not explain, that his claim against Ms. Lovegrove is somehow also connected to the mysterious Bill of Attainder: "Angie is *well* versed on the *drama*: **Bill of Attainder**." ECF No. 1 at 4 (emphasis in original). To the extent that these sibylline allegations purport to state a claim, they must be dismissed because they are incoherent. See Cerullo v. Wall, No. CA 14-364-ML, 2014 WL 7272799, at *2 (D.R.I. Dec. 18, 2014).

More substantively, claiming that he has had "real-time issues . . . with Extended Stay America and Sonesta Suites concerning several housing violations clearly to do with racism," Plaintiff alleges that Ms. Lovegrove, apparently acting in her capacity as CHR's Director of Fair Housing, refused to perform an adequate investigation, presumably in response to his complaint. ECF No. 1 at 4. This allegation also fails to state a claim, though the reasons are somewhat more complex.

Plaintiff may have a race-related claim against housing providers who committed housing violations based on race to his detriment. Langlois v. Abington Hous. Auth., 207 F.3d 43, 47 (1st Cir. 2000). Race discrimination in the rental of property is prohibited by federal law pursuant to the Civil Rights Act of 1866, 42 U.S.C. § 1982, and the Fair Housing Act, 42 U.S.C. § 3604. Both statutes permit an aggrieved person to sue private parties. Cooper v. Shortt, 53

[4] The Court notes another potential problem with joinder of Ms. Lovegrove. Although Plaintiff's summons request lists only one address for service on her, ECF No. 4, the complaint lists eleven addresses, all over Rhode Island and in Massachusetts, Texas and Nevada. A caution to Plaintiff: the Court will not permit service at eleven addresses. Behroozi v. Behroozi, C.A. No. 15-536S, ECF No. 5 (ordering IFP plaintiff listing "twenty different addresses" for service of summonses "to supply an amended summons request with no more than two addresses"); see Simmons v. Prison Health Servs. Inc., No. CV408-239, 2009 WL 2914103, at *1 (S.D. Ga. Sept. 10, 2009) (dismissal of IFP application is warranted where *pro se* plaintiff fails to provide accurate, current address for defendants to be served with process).

F.3d 327 (1st Cir. 1995). However, Plaintiff has not named any of the entities that he seems to believe engaged in racially based housing discrimination, nor does he describe how he was the victim of any discriminatory practice.[5] More importantly, Plaintiff's allegations do not reflect whether Ms. Lovegrove was personally involved in any constitutional violations, never mind whether she participated in any race discrimination of which Plaintiff was a victim. Rather, it appears that Plaintiff is suing Ms. Lovegrove merely because he feels her investigation of his administrative case was not adequate. See Opoku v. Educ. Comm'n for Foreign Med. Graduates, 574 F. App'x 197, 202 (3d Cir. 2014) (dismissing claim against Human Rights Commission investigator because plaintiff failed to allege that investigator personally participated in alleged discrimination). For these reasons, Plaintiff's claim against Ms. Lovegrove should be dismissed because it fails to state a claim.

The Lovegrove claim also likely fails based on prosecutorial/judicial and sovereign immunity. Several Rhode Island statutes bar race discrimination in housing. E.g., R.I. Gen. Laws § 11-24-1, *et seq*.; R.I. Gen. Laws § 34-37-1, *et seq*. Ms. Lovegrove is alleged to be a representative of the CHR, which is empowered to enforce these laws, by deciding whether to prosecute and, if so, to adjudicate charges administratively. See R.I. Gen. Laws § 28-5-8; § 34-37-5(b). To the extent that Plaintiff's claim is based only on Ms. Lovegrove's status in performing the CHR's quasi-prosecutorial/quasi-judicial function, it is likely subject to dismissal because she enjoys immunity for actions taken within the scope of her position, which seem to be the focus of Plaintiff's claim. See Rudow v. City of New York, 822 F.2d 324, 325-27 (2d Cir. 1987) ("Human Rights Commission (HRC) prosecutor is absolutely immune from personal

[5] It is well settled that the conclusory assertion of "racism" is insufficient to carry a claim past screening. See, e.g., Armstrong v. Moroe, C.A. No. 17-111S, 2017 WL 3447896, at *3 (D.R.I. Aug. 11, 2017) (complaint dismissed at screening because, *inter alia*, its "reference[s] to nothing more than racial slurs and acts of racism" were "insufficient as a matter of law" to state discrimination claim).

liability under federal and state law") (citing Butz v. Economou, 438 U.S. 478, 517 (1978)); White v. Martin, 26 F. Supp. 2d 385, 390 (D. Conn. 1998), aff'd sub nom., White v. Comm'n of Human Rights, Opportunities, 198 F.3d 235 (2d Cir. 1999) (investigation of alleged discrimination by employees of state human rights commission acting in official capacity was "clearly quasi-judicial functions entitled to absolute immunity"). Further, to the extent that Plaintiff purports to sue Ms. Lovegrove for money damages in her official capacity, his claim is barred by the Eleventh Amendment. Opoku, 574 F. App'x at 201 (Human Rights Commission "shares in the Commonwealth's Eleventh Amendment immunity," as do its employees "sued in their official capacities"); Baba v. Japan Travel Bureau Int'l, Inc., 111 F.3d 2, 5 (2d Cir. 1997) (claim against state human rights commission was properly dismissed by district court because claims seeking any remedy other than prospective injunctive relief against state agencies are "barred by the Eleventh Amendment").

As presently configured, Plaintiff's complaint's final fatal flaw is his invocation of 28 U.S.C. § 1455, which permits removal from state to federal court of criminal prosecutions in limited circumstances (charges against federal officers, agencies or members of the armed forces) and within a specified period of time (thirty days after arraignment). In addition, 28 U.S.C. § 1443 permits removal of a state criminal prosecution to federal court if it was commenced "[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States." 28 U.S.C. § 1443(1); Johnson v. Mississippi, 421 U.S. 213, 219 (1975); see Massachusetts v. Martin, Civil Action No. 16-11028-FDS, 2016 WL 3461189, at *2 (D. Mass. June 21, 2016) ("This Court's removal jurisdiction for criminal cases is very limited . . . ."). Simply put, § 1455 does not apply to this case at all. As far as Plaintiff's complaint tells the tale, there is no ongoing

state court prosecution; Plaintiff is not a federal officer or member of the armed forces; there has been no arraignment within the past thirty days; and he has not alleged that he is being prosecuted contrary to federal law providing for specific civil rights stated in terms of racial equality. If Plaintiff has something else in mind, he must plead it more clearly so that the Court can ascertain what he really intends. Since § 1455 purports to be the foundational federal statute on which the entire pleading rests, the complaint is subject to dismissal for failure to state a plausible claim.

In conclusion, I find that, as currently crafted, this complaint fails to comport with the mandate of Fed. R. Civ. P. 8(a), which requires a plaintiff to include "a short and plain statement of the grounds for the court's jurisdiction . . . and of the claim showing that the pleader is entitled to relief," as well as Fed. R. Civ. P. 10(a-b), which requires a caption and claims set out in numbered paragraphs, each limited to a single set of circumstances. More substantively, I find that the pleading fails to state a claim, is frivolous in part and is likely barred in part by sovereign and prosecutorial/judicial immunity. Based on these findings, I recommend that Plaintiff be afforded thirty days from the adoption of this report and recommendation to amend the pleading, as well as to file a supplement to his sworn IFP application providing information under the penalty of perjury regarding the nature and present value of the "stock" that he lists. ECF No. 2 at 2. If he fails to do either or both, or if his amended complaint is still deficient, I will recommend that the complaint be dismissed and that the IFP motion be denied. If his supplemental IFP application fails to establish that he is indigent and unable to afford the filing fee, his IFP motion will be denied and he will be ordered to pay the filing fee. See Temple v. Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984) (Selya, J.) (in evaluating the merits of IFP

motion, court must "hold the balance steady and true as between fairness to the putatively indigent suitor and fairness to the society which ultimately foots the bill").

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after the report and recommendation is served on the objecting party. See Fed. R. Crim. P. 59(b); DRI LR Cr 57.2(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
July 2, 2019