IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

AZAEL DYTHIAN PERALES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 11-1218-SLR
	)	
FULLERTON PUBLIC LIBRARY, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

At Wilmington this 10th day of April, 2012;

IT IS ORDERED that the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 1915, for the reasons that follow:

1. **Background**. Plaintiff Azael Dythian Perales ("plaintiff") filed this action on December 12, 2011, alleging violations of the Freedom of Information Act ("FOIA") and the Employee Retirement Income Security Act ("ERISA"). He appears pro se and has been granted leave to proceed in forma pauperis.

2. **Standard of Review**. This court must dismiss, at the earliest practicable time, certain in forma pauperis actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to a pro se plaintiff. *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because plaintiff proceeds pro se, his pleading is liberally construed and his complaint, "however

inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. at 94 (citations omitted).

3. An action is frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915(e)(2)(B)(i), a court may dismiss a complaint as frivolous if it is "based on an indisputably meritless legal theory" or a "clearly baseless" or "fantastic or delusional" factual scenario. *Neitzke*, 490 at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); *see, e.g., Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate's pen and refused to give it back).

4. The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. § 1915, the court must grant plaintiff leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

5. A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The assumption of truth is inapplicable to legal conclusions or to "[t]hreadbare recitals of the elements of a cause of action supported by

mere conclusory statements." *Id.* at 1949. When determining whether dismissal is appropriate, the court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the factual and legal elements of a claim are separated. *Id.* The court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. *Id.* at 210-11. Second, the court must determine whether the facts alleged in the complaint are sufficient to show that plaintiff has a "plausible claim for relief."[1] *Id.* at 211. In other words, the complaint must do more than allege plaintiff's entitlement to relief; rather it must "show" such an entitlement with its facts. *Id.* "[W]here the well-pleaded facts do not permit the court to infer more than a mere possibility of misconduct, the complaint has alleged - but it has not shown - that the pleader is entitled to relief." *Iqbal*, 129 S.Ct. at 1949 (quoting Fed. R. Civ. P. 8(a)(2)).

6. **Discussion**. Plaintiff is a frequent filer. According to the PACER Case Locator national index, beginning May 8, 2009, plaintiff has filed seventy-one lawsuits in district courts throughout the United States. He recently discovered the District of Delaware. The instant complaint alleges FOIA and ERISA violations and mentions in passing federal criminal statutes and 42 U.S.C. § 1983. Plaintiff seeks thirty million dollars in compensatory damages. He also seeks punitive damages.

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[1]A claim is facially plausible when its factual content allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.*

7. **Freedom of Information Act**. It is difficult to understand plaintiff's claims however, it appears that he seeks relief pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Apparently, the Fullerton Public Library in Fullerton, California underwent a renovation. During the renovation phase, an outdated version of the United States Code was thrown away, and plaintiff was told that he could access the information via the internet. According to plaintiff, due to the construction, the internet has not worked since June 18, 2010. Plaintiff alleges that all named defendants have a responsibility to the public to have ready access to the law. He alleges that the foregoing resulted in a violation of the FOIA.

8. A FOIA claim cannot be asserted against state entities. FOIA applies only to federal agencies not to state entities. *McDonnell v. United States*, 4 F.3d 1227, 1249 (3d Cir. 1993) ("FOIA has no application to state governments."); 5 U.S.C. § 551(1) ("'agency' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency"); *see also Donnelly v. O'Malley & Langan*, PC, 370 F. App'x 347, 348 n.2 (3d Cir. 2010) (not published) (FOIA applies only to the release of government records by the federal government); *Dunleavy v. New Jersey*, 251 F. App'x 80, 83 (3d Cir. 2007) (not published) ("FOIA obligated federal agencies to make their documents, records, and publications available to the public."

9. With the exception of "The White House," all defendants are either private, city, or state entities. The White House is never mentioned in the complaint. Nor is it a federal agency. It is the residence of the President of the United States of America.

Plaintiff's FOIA claim has no basis in law or fact, is frivolous, and is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(b).

10. **Title 29**. Section 3 of the complaint refers to U.S.C. Title 29, "protection of employee benefits rights," § 1001. This provision arises under Subchapter I of ERISA. Plaintiff alleges that he was unable to access on-line applications during the library renovations due to its reduced hours of operation, all of which resulted in a diminished opportunity to find employment and benefits on the internet.

11. Congress enacted ERISA to ensure that employees would receive the benefits they had earned. *Conkright v. Frommert*, __U.S.__, 130 S.Ct. 1640, 1648 (2010). Nothing in the allegations suggest that plaintiff is employed. Rather, he seeks employment. The ERISA claim fails as a matter of law and fact and is dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

12. **Conclusion**. For the above reasons, the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Amendment of the complaint would be futile. *See Alston v. Parker*, 363 F.3d 229 (3d Cir. 2004); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 111 (3d Cir. 2002); *Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976).

UNITED STATES DISTRICT JUDGE