

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

MARLEN D. CURRINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 24-523-MN
	)	
PATRICK KARPIN,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

Plaintiff Marlen D. Currington (“Plaintiff”) filed this action on April 29, 2024, alleging violations of his civil rights. (D.I. 1) He appears *pro se* and has been granted leave to proceed *in forma pauperis*. (D.I. 5) The court proceeds to review and screen the matter pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(a). For the reasons set forth below, the court recommends that the complaint be DISMISSED WITHOUT PREJUDICE.

**I. BACKGROUND**

Plaintiff alleges a Fourth Amendment violation for excessive force. The complaint does not describe the circumstances leading up to Plaintiff’s encounter with three officers from the New Castle County Police Department in November of 2023. According to the complaint, two unnamed police officers grabbed Plaintiff by each arm and placed him in a kneeling position. Plaintiff informed the officers that he knew his rights and asked for a supervising officer. At that time, defendant Patrick Karpin punched Plaintiff. The complaint first alleges that Karpin punched Plaintiff in the face five or six times, and later states that Karpin punched Plaintiff from behind, and Plaintiff “never saw it coming.” Plaintiff now suffers from a pinched nerve in his right arm. There is no prayer for relief.

## II. LEGAL STANDARDS

A federal court may properly dismiss an action *sua sponte* under the screening provisions of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b) if “the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.” *Ball v. Famiglio*, 726 F.3d 448, 452 (3d Cir. 2013); *see also* 28 U.S.C. § 1915(e)(2) (*in forma pauperis* actions); 28 U.S.C. § 1915A (actions in which prisoner seeks redress from a governmental defendant); 42 U.S.C. § 1997e (prisoner actions brought with respect to prison conditions). 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. *See Phillips v. Cnty. 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*, 551 U.S. at 94 (citations omitted).

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). A complaint is not automatically frivolous because it fails to state a claim. *See Dooley v. Wetzel*, 957 F.3d 366, 374 (3d Cir. 2020). Under 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1), a court may dismiss a complaint as frivolous if it depends on an “indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. *Dooley*, 957 F.3d at 374 (internal citations and quotation marks omitted).

The legal standard for dismissing a complaint for failure to state a claim pursuant to §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) is identical to the legal standard used when deciding Federal Rule of Civil Procedure 12(b)(6) motions. *See Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999). 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 and 1915A, the court must grant a 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).

A complaint may be dismissed only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court concludes that those allegations “could not raise a claim of entitlement to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Though “detailed factual allegations” are not required, a complaint must do more than simply provide “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Davis v. Abington Mem’l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014) (internal quotation marks omitted). A plaintiff must plead facts sufficient to show that a claim has substantive plausibility. *See Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014). A complaint may not be dismissed for imperfect statements of the legal theory supporting the claim asserted. *See id.* at 10.

Under the pleading regime established by *Twombly* and *Iqbal*, a court reviewing the sufficiency of a complaint must take three steps: (1) take note of the elements the plaintiff must plead to state a claim; (2) identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) when there are well-pleaded factual allegations, assume their veracity and determine whether they plausibly give rise to an entitlement to relief. *See Connelly v. Lane Const. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016); *see also Iqbal*, 556 U.S. at 679 (citing Fed. R. Civ. P. 8(a)(2)). Deciding whether a claim is plausible will be a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

### **III. DISCUSSION**

#### **A. Failure to State a Claim**

The complaint fails to state a plausible claim for excessive force under the Fourth Amendment. A claim that law enforcement officers used excessive force “in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen” is analyzed under the Fourth Amendment “reasonableness” standard. *Graham v. Connor*, 490 U.S. 386, 395 (1989). “Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” *Id.* at 396 (internal citations and quotation marks omitted). This analysis “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” *Id.* Other relevant factors include “the duration of the [officer’s] action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time.” *Couden v. Duffy*, 446 F.3d 483, 497 (3d Cir. 2006).

Even with a liberal construction, Plaintiff’s allegations are too sparse and lacking in context or critical details to state a claim for excessive force under the Fourth Amendment. Moreover, Plaintiff’s allegations appear to be internally inconsistent, as he alternately claims that he was punched in the face multiple times and that he was punched from behind and “never saw it coming.” I recommend that the court give Plaintiff leave to file an amended complaint curing these deficiencies.

## B. Prayer for Relief

The complaint does not contain a prayer for relief that explains what relief Plaintiff seeks from the court. Federal Rules of Civil Procedure 8(a)(2) and (3) require that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), and “a demand for the relief,” Fed. R. Civ. P. 8(a)(3). *See e.g., Scibelli v. Lebanon Cnty.*, 219 F. App’x 221, 222 (3d Cir. 2007); *see also Klein v. Pike Cnty. Comm’rs*, 2011 WL 6097734 (M.D. Pa. Dec. 6, 2011) (failure to articulate a prayer for relief compels dismissal). Plaintiff’s failure to specify relief of any sort of relief weighs in favor of dismissal for noncompliance with Rule 8. *See Liggon-Redding v. Souser*, 352 F. App’x 618, 619 (3d Cir. 2009) (affirming dismissal without prejudice where complaint failed to identify relief sought). Because the complaint does not contain a prayer for relief, I recommend that the court dismiss the complaint without prejudice and grant Plaintiff leave to amend to correct this pleading deficiency.

## IV. CONCLUSION

For the reasons discussed above, I recommend that the court issue an Order in the form set forth below:

### ORDER

At Wilmington this \_ \_th day of \_\_, 2025, IT IS ORDERED that:

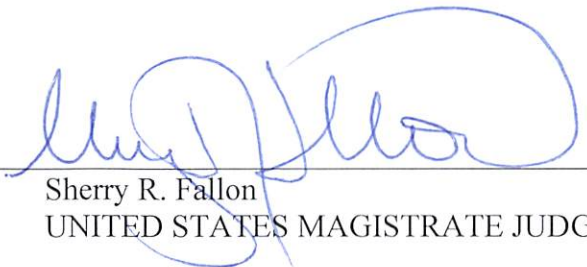
1. The Report and Recommendation issued on April 4, 2025 is **ADOPTED**.
2. The complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) and § 1915A(b)(1).

3. Plaintiff is granted leave to file an amended complaint on or before \_\_\_\_\_, 2025, remedying the deficiencies noted in the Report and Recommendation. The case will be closed should Plaintiff fail to timely file an amended complaint.

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b)(1), and D. Del. LR 72.1. Any objections to the Report and Recommendation shall be limited to ten (10) double-spaced pages and filed within fourteen (14) days after being served with a copy of this Report and Recommendation. Fed. R. Civ. P. 72(b). The failure of a party to object to legal conclusions may result in the loss of the right to *de novo* review in the district court. *See Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987); *Sincavage v. Barnhart*, 171 F. App'x 924, 925 n.1 (3d Cir. 2006).

The parties are directed to the court's Standing Order for Objections Filed Under Fed. R. Civ. P. 72, dated March 7, 2022, a copy of which is available on the court's website, <http://www.ded.uscourts.gov>.

Dated: April 4, 2025



Sherry R. Fallon  
UNITED STATES MAGISTRATE JUDGE