

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>GENE C. BENCKINI,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>UPPER SAUCON TOWNSHIP and</b>	:	
<b>UPPER SAUCON POLICE DEPARTMENT,</b>	:	<b>No. 04-4304</b>
<b>Defendants.</b>	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**March 23, 2005**

Pro se Plaintiff Gene Benckini brings this lawsuit against the Upper Saucon Township (“the Township”) and the Upper Saucon Police Department (“the Police Department”) alleging violations of his Fourth and Fourteenth Amendment Rights and civil rights violations under 42 U.S.C. § 1983. Presently before the Court is the Police Department’s Motion to Dismiss.<sup>1</sup> For the following reasons, the motion is granted.

**I. BACKGROUND**

Benckini originally filed a Complaint in this District on September 10, 2004, alleging numerous incidents of police misconduct commencing in 1998 and continuing through September of 2002. (Compl. ¶¶ 6-17.) The Complaint named both the Township and the Police Department as Defendants and the case was assigned to the Honorable Lawrence F. Stengel. Defendants filed

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<sup>1</sup> As Benckini has not filed a response to the motion, the Court may grant it as uncontested. *See Fiore v. Giant Food Stores*, Civ. A. No. 98-0517, 1998 U.S. Dist. LEXIS 5418, at \*2 (E.D. Pa. Apr. 17, 1998) (“Local Rule 7.1(c) authorizes the court to grant motions, other than motions for summary judgment, as uncontested if the opposing party has failed to file a timely response. The validity of this rule has been approved by the Third Circuit.”) I, however, elect to consider the merits of the motion.

a motion to dismiss the Police Department as a party and to dismiss a number of claims as outside the statute of limitations. This motion was granted and the Township proceeded to answer the Complaint as to the remaining claims. On January 25, 2005, an Order was entered transferring this case to my docket. Plaintiff subsequently sought and was allowed to amend his Complaint. The Amended Complaint recounts an incident that occurred on September 13, 2002, when the Police Department allegedly handcuffed and manhandled Benckini and also referred to him as a child molester. (Am. Compl. ¶ 5.) The remainder of the Amended Complaint makes various claims against the Township, including allegations that the Township dumped sewage onto Benckini's property, condemned 15.4 acres of land where he operates his landscape and nursery business, and hauled "fill soil" onto his land in an effort to harm his nursery business. (*Id.* ¶¶ 6-8.) Benckini seeks \$5.5 million in damages.

## **II. LEGAL STANDARD**

In considering a motion to dismiss for failure to state a claim upon which relief may be granted, a court must accept as true all of the factual allegations in the complaint and all reasonable inferences that can be drawn from those allegations. *Morse v. Lower Merion Sch. Dist.*, 131 F.3d 902, 906 (3d Cir. 1997). Moreover, a court must view all factual allegations in the light most favorable to the plaintiff. *Id.* A motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Because Benckini is acting pro se, the Court must liberally construe his complaint and "apply the applicable law, irrespective of whether [he] has mentioned it by name." *Seville v.*

*Martinez*, Civ. A. No. 04-5767, 2005 WL 289906, at \*2 (E.D. Pa. Feb. 4, 2005) (quoting *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002)). A pro se complaint may be dismissed for failure to state a claim only if it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (quoting *Conley*, 355 U.S. at 45-46); *Milhouse v. Carlson*, 652 F.2d 371, 373 (3d Cir. 1981). If the plaintiff presents only vague and conclusory allegations, however, the complaint should be dismissed. *Riley v. Jeffes*, 777 F.2d 143, 148 (3d Cir. 1985).

### III. DISCUSSION

Benckini’s factual and legal claims are, at best, difficult to decipher. For purposes of this motion, however, the relevant fact is clear; Benckini has sued the Police Department for violations of his civil rights under 42 U.S.C. § 1983. That statute creates liability for deprivations of constitutional or legal rights, privileges, or immunities by persons acting under color of state law. 42 U.S.C. § 1983 (2005). A municipal police department, however, is not a person within the meaning of the statute. *See Pino v. Baumeister*, Civ. A. No. 96-5233, 1997 WL 811011, at \*1 (E.D. Pa. Dec. 23, 1997) (“[A] municipal police department is not a party subject to suit under § 1983.”); *Tally v. Trautman*, Civ. A. No. 96-5190, 1997 WL 135705, at \*2 (E.D. Pa. Mar. 13, 1997) (“The police department, a mere incident of the borough, does not constitute a natural or artificial person. Therefore, the plaintiffs may not maintain claims against it.”); *see also Brown v. Pfaff*, Civ. A. No. 03-404, 2004 WL 422671, at \*2 (D. Del. Mar. 3, 2004) (“A municipal police department, however, is not a ‘person’ within the meaning of § 1983.”) The Police Department is thus an arm of a municipality and is not subject to lawsuits brought under § 1983. *See Harris v. Pitts*, Civ. A. No.

98-5479, 1999 WL 58644, at \*1 (E.D. Pa. Jan. 28, 1999) (collecting cases). It is well-established that “[i]n Section 1983 actions, police departments cannot be sued in conjunction with municipalities, because the police department is merely an administrative arm of the local municipality, and is not a separate judicial entity.” *DeBellis v. Kulp*, 166 F. Supp. 2d 255, 264 (E.D. Pa. 2001); *see also Tomaselli v. Upper Pottsgrove Township*, Civ. A. No. 04-2646, 2004 WL 2988515, at \*9 (E.D. Pa. Dec. 22, 2004) (dismissing § 1983 claim against police department); *Fraschetta v. Phoenixville Police Dept.*, Civ. A. No. 93-0870, 1993 WL 131307, at \*3 (E.D. Pa. Apr. 22, 1993) (same).

Despite the fact that Judge Stengel previously dismissed the Police Department as a Defendant in this action, Benckini’s Amended Complaint again names that entity. While this Court appreciates that Benckini is not an attorney and is therefore not well versed in legal concepts, he remains bound to move forward only with legitimate claims against those entities that he is permitted to sue. The Police Department is not such an entity.

#### **IV. CONCLUSION**

For the foregoing reasons, the Police Department’s motion to dismiss is granted. An appropriate Order follows.

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<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, this 23<sup>rd</sup> day of **March, 2005**, upon consideration of Defendant Upper Saucon Police Department's Motion to Dismiss (Document No. 15), and for the foregoing reasons, it is hereby **ORDERED** that the motion is **GRANTED** and the Upper Saucon Police Department is **DISMISSED WITH PREJUDICE** from this action.

**BY THE COURT:**



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**Berle M. Schiller, J.**