

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MARK SCOTT CIRIELLO, :  
Plaintiff, :  
 :  
-vs- : Civil No. 3:01cv2149 (PCD)  
 :  
DEPARTMENT OF DEFENSE, :  
Defendant. :

ORDER DISMISSING COMPLAINT

Plaintiff was granted leave to proceed in forma pauperis. Construing plaintiff's complaint under the liberal standard afforded pro se submissions, *see Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), no cognizable claim against defendant can be identified and the complaint is dismissed sua sponte.

“A district court must dismiss an in forma pauperis action if the action is ‘frivolous or malicious.’ *See* 28 U.S.C. § 1915(e)(2)(B)(I). An action is ‘frivolous’ when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is ‘based on an indisputably meritless legal theory. . . . A claim is based on an ‘indisputably meritless legal theory’ when either the claim lacks an arguable basis in law . . . or a dispositive defense clearly exists on the face of the complaint.” *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (citations omitted; internal quotation marks omitted).

Plaintiff's complaint is found to be frivolous due to both the fantastic allegations contained therein and the absence of any legal theory under which to pursue a claim. As an additional matter, plaintiff fails to identify the relief sought, stating instead that his complaint will be amended to include a

remedy after conducting discovery. “[D]iscovery is not intended as a fishing expedition permitting the speculative pleading of a case first and then pursuing discovery to support it; the plaintiff must have some basis in fact for the action.” *Zuk v. E. Pa. Psychiatric Inst. of Med. Coll.*, 103 F.3d 294, 299 (3d Cir. 1996). The complaint is dismissed without prejudice and with leave to file an amended complaint within thirty days.

SO ORDERED.

Dated at New Haven, Connecticut, November \_\_\_\_, 2001.

---

Peter C. Dorsey  
United States District Judge