IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DANIEL BARFIELD,	:	
	:	
Plaintiff,	:	
VS.	:	
	:	**NO. 5:17-CV-00240-MTT-CHW**
DR. SHARON LEWIS, *et al.*,	:	
	:	
Defendants.	:	
_____	:	

ORDER AND RECOMMENDATION

Pro se Plaintiff Daniel Barfield, an inmate currently incarcerated at the Georgia Diagnostic and Classification Prison in Jackson, Georgia, has filed a Complaint seeking relief pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff has also filed a motion for leave to proceed *in forma pauperis* (ECF No. 2). The undersigned has reviewed Plaintiff's submissions and finds Plaintiff's motion to proceed *in forma pauperis* must be **GRANTED**, and the following claims shall proceed for factual development: (1) access to courts claims against Defendants Chatman, Sellers, Cannon, Young, and Powell; (2) medical deliberate indifference claims against Defendants Burnside, Adair, and Gore; and (3) retaliation claims against Defendants Gore and Powell. It is **RECOMMENDED**, however, that Plaintiff's remaining federal claims be **DISMISSED without prejudice.**

I. Motion to Proceed *in forma pauperis*

Section 1915 allows the district courts to authorize the commencement of a civil action without prepayment of the normally-required fees upon a showing that the plaintiff is indigent and financially unable to pay the filing fee. A prisoner seeking to proceed *in*

forma pauperis ("IFP") under this section must provide the district court with both (1) an affidavit in support of his claim of indigence and (2) a certified copy of his prison "trust fund account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint." § 1915(b).

In this case, Plaintiff's pauper's affidavit and trust account statement show that he is currently unable to prepay the Court's filing fee. Plaintiff's motion to proceed *in forma pauperis* (ECF No. 2) is thus **GRANTED** and Plaintiff will be assessed an initial partial filing fee of $0.00. Plaintiff, however, is still obligated to pay the full balance of the filing fee, in installments, as set forth in § 1915(b) and explained below. It is accordingly requested that the **CLERK** forward a copy of this **ORDER** to the business manager of the facility in which Plaintiff is incarcerated so that withdrawals from his account may commence as payment towards the filing fee. The district court's filing fee is not refundable, regardless of the outcome of the case, and must therefore be paid in full even if the Plaintiff's Complaint (or any part thereof) is dismissed prior to service.

A. Directions to Plaintiff's Custodian

It is hereby **ORDERED** that the warden of the institution wherein Plaintiff is incarcerated, or the sheriff of any county wherein he is held in custody, and any successor custodians, each month cause to be remitted to the Clerk of this Court twenty percent (20%) of the preceding month's income credited to Plaintiff's account at said institution until the $350.00 filing fee has been paid in full. In accordance with provisions of the Prison Litigation Reform Act ("PLRA"), Plaintiff's custodian is hereby authorized to forward payments from the prisoner's account to the Clerk of Court each month until the

filing fee is paid in full, provided the amount in the account exceeds $10.00. It is further **ORDERED** that collection of monthly payments from Plaintiff's trust fund account shall continue until the entire $350.00 has been collected, notwithstanding the dismissal of Plaintiff's lawsuit or the granting of judgment against him prior to the collection of the full filing fee.

B. Plaintiff's Obligations Upon Release

Pursuant to provisions of the PLRA, in the event Plaintiff is hereafter released from the custody of the State of Georgia or any county thereof, he shall remain obligated to pay any balance due on the filing fee in this proceeding until said amount has been paid in full; Plaintiff shall continue to remit monthly payments as required by the PLRA. Collection from Plaintiff of any balance due on the filing fee by any means permitted by law is hereby authorized in the event Plaintiff is released from custody and fails to remit payments. Plaintiff's Complaint is subject to dismissal if he has the ability to make monthly payments and fails to do so.

II. Motions to Transfer Exhibits

Plaintiff has filed two motions in which he requests that the Court move exhibits from a previously-filed case, *Barfield v. Sutton*, No. 5:15-cv-00474-LJA-CHW (M.D. Ga. Dec. 21, 2015) ("*Barfield I*") and "interject those same exhibits" into the above-captioned case. Mot. Transfer Exhibits 1, ECF No. 6. The exhibits filed in *Barfield I* were attached to a motion for temporary restraining order filed after that case had already been closed. The motion for temporary restraining order in *Barfield I* focused on Plaintiff's alleged inability to obtain adequate access "to a law library and/or access to any legally trained

person" and alleged that this inability to access the courts contributed to the dismissal of his complaint in *Barfield I.* Mot. TRO 1-2, ECF No. 28 in *Barfield I.* The substantive allegations Plaintiff makes in the motion for TRO in *Barfield I* are thus similar to the allegations Plaintiff makes in the above-captioned case, and it appears that Plaintiff should have filed his exhibits in this case rather than in *Barfield I.* Accordingly, Plaintiff's motions to transfer exhibits (ECF Nos. 6, 7) shall be **GRANTED**, and the Clerk is requested to file the exhibits attached to Plaintiff's motion for temporary restraining order in *Barfield I* (ECF No. 28-2) in the above-captioned action. These documents have been considered in the initial screening process in this case.

III. Preliminary Screening

A. Standard of Review

In accordance with the PLRA, the district courts are obligated to conduct a preliminary screening of every complaint filed by a prisoner who seeks redress from a government entity, official, or employee. *See* 28 U.S.C. § 1915A(a). Screening is also required under 28 U.S.C. § 1915(e) when the plaintiff is proceeding IFP. Both statutes apply in this case, and the standard of review is the same. When conducting preliminary screening, the Court must accept all factual allegations in the complaint as true. *Boxer X v. Harris*, 437 F.3d 1107, 1110 (11th Cir. 2006); *Hughes v. Lott*, 350 F.3d 1157, 1159-60 (11th Cir. 2003). *Pro se* pleadings, like the one in this case, are "held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Id.* (internal quotation marks omitted). Still, the Court must dismiss a prisoner complaint if it "(1) is frivolous, malicious, or fails to state a claim upon which relief may be

granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. §1915A(b).

A claim is frivolous if it "lacks an arguable basis either in law or in fact." *Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008) (internal quotation marks omitted). The Court may dismiss claims that are based on "indisputably meritless legal" theories and "claims whose factual contentions are clearly baseless." *Id.* (internal quotation marks omitted). A complaint fails to state a claim if it does not include "sufficient factual matter, accepted as true, 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)). The factual allegations in a complaint "must be enough to raise a right to relief above the speculative level" and cannot "merely create[] a suspicion [of] a legally cognizable right of action." *Twombly*, 550 U.S. at 555 (first alteration in original). In other words, the complaint must allege enough facts "to raise a reasonable expectation that discovery will reveal evidence" supporting a claim. *Id.* at 556. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

To state a claim for relief under § 1983, a plaintiff must allege that (1) an act or omission deprived him of a right, privilege, or immunity secured by the Constitution or a statute of the United States; and (2) the act or omission was committed by a person acting under color of state law. *Hale v. Tallapoosa County*, 50 F.3d 1579, 1582 (11th Cir. 1995). If a litigant cannot satisfy these requirements or fails to provide factual allegations in support of his claim or claims, the complaint is subject to dismissal. *See*

Chappell v. Rich, 340 F.3d 1279, 1282-84 (11th Cir. 2003).

B. Factual Allegations and Plaintiff's Claims

Plaintiff's claims arise from his imprisonment at the Georgia Diagnostic and Classification Prison ("GDCP") in Jackson, Georgia. According to the Complaint, Plaintiff is incarcerated in the Special Management Unit ("SMU") in the GDCP. Compl. 9, ECF No. 1. Plaintiff first contends that prisoners confined to the SMU do not have adequate access to a law library or legal materials and that the prison's indigent mail system is deficient. *Id.* at 11-12. Plaintiff further alleges that he has not been provided adequate medical treatment during his incarceration at the GDCP. *Id.* at 13. Finally, Plaintiff alleges he has been retaliated against by Defendant Gore, a nurse at GDCP. *Id.* at 16. Plaintiff alleges Defendants' actions violate his constitutional rights, and he seeks declaratory relief, injunctive relief, and damages. *Id.* at 19-21. Plaintiff also wishes to bring state tort law claims for negligence and medical malpractice. *Id.* at 8.

1. Access to Courts

Plaintiff first alleges that Defendants Chatman, Sellers, Cannon, and Young instituted or followed a policy that violates his constitutional right to access the courts. Plaintiff contends that SMU inmates are only permitted to obtain materials through "a law request system where inmates must 'specifically' request particular information such as statutes or case law, an[d] this is limited to two (2) items weekly." Compl. 12, ECF No. 1. Inmates are provided no help if they do not know the specific case citations or statute number for the materials they seek, and they are provided no other assistance from prison staff in preparing or filing their claims. *Id.* at 12. Plaintiff also states that

Defendant Powell intentionally interfered with his legal mail, thereby denying Plaintiff access to the courts. *Id.* at 13.

"Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment." *Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003) (citing *Christopher v. Harbury*, 536 U.S. 403, 415 n. 12 (2002)). "To have standing to seek relief under this right, however, a plaintiff must show actual injury by 'demonstrat[ing] that a nonfrivolous legal claim ha[s] been frustrated or . . . impeded.'" *Jackson v. State Bd. of Pardons & Paroles*, 331 F.3d 790, 797 (11th Cir. 2003) (alterations and omission in original) (citing *Lewis v. Casey*, 518 U.S. 343, 353 (1996)). In other words, "[t]he injury requirement means that the plaintiff must have an underlying cause of action the vindication of which is prevented by the denial of access to the courts." *Cunningham v. Dist. Attorney's Office for Escambia Cnty.*, 592 F.3d 1237, 1271 (11th Cir. 2010).

Construing Plaintiff's allegations liberally, as the Court must at this stage, the undersigned finds Plaintiff has sufficiently alleged that Defendants Chatman, Sellers, Cannon, Young, and Powell interfered with Plaintiff's access to the courts. Plaintiff specifically states that Defendant Powell failed to process his legal mail, preventing Plaintiff from filing timely objections in a civil rights case filed in this Court. Compl. 11, 13, ECF No. 1. Plaintiff's case was ultimately dismissed. *See id.* at 13. Plaintiff has therefore alleged "actual injury" with respect to his access-to-courts claims against Defendant Powell. Plaintiff has also alleged that he attempted to obtain materials from

Defendant Young, that he did not receive those materials when requested, and that his inability to receive those materials in a timely manner affected his ability to respond to a motion to dismiss in his civil rights case. *See id.* at 12; *see also* Exh. to Mot. TRO in *Barfield I* at 5-6, ECF No. 28-2. At this early stage of the litigation, it cannot be said that Plaintiff's access-to-courts claims against Defendant Young should be summarily dismissed.

It appears Plaintiff seeks to hold Defendants Chatman, Sellers, and Cannon liable in their supervisory capacity. Supervisors can only be held liable under § 1983 if they personally participated in the allegedly unconstitutional conduct or if there is a causal connection between their actions and the alleged constitutional violation. *See, e.g.*, *Hendrix v. Tucker*, 535 F. App'x 803, 805 (11th Cir. 2013) (per curiam). A causal connection can be established if

> (1) a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation and he fail[ed] to do so; (2) the supervisor's improper custom or policy le[d] to deliberate indifference to constitutional rights; or (3) facts support an inference that the supervisor directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so.

Id. Construed liberally, Plaintiff's allegations support the inference that Defendants Chatman, Sellers, and Cannon were aware of the "law request system" and its potential inadequacies. Plaintiff has alleged that these Defendants held positions in the prison which would make it likely that they were actually responsible for creating the "law request system" about which Plaintiff complains. As such, Plaintiff's access-to-courts claims against these Defendants must also proceed for further factual development.

2. Medical Treatment Claims

Plaintiff next alleges that various Defendants were deliberately indifferent to his serious medical needs. A prisoner who demonstrates that a prison official was deliberately indifferent to his serious medical needs can state a claim under the Eighth Amendment. *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003). "To show that a prison official acted with deliberate indifference to serious medical needs, a plaintiff must satisfy both an objective and a subjective inquiry." *Id.* at 1243. A plaintiff must first "set forth evidence of an objectively serious medical need," and must also "prove that the prison official acted with an attitude of 'deliberate indifference' to that serious medical need." *Id.* In other words, prison officials must both "know of and then disregard an excessive risk to the prisoner." *Dunn v. Martin*, 178 F. App'x 876, 877 (11th Cir. 2006) (per curiam).

Plaintiff has alleged that previous injuries and surgery have left his left lower leg, ankle, and foot "deformed and not fully functional," and he states that "over the years" he has "had problems with the pain & blood circulation regarding the left lower leg & foot." Compl. 14, ECF No. 1. Plaintiff alleges that these problems manifest themselves in "pain, numbness, and discoloration in [his] left foot." *Id.* Plaintiff also alleges that he fell while attempting to step down from his bed because of his foot pain and numbness and further injured his leg, leaving "an obvious lump" visible on his foot. *Id.* at 15. Plaintiff further alleges facts suggesting that the discoloration in his foot is obvious. *See id.* at 14 (noting that discoloration in foot is "like a maroon, purpleish"). For purposes of initial screening, these afflictions can be considered serious medical needs. *See Farrow*,

320 F.3d at 1243 (defining "serious medical need" as "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention" (internal quotation marks omitted)).

Plaintiff must also allege that each individual Defendant was deliberately indifferent to these serious medical needs. Plaintiff asserts that Defendants Burnside, Adair, and Gore, the prison physician and nurses, have refused to provide him adequate medical treatment for his foot problems. Compl. 14, ECF No. 1. Plaintiff states that although he was provided an x-ray, it was of his upper leg and not his lower leg where he is experiencing problems; in addition, Plaintiff states that Defendant Burnside informed Plaintiff that "as long as nothing's broken that's really all he's concerned with" and that Plaintiff would have to "deal with" any "other issues . . . when he gets out" of prison. *Id.* Plaintiff has also provided documents indicating that the pain he experiences is severe. *See* Attach. 4 to Compl. at 2, ECF No. 1-4 (medical request characterizing Plaintiff's pain as "severe"). Plaintiff further alleges that he has experienced continued deterioration "of usage, movement and discoloration of said foot," but that Defendants Gore and Adair no longer accept Plaintiff's medical requests "when it pertains to any issues in regards to [his] left lower leg & foot." Compl. 15, ECF No. 1. Construed liberally and in the light most favorable to him, Plaintiff's medical treatment claims against Defendants Burnside, Adair, and Gore cannot be summarily dismissed at this time. *See, e.g., McElligott v. Foley*, 182 F.3d 1248, 1257 (11th Cir. 1999) ("[P]rison officials may violate the Eighth Amendment's commands by failing to treat an inmate's pain.").

Plaintiff also appears to allege that Defendants Chatman, Sellers, Cannon, and Lewis should be constitutionally liable for "upholding and ignoring plaintiff['s] complaint of pain." Compl. 18, ECF No. 1. Plaintiff states these Defendants "have refused to conduct any investigation" into Plaintiff's complaints that he has not received adequate medical care and have denied Plaintiff's complaints and grievances related thereto. Again, Plaintiff appears to allege these Defendants should be held liable as supervisors of the prison medical staff in this case.

Plaintiff's Complaint does not allege that Defendants Chatman, Sellers, Cannon, or Lewis personally participated in any medical decision-making, had any customs or policies regarding medical care, directed any of their subordinates to act unlawfully, or knew they were doing so and failed to stop them. While Plaintiff's complaints or grievances may have informed some of these Defendants of Plaintiff's belief that he was not receiving the level of medical care he desired, they fall short of informing them of the kind of "widespread abuse" that is required to impose supervisory liability on a prison official. *See Hendrix*, 535 F. App'x at 805 (plaintiff's contention that supervisors were on notice of need to correct constitutional deprivations because supervisors were aware of his administrative grievances and state court litigation was insufficient to establish that any alleged abuse was more than just an isolated occurrence).

Furthermore, Defendants Chatman, Sellers, and Cannon are not medical professionals, and Plaintiff does not allege that the nature of his injury was so obvious that these officials must have known that a medical professional had not appropriately treated the injury or that these officials had any reason to believe that prison medical staff

was not appropriately treating Plaintiff.[1] *See, e.g., Kuhne v. Fla. Dep't Corr.*, 618 F. App'x 498, 507 (11th Cir. 2015) (per curiam) (holding that "when a layperson is accused of deliberate indifference, the plaintiff must present[] evidence that her situation was so obviously dire that two lay [officers] must have known that a medical professional had grossly misjudged [the plaintiff's] condition" (internal quotation marks omitted) (alterations in original)); *see also Durmer v. O'Carroll*, 991 F.2d 64, 69 (3d Cir. 1993) (holding that two defendants who were not medical professionals could not be deliberately indifferent "simply because they failed to respond directly to the medical complaints of a prisoner who was already being treated by the prison doctor"). Accordingly, it is **RECOMMENDED** that Plaintiff's medical deliberate indifference claims against Defendants Chatman, Sellers, Cannon, and Lewis be **DISMISSED without prejudice.**

3. Retaliation Claims

Finally, Plaintiff appears to raise claims related to allegedly retaliatory conduct by Defendant Gore. It is well established that an adverse action imposed in retaliation for a prisoner's exercise of a constitutionally protected right is actionable. *Wildberger v. Bracknell*, 869 F.2d 1467, 1468 (11th Cir. 1989) (per curiam). Generally speaking, to prove a retaliation claim an inmate needs to show that he engaged in protected conduct; that the prison official's retaliatory conduct adversely affected the protected conduct; and a causal connection between the protected conduct and the adverse action. *See, e.g.*,

[1]Plaintiff alleges that Defendants Chatman, Sellers, Cannon, and Lewis considered only "the ex parte statements of Defendants Burnside, Gore, and Adair that I (plaintiff) am not suffering from anything." Compl. 16, ECF No. 1.

Moton v. Cowart, 631 F.3d 1337, 1341 (11th Cir. 2011). "[B]road, conclusory allegations of retaliation are insufficient to state a claim under section 1983." *Robinson v. Boyd*, No. 5:03CV25/MMP/MD, 2005 WL 1278136, at *3 (N.D. Fla. May 26, 2005).

Plaintiff alleges Defendant Gore retaliated against him after Plaintiff filed a civil rights claim against her. Compl. 16, ECF No. 1. Plaintiff states that Defendant Gore "started having [Plaintiff's] cell shook down without cause or reason" and denied Plaintiff his prescribed medications beginning after the lawsuit was filed. *See id.* Construing Plaintiff's allegations liberally, as the Court must at this stage, the undersigned finds Plaintiff's retaliation claim against Defendant Gore should proceed for further factual development. Plaintiff also contends that Defendant Powell was aware that Defendant Gore was retaliating against Plaintiff and took no action to stop the retaliation. This claim cannot be summarily dismissed at this stage and must also proceed for further factual development. *See, e.g., Douglas v. Yates*, 535 F.3d 1316, 1322 (11th Cir. 2008) (finding district court erred in dismissing claims against supervisor with prejudice where prisoner alleged supervisor had been informed "of ongoing misconduct by [supervisor's] subordinates and [supervisor] failed to stop the misconduct").

4. State Law Claims

Plaintiff alleges that the Board of Regents of the University System of Georgia—through their employees, Defendants Burnside, Gore, Adair, and Lewis—committed "the tort of malpractice and negligence under the laws of the State of Georgia." Compl. 18,

ECF No. 1.[2] Although Plaintiff's federal claims against some of these Defendants are proceeding for further factual development, it is possible they may fail if faced with a motion to dismiss or a motion for summary judgment. In the event that the federal claims over which this Court has original jurisdiction are dismissed, the Court will likely decline to exercise supplemental jurisdiction over Plaintiff's state law claims. 28 U.S.C. § 1367(c)(3). Because federal jurisdiction over Plaintiff's state law claims remains an unsettled issue, it would be unnecessary and inappropriate to reach the merits of such claims at this early stage in this case.

IV. Motion for Temporary Restraining Order

Plaintiff has also filed a separate motion for a temporary restraining order (ECF No. 3.) A temporary restraining order ("TRO") or preliminary injunction is a drastic remedy used primarily to preserve the status quo rather than grant most or all of the substantive relief sought in the complaint. *See, e.g.*, *Cate v. Oldham*, 707 F.2d 1176, 1185 (11th Cir. 1983); *Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982).[3] Factors a movant must show to be entitled to a TRO include: "(1) a substantial likelihood of ultimate success on the merits; (2) the TRO is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the TRO would inflict on the non-movant;

[2] Plaintiff does not appear to assert any § 1983 claims against the Board of Regents.

[3]The standard for obtaining a TRO is the same as the standard for obtaining a preliminary injunction. *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001) (per curiam); *Windsor v. United States*, 379 F. App'x 912, 916-17 (11th Cir. 2010) (per curiam).

and (4) the TRO would serve the public interest." *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995) (per curiam).

At this stage of litigation, the facts have not been sufficiently developed to conclude that there is a substantial likelihood that Plaintiff will ultimately prevail on the merits. Instead, the Defendants should be afforded an opportunity to respond to Plaintiff's allegations, and any claims for injunctive relief can be addressed as this case proceeds. Accordingly, it is **RECOMMENDED** that Plaintiff's motion for a temporary restraining order (ECF No. 3) be **DENIED.**

V. Conclusion

In accordance with the foregoing, Plaintiff's motion for leave to proceed *in forma pauperis* (ECF No. 2) and his motions to transfer exhibits (ECF Nos. 6, 7) are **GRANTED,** and the following claims may proceed for further factual development: (1) access to courts claims against Defendants Chatman, Sellers, Cannon, Young, and Powell; (2) medical deliberate indifference claims against Defendants Burnside, Adair, and Gore; and (3) retaliation claims against Defendants Gore and Powell. Because Plaintiff has failed to state a claim upon which relief may be granted, it is **RECOMMENDED** that Plaintiff's remaining federal claims be **DISMISSED without prejudice.** It is further **RECOMMENDED** that Plaintiff's motion for a temporary restraining order (ECF No. 3) be **DENIED.**

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to these recommendations with the Honorable Marc T. Treadwell, United

States District Judge, **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Recommendation. The parties may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. *See* 11th Cir. R. 3-1.

ORDER FOR SERVICE

Having found that Plaintiff has made colorable constitutional violation claims against Defendants Chatman, Sellers, Cannon, Young, Powell, Burnside, Adair, and Gore, it is accordingly **ORDERED** that service be made on those Defendants and that they file an Answer, or such other response as may be appropriate under Rule 12, 28 U.S.C. § 1915, and the Prison Litigation Reform Act. Defendants are reminded of the duty to avoid unnecessary service expenses, and of the possible imposition of expenses for failure to waive service pursuant to Rule 4(d).

DUTY TO ADVISE OF ADDRESS CHANGE

During the pendency of this action, all parties shall keep the Clerk of this Court and all opposing attorneys and/or parties advised of their current address. Failure to promptly advise the Clerk of a change of address may result in the dismissal of a party's pleadings.

DUTY TO PROSECUTE ACTION

Plaintiff is also advised that he must diligently prosecute his Complaint or face the

possibility that it will be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. Defendants are similarly advised that they are expected to diligently defend all allegations made against them and to file timely dispositive motions as hereinafter directed. This matter will be set down for trial when the Court determines that discovery has been completed and that all motions have been disposed of or the time for filing dispositive motions has passed.

FILING AND SERVICE OF MOTIONS, PLEADINGS, AND CORRESPONDENCE

It is the responsibility of each party to file original motions, pleadings, and correspondence with the Clerk of Court. A party need not serve the opposing party by mail if the opposing party is represented by counsel. In such cases, any motions, pleadings, or correspondence shall be served electronically at the time of filing with the Court. If any party is not represented by counsel, however, it is the responsibility of each opposing party to serve copies of all motions, pleadings, and correspondence upon the unrepresented party and to attach to said original motions, pleadings, and correspondence filed with the Clerk of Court a certificate of service indicating who has been served and where (i.e., at what address), when service was made, and how service was accomplished.

DISCOVERY

Plaintiff shall not commence discovery until an answer or dispositive motion has been filed on behalf of the Defendant from whom discovery is sought by the Plaintiff. The Defendants shall not commence discovery until such time as an answer or dispositive

motion has been filed. Once an answer or dispositive motion has been filed, the parties are authorized to seek discovery from one another as provided in the Federal Rules of Civil Procedure. The deposition of the Plaintiff, a state/county prisoner, may be taken at any time during the time period hereinafter set out provided prior arrangements are made with his custodian. **Plaintiff is hereby advised that failure to submit to a deposition may result in the dismissal of his lawsuit under Rule 37 of the Federal Rules of Civil Procedure.**

IT IS HEREBY ORDERED that discovery (including depositions and the service of written discovery requests) shall be completed within 90 days of the date of filing of an answer or dispositive motion by the Defendants (whichever comes first) unless an extension is otherwise granted by the court upon a showing of good cause therefor or a protective order is sought by the defendant and granted by the court. This 90-day period shall run separately as to Plaintiff and Defendants beginning on the date of filing of Defendants' answer or dispositive motion (whichever comes first). The scheduling of a trial may be advanced upon notification from the parties that no further discovery is contemplated or that discovery has been completed prior to the deadline.

Discovery materials shall not be filed with the Clerk of Court. No party shall be required to respond to any discovery not directed to him/her or served upon him/her by the opposing counsel/party. The undersigned incorporates herein those parts of the **Local Rules** imposing the following limitations on discovery: except with written permission of the court first obtained, **interrogatories** may not exceed TWENTY-FIVE (25) to each party, **requests for production of documents and things** under Rule 34 of the Federal

Rules of Civil Procedure may not exceed TEN (10) requests to each party, and **requests for admissions** under Rule 36 of the Federal Rules of Civil Procedure may not exceed FIFTEEN (15) requests to each party. No party shall be required to respond to any such requests which exceed these limitations.

REQUESTS FOR DISMISSAL AND/OR JUDGMENT

The Court shall not consider requests for dismissal of or judgment in this action, absent the filing of a motion therefor accompanied by a brief/memorandum of law citing supporting authorities. Dispositive motions should be filed at the earliest time possible, but in any event no later than one hundred - twenty (120) days from when the discovery period begins unless otherwise directed by the Court.

SO ORDERED AND RECOMMENDED, this 18th day of January, 2018.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge