

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

WALLACE A. GARDNER, ADC # 110784

PLAINTIFF

v.

5:16CV00024-DPM-JJV

CHRISTOPHER BUDNIK, Deputy Warden,
Varner Unit; *et al.*

DEFENDANTS

ORDER

Wallace A. Gardner (“Plaintiff”) filed this action pro se and pursuant to 42 U.S.C. section 1983. (Doc. No. 2.) He also filed an Application to Proceed Without Prepayment of Fees and Affidavit (“Application”) (Doc. No. 1). Plaintiff is a “three-striker” within the meaning of the Prison Litigation Reform Act.¹ However, he may be eligible to proceed in this action if he is in imminent danger of physical harm. *See Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003); *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998). Before proceeding further, I invite Plaintiff to amend his Complaint in order to clarify several issues.

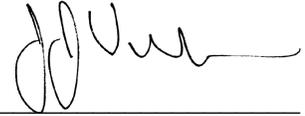
Plaintiff alleges he was placed in a recently painted cell and the paint fumes caused him dizziness, headaches, and asthma attacks. (Doc. No. 2 at 4.) He alleges this occurred in October 2015, but he has not specified whether he is still subject to these conditions. (*Id.*) Additionally, Plaintiff has named eight Defendants to this action, but he has not specified how any of these individuals was responsible for violating his rights. Rather, he asks that a trial be held to determine which Defendants were at fault. (*Id.*) In so doing, he has placed the cart before the horse. Plaintiff must specifically allege at the outset of this action which Defendants violated his rights and how they did so.

¹*See Gardner v. Kelley, et al.*, 5:15CV00223-SWW; *Gardner v. Hutchison et al.*, 4:15CV00650-JLH; and *Gardner v. Fox et al.*, 4:14CV00197-JM.

Plaintiff, if he chooses, may submit to the Court, within thirty (30) days of the entry date of this Order, a superseding Amended Complaint which complies with this Order and contains all of his claims against all defendants he is suing in a single document. Plaintiff is cautioned that an Amended Complaint renders his original Complaint without legal effect. Only claims properly set out in the Amended Complaint will be allowed to proceed. If he fails to file an Amended Complaint, I will screen his allegations as they stand and some or all of his claims may be dismissed.

IT IS, THEREFORE, ORDERED that the Clerk shall mail the 42 U.S.C. § 1983 complaint form to Plaintiff with this Order. If Plaintiff wishes to amend his Complaint, he may complete the new complaint form in its entirety in accordance with this Order, mark it as “Amended Complaint,” and file within thirty (30) days of the date of this Order.

DATED this 28th day of January, 2016.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE