

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION**

ROBERT JONES,

Plaintiff,

v.

WARDEN DOUG WILLIAMS; and ERIC  
SMOKES,

Defendants.

CIVIL ACTION NO.: 6:17-cv-161

**ORDER and MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff, currently an inmate at Hays State Prison in Trion, Georgia, submitted an Amended Complaint in the above-captioned action pursuant to 42 U.S.C. § 1983 contesting certain conditions of his confinement while he was housed at Smith State Prison in Glennville, Georgia. (Doc. 5.) While proceeding before the United States District Court for the Northern District of Georgia, Plaintiff was granted leave to proceed *in forma pauperis*. (Docs. 6, 7.) Plaintiff also filed a Motion to Appoint Counsel. (Doc. 17.) For the reasons set forth below, I **DENY** Plaintiff's Motion to Appoint Counsel, and I **RECOMMEND** that the Court **DISMISS** Plaintiff's claims for monetary damages against Defendants in their official capacities and **DENY** Plaintiff leave to appeal *in forma pauperis* as to those claims. However, Plaintiff arguably states colorable Eighth Amendment claims against Defendants, and those claims shall proceed. Accordingly, the Court **DIRECTS** the United States Marshal to serve Defendants Williams and Smokes with a copy of Plaintiff's Amended Complaint and Brief, (docs. 5, 16), and this Order.

## BACKGROUND<sup>1</sup>

Plaintiff originally filed this action in the United States District Court for the Northern District of Georgia, where he also submitted his Amended Complaint. (Docs. 1, 5.) After reviewing Plaintiff's Amended Complaint, the Northern District Court dismissed Defendant Gray Jorges and transferred Plaintiff's remaining claims against Defendants Williams and Smokes to the Statesboro Division of this District. (Docs. 8, 12, 13, 14.) In his Amended Complaint, Plaintiff raises claims against Defendants Williams and Smokes that implicate the Eighth Amendment. (Doc. 5.) Plaintiff also filed a Brief in support of his Amended Complaint where he objected to the Northern District's findings and clarified and supplemented his contentions. (Doc. 16.)

On July 15, 2016, while at Smith State Prison, Plaintiff notified counselor Picard that he was experiencing significant mental health problems. (Doc. 5, p. 3.) Counselor Picard, however, did not come back to see Plaintiff until three days later. (Id.) When Picard met with Plaintiff on July 18, she eventually had Plaintiff placed in a suicide cell. (Id. at p. 5.) While in the suicide watch cell, Plaintiff alleges Defendant Smokes came to inquire about Plaintiff's mental health and current status in the suicide cell. After listening to Plaintiff's issues, Defendant Smokes asked if Plaintiff wanted to back to general population, despite Plaintiff telling Defendant Smokes he had yet to see a doctor. Plaintiff replied yes, allegedly because Defendant Smokes "was not trying to understand what [he] was going through." (Id.) That next day, on July 22, Plaintiff attempted to hang himself, but two officers and an inmate pulled him to safety. Plaintiff was taken to medical and then to Emory Hospital. (Id.)

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<sup>1</sup> The below recited facts are taken from Plaintiff's Amended Complaint, (doc. 5), and are accepted as true, as they must be at this stage.

Defendant Williams came to visit Plaintiff at Emory. (Id. at p. 4.) While at the hospital, Defendant Williams allegedly took cell phone video of Plaintiff saying that he “was ok.” (Id.) Plaintiff further alleges Defendant Williams took this video to cover up a violation of Plaintiff’s rights. Plaintiff avers he was then taken to Georgia State Prison where he was confined without clothes for two weeks before being taken to Hays State Prison on August 8, 2016. (Id.)

Plaintiff asserts Defendant Williams and Smokes were deliberately indifferent to his serious mental health needs. (Doc. 16.) Plaintiff claims that Defendant Smokes acted with deliberate indifference because he let Plaintiff out of suicide watch without an evaluation from medical personnel. (Id. at p. 2.) Similarly, Plaintiff claims Defendant Williams acted with deliberate indifference because he did nothing while viewing video footage that showed Defendant Smokes transferring Plaintiff from suicide watch without a medical evaluation. (Id. at p. 5.) Plaintiff also claims Defendant Williams was aware Plaintiff went to the shower without supervision the day of his attempted suicide and that officers did not follow procedure in saving him. (Id.) As relief, Plaintiff requests nominal, compensatory, and punitive damages or a reduction in his sentence. (Doc. 5, p. 5; see also Doc. 17, p. 3.)

### **STANDARD OF REVIEW**

Plaintiff brings this action *in forma pauperis* under 42 U.S.C. § 1983. (Docs. 6, 7.) Under 28 U.S.C. § 1915(a)(1), the Court may authorize the filing of a civil lawsuit without the prepayment of fees if the plaintiff submits an affidavit that includes a statement of all of his assets and shows an inability to pay the filing fee and also includes a statement of the nature of the action which shows that he is entitled to redress. Even if the plaintiff proves indigence, the Court must dismiss the action if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii). Additionally, pursuant to 28 U.S.C.

§ 1915A, the Court must review a complaint in which a prisoner seeks redress from a governmental entity. Upon such screening, the Court must dismiss a complaint, or any portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or which seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

When reviewing a complaint on an application to proceed *in forma pauperis*, the Court is guided by the instructions for pleading contained in the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 8 (“A pleading that states a claim for relief must contain [among other things] . . . a short and plain statement of the claim showing that the pleader is entitled to relief.”); Fed. R. Civ. P. 10 (requiring that claims be set forth in numbered paragraphs, each limited to a single set of circumstances). Further, a claim is frivolous under Section 1915(e)(2)(B)(i) “if it is ‘without arguable merit either in law or fact.’” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002) (quoting Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001)).

Whether a complaint fails to state a claim under Section 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). Thompson v. Rundle, 393 F. App’x 675, 678 (11th Cir. 2010) (per curiam). Under that standard, this Court must determine whether the complaint contains “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)). A plaintiff must assert “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not” suffice. Twombly, 550 U.S. at 555. Section 1915 also “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations

and dismiss those claims whose factual contentions are clearly baseless.” Bilal, 251 F.3d at 1349 (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)).

In its analysis, the Court will abide by the long-standing principle that the pleadings of unrepresented parties are held to a less stringent standard than those drafted by attorneys and, therefore, must be liberally construed. Haines v. Kerner, 404 U.S. 519, 520 (1972); Boxer X v. Harris, 437 F.3d 1107, 1110 (11th Cir. 2006) (“*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys . . . .”) (quoting Hughes v. Lott, 350 F.3d 1157, 1160 (11th Cir. 2003)). However, Plaintiff’s unrepresented status will not excuse mistakes regarding procedural rules. McNeil v. United States, 508 U.S. 106, 113 (1993) (“We have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.”). The requisite review of Plaintiff’s Complaint raises several doctrines of law, which the Court discusses as follows.

## **DISCUSSION**

### **I. Motion to Appoint Counsel (Doc. 17)**

Plaintiff moves for the appointment of counsel. (Doc. 17.) Plaintiff, however, has no constitutional right to the appointment of counsel in this civil case. Wright v. Langford, 562 F. App’x 769, 777 (11th Cir. 2014) (per curiam) (citing Bass v. Perrin, 170 F.3d 1312, 1320 (11th Cir. 1999)). “Although a court may, pursuant to 28 U.S.C. § 1915(e)(1), appoint counsel for an indigent plaintiff, it has broad discretion in making this decision, and should appoint counsel only in exceptional circumstances.” Wright, 562 F. App’x at 777 (citing Bass, 170 F.3d at 1320). Appointment of counsel in a civil case is a “privilege that is justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner.” Fowler v. Jones, 899 F.2d 1088, 1096 (11th Cir. 1990) (citing Poole v. Lambert, 819 F.2d 1025, 1028 (11th Cir. 1987); Wahl v. McIver, 773 F.2d

1169, 1174 (11th Cir. 1985)). The Eleventh Circuit Court of Appeals has explained that “the key” to assessing whether counsel should be appointed “is whether the *pro se* litigant needs help in presenting the essential merits of his or her position to the court. Where the facts and issues are simple, he or she usually will not need such help.” McDaniels v. Lee, 405 F. App’x 456, 457 (11th Cir. 2010) (per curiam) (quoting Kilgo v. Ricks, 983 F.2d 189, 193 (11th Cir. 1993)).

The Court has reviewed the record and pleadings in this case, and there are no “exceptional circumstances” warranting the appointment of counsel. While the Court understands that Plaintiff is incarcerated, this Court has repeatedly found that “prisoners do not receive special consideration notwithstanding the challenges of litigating a case while incarcerated.” Hampton v. Peebles, No. CV 614-104, 2015 WL 4112435, at \*2 (S.D. Ga. July 7, 2015). “Indeed, the Eleventh Circuit has consistently upheld district courts’ decisions to refuse appointment of counsel in 42 U.S.C. § 1983 actions similar to this case for want of exceptional circumstances.” Id. (citing Smith v. Warden, Hardee Corr. Inst., 597 F. App’x 1027, 1030 (11th Cir. 2015) (per curiam); Wright, 562 F. App’x at 777; Faulkner v. Monroe Cty. Sheriff’s Dep’t, 523 F. App’x 696, 702 (11th Cir. 2013) (per curiam); McDaniels v. Lee, 405 F. App’x 456, 457 (11th Cir. 2010) (per curiam); Sims v. Nguyen, 403 F. App’x 410, 414 (11th Cir. 2010) (per curiam); Fowler, 899 F.2d at 1091, 1096; Wahl, 773 F.2d at 1174). This case is not so complex legally or factually to prevent Plaintiff from presenting “the essential merits of his position” to the Court. Thus, the Court **DENIES** Plaintiff’s Motion to Appoint Counsel.

## **II. Dismissal of Official Capacity Claims**

Plaintiff cannot sustain Section 1983 monetary damages claims against Defendants in their official capacities. States are immune from private suits pursuant to the Eleventh Amendment and traditional principles of state sovereignty. Alden v. Maine, 527 U.S. 706, 712–

13 (1999). Section 1983 does not abrogate the well-established immunities of a state from suit without its consent. Will v. Mich. Dep't of State Police, 491 U.S. 58, 67 (1989). Because a lawsuit against a state agency or a state officer in his official capacity is “no different from a suit against the [s]tate itself,” such defendants are immune from suit under Section 1983. Id. at 71. Here, the State of Georgia would be the real party in interest in a suit against Defendants in their official capacities as employees of the Georgia Department of Corrections. Accordingly, the Eleventh Amendment immunizes these actors from suit in their official capacities. See Free v. Granger, 887 F.2d 1552, 1557 (11th Cir. 1989). Absent a waiver of that immunity, Plaintiff cannot sustain any constitutional claims against Defendants in their official capacities for monetary relief. Therefore, the Court should **DISMISS** all monetary damages claims against Defendants in their official capacities.

### **III. Deliberate Indifference to Serious Medical Needs Claims**

The cruel and unusual punishment standard of the Eighth Amendment requires prison officials to “ensure that inmates receive adequate food, clothing, shelter, and medical care.” Farmer v. Brennan, 511 U.S. 825, 832 (1994). Generally speaking, however, “prison conditions rise to the level of an Eighth Amendment violation only when they involve the wanton and unnecessary infliction of pain.” Chandler v. Crosby, 379 F.3d 1278, 1289 (11th Cir. 2004) (quotation marks omitted). Thus, not all deficiencies and inadequacies in prison conditions amount to a violation of a prisoner’s constitutional rights. Rhodes v. Chapman, 452 U.S. 337, 349 (1981). The Constitution does not mandate comfortable prisons. Id. Prison conditions violate the Eighth Amendment only when the prisoner is deprived of “the minimal civilized measure of life’s necessities.” Id. at 347. However, “[c]ontemporary standards of decency must

be brought to bear in determining whether a punishment is cruel and unusual.” Bass v. Perrin, 170 F.3d 1312, 1316 (11th Cir. 1999).

In the medical care context, the standard for cruel and unusual punishment, embodied in the principles expressed in Estelle v. Gamble, 429 U.S. 97, 104 (1976), is whether a prison official exhibits a deliberate indifference to the serious medical needs of an inmate. Farmer, 511 U.S. at 828. However, “not every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment.” Harris v. Thigpen, 941 F.2d 1495, 1505 (11th Cir. 1991) (quoting Estelle, 429 U.S. at 105). Rather, “an inmate must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” Hill v. DeKalb Reg’l Youth Det. Ctr., 40 F.3d 1176, 1186 (11th Cir. 1994).

Thus, in order to prove a deliberate indifference to medical care claim, a prisoner must:

- (1) “satisfy the objective component by showing that [he] had a serious medical need”;
- (2) “satisfy the subjective component by showing that the prison official acted with deliberate indifference to [his] serious medical need”; and
- (3) “show that the injury was caused by the defendant’s wrongful conduct.” Goebert v. Lee County, 510 F.3d 1312, 1326 (11th Cir. 2007).

As to the first component, a medical need is serious if it “has been diagnosed by a physician as mandating treatment or [is] one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” Id. (quoting Hill, 40 F.3d at 1187). Under the second, subjective component, the Eleventh Circuit has consistently required that “a defendant know of and disregard an excessive risk to an inmate’s health and safety.” Haney v. City of Cumming, 69 F.3d 1098, 1102 (11th Cir. 1995). Thus, the subjective component requires an inmate to prove: “(1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by



conduct that is more than mere negligence.” Melton v. Abston, 841 F.3d 1207, 1223 (11th Cir. 2016).<sup>2</sup>

“Conduct that is more than mere negligence includes: (1) grossly inadequate care; (2) a decision to take an easier but less efficacious course of treatment; and (3) medical care that is so cursory as to amount to no treatment at all.” Bingham v. Thomas, 654 F.3d 1171, 1176 (11th Cir. 2011). Additionally, a defendant who “delays necessary treatment for non-medical reasons” or “knowingly interfere[s] with a physician’s prescribed course of treatment” may exhibit deliberate indifference. Id. (citations omitted).

In instances where a deliberate indifference claim turns on a delay in treatment rather than the type of medical care received, the Court considers “the reason for the delay and the nature of the medical need.” Farrow v. West, 320 F.3d 1235, 1246 (11th Cir. 2003) (citing McElligott, 182 F.3d at 1255). When a claim turns on the quality of treatment provided, however, “a simple difference in medical opinion between the prison’s medical staff and the inmate as to the latter’s diagnosis or course of treatment’ does not support a claim of deliberate indifference.” Melton, 841 F.3d at 1224 (quoting Harris, 941 F.2d at 1505). In other words, “medical malpractice does not become a constitutional violation merely because the victim is a prisoner.” Estelle, 429 U.S. at 104. Furthermore, deliberate indifference is not established when an inmate receives medical care, but “may have desired different modes of treatment.” Hamm v. DeKalb County, 774 F.2d 1567, 1575 (11th Cir. 1985).

“A medical treatment claim [will] not lie against non-medical personnel unless they were personally involved in the denial of treatment or deliberately interfered with prison doctors’

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<sup>2</sup> Eleventh Circuit case law on whether a claim of deliberate indifference requires “more than *gross* negligence” or “more than *mere* negligence” is inconsistent. Compare Goebert, 510 F.3d at 1327, with Bingham, 654 F.3d at 1176. In Melton, the Eleventh Circuit directly addressed this discrepancy and found “more than mere negligence” to be the appropriate standard. 841 F.3d at 1223 n.2. Accordingly, this Court will apply the “more than mere negligence” standard.

treatment. Prison officials are entitled to rely on the opinions, judgment, and expertise of a prison medical staff to determine a medically necessary and appropriate cause of treatment for an inmate.” Baker v. Pavlakovic, No. 4:12-CV-03958-RDP, 2015 WL 4756295, at \*7 (N.D. Ala. Aug. 11, 2015) (citing Williams v. Limestone County, 198 F. App’x 893, 897 (11th Cir. 2006) (per curiam)). “[It] is widely held that non-medical prison personnel are generally entitled to rely on the expertise of the medical staff and are not required to second-guess the medical staff’s judgment regarding an inmate’s care.” Stallworth v. Graham, No. 4:14-CV-00134-RDP, 2015 WL 4756348, at \*5 (N.D. Ala. Aug. 11, 2015) (citing Johnson v. Doughty, 433 F.3d 1001, 1011 (7th Cir. 2006) (“Except in the unusual case where it would be evident to a layperson that a prisoner is receiving inadequate or inappropriate treatment, prison officials may reasonably rely on the judgment of medical professionals[.]”); Kelly v. Ambroski, 97 F. Supp. 3d 1320, 1343 (N.D. Ala. 2015) (“[I]n the absence of a reason to believe, or actual knowledge, that medical staff is administering inadequate medical care, non-medical prison personnel are not chargeable with the Eighth Amendment scienter requirement of deliberate indifference[.]”)).

**A. Defendant Smokes**

Liberal construing Plaintiff’s claims, he states Defendant Smokes was aware of his suicidal condition but did not ensure any mental health care, instead letting Plaintiff leave suicide watch of his own volition. (Doc. 5, p. 5; Doc. 16, p. 2.) At this stage of the litigation, because Plaintiff alleges Defendant Smokes did not provide any health care despite knowledge of Plaintiff’s suicidal tendencies, the Court finds Plaintiff has arguably stated a colorable deliberate indifference to serious medical needs claim against Defendant Smokes. See Greason v. Kemp, 891 F.2d 829, 835–36 (11th Cir. 1990) (“Where prison personnel directly responsible for inmate care have knowledge that an inmate has attempted, or even threatened, suicide, their failure to

take steps to prevent that inmate from committing suicide can amount to deliberate indifference.”) (citations omitted). Accordingly, Plaintiff’s Eighth Amendment claim against Defendant Smokes shall proceed.

**B. Defendant Williams**

Unlike Plaintiff’s claims against Defendant Smokes, Plaintiff does not aver direct, personal involvement by Defendant Williams, the Warden, in Plaintiff’s supervision or lack of mental health care. Nonetheless, Plaintiff levies essentially the same allegations—Defendant Williams knew Plaintiff was suicidal, knew he had not seen any mental health professional, and did nothing to ensure some modicum of treatment. (Doc. 16, p. 5.) As such, Plaintiff has arguably stated a colorable claim of deliberate indifference to serious medical needs against Defendant Williams.

Although Plaintiff’s allegations regarding Defendant Williams’s subjective knowledge of Plaintiff’s condition, premised on surveillance footage, are enough to survive frivolity review, Plaintiff is forewarned that, in order to successfully maintain this claim, he must show Defendant Williams was subjectively aware of Plaintiff’s condition and aware of the total lack of health care Plaintiff allegedly faced. See Melton, 841 F.3d at 1223; Ambroski, 97 F. Supp. 3d at 1343 (“[I]n the absence of a reason to believe, or actual knowledge, that medical staff is administering inadequate medical care, non-medical prison personnel are not chargeable with the Eighth Amendment scienter requirement of deliberate indifference[.]”). Moreover, Plaintiff is forewarned that he cannot establish liability against Defendant Williams merely based on his supervisory status as warden. Bryant v. Jones, 575 F.3d 1281, 1299 (11th Cir. 2009). A supervisor may be liable only through personal participation in the alleged constitutional violation or when there is a causal connection between the supervisor’s conduct and the alleged

violations. Braddy v. Fla. Dep't of Labor & Emp't Sec., 133 F.3d 797, 801 (11th Cir. 1998); see also Barr v. Gee, 437 F. App'x 865, 875 (11th Cir. 2011) (per curiam) (stating grounds sufficient to establish a supervisor's liability).

Despite these warnings, the Court finds Plaintiff's deliberate indifference to serious medical needs claim against Defendant Williams sufficient to survive frivolity review, and this claim shall proceed.

### CONCLUSION

For the reasons set forth above, I **DENY** Plaintiff's Motion to Appoint Counsel, and I **RECOMMEND** that the Court **DISMISS** Plaintiff's claims for monetary damages against Defendants in their official capacities and **DENY** Plaintiff leave to appeal *in forma pauperis* as to those claims. However, Plaintiff's allegations arguably state colorable Eighth Amendment claims against Defendants, and those claims shall proceed. Accordingly, the Court **DIRECTS** the United States Marshal to serve Defendants Williams and Smokes with a copy of Plaintiff's Amended Complaint and Brief, (docs. 5, 16), and this Order.

The Court **ORDERS** any party seeking to object to this Report and Recommendation to file specific written objections within fourteen (14) days of the date on which this Report and Recommendation is entered. Any objections asserting that the Magistrate Judge failed to address any contention raised in the Complaint must also be included. Failure to do so will bar any later challenge or review of the factual findings or legal conclusions of the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). A copy of the objections must be served upon all other parties to the action.

Upon receipt of Objections meeting the specificity requirement set out above, a United States District Judge will make a *de novo* determination of those portions of the report, proposed findings, or recommendation to which objection is made and may accept, reject, or modify in

whole or in part, the findings or recommendations made by the Magistrate Judge. Objections not meeting the specificity requirement set out above will not be considered by a District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a District Judge. The Court **DIRECTS** the Clerk of Court to serve a copy of this Report and Recommendation upon the Plaintiff.

### **REMAINING CLAIMS**

As stated above, Plaintiff's Amended Complaint, as clarified and supplemented in his Brief, arguably states colorable claims against Defendants for deliberate indifference to serious medical needs. Consequently, a copy of Plaintiff's Amended Complaint, Brief, and a copy of this Order shall be served upon Defendants by the United States Marshal without prepayment of cost. The Court also provides the following instructions to the parties that will apply to the remainder of this action and which the Court urges the parties to read and follow.

### **INSTRUCTIONS TO DEFENDANTS**

Because Plaintiff is proceeding *in forma pauperis*, the undersigned directs that service be effected by the United States Marshal. Fed. R. Civ. P. 4(c)(3). In most cases, the marshal will first mail a copy of the complaint to the defendant by first-class mail and request that the defendant waive formal service of summons. Fed. R. Civ. P. 4(d); Local R. 4.7. Individual and corporate defendants have a duty to avoid unnecessary costs of serving the summons, and any such defendant who fails to comply with the request for waiver must bear the costs of personal service unless good cause can be shown for the failure to return the waiver. Fed. R. Civ. P. 4(d)(2). Generally, a defendant who timely returns the waiver is not required to answer the

complaint until sixty (60) days after the date that the marshal sent the request for waiver. Fed. R. Civ. P. 4(d)(3).

**IT IS FURTHER ORDERED** that Defendants are hereby granted leave of court to take the deposition of Plaintiff upon oral examination. Fed. R. Civ. P. 30(a). Defendants are further advised that the Court's standard 140 day discovery period will commence upon the filing of the last answer. Local R. 26.1. Defendants shall ensure that all discovery, including Plaintiff's deposition and any other depositions in the case, is completed within that discovery period.

In the event that Defendants take the deposition of any other person, Defendants are ordered to comply with the requirements of Federal Rule of Civil Procedure 30. As Plaintiff will likely not be in attendance for such a deposition, Defendants shall notify Plaintiff of the deposition and advise him that he may serve on Defendants, in a sealed envelope, within ten (10) days of the notice of deposition, written questions Plaintiff wishes to propound to the witness, if any. Defendants shall present such questions to the witness seriatim during the deposition. Fed. R. Civ. P. 30(c).

#### **INSTRUCTIONS TO PLAINTIFF**

**IT IS FURTHER ORDERED** that Plaintiff shall serve upon Defendants or, if appearance has been entered by counsel, upon their attorney, a copy of every further pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of Court a certificate stating the date on which a true and correct copy of any document was mailed to Defendants or their counsel. Fed. R. Civ. P. 5. "Every pleading shall contain a caption setting forth the name of the court, the title of the action, [and] the file number." Fed. R. Civ. P. 10(a).

Plaintiff is charged with the responsibility of **immediately** informing this Court and defense counsel of any change of address during the pendency of this action. Local Rule 11.1. Plaintiff's failure to notify the Court of a change in his address may result in dismissal of this case.

Plaintiff has the responsibility for pursuing this case. For example, if Plaintiff wishes to obtain facts and information about the case from Defendants, Plaintiff must initiate discovery. See generally Fed. R. Civ. P. 26 *et seq.* The discovery period in this case will expire 140 days after the filing of the last answer. Local R. 26.1. Plaintiff does not need the permission of the Court to begin discovery, and Plaintiff should begin discovery promptly and complete it within this time period. Local R. 26.1. Discovery materials should **not** be filed routinely with the Clerk of Court; exceptions include: when the Court directs filing; when a party needs such materials in connection with a motion or response, and then only to the extent necessary; and when needed for use at trial. Local R. 26.4.

Interrogatories are a practical method of discovery for incarcerated persons. See Fed. R. Civ. P. 33. Interrogatories may be served only on a party to the litigation, and, for the purposes of the instant case, this means that interrogatories should not be directed to persons or organizations who are not named as a defendant. Interrogatories are not to contain more than twenty-five (25) questions. Fed. R. Civ. P. 33(a). If Plaintiff wishes to propound more than twenty-five (25) interrogatories to a party, Plaintiff must have permission of the Court. If Plaintiff wishes to file a motion to compel, pursuant to Federal Rule of Civil Procedure 37, he should first contact the attorney for Defendant and try to work out the problem; if Plaintiff proceeds with the motion to compel, he should also file a statement certifying that he has

contacted opposing counsel in a good faith effort to resolve any dispute about discovery. Fed. R. Civ. P. 26(c), 37(a)(2)(A); Local R. 26.7.

Plaintiff has the responsibility for maintaining his own records of the case. If Plaintiff loses papers and needs new copies, he may obtain them from the Clerk of Court at the standard cost of fifty cents (\$.50) per page. **If Plaintiff seeks copies, he should request them directly from the Clerk of Court and is advised that the Court will authorize and require the collection of fees from his prison trust fund account to pay the cost of the copies at the aforementioned rate of fifty cents (\$.50) per page.**

If Plaintiff does not press his case forward, the court may dismiss it for want of prosecution. Fed. R. Civ. P. 41; Local R. 41.1.

It is Plaintiff's duty to cooperate fully in any discovery which may be initiated by Defendants. Upon no less than five (5) days' notice of the scheduled deposition date, Plaintiff shall appear and permit his deposition to be taken and shall answer, under oath or solemn affirmation, any question which seeks information relevant to the subject matter of the pending action. Failing to answer questions at the deposition or giving evasive or incomplete responses to questions will not be tolerated and may subject Plaintiff to severe sanctions, including dismissal of this case.

As the case progresses, Plaintiff may receive a notice addressed to "counsel of record" directing the parties to prepare and submit a Joint Status Report and a Proposed Pretrial Order. A plaintiff proceeding without counsel may prepare and file a unilateral Status Report and is required to prepare and file his own version of the Proposed Pretrial Order. A plaintiff who is incarcerated shall not be required or entitled to attend any status or pretrial conference which may be scheduled by the Court.



**ADDITIONAL INSTRUCTIONS TO PLAINTIFF REGARDING  
MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY JUDGMENT**

Under this Court's Local Rules, a party opposing a motion to dismiss shall file and serve his response to the motion within fourteen (14) days of its service. "Failure to respond shall indicate that there is no opposition to a motion." Local R. 7.5. Therefore, if Plaintiff fails to respond to a motion to dismiss, the Court will assume that he does not oppose the Defendants' motion. Plaintiff's case may be dismissed for lack of prosecution if Plaintiff fails to respond to a motion to dismiss.

Plaintiff's response to a motion for summary judgment must be filed within twenty-one (21) days after service of the motion. Local R. 7.5, 56.1. The failure to respond to such a motion shall indicate that there is no opposition to the motion. Furthermore, each material fact set forth in Defendants' statement of material facts will be deemed admitted unless specifically controverted by an opposition statement. Should Defendants file a motion for summary judgment, Plaintiff is advised that he will have the burden of establishing the existence of a genuine dispute as to any material fact in this case. That burden cannot be carried by reliance on the conclusory allegations contained within the complaint. Should Defendants' motion for summary judgment be supported by affidavit, Plaintiff must file counter-affidavits if he desires to contest Defendants' statement of the facts. Should Plaintiff fail to file opposing affidavits setting forth specific facts showing that there is a genuine dispute for trial, any factual assertions made in Defendants' affidavits will be accepted as true and summary judgment may be entered

against Plaintiff pursuant to Federal Rule of Civil Procedure 56.

**SO ORDERED** and **REPORTED** and **RECOMMENDED**, this 16th day of July, 2018.

A handwritten signature in blue ink, appearing to read "R. Stan Baker". The signature is stylized and cursive.

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R. STAN BAKER  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA