

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

Jarvis Jackson)	
(B-71498),)	
Plaintiff,)	Case No: 13 C 1431
)	
v.)	
)	Judge John A. Nordberg
Marcus Hardy,)	
Defendant.)	

ORDER

Defendant's motion to dismiss [16], [20] is denied. Defendant's answer is to be filed within 14 days of this order. A status hearing is scheduled for 11/20/2013 at 2:30 p.m. Plaintiff's motion for attorney representation [22] is denied without prejudice.

STATEMENT

Plaintiff, Jarvis Jackson, a prisoner at Stateville Correctional Center, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Presently before the Court is Defendant's motion to dismiss.

It is well established that *pro se* complaints are to be liberally construed. *Kaba v. Stepp*, 458 F.3d 678, 681, 687 (7th Cir. 2006). *Pro se* submissions are held to a less stringent standard than formal pleadings drafted by lawyers. *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009). Rule 8(a)(2) of the Federal Rules of Civil Procedure requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to " 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.' " *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); *Windy City Metal Fabricators & Supply, Inc. v. CIT Tech. Fin. Servs., Inc.*, 536 F.3d 663, 667 (7th Cir. 2008).

To satisfy the notice pleading requirements of Fed. R. Civ. P. 8(a)(2), the plaintiff must only state his basic legal claim and provide "some indication . . . of time and place." *Thompson v. Washington*, 362 F.3d 969, 971 (7th Cir. 2004). In addition, when considering whether to dismiss a complaint for failure to state a claim upon which relief can be granted, the court assumes all factual allegations in the complaint to be true, viewing all facts—as well as any inferences reasonably drawn therefrom—in the light most favorable to the plaintiff. *Parish v. City of Elkhart*, 614 F.3d 677, 679 (7th Cir. 2010); *Bell Atlantic Corp.*, 550 U.S. at 563 (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002)). A well-pleaded complaint may proceed even if it appears "that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Bell Atlantic Corp.*, 550 U.S. at 556.

Nevertheless, the factual allegations in the complaint must be enough to raise a right to relief above the speculative level. *Bell Atlantic Corp.*, 550 U.S. at 555. While a complaint challenged by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. *Bell Atlantic Corp.*, 550 U.S.

at 555 (citations omitted). “The complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 463 (7th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009)).

Plaintiff alleges that the living conditions at Stateville Correctional Center constitute cruel and unusual punishment. The conditions include: a lack of adequate cleaning supplies, lead paint within the prison, the presence of toxic black mold and flammable paint, lack of proper air ventilation, infestation with pests, and contaminated drinking water. Plaintiff names Warden Hardy as the only Defendant.

Defendant first argues that Plaintiff has not sufficiently pled his personal involvement in the alleged unconstitutional conditions. Liability under the Civil Rights Act requires a defendant’s personal involvement in the alleged constitutional violation. *See Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003). A supervisory official cannot be held liable for the conduct of his subordinates based on a theory of respondeat superior, and a complaint’s allegations must indicate that the supervisory official was somehow personally involved in the constitutional deprivation. *See Perkins v. Lawson*, 312 F.3d 872, 875 (7th Cir. 2002). Nevertheless, *Antonelli v. Sheahan*, 81 F.3d 1422 (7th Cir. 1996), teaches that dismissal of a *pro se* complaint on grounds of active personal involvement is inappropriate where the official’s position justifies an inference that the official had some direct involvement in the alleged violation. *Antonelli* concerned broad claims of unconstitutional conditions of confinement. In that case, the Court of Appeals found an inference of involvement was justified to sustain claims against certain senior officials, such as the county sheriff or the prison warden, where the claims alleged “potentially systemic,” rather than “clearly localized,” constitutional violations. *Id.* at 1428-29. Similarly, Plaintiff alleges that multiple conditions throughout Stateville in their totality constitute cruel and unusual punishment. Plaintiff’s claims support an inference of a systemic problem within Stateville that supports an inference of involvement by Warden Hardy.

Defendant also argues that Plaintiff’s allegations do not rise to unconstitutional conditions of confinement. The factual finding as to whether the alleged conditions rise to a constitutional violation is inappropriate at this stage of the litigation. Making all reasonable inferences in Plaintiff’s favor, it cannot be determined that the alleged conditions of confinement do not rise to an unconstitutional level.

Based on the above, the Defendants’ motions to dismiss is denied.

Plaintiff also moves for the recruitment of counsel.

There is no constitutional or statutory right to counsel in federal civil cases. *Romanelli v. Suliene*, 615 F.3d 847, 851 (7th Cir. 2010); *see also Johnson v. Doughty*, 433 F.3d 1001, 1006 (7th Cir. 2006). Nevertheless, the district court has discretion under 28 U.S.C. § 1915(e)(1) to recruit counsel for an indigent litigant. *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866-67 (7th Cir. 2013).

When a *pro se* litigant submits a request for assistance of counsel, the court must first consider whether the indigent plaintiff has made reasonable attempts to secure counsel on his own. *Navejar v. Iyiola*, 718 F.3d 692, 696 (7th Cir. 2013) (citing *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007) (en banc)). If so, the court must examine “whether the difficulty of the case--factually and legally--exceeds the particular plaintiff’s capacity as a layperson to coherently present it.” *Navejar, Navejar*, 718 F.3d at 696 (quoting *Pruitt*, 503 F.3d at 655). “The question ... is whether the plaintiff appears competent to litigate his own claims, given their degree of difficulty, and this includes the tasks that normally attend litigation: evidence gathering, preparing and responding to motions and other court filings, and trial.” *Pruitt*, 503 F.3d at 655. The court also considers such

factors as the plaintiff's "literacy, communication skills, education level, and litigation experience."
Id.

After considering the above factors, the court concludes that the solicitation of counsel is not warranted in this case. While Plaintiff indicates that he has attempted to retain private counsel, the complaint sets forth cognizable claims and Plaintiff has alleged no physical or mental disability that might preclude him from adequately investigating the facts giving rise to his complaint. Plaintiff, whose submissions are coherent and articulate, appears capable of litigating this matter. This is clearly demonstrated by the quality of Plaintiff's pleadings that he has submitted to the Court. While Plaintiff argues that discovery may be extensive and experts may be required in the case, at this early stage of the lawsuit, counsel is not required. It is additionally noted that the court grants *pro se* litigants wide latitude in the handling of their lawsuits. Therefore, Plaintiff's motion for attorney representation is denied at this time. Should the case proceed to a point that assistance of counsel is appropriate, the court may revisit this request.

Date: 11-4-13

/s/ John A. Nordberg