IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

SHAWN KOCH,	)
	)
Plaintiff,	)
	)
vs.	) **CIVIL NO. 07-cv-0004-MJR**
	)
DARRELL WESTERMAN, *et al.*,	)
	)
Defendants.	)

<u>MEMORANDUM AND ORDER</u>

REAGAN, District Judge:

This matter is before the Court on Plaintiff's motion to dismiss Count 4 of this action (Doc. 12). In a threshold review of Plaintiff's complaint, this Court identified the following counts as surviving review under 28 U.S.C. § 1915A: Count 4, Count 5, Count 7, Count 8, Count 9, Count 10, and Count 11. *See* (Doc. 10).

This Court, however, concluded that the joinder of the claims asserted in Counts 5, 7, 8, 9, 10, and 11, concerning retaliation, excessive use of force, denial of adequate medical care, and failure to protect Plaintiff from a known harm, did not arise from the same transaction, occurrence, or series of transactions or occurrences as the claim asserted in Count 4. Therefore, the Court concluded that Count 4 could not proceed in the same action as Counts 5, 7, 8, 9, 10, and 11. *See* Fed. R. Civ. P. 18(a) and 20(a)(2); *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Therefore, the Court advised Plaintiff that it would sever Counts 5, 7, 8, 9, 10, and 11 into a new action and assess a new filing fee on Plaintiff. The Court further advised Plaintiff, however, that it would not sever Counts 5, 7, 8, 9, 10, and 11 into a new action if he voluntarily

dismissed them.

In the instant motion, Plaintiff has notified the Court that he wishes to dismiss Count 4 of the instant action, rather than dismiss Counts 5, 7, 8, 9, 10, and 11. The voluntary dismissal of Count 4 cures the joinder problems previously identified by this Court in its threshold review order. Accordingly, Plaintiff's motion to voluntarily dismiss Count 4 of this action (Doc. 12) is **GRANTED**. This case shall proceed on Count 5, 7, 8, 9, 10, and 11.

IT IS SO ORDERED.

DATED this 11th day of March, 2009.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge