

to a claim that any reasonable person would find meritless. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross “the line between possibility and plausibility.” *Id.* at 557. At this juncture, the factual allegations of the *pro se* complaint are to be liberally construed. *See Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

The Second Amended Complaint

On May 21, 2016, Plaintiff was arrested for destruction of property. (Doc. 19, p. 6). On May 22, 2017, Defendants Young and Prusodgich found Plaintiff in his cell, hanging by his neck. *Id.* Plaintiff was unconscious. *Id.* Defendants did not immediately assist Plaintiff. *Id.* Instead, Young slammed the cell door shut and walked to where Prusodgich was standing. *Id.* Defendants then left the area, leaving Plaintiff hanging by his neck. *Id.* Defendants returned approximately fifteen minutes later. *Id.* Plaintiff was flown to a hospital in Indiana and remained on life support for eight days. (Doc. 19, p. 5). Although Plaintiff was unconscious during the events in question, various witnesses have provided him with the facts alleged in the Second Amended Complaint. (Doc. 19, p. 6).

Discussion

The Court finds it convenient to divide the *pro se* action into a single count. The parties and the Court will use this designation in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. Any other claim that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice as inadequately pled under the *Twombly* pleading standard.

Count 1 – Defendants were objectively unreasonable and/or deliberately indifferent in responding to Plaintiff’s medical needs on May 22, 2016.

The applicable legal standard for Plaintiff’s claim depends on his status as an arrestee, pretrial detainee, or prisoner during his detention at the Jail. Different constitutional protections extend to an arrestee (Fourth Amendment), pretrial detainee (Fourteenth Amendment), and prisoner (Eighth Amendment). The Second Amended Complaint indicates that Plaintiff was either an arrestee or a pretrial detainee.¹ If Plaintiff was an arrestee who had not yet had a probable cause hearing, the Fourth Amendment’s “objectively unreasonable” standard governs his claim. *Currie v. Chhabra*, 728 F.3d 626, 629 (7th Cir. 2013). However, if Plaintiff was a detainee at the time of the alleged constitutional violation, the Fourteenth Amendment deliberate indifference standard applies to his claim. *See Weiss v. Cooley*, 230 F.3d 1027, 1032 (7th Cir. 2000). With respect to the latter, the Seventh Circuit has repeatedly held that Eighth Amendment and Fourteenth Amendment case law can be used interchangeably. *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 664 (7th Cir. 2012); *Forest v. Prine*, 620 F.3d 739, 744-45 (7th Cir. 2010). In both contexts, the alleged medical need must be objectively serious, and the prison official must possess a sufficiently culpable state of mind. *Smith v. Dart*, 803 F.3d 304, 312 (7th Cir. 2015).

In the instant case, Plaintiff alleges that Defendants found him hanging unconscious and left him in that state for approximately fifteen minutes. The Second Amended Complaint

¹ The Second Amended Complaint indicates that Plaintiff was arrested the day before the alleged constitutional violation. If Plaintiff was arrested without a warrant and had not yet had a probable cause hearing, then he was an arrestee and his claims are governed by the Fourth Amendment. *Lopez v. City of Chicago*, 464 F.3d 711, 720 (7th Cir. 2006) (citing *Villanova v. Abrams*, 972 F.2d 792, 797 (7th Cir. 1992); *Brokaw v. Mercer Cnty.*, 235 F.3d 1000, 1018 n. 14 (7th Cir. 2000)). In the instant case, the distinction is not vital because the Court concludes that Plaintiff’s claim survives under either standard.

suggests that Plaintiff's injuries were serious; he was flown to a hospital and remained on life support for a number of days. These allegations are sufficient to survive preliminary screening under either the Fourth Amendment's objectively reasonable standard or the Fourteenth Amendment's deliberate indifference standard.

Accordingly, regardless of Plaintiff's status as an arrestee or pretrial detainee during the relevant time period, the Court finds that further review of Count 1 is warranted. Plaintiff's status and the exact source of constitutional protections afforded to him will be determined in due course.

Pending Motions

Plaintiff has filed a Motion for Recruitment of Counsel (Doc. 20). This motion shall be referred to a United States magistrate Judge for a decision.

Disposition

IT IS HEREBY ORDERED that the Second Amended Complaint shall receive further review as to **YOUNG** and **PRUSODGICH**.

IT IS FURTHER ORDERED that the Clerk of Court shall prepare for Defendants **YOUNG** and **PRUSODGICH**: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the Complaint, and this Memorandum and Order to each Defendant's place of employment as identified by Plaintiff. If a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

With respect to a Defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the Defendant's current work address, or, if not known, the Defendant's last-known address. This information shall be used only for sending the forms as directed above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the Complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is **REFERRED** to a United States Magistrate Judge for further pre-trial proceedings, including Plaintiff's Motion for Recruitment of Counsel (Doc. 20). Further, this entire matter shall be **REFERRED** to a United States Magistrate for disposition, pursuant to Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *if all parties consent to such a referral*.

If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under § 1915, Plaintiff will be required to pay the full amount of the costs, regardless of whether his application to proceed *in forma pauperis* is granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Plaintiff is **ADVISED** that at the time application was made under 28 U.S.C. § 1915 for leave to commence this civil action without being required to prepay fees and costs or give security for the same, the applicant and his or her attorney were deemed to have entered into a stipulation that the recovery, if any, secured in the action shall be paid to the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against plaintiff and remit the balance to plaintiff. Local Rule 3.1(c)(1).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the

Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 25, 2017

s/J. Phil Gilbert
J. PHIL GILBERT
United States District Judge