IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TIMOTHY J. CUNNINGHAM, SR., # R-05718,	)	
Plaintiff,	)	
vs.	)	**Case No. 17-cv-126-SMY**
C/O FALMIER, C/O JENKINS, LT. CARRIE, C/O SIMMS, C/O SANDERS, C/O TANNER, C/O BRUNNER, C/O BRIDWELL, C/O JOHNSON, C/O DUNLAP, WARDEN DUNCAN, and WARDEN LAMB,	)	
Defendants.	)	

MEMORANDUM AND ORDER

YANDLE, District Judge:

Plaintiff is currently incarcerated at Lawrence Correctional Center ("Lawrence"), where he is serving a life sentence. He originally brought the claims in this *pro se* civil rights action in Case No. 16-cv-1360-MJR on December 19, 2016. On February 8, 2017, the Court severed that action into several separate cases. (Doc. 1). The instant case contains the claims designated as Counts 8-11, which address several alleged violations of Plaintiff's rights in connection with his needs as a person with disabilities. This matter is now before the Court for a preliminary merits review pursuant to 28 U.S.C. § 1915A.

Under § 1915A, the Court is required to screen prisoner complaints to filter out non-

meritorious claims. *See* 28 U.S.C. § 1915A(a). The Court must dismiss any portion of the complaint that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law is immune from such relief. 28 U.S.C. § 1915A(b).

An action or claim is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolousness is an objective standard that refers to a claim that "no reasonable person could suppose to have any merit." *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. Conversely, a complaint is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Although the Court is obligated to accept factual allegations as true, *see Smith v. Peters*, 631 F.3d 418, 419 (7th Cir. 2011), some factual allegations may be so sketchy or implausible that they fail to provide sufficient notice of a plaintiff's claim. *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009). Additionally, Courts "should not accept as adequate abstract recitations of the elements of a cause of action or conclusory legal statements." *Id*. At the same time, however, the factual allegations of a pro se complaint are to be liberally construed. *See Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011); *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

Applying these standards, the Court finds that some of Plaintiff's claims survive threshold review under § 1915A.

Counts 8-11

Upon initial review, the Court characterized the claims in Counts 8-11 as follows. The parties and the Court will use these designations in all future pleadings and orders in this case, unless otherwise directed by a judicial officer of this Court. The designation of these counts does not constitute an opinion as to their merit. Any other claim that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice.

> **Count 8 –** Falmier did not accommodate Plaintiff's disability pursuant to the Americans with Disabilities Act (ADA) in order to allow him to use the phone on equal terms as non-disabled inmates;
>
> **Count 9 –** Duncan and Lamb failed to adequately regulate the temperature in the A.D.A. gym at Lawrence Correctional Center from March 11, 2016 through September 16, 2016, causing it to be excessively hot in violation of the Eighth Amendment's prohibition on cruel and unusual punishment;
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> **Count 10 –** Jenkins failed to accommodate Plaintiff's disability pursuant to the ADA when he transported him on February 10, 2015 and March 28, 2015, causing Plaintiff to wet himself and suffer humiliation;
>
> **Count 11 –** Carie, Simms, Sanders, Tanner, Brunner,[1] Jenkins, Bridwell, Johnson, and Dunlap retaliated against Plaintiff for filing grievances in violation of the First Amendment by denying him ice distribution between June 19, 2015 and October 22, 2015, conducting compliance checks, and cutting short meal times.

The Complaint

The portions of the Complaint (Doc. 2) that are relevant to Counts 8-11 above are as follows.

Plaintiff was transferred from the Pinckneyville Correctional Center to Lawrence on September 25, 2014. (Doc. 2, p. 6). On Plaintiff's housing wing, inmates were allowed to leave

[1] Plaintiff refers to this officer as "Brunner" in the caption of his Complaint, and as "Bruner" in the narrative. The Court shall use the spelling in the caption at this time.

their cells and access the telephones at certain times, but literally raced to the phones so as to be first in line to use them.[2] The inmates who "won" the race would then pass off the phone to their friends or gang cohorts. (Doc. 2, p. 10). Because of Plaintiff's physical limitations (he uses a wheelchair for mobility), he could never get to a phone in time to use it before the allotted time expired. Able-bodied inmates could access the phones 3-6 times per week and were allowed to stay on a call for 30 minutes.

C/O Falmier (a Pinkneyville officer) recognized Plaintiff's inability to access the phone and allowed him to come out of his cell at other times to make a call. However, he limited him to 15 minutes and made this accommodation only once per month. Otherwise, Plaintiff would have to pay $0.50 per call or $3.00 per month to have more access to the phone. Plaintiff points out that under the ADA (Americans with Disabilities Act), handicapped individuals should have equal access to services such as telephone use. Nonetheless, he was never allowed the same access to the phone as able-bodied inmates enjoyed. Plaintiff filed a grievance over this problem on September 23, 2014.

Plaintiff uses the ADA gym at Lawrence for exercise on a regular basis, for a 2-hour period each Friday.[3] (Doc. 2, pp. 15-16; Doc. 2-10, pp. 3-6). From March 11 to September 16, 2016, the heaters in the ADA gym were "pumping out heat" despite the blowers being off. As a result, temperatures inside the gym were 15-20 degrees above the outside temperatures. The gym next door for able-bodied inmates was equipped with a large fan to relieve the heat, but the ADA gym was not. Plaintiff complained and filed grievances, but the conditions were never corrected. His 2 grievances were directed to the Warden (either Duncan or Lamb). (Doc. 2-10,

[2] Plaintiff labeled these allegations as "Count 7" in the Complaint, however, the Court has designated this claim as Count 8. (Doc. 2, p. 10).
[3] The Complaint labels this claim as "Count 10," but the Court has designated this claim as Count 9.

pp. 3, 5). In addition to the differential treatment of disabled inmates, Plaintiff asserts that the overheated ADA gym conditions amounted to cruel and unusual punishment.

Plaintiff describes two incidents involving C/O Jenkins.[4] (Doc. 2, p. 11). On February 10 and March 27, 2015, Jenkins transported Plaintiff in a wheelchair van to a doctor visit in Mt. Vernon, an hour and a half drive from the prison. (Doc. 2-8, p. 7). Due to his disability, Plaintiff is incontinent and uses adult diapers and a urinal to maintain his personal hygiene. Jenkins would not allow Plaintiff to use a urinal, and kept Plaintiff's hands in "black box" restraints which prevented him from handling a urinal. (Doc. 2-8, pp. 7-8). As a result, during the trip to the doctor's office and back, Plaintiff urinated on himself beyond the capacity of the adult diaper, wetting his clothes and leaving puddles on the floor. When Plaintiff returned to Lawrence, other officers kept him waiting and then sent him to the chow hall still wet and "smelling like a sewer." (Doc. 2, p. 11). He was unable to clean up until he returned to his cell. Plaintiff filed a grievance over Jenkins' treatment, and asked for accommodations before his next scheduled trip to the outside doctor.

Plaintiff had surgery on March 17, 2015 to remove a tumor from his penis and had complications because the sutures meant to close his large open wound did not hold. On March 27, 2015, Jenkins again took Plaintiff to see the surgeon in Mt. Vernon to attend to the incision. Despite Jenkins' prior agreement to either release Plaintiff's restraints so he could change his diaper during this trip, or to change the diaper for Plaintiff, Jenkins refused to do either. Once again, Plaintiff wet himself, saturating his clothing and creating an unbearable smell. (Doc. 2, pp. 11-12; Doc. 2-8, pp. 5-6). Plaintiff further claims that the doctor was unable to examine his incision site or change the dressing because Jenkins would not remove Plaintiff's restraints.

[4] The Jenkins allegations are labeled as "Count 8" in the Complaint, but have been designated by the Court as Count 10 herein.

(Doc. 2-8, p. 6). The dressing was only changed after Plaintiff returned to Lawrence and cleaned himself up. Plaintiff asserts that in these two incidents, Jenkins subjected him to cruel and unusual punishment, and refused to accommodate his disability-related needs. (Doc. 2, p. 12).

As to Plaintiff's retaliation claim, he alleges that the warden had ordered ice to be distributed to inmates from June 19, 2015 through October 22, 2015.[5] (Doc. 2, pp. 12-15; Doc. 2-9, pp. 2-23, 27-38). Ice was necessary to help inmates cope with the excessive heat in the non-air-conditioned cell blocks. A "core group" of correctional officers (Carie, Simms, Sanders, Tanner, Brunner and Jenkins; led by Bridwell) punished Plaintiff and others on his wing by refusing to pass out ice for 93 out of the 125 days that ice should have been distributed. Officers Johnson and Dunlap also participated in the retaliation.

Plaintiff wrote grievances and complained, but the result was more withholding of ice and retaliatory searches and compliance checks of Plaintiff's cell. In addition, the officers would cut short the dining time for the entire wing if Plaintiff complained about the lack of ice. Plaintiff finally complained to Internal Affairs. Dunlap leaked the information that Plaintiff had brought a complaint to another inmate, which put Plaintiff's life in danger from fellow prisoners who had been affected by the officers' actions against the entire group. Plaintiff and his ADA attendant were then moved to a different cell house away from the Defendant officers. He had no further problems with ice distribution or rule compliance in the new housing area. (Doc. 2, p. 13).

As relief, Plaintiff seeks compensatory damages. (Doc. 2, p. 18).

Merits Review Pursuant to 28 U.S.C. § 1915A

Count 8 – Denial of Telephone Access due to Disability

[5] This retaliation claim is labeled as "Count 9" in the Complaint, and has been designated by the Court as Count 11.

Notably, Plaintiff's September 23, 2014 grievance over the telephone access problems was lodged just before Plaintiff's transfer from Pinckneyville to Lawrence. According to the Complaint, the defendant named in connection with this claim (Falmier) is a Pinckneyville correctional officer. (Doc. 2, p. 2). Based on these facts, Plaintiff's description of the denial of telephone privileges is limited to the period that he was incarcerated at Pinckneyville. He does not set forth any factual allegations to suggest that his phone access is still being curtailed or denied at Lawrence, and he does not seek injunctive relief.

Plaintiff's inability to access the telephone does not give rise to a constitutional claim. The Constitution does not recognize an inmate's liberty interest in telephone privileges, *see Sandin v. Connor*, 515 U.S. 472 (1995), and regulations limiting telephone use by inmates have been sustained routinely as reasonable. *See, e.g., Arsberry v. Illinois*, 244 F.3d 558, 564 (7th Cir. 2001). Therefore, in order for Plaintiff to have a colorable claim for damages based on this scenario, he must demonstrate the right to a monetary recovery under either the ADA or the Rehabilitation Act. *See Norfleet v. Walker*, 684 F.3d 688, 690 (7th Cir. 2012); *Jaros v. Illinois Dept. of Corrections*, 684 F.3d 667 (7th Cir. 2012) (courts must analyze prisoners' disability-discrimination claims in light of both the ADA and the Rehabilitation Act, whether or not the plaintiff has invoked both acts).

At this stage, the Court will presume that Plaintiff's physical limitations qualify him as a protected person under both the ADA and the Rehabilitation Act. Further, he has presented facts that suggest that the denial or limitation on his ability to make telephone calls was a result of his disability. Title II of the ADA prohibits public entities from denying qualified individuals with disabilities the opportunity to participate in the services, programs, or activities of the public entity because of their disabilities and prohibits discrimination against disabled individuals by a

public entity. 42 U.S.C. § 12132. Additionally, under the Rehabilitation Act, the Department of Corrections (which receives federal funds) is prohibited from denying a qualified inmate with a disability access to a program or activity because of the inmate's disability. *See* 29 U.S.C. § 705(2)(B); *Wis. Cmty. Serv. v. City of Milwaukee*, 465 F.3d 737, 746 (7th Cir. 2006); *Foley*, 359 F.3d at 928; *Grzan v. Charter Hosp. of Nw. Ind.*, 104 F.3d 116, 119 (7th Cir. 1997).

Title II of the ADA abrogates state sovereign immunity for damages at least for those claims that independently violate the Constitution. *United States v. Georgia*, 546 U.S. 151, 159 (2006); *Toeller v. Wis. Dep't of Corr.*, 461 F.3d 871, 874 (7th Cir. 2006). In *Georgia*, however, the Supreme Court left open the question of whether the ADA could validly abrogate sovereign immunity for non-constitutional violations. *Georgia*, 546 U.S. at 159. The Supreme Court has instructed lower courts to determine, claim by claim, whether Congress' purported abrogation of sovereign immunity is valid when the challenged conduct violates the ADA but not the Constitution. *Id*. As previously noted, the denial of Plaintiff's telephone privileges does not independently violate the Constitution. Therefore, he cannot pursue his claim for damages in **Count 8** under the ADA.

Plaintiff may, however, have a viable damages claim under the Rehabilitation Act. An agency's refusal to make reasonable accommodations for a person's disability is tantamount to denying access. *Jaros v. Illinois Dept. of Corrections*, 684 F.3d 667, 672 (7th Cir. 2012). Although the Rehabilitation Act does not expressly require accommodation, "the Supreme Court has located a duty to accommodate in the statute generally." *Id.* (quoting *Wis. Cmty. Serv*., 465 F.3d at 747; and citing *Alexander v. Choate*, 469 U.S. 287, 300-01 (1985)). Moreover, the Seventh Circuit has concluded that damages are available to a prevailing plaintiff for violations of the Rehabilitation Act, because Illinois "has waived its immunity from suits for damages

under the Rehabilitation Act as a condition of its receipt of federal funds." *Jaros*, 684 F.3d at 672 n.5 (citing *Stanley v. Litscher*, 213 F.3d 340, 344 (7th Cir. 2000)). *See also Rittenhouse v. Bd. of Trustees of S. Ill. Univ.*, 628 F. Supp. 2d 887, 895 (S.D. Ill. 2008) (noting that punitive damages are not available in private suit brought under Rehabilitation Act).

Plaintiff may therefore proceed in **Count 8** with his Rehabilitation Act claim only, for denial of access to telephone privileges on a comparable basis to non-disabled inmates. However, because an individual state employee cannot be sued under the Rehabilitation Act, Falmier shall be dismissed from the action without prejudice. "[E]mployees of the Department of Corrections are not amenable to suit under the Rehabilitation Act or the ADA. *See* 29 U.S.C. § 794(b); 42 U.S.C. § 12131." *Jaros v. Illinois Dept. of Corrections*, 684 F.3d 667, 670 (7th Cir. 2012).

Plaintiff included the State of Illinois Department of Corrections as a defendant in his Complaint. (Doc. 2, p. 1). In the Order severing this claim which was entered before the required § 1915A merits review was conducted, the IDOC was dismissed as a party because a state and its agencies cannot be sued for damages in a civil rights claim brought pursuant to 42 U.S.C. § 1983 (Doc. 1). In contrast, the state agency is the only proper defendant in a Rehabilitation Act claim. Therefore, the Clerk will be directed to add the Illinois Department of Corrections as a party in this severed action, and **Count 8** shall proceed against the IDOC.

Count 9 – Excessive Heat in ADA Gym

In a case involving conditions of confinement in a prison, two elements are required to establish a violation of the Eighth Amendment's cruel and unusual punishment clause. First, an objective element requires a showing that the conditions deny the inmate "the minimal civilized measure of life's necessities," creating an excessive risk to the inmate's health or safety. *Farmer*

v. Brennan, 511 U.S. 825, 834 (1994). Prison conditions that deprive inmates of basic human needs – food, medical care, sanitation, or physical safety – may violate the Eighth Amendment. *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). The second requirement is a subjective element – establishing a defendant's culpable state of mind, which is deliberate indifference to a substantial risk of serious harm to the inmate from those conditions. *Farmer*, 511 U.S. at 837, 842.

Allegations of excessive temperatures in a prisoner's cell, coupled with the inability to mitigate the potential harm from extreme heat or cold, may state a constitutional claim for cruel and unusual punishment. *See, e.g., White v. Monohan*, 326 F. App'x 385, 387-88 (7th Cir. 2009) (inmate stated Eighth Amendment claim for being housed in a poorly ventilated cell where summer temperatures were over 100 degrees, causing him to vomit blood); *Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006) (prisons must provide "reasonably adequate ventilation, sanitation, bedding, hygienic materials, and utilities" (quotation marks and citation omitted)); *Board v. Farnham*, 394 F.3d 469, 486-87 (7th Cir. 2005) (inmate could state an Eighth Amendment claim based on poor ventilation). In Plaintiff's case, however, he claims that he was subjected to the excessive heat only when he went to the ADA gym for exercise -- one time per week for a 2-hour period. While these conditions were undoubtedly uncomfortable, they were temporary in nature, and Plaintiff does not allege that he was forced to remain in the gym against his will. Mere discomfort and inconvenience of a temporary nature do not implicate the Constitution. *See Caldwell v. Miller*, 790 F.2d 589, 600-01 (7th Cir. 1986). For these reasons, the Eighth Amendment portion of **Count 9** fails to state a constitutional claim upon which relief may be granted.

Because the ADA gym conditions did not violate Plaintiff's constitutional rights, he cannot sustain a claim under the ADA for damages. *See United States v. Georgia*, 546 U.S. 151, 159 (2006). Because he has not requested injunctive relief, the Court shall not reach the issue as whether such relief may be appropriate under the ADA if the conditions he describes were to recur.

Finally, turning to the Rehabilitation Act, the alleged differential treatment of Plaintiff as a disabled inmate and the failure of prison authorities to provide the same accommodation in the ADA gym as was offered to inmates using the regular gym, could give rise to a viable damages claim. *See Jaros v. Illinois Dept. of Corrections*, 684 F.3d 667, 672 (7th Cir. 2012). Accordingly, Plaintiff may proceed on a Rehabilitation Act claim under **Count 9**. This claim shall proceed against the Illinois Department of Corrections and against the current Warden of Lawrence (Duncan, Lamb or their successor) in his/her official capacity only.

Count 10 – Failure to Accommodate Toileting Needs

The lack of access to toilet facilities for a relatively short period of time may not be sufficiently serious to state a claim of constitutional dimension. *See, e.g., Clark v. Spey*, No. 01-C-9669, 2002 WL 31133198 at *2-3 (N.D. Ill. Sept. 26, 2002) (inmate held in cold cell with no toilet for several hours overnight failed to state a claim); *Ledbetter v. City of Topeka, Kansas*, 318 F.3d 1183, 1188 (10th Cir. 2003) (pretrial detainee held for five hours in cell lacking a toilet did not state claim for cruel and unusual punishment). However, denying bathroom access (or in this case, use of a urinal and a replacement adult diaper) to an inmate who cannot control his bladder due to his disability, forcing him to urinate on himself and to sit in his urine-soaked clothes for several hours, suggests an Eighth Amendment violation. *See Thomas v. Illinois*, 697 F.3d 612, 614-15 (7th Cir. 2012) (depending on severity, duration, nature of the risk, and

susceptibility of the inmate, prison conditions may violate the Eighth Amendment if they caused either physical, psychological, or probabilistic harm). Thus, at this juncture, Plaintiff states a viable Eighth Amendment claim against Jenkins.

Because these incidents may have violated Plaintiff's constitutional rights, he may also proceed with his ADA claim in **Count 10** for damages due to the failure to accommodate his disability-related needs during the trips to the doctor's office. This portion of the claim shall proceed against the Illinois Department of Corrections. As the Rehabilitation Act provides an alternative ground for this claim, it shall remain in Count 10.

To summarize, **Count 10** shall proceed against Jenkins on the Eight Amendment claim, and against the Illinois Department of Corrections on the ADA/Rehabilitation Act claim.

Count 11 – Retaliation for Grievances over Ice Denial

Prison officials may not retaliate against inmates for filing grievances or otherwise complaining about their conditions of confinement. *See, e.g., Gomez v. Randle*, 680 F.3d 859, 866 (7th Cir. 2012); *Walker v. Thompson*, 288 F.3d 1005 (7th Cir. 2002); *DeWalt v. Carter*, 224 F.3d 607 (7th Cir. 2000); *Babcock v. White*, 102 F.3d 267 (7th Cir. 1996); *Cain v. Lane*, 857 F.2d 1139 (7th Cir. 1988). Furthermore, "[a]ll that need be specified is the bare minimum facts necessary to put the defendant on notice of the claim so that he can file an answer." *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002). Naming the complaint or suit and the act of retaliation is all that is necessary to state a claim of improper retaliation. *Id.* A complaint that provides a short, clear statement of the relevant facts complies with the federal rules of civil procedure, and thus cannot be dismissed because it does not allege all facts necessary to clearly establish a valid claim. *Id.*

Here, Plaintiff alleges a sequence of events that plausibly supports his claim that the officers refused to give him ice and targeted him for cell searches and compliance checks, in retaliation for his complaints and grievances over the ice distribution. While the first instance(s) of ice denial may not have constituted retaliation, Plaintiff alleges that after he voiced complaints and filed grievances, officers purposely refused to hand out ice and singled him out for other punitive treatment.

The key question in a retaliation claim is whether the plaintiff experienced an adverse action that would likely deter First Amendment activity in the future, and if the First Amendment activity was "at least a motivating factor" in the Defendants' decision to take the retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 551 (7th Cir. 2009). Further factual development will be necessary in order to resolve this question. Therefore, the retaliation claim in **Count 11** shall proceed for further review against Carie, Simms, Sanders, Tanner, Brunner, Jenkins, Bridwell, Johnson and Dunlap.

Disposition

The Clerk is **DIRECTED** to add the **ILLINOIS DEPARTMENT of CORRECTIONS** as a Defendant in this action.

Defendant **FALMIER** is **DISMISSED** from this action without prejudice. All claims against Defendants **WARDEN DUNCAN** and **WARDEN LAMB** in their individual capacities are **DISMISSED** with prejudice.

The Clerk of Court shall prepare for Defendants **ILLINOIS DEPARTMENT of CORRECTIONS, JENKINS, CARIE, SIMMS, SANDERS, TANNER, BRUNNER, BRIDWELL, JOHNSON, DUNLAP,** and the **WARDEN of LAWRENCE CORRECTIONAL CENTER (in His/Her Official Capacity)**: (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. Service on the Illinois Department of Corrections shall be made by mailing these documents to the Director of the IDOC, 1301 Concordia Court, P.O. Box. 19277, Springfield, IL 62794. 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.

Plaintiff shall serve upon Defendants (or upon defense counsel once an appearance is entered), a copy of every pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed a certificate stating the date on which a true and correct copy of the document was served on Defendants or counsel. Any paper received by a district judge or magistrate judge that has not been filed with the Clerk or that fails to include a certificate of service will be disregarded by the Court.

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 **United States Magistrate Judge Reona J. Daly** for further pre-trial proceedings.

Further, this entire matter shall be **REFERRED** to United States Magistrate Judge Daly 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, notwithstanding that his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

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: April 3, 2017

s/ STACI M. YANDLE
United States District Judge