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

JACK L. FIRKINS, #315562,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 17−cv−195−JPG**
	)	
PHILLIP MCLAURIN,	)	
ST. CLAIR COUNTY JAIL, and	)	
CHRIS HEARNIS,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff Jack Firkins, an inmate in St. Clair County Jail ("Jail"), brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. In his Amended Complaint (Doc 9), Plaintiff claims the defendants subjected him to an improper search and unconstitutional conditions of confinement and deprived him of writing materials and access to his attorney. This case is now before the Court for a preliminary review of the Amended Complaint[1] pursuant to 28 U.S.C. § 1915A, which provides:

> (a) **Screening** – The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
>
> (b) **Grounds for Dismissal** – On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–
>
> (1) is frivolous, malicious, or fails to state a claim on which

[1] An amended complaint supersedes and replaces the original complaint, rendering it void. *See Flannery v. Recording Indus. Ass'n of Am.*, 354 F.3d 632, 638 n.1 (7th Cir. 2004). This Court's § 1915A review will therefore exclusively focus on Plaintiff's Amended Complaint (Doc. 9) filed March 23, 2017, rather than Plaintiff's original Complaint (Doc. 1) filed February 23, 2017.

> relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

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 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).

Upon careful review of the Amended Complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; this action is subject to summary dismissal.

The Complaint

In his Amended Complaint (Doc. 9), Plaintiff makes the following allegations: on January 8, 2017, when Plaintiff asked to be sent for a visit that was scheduled for 2:30pm, he was instead taken to booking where he was strip searched by officer Chris Hearnis, along with three other male inmates. (Doc. 9, p. 5). When Plaintiff asked why he was being strip searched, Hearnis responded that he was "just doing [his] job" and that he "got some information." *Id.* Plaintiff missed his scheduled visit because of this search. *Id.*

During his time at the Jail, Plaintiff was subjected to poor living conditions, including mold in the showers, paint peeling and cracks on the walls and ceilings, and dust in the

ventilation system. (Doc. 9, p. 5). Plaintiff has not been given a second uniform, so he has to walk in a blanket while he waits for his uniform to be laundered. *Id.* There is also "inadequate portions of food on trays" and inmates "are charged too much for commissary and Aramark food services." *Id.* Plaintiff was unable to purchase writing paper or stamped envelopes for correspondence for two weeks, from March 6, 2017 to March 19, 2017. (Doc. 9, p. 6). During this time, he was also not able to use the telephone to call an attorney. *Id.* He filed a complaint at the Jail regarding these issues, but has not received a response. *Id.*

Plaintiff seeks monetary damages from the defendants. (Doc. 9, p. 6).

Discussion

Based on the allegations of the Amended Complaint, the Court finds it convenient to designate three counts in this *pro se* action. The parties and the Court will use these designations in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court.

Count 1 – Defendants subjected Plaintiff to an unconstitutional strip search on January 8, 2017 in violation of the Fourth and Fourteenth Amendments.

Count 2 – Defendants subjected Plaintiff to unconstitutional conditions of confinement while he was incarcerated at St. Clair County Jail in violation of the Fourteenth Amendment.

Count 3 – Defendants violated Plaintiff's constitutional rights by preventing him from purchasing writing paper, purchasing stamped envelopes, and using the telephone to call his attorney from March 6, 2017 to March 19, 2017 and denying him access to the law library for 4 weeks.

As discussed in more detail below, Counts 1, 2, and 3 will be dismissed without prejudice. Notably, Plaintiff has indicated on his Amended Complaint that he intends to also bring a claim under the Federal Tort Claims Act. (Doc. 9, p. 1). The FTCA provides jurisdiction for suits against the United States regarding torts committed by federal officials, not state officials. The defendants named herein are not federal officials. Therefore, Plaintiff's claim

does not fall within the jurisdiction of the FTCA. Any FTCA claim Plaintiff sought to bring in this action is therefore dismissed with prejudice. Any other intended claim that has not been recognized by the Court is also considered dismissed with prejudice as inadequately pleaded under the *Twombly* pleading standard.

Defendants

Before analyzing Plaintiff's allegations, the Court finds it appropriate to address Plaintiff's failure to include specific allegations against Defendant Phillip McLaurin (Jail Superintendent) and St. Clair County Jail in the body of his Amended Complaint, despite his having listed them among the defendants. Plaintiffs are required to associate specific defendants with specific claims, so that defendants are put on notice of the claims brought against them and so they can properly answer the complaint. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); FED. R. CIV. P. 8(a)(2). Where a plaintiff has not included a defendant in his statement of claim, the defendant cannot be said to be adequately put on notice of which claims in the complaint, if any, are directed against him. Furthermore, merely invoking the name of a potential defendant is not sufficient to state a claim against that individual. *See Collins v. Kibort*, 143 F.3d 331, 334 (7th Cir. 1998). And in the case of those defendants in supervisory positions, the doctrine of *respondeat superior* is not applicable to § 1983 actions. *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001) (citations omitted).

Plaintiff has not alleged that McLaurin is "personally responsible for the deprivation of a constitutional right," *id.*, and a defendant cannot be liable merely because he supervised a person who caused a constitutional violation. Further, St. Clair County Jail is not an appropriate defendant in this case. A jail is not a "person" under § 1983. *Smith v. Knox Cnty. Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012); *Powell v. Cook Cnty. Jail*, 814 F. Supp. 757, 758 (N.D. Ill. 1993). It

is not a legal entity in the first place and is therefore not amenable to suit.

Accordingly, McLaurin will be dismissed from this action without prejudice, and St. Clair County Jail will be dismissed with prejudice.

Count 1

Courts have recognized that arbitrary or blanket strip searches of pretrial detainees may violate the Constitution. *See Bell v. Wolfish*, 441 U.S. 520, 558-60 (1979) (search of pretrial detainees after contact visits with outsiders was reasonable); *Calvin v. Sheriff of Will Cnty.*, 405 F. Supp. 2d 933, 938-940 (N.D. Ill. 2005) (noting that "*Bell* did not validate a blanket policy of strip searching pretrial detainees"). *Bell* instructs that in balancing the detainee's constitutional rights with the security concerns of the institution, courts must consider the scope of the intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *Bell*, 441 U.S. at 559. The Seventh Circuit has viewed with disfavor the application of a blanket policy to strip search detainees in the absence of probable cause to believe that the individual was concealing contraband or weapons. *Tinetti v. Wittke*, 620 F.2d 160 (7th Cir. 1980) (affirming 479 F. Supp. 486 (E.D. Wis. 1979)); *see also Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983) (describing strip searches as "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission").

Although civil rights claims brought by detainees arise under the Fourteenth Amendment and not the Eighth Amendment, *see Weiss v. Cooley*, 230 F.3d 1027, 1032 (7th Cir. 2000), the Seventh Circuit has "found it convenient and entirely appropriate to apply the same standard to claims arising under the Fourteenth Amendment (detainees) and Eighth Amendment (convicted prisoners) 'without differentiation.'" *Board v. Farnham*, 394 F.3d 469, 478 (7th Cir. 2005)

(quoting *Henderson v. Sheahan*, 196 F.3d 839, 845 n.2 (7th Cir. 1999)).

Strip searches of prisoners that are not related to legitimate security needs, or are conducted in a harassing manner in order to humiliate and inflict psychological pain, may be found unconstitutional under the Eighth Amendment. *Mays v. Springborn*, 719 F.3d 631, 634, (7th Cir. 2013) (group of inmates were strip searched together, gratuitously exposing prisoners' nude bodies to each other, while guards uttered demeaning comments); *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003) (a strip search conducted in a harassing manner intended to humiliate and inflict psychological pain could violate the Eighth Amendment); *see also Meriwether v. Faulkner*, 821 F.2d 408 (7th Cir. 1987) (allegation of calculated harassment by strip searches stated Eighth Amendment claim), *cert. denied*, 484 U.S. 935 (1987).

Plaintiff's factual allegations, however, fail to suggest that the January 8 strip search was conducted in such a manner as to violate his constitutional rights. He does not claim that the search involved any harassing, humiliating, or demeaning comments or behavior on the part of Hearnis. Nor does it appear that the search was performed with the intent to degrade him, or that it was unnecessary in light of legitimate security concerns. Indeed, Plaintiff states that, when he asked why he was being strip searched, he was told by Hearnis, among other things: "We got some information," implying there was some penological reason for the search. (Doc. 9, p. 5). Still, even if a valid penological reason existed for the search, "the manner in which the searches were conducted must itself pass constitutional muster." *Mays v. Springborn*, 719 F.3d 631, 634 (7th Cir. 2013) (quoting *Mays v. Springborn*, 575 F.3d 643, 649 (7th Cir. 2009)).

Plaintiff does not specify if he had any specific objection to the manner in which the search was conducted. He focuses on the fact that he missed his scheduled visit because of the search, but he does not claim that the decision to search him at that specific time during his

scheduled visit was maliciously geared toward harassing him. Further, missing a single scheduled visit does not independently give rise to a constitutional claim, without further facts regarding the circumstances. "The very object of imprisonment is confinement. Many of the liberties and privileges enjoyed by other citizens must be surrendered by the prisoner. An inmate does not retain rights inconsistent with proper incarceration." *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (citing *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125 (1977); *Shaw v. Murphy*, 532 U.S. 223, 229 (2001)). "And, as our cases have established, freedom of association is among the rights least compatible with incarceration." *Id.* (citing *Jones*, 433 U.S. at 125-126; *Hewitt v. Helms*, 459 U.S. 460 (1983)). "Some curtailment of that freedom must be expected in the prison context." *Id.*

Plaintiff also notes that there were three other inmates that were searched, but such a group search would not amount to a constitutional violation when no other circumstances were present to indicate that the search was intended to humiliate, harass, or demean the inmates. Searching prisoners in a group is not unconstitutional in and of itself. "[A] prisoner's expectation of privacy is extremely limited in light of the overriding need to maintain institutional order and security." *Meriwether v. Faulkner*, 821 F.2d 408, 418 (7th Cir.1987) (citing *Bell v. Wolfish*, 441 U.S. 520, 537 (1979)). "There is no question that strip searches may be unpleasant, humiliating, and embarrassing to prisoners, but not every psychological discomfort a prisoner endures amounts to a constitutional violation." *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003).

By way of example, the strip search complained of in *Mays v. Springborn* involved allegations that the plaintiff had been subjected to daily strip searches in view of other inmates in a "freezing" basement room, by guards who wore dirty latex gloves and who made demeaning

comments to the prisoners. *See Mays*, 719 F.3d 631, 634 (7th Cir. 2013); *Mays*, 575 F.3d 643, 649 (7th Cir. 2009). In contrast to that case, Plaintiff herein does not describe any circumstances suggesting that Hoernis intended to humiliate him or the other inmates by searching them as a group on a single occasion. Given the allegations in the Amended Complaint, Plaintiff was not subjected to cruel and unusual punishment, nor did the strip search violate the Fourth Amendment, and Count 2 will be dismissed. Out of an abundance of caution, this dismissal will be without prejudice.

Count 2

The applicable legal standard for conditions of confinement claims depends on Plaintiff's status as a pretrial detainee or prisoner while at the St. Clair County Jail. The Due Process Clause of the Fourteenth Amendment governs claims of pretrial detainees, while the Eighth Amendment applies to claims of inmates. *See Klebanowski v. Sheahan*, 540 F.3d 633, 637 (7th Cir. 2008); *see also 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). However, in cases involving complaints of unconstitutional conditions of confinement, both Eighth and Fourteenth Amendment case law can be used interchangeably. *Id.*

The Eighth Amendment prohibits cruel and unusual punishment and is applicable to the states through the Fourteenth Amendment. In a case involving conditions of confinement in a prison, two elements are required to establish violations of the Eighth Amendment's cruel and unusual punishments 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). The second requirement is a subjective element – establishing a defendant's culpable state of mind. *Id.*

With respect to the first element, not all prison conditions trigger Eighth Amendment scrutiny – only deprivations of basic human needs like food, medical care, sanitation, and physical safety. *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981); s*ee also James v. Milwaukee Cnty.*, 956 F.2d 696, 699 (7th Cir. 1992). The condition must result in unquestioned and serious deprivations of basic human needs or deprive inmates of the minimal civilized measure of life's necessities. *Rhodes*, 452 U.S. at 347; *accord Jamison-Bey v. Thieret*, 867 F.2d 1046, 1048 (7th Cir. 1989); *Meriwether v. Faulkner*, 821 F.2d 408, 416 (7th Cir. 1987). Mere discomfort and inconvenience do not implicate the Constitution. *See Caldwell v. Miller*, 790 F.2d 589, 600-01 (7th Cir. 1986).

Conditions such as poor ventilation do not fall below "the minimal civilized measure of life's necessities," absent medical or scientific proof that such conditions exposed a prisoner to diseases or respiratory problems which he would not otherwise have suffered. *Dixon v. Godinez*, 114 F.3d 640, 645 (7th Cir. 1997) (*quoting Farmer v. Brennan*, 511 U.S. 825, 833-34 (1994)). In a case where an inmate complained about asbestos-covered pipes near his cell, the Seventh Circuit held that "[e]xposure to moderate levels of asbestos is a common fact of contemporary life and cannot, under contemporary standards, be considered cruel and unusual." *McNeil v. Lane*, 16 F.3d 123, 125 (7th Cir.1993). As to the possible mold exposure, while some courts have allowed similar claims to proceed past threshold review, in those cases the plaintiff alleged actual physical symptoms or illness that may have been caused by the mold exposure. *See, e.g.*, *Munson v. Hulick*, Case No. 10–cv–52–JPG, 2010 WL 2698279 (S.D. Ill. July 7, 2010); *Mejia v. McCann*, Case No. 08–C–4534, 2010 WL 653536 (N.D. Ill. Feb. 22, 2010); *Moran v. Rogers*, Case No. 07–cv–171, 2008 WL 2095532 at *1–5 (N.D. Ind. May 15, 2008).

With respect to the second element in conditions of confinement cases, the relevant state

of mind is deliberate indifference to inmate health or safety. The official must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he also must draw the inference. *See, e.g., Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Wilson*, 501 U.S. at 303; *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *DelRaine v. Williford*, 32 F.3d 1024, 1032 (7th Cir. 1994). The deliberate indifference standard is satisfied if the plaintiff shows that the prison official acted or failed to act despite the official's knowledge of a substantial risk of serious harm. *Farmer*, 511 U.S. at 842.

Plaintiff's allegations of possible exposure to mold in the showers, paint, and dust in the vents do not come close to describing the kind of objectively serious conditions that have been found to state a constitutional claim for cruel and unusual punishment. *See Vinning–El v. Long*, 482 F.3d 923, 924 (7th Cir. 2007) (prisoner held in cell for three to six days with no working sink or toilet, floor covered with water, and walls smeared with blood and feces); *Jackson v. Duckworth*, 955 F.2d 21, 22 (7th Cir. 1992) (summary judgment improper where inmate alleged he lived with "filth, leaking and inadequate plumbing, roaches, rodents, the constant smell of human waste, ... [and] unfit water to drink[.]"); *Johnson v. Pelker*, 891 F.2d 136, 139 (7th Cir. 1989) (inmate held for three days in cell with no running water and feces smeared on walls); *see also, DeSpain v. Uphoff*, 264 F.3d 965, 974 (10th Cir. 2001) (thirty-six hours with no working toilet, flooded cell and exposure to human waste as well as the odor of accumulated urine, stated Eighth Amendment claim).

Plaintiff has not alleged that he suffered any ailment from the possible exposure to mold, paint, and dust in the vents. Plaintiff also fails to explain how often and to what degree he encounters these conditions. Whether he experienced any exposure at all to potentially disease-causing substances is speculative, and moderate exposure without any potential harm does not

rise to the level of a constitutional claim.

With respect to Plaintiff's claims that there are inadequate portions of food served on trays and that prisoners are charged too much for commissary and Aramark food services, while lack of adequate nutrition may state a constitutional claim, *French v. Owens*, 777 F.2d 1250, 1255 (7th Cir. 1985) (citation omitted), Plaintiff has not provided any detail with respect to these allegations. Without more information regarding the nutritional value of the food Plaintiff is provided in a day, this Court cannot find that Plaintiff's constitutional claims on this issue cross "the line between possibility and plausibility." *Twombly*, 550 U.S. at 557.

With respect to Plaintiff's allegation that he has only been given one set of clothing and is therefore forced to wear a blanket while his clothes are being washed, Plaintiff has not provided any facts that would show this situation has posed an excessive risk to his health or safety. Plaintiff has not provided any facts regarding how long he is forced to remain in the blanket while laundry is done or whether his being without clothes exposes him to extreme conditions of some sort from which his blanket cannot shield him. If Plaintiff is concerned with potential exposure of his body from only having a blanket to cover himself, the "[m]onitoring of naked prisoners is not only permissible ... but also sometimes mandatory," so the monitoring of a prisoner covered by a blanket, on certain specific occasions without the Plaintiff sustaining some greater harm, is not likely to give rise to a constitutional claim. *Johnson v. Phelan*, 69 F.3d 144, 146 (7th Cir. 1995).

Finally, the Amended Complaint does not explain how any of the defendants were directly involved in perpetuating these alleged conditions, much less were deliberately indifferent to Plaintiff's health and safety. In fact, Plaintiff does not name any of the defendants in connection with his conditions of confinement allegations at all. Thus, Count 2 will be

dismissed without prejudice.

Count 3

With respect to Plaintiff's allegation that he was prevented him from purchasing writing paper, purchasing stamped envelopes, and using the telephone to call his attorney from March 6, 2017 to March 19, 2017 and denied him access to the law library for 4 weeks, it is unclear exactly what type of claim Plaintiff intends to bring. If Plaintiff considers this alleged deprivation a Fourteenth Amendment violation, writing materials can hardly be considered basic human needs, so such a claim would be unavailing. To the extent Plaintiff seeks to claim that his right to access the courts was violated, Plaintiff has not alleged an actual or threatened detriment to any litigation, which is an essential element of a § 1983 action for denial of access to the courts. *Martin v. Davies*, 917 F.2d 336, 340 (7th Cir. 1990); *see also Kaufman v. McCaughtry*, 419 F.3d 678, 686 (7th Cir. 2005); *Howland v. Kilquist*, 833 F.2d 639, 642-43 (7th Cir. 1987).

If Plaintiff intends to assert a First Amendment claim based on his inability to send mail, the Supreme Court has recognized that prisoners have protected First Amendment interests in both sending and receiving mail, particularly legal mail. *See Thornburgh v. Abbott*, 490 U.S. 401 (1989); *Turner v. Safely*, 482 U.S. 78 (1987); *Pell v. Procunier*, 417 U.S. 817, 822 (1974) ("[a] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system"). Content-based restrictions upon a prisoner's exercise of his First Amendment rights are particularly concerning. *See Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir. 1999) (discussing the parameters of a prisoner's First Amendment rights to mail and noting that a non-content based claim of minor interference with mail typically does not state a claim grounded in the First Amendment). A valid claim typically requires "a continuing pattern or repeated occurrences" of mail interference.

Zimmerman v. Tribble, 226 F.3d 568, 572 (7th Cir. 2000). This includes a prisoner's claim of ongoing interference with his legal mail. *Castillo v. Cook Cnty. Mail Room Dep't*, 990 F.2d 304 (7th Cir. 1993). This also includes a prisoner's claim that his legal mail was opened, delayed for an inordinate period of time, and even lost. *Antonelli v. Sheahan*, 81 F.3d 1422, 1431-32 (7th Cir. 1996).

Plaintiff has failed to elaborate on the circumstances under which he was deprived of paper and stamped envelopes for sending mail – such as whether he was given a reason for this deprivation, told when the deprivation would end, or intended to send mail during this time period at all. Further, based on Plaintiff's allegations, this deprivation did not last for an inordinate period of time (only 2 weeks), nor was it repeated or content-based. Plaintiff has, as mentioned above, also failed to associate any particular defendants with this alleged deprivation. Count 3 will therefore be dismissed, without prejudice, for failing to state a claim upon which relief may be granted.

Pending Motions

Plaintiff has filed a Motion for Recruitment of Counsel (Doc. 2). There is no constitutional or statutory right to appointment of counsel in federal civil cases. *Romanelli v. Suliene*, 615 F.3d 847, 851 (7th Cir. 2010). When presented with a request to appoint counsel, the Court must consider: "(1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself [.]" *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007).

With regard to the first step of the inquiry, Plaintiff claims in his Motion that he has called several attorneys. He does not list the names of the attorneys he allegedly called, nor does

he attach any letters he may have sent to or received from attorneys he has sought representation from. The Court therefore has little information with which to determine whether Plaintiff has made a reasonable attempt to find counsel.

Assuming Plaintiff has made a reasonable attempt to find counsel, which is dubious at best, concerning the second step of the inquiry, "the difficulty of the case is considered against the plaintiff's litigation capabilities, and those capabilities are examined in light of the challenges specific to the case at hand." *Id.* at 655. In this case, Plaintiff's claims do not appear to be that factually complex. Plaintiff claims he was strip searched in violation of his rights, and adequately pleading such a claim merely requires sufficient information related to the incident which would implicate a named defendant. Plaintiff also claims he has been subjected to unconstitutional conditions of confinement. Pleading this claim, once again, requires Plaintiff to recount his own experiences regarding his confinement and how these experiences have affected him. Finally, Plaintiff has alleged he was prevented from obtaining writing materials, stamped envelopes, and access to the law library, as well as calling his attorney, for a certain period of time. To state a First Amendment claim with respect to these issues, as detailed above, Plaintiff need only articulate what occurred and how it affected him in sufficient detail and in such a way that implicates a named defendant.

From a legal standpoint, the litigation of any constitutional claim falls in the complex range. Even so, Plaintiff's Amended Complaint adequately articulates the claims he is attempting to bring, and based on this ability and no further explanation from Plaintiff as to why he is incapable of litigating his case, this Court concludes that Plaintiff appears to be competent to litigate on his own at this time. Future developments in this case may alter the Court's decision, but at this early stage in the litigation, and given the reasoning above, Plaintiff's

Motion for Recruitment of Counsel (Doc. 2) is hereby **DENIED** without prejudice. Plaintiff may choose to re-file this motion at a later stage in the litigation.

Disposition

IT IS HEREBY ORDERED that the Amended Complaint is **DISMISSED without prejudice** for failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that **ST. CLAIR COUNTY JAIL** is **DISMISSED** with prejudice from this action.

IT IS FURTHER ORDERED that, should he wish to proceed with this case, Plaintiff shall file his Second Amended Complaint, stating any facts which may exist to support an unconstitutional strip search, unconstitutional conditions of confinement, or First Amendment access to mail/courts claim, within 28 days of the entry of this order (on or before **May 2, 2017**). Should Plaintiff fail to file his Second Amended Complaint within the allotted time or consistent with the instructions set forth in this Order, the entire case shall be dismissed with prejudice for failure to comply with a court order and/or for failure to prosecute his claims. FED. R. APP. P. 41(b). *See generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994); 28 U.S.C. § 1915(e)(2). Such dismissal shall count as one of Plaintiff's three allotted "strikes" within the meaning of 28 U.S.C. § 1915(g).

Should Plaintiff decide to file a Second Amended Complaint, it is strongly recommended that he use the forms designed for use in this District for such actions. He should label the form, "Second Amended Complaint," and he should use the case number for *this* action (*i.e.* 17-cv-195-JPG). The pleading shall present each claim in a separate count, and each count shall specify, *by name*, each defendant alleged to be liable under the count, as well as the actions alleged to have been taken by that defendant. Plaintiff should attempt to include the facts of his

case in chronological order, inserting each defendant's name where necessary to identify the actors. Plaintiff should refrain from filing unnecessary exhibits. Plaintiff should *include only related claims* in his new complaint. Claims found to be unrelated to the alleged strip search, conditions of confinement, and First Amendment claims will be severed into new cases, new case numbers will be assigned, and additional filing fees will be assessed.

Plaintiff is warned that the Court takes the issue of perjury seriously, and that any facts found to be untrue in the Second Amended Complaint may be grounds for sanctions, including dismissal and possible criminal prosecution for perjury. *Rivera v. Drake*, 767 F.3d 685, 686 (7th Cir. 2014) (dismissing a lawsuit as a sanction where an inmate submitted a false affidavit and subsequently lied on the stand).

An amended complaint supersedes and replaces the original complaint, rendering the original complaint void. *See Flannery v. Recording Indus. Ass'n of Am.*, 354 F.3d 632, 638 n.1 (7th Cir. 2004). The Court will not accept piecemeal amendments to a complaint. Thus, the Second Amended Complaint must stand on its own, without reference to any previous pleading, and Plaintiff must re-file any exhibits he wishes the Court to consider along with the Second Amended Complaint. The Second Amended Complaint is subject to review pursuant to 28 U.S.C. § 1915A. No service shall be ordered on any defendant until after the Court completes its § 1915A review of the Second Amended Complaint.

Plaintiff is further **ADVISED** that his obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of $350.00 remains due and payable, regardless of whether Plaintiff elects to file a Second Amended Complaint. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

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).

In order to assist Plaintiff in preparing his amended complaint, the Clerk is **DIRECTED** to mail Plaintiff a blank civil rights complaint form.

IT IS SO ORDERED.

DATED: April 3, 2017

s/J. Phil Gilbert
U.S. District Judge