Gonzalez v. Wexford Health Sources, Inc. et al Doc. 10

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

GILBERTO GONZALEZ,
#K-69916,

Plaintiff,

vs.

WEXFORD HEALTH SOURCES, INC.,
IDOC,
KIMBERLY BUTLER,
JOHN DOE, 1,
JOHN DOE 2,
JOHN DOE 3,
JANE DOE,
DR. TROST,
JOHN DOE 4,
LORI OAKLEY, and
BALDWIN,

Defendants.

Case No. 17-CV-287-NJR

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

Plaintiff Gilberto Gonzalez, an inmate currently housed at Menard Correctional Center ("Menard"), filed this action pursuant to 42 U.S.C. § 1983. Plaintiff brings allegations pertaining to the conditions at Menard and the medical care he received for a broken thumb. Plaintiff maintains that the alleged constitutional deprivations are connected, in whole or in part, to overcrowding at Menard. Plaintiff seeks monetary damages, injunctive relief,[1] and a prison transfer.[2] (Doc. 1, p. 26).

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[1] Plaintiff asks for Menard to be shut down and for specific medical care. (Doc. 1, p. 26).
[2] Plaintiff asks to be "removed from these conditions." (Doc. 1, p. 26).

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This case is now before the Court for a preliminary review of the Complaint (Doc. 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 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).

The Complaint

Plaintiff asserts four sets of claims against Defendants in his Complaint. A summary of the factual allegations offered in support of the claims is followed by a brief analysis of each claim below. Any claim that is not recognized by the Court in this screening order should be considered dismissed without prejudice from this action.

1. Conditions of Confinement

Plaintiff describes Menard as old, dilapidated, and overcrowded. (Doc. 1, pp. 6-10). The prison was allegedly built in 1878 and has not been updated. (Doc. 61, p. 6). Cells that were originally built to house one inmate are now used to house two inmates. (Doc. 1, p. 6). Therefore, inmates do not have enough space to move around in the cells and are only permitted one hour of exercise outside of their cells each day. (Doc. 1, pp. 6-7). This causes psychological and physical deterioration. (Doc. 1, p. 6). Because Plaintiff cannot move freely around his cell and is not given adequate opportunities to exercise, he is suffering from headaches, constipation, knee pain, back pain, depression, and increased blood pressure. (Doc. 1, p. 7).

In addition to the above, Plaintiff complains of the following cell conditions:

- The cells have inadequate ventilation, resulting in extremely hot and cold temperatures. (Doc. 1, p. 8).
- The cells are infested with ants, mice, and roaches. (Doc. 1, p. 8).
- The plumbing is inadequate. (Doc. 1, p. 8). When other inmates flush their toilets, feces and urine flow into Plaintiff's toilet. (Doc. 1, p. 8).
- Cleaning supplies are not provided on a regular basis. (Doc. 1, p. 8). As a result, Plaintiff cannot keep his cell clean; bacteria, germs, and disease are left to accumulate and gather in Plaintiff's cell. (Doc. 1, p. 8).
- The cells and showers have high levels of toxic black mold and Plaintiff is breathing in mold spores on a daily basis. (Doc. 1, p. 8).

In connection with these claims, Plaintiff names the Illinois Department of Corrections ("IDOC'), Butler (Former Menard Warden), John Doe 1 (Menard Warden from December 2016 – February 2017), Baldwin (IDOC Director), and Wexford. (Doc. 1, p. 9). Plaintiff contends these Defendants are required to conduct and safety and sanitation checks throughout the cell houses but fail to do so. (Doc. 1, p. 9). Plaintiff also suggests that IDOC, Butler, John Doe 1, and

Baldwin are subject to liability for "turning a blind eye" to the alleged unconstitutional conditions. With respect to this claim, Plaintiff alleges Defendants were on notice of these conditions because of numerous inmate grievances, letters, and lawsuits regarding the same conditions, as well as reports issued by the John Howard Association. (Doc. 1, p. 9). Finally, the Complaint also suggests that Oakley, a grievance counselor, is subject to liability for denying a grievance pertaining to Plaintiff's cell conditions. *Id*.

2. Deliberate Indifference to Serious Medical Needs

Plaintiff generally alleges that medical treatment at Menard is substandard and regularly denied or delayed. (Doc. 1, pp. 10-11, 19-22). Plaintiff contends correctional officers have taken on an improper gate-keeper role, often denying requests for medical visits when they feel an injury is not serious and improperly substituting their judgment for the judgment of medical staff. (Doc. 1, pp. 14-16). Plaintiff attributes the alleged constitutional deprivations to (1) Menard's severe overcrowding (there are not enough medical employees to meet the prison's needs) (Doc. 1, pp. 22-23); (2) inadequate training from IDOC, Baldwin, Butler, and Wexford (Doc. 1, pp. 13, 15); and (3) Wexford's cost saving policies, including deliberately understaffing the medical department, utilizing cheaper/less effective treatments, and denying/delaying necessary treatment (Doc. 1, pp. 10-11, 19-22). Plaintiff also asserts that IDOC, Butler, and Baldwin are on notice about the conduct described above (because of grievances, letters, lawsuits, reports from the John Howard Association, and newspaper articles) but have "turned a blind eye" to it. (Doc. 1, p. 14). Finally, Plaintiff contends that Wexford, IDOC, Butler, John Doe 1, Baldwin, and Trost "allow the healthcare unit to be understaffed" and then use the lack of staff as basis for denying medical requests. (Doc. 1, p. 19).

Plaintiff's medical claim arises from the medical care he received for a broken thumb. (Doc. 1, p. 11). On November 30, 2016, Plaintiff was in the yard and injured his right thumb. (Doc. 1, pp. 11, 39). Plaintiff's thumb was bent at an odd angle, swollen to twice its size, and turning black/purple. (Doc. 1, p. 11). Plaintiff showed his injured thumb to John Doe 2 – the on duty tower officer. *Id.* John Doe 2 disregarded Plaintiff's request for medical attention and told Plaintiff he would have to seek medical care when Plaintiff returned to the cell house. (Doc. 1, pp. 11-12). According to the Complaint, Plaintiff did not return to the cell house for another two hours.[3]

At approximately 2:00 p.m., Plaintiff returned to the cell house. (Doc. 1, p. 16). Plaintiff showed his thumb to the cell house sergeant and a gallery officer. (Doc. 1, p. 16). The sergeant and the officer denied Plaintiff's request for medical attention and told him he would have to seek assistance on the following shift (3:00 p.m. To 11:00 p.m.). *Id.* The cell house sergeant and the gallery officer are not identified as defendants in Plaintiff's caption or in Plaintiff's list of defendants.

During the 3:00 p.m. to 11:00 p.m. shift, Plaintiff showed his injured thumb to a correctional officer. (Doc. 1, p. 17). Plaintiff told the correctional officer his thumb was broken, that he was in severe pain (on a scale of 1-10, his pain was a 9 or higher), and requested medical attention. *Id.* The correctional officer indicated he would contact the healthcare unit. *Id.* The correctional officer returned and told Plaintiff that, the healthcare unit was short staffed and the nurses were extremely busy handling new arrivals. (Doc. 1, p. 18). Accordingly, the nurses were

[3] The Complaint does not state exactly when Plaintiff injured his thumb. Plaintiff subsequently alleges that he returned to the cell house at approximately 2:00 p.m. (Doc. 1, p. 16), suggesting he injured his thumb at approximately noon. However, medical records attached to the Complaint indicate that the injury occurred at 2:00 p.m. (Doc. 1, p. 44).

too busy to address Plaintiff's broken thumb, which the nurses deemed to be a non-emergency. (Doc. 1, p. 18).

Around 8:00 p.m., Jane Doe 1, a nurse, was passing out night medications. (Doc. 1, p. 18). Plaintiff showed Jane Doe 1 his thumb and requested medical attention. *Id.* The nurse informed Plaintiff that they were short staffed and too busy handling new arrivals to address Plaintiff's non-emergency broken thumb. *Id.* Plaintiff indicated he was in severe pain and requested pain medication. *Id.* Jane Doe 1 denied Plaintiff's request. (Doc. 1, p. 19).

On December 1, 2016, Plaintiff showed his injured thumb to John Doe 4, a physician's assistant. (Doc. 1, p. 19). John Doe 4 examined the injury, prescribed Motrin for pain,[4] and referred Plaintiff to the healthcare unit for an x-ray. (Doc. 1, pp. 20, 39, 44-45). Plaintiff's thumb was x-rayed the same day. (Doc. 1, pp. 20, 42). The x-ray revealed that Plaintiff's thumb was broken. (Doc. 1, pp. 20, 42). According to the Complaint, upon reviewing the x-ray, John Doe 4 prescribed a plastic mold for Plaintiff's thumb. (Doc. 1, p. 20). Plaintiff contends the Plastic mold was ineffective because it was ill fitting and twice as big as his thumb. *Id.* Plaintiff also contends that his injury should have been treated with a cast and not a plastic mold. *Id.*

On December 9, 2016, Plaintiff was examined by an unidentified nurse for pain related to his injured thumb. (Doc. 1, p. 45). At the time, Plaintiff was taking 1600 mg of Motrin. *Id.* Plaintiff's thumb was examined, and Tylenol was prescribed instead of Motrin. *Id.* The nurse informed Plaintiff that only a physician could address his request for stronger pain medication. (Doc. 1, p. 22). Accordingly, the nurse referred Plaintiff for treatment with a physician. (Doc. 1, pp. 22, 45). The Complaint suggests that Trost is the physician to whom Plaintiff would have been referred, but Plaintiff was never examined by Trost. (Doc. 1, p. 22). Instead, Plaintiff was

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[4] The medical record from Plaintiff's December 9, 2016 examination indicates that Plaintiff was previously prescribed 1600 mg of Motrin for his thumb injury. (Doc. 1, p. 45).

seen by John Doe 4. *Id.* John Doe 4 also lacked the authority to prescribe stronger pain medication and did not effectively treat Plaintiff's pain. *Id.*

On December 20, 2016, Plaintiff had a follow-up x-ray ordered by John Doe 4. (Doc. 1, p. 43). That x-ray revealed that the thumb was still fractured but noted that "some healing" was "suggested." *Id.* A letter responding to one of Plaintiff's complaints indicates that Plaintiff was also examined and received follow-up x-rays on December 28, 2016 and January 12, 2017. (Doc. 1, p. 39).

Plaintiff contends he was never examined by a specialist because of Wexford's cost-saving policies. (Doc. 1, p. 21). Plaintiff also objects to the fact that he has not received an MRI (Doc. 1, p. 21) and that medical staff do not intend to follow-up with physical therapy. (Doc. 1, p. 24).

On December 2, 2016, Plaintiff submitted a grievance regarding the delayed treatment for his injured thumb. (Doc. 1, pp. 4-5, 31-33). The grievance also indicated that, although Plaintiff had received some medical care, the medical care was inadequate. *Id.* Plaintiff did not receive a response and subsequently submitted letters to the warden (John Doe 1) and Baldwin. (Doc. 1, pp. 4-5, 36-38). The letters inquired about the status of Plaintiff's original grievance, suggested that Plaintiff was being denied medical care, and asked for help in obtaining medical care. (Doc. 1, pp. 36-38). In February 2017, Lashbrook responded to one of Plaintiff's letters, indicating the letter had been forwarded to her. (Doc. 1, p. 39). Lashbrook reviewed Plaintiff's medical records and concluded that Plaintiff was receiving treatment for his injured thumb. *Id.*

3. **Claims Pertaining to Prisoner Mail and Prison Library (Counts 3 through 5)**

Plaintiff contends the mailroom is inadequately staffed and mailroom employees are inadequately trained. (Doc. 1, p. 7). As a result, mail is sometimes lost or delayed, and legal mail

is being opened outside of Plaintiff's presence. *Id*. Plaintiff also alleges that the law library is inadequately staffed and law library employees are inadequately trained. *Id*. Plaintiff alleges this violates his right to access the courts and to access counsel. *Id*.

Plaintiff contends the inadequacies in the mailroom and law library are connected to the issue of overcrowding. (Doc. 1, pp. 7-8). These claims appear to be directed against IDOC, Butler, John Doe 1, Baldwin, and Wexford. (Doc. 1, p. 9).

4. Cancelling Medical Appointments During Lockdown (Count 6)

Plaintiff contends that Wexford, Trost, Butler, John Doe 1, and Baldwin have implemented a policy canceling all medical call passes when Menard is on lockdown. (Doc. 1, p. 23). On December 23, 2016, as a result of this policy, Plaintiff's medical call pass was recalled and Plaintiff was not seen as requested. (Doc. 1, pp. 24, 46).

Dismissal of Certain Defendants

IDOC

Plaintiff cannot maintain his suit for money damages against the IDOC because it is a state government agency. The Supreme Court has held that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). The Eleventh Amendment bars suits against states in federal court for money damages. *Wynn v. Southward*, 251 F.3d 588, 592 (7th Cir. 2001); *Billman v. Ind. Dep't of Corr.*, 56 F.3d 785, 788 (7th Cir. 1995) (state Department of Corrections is immune from suit by virtue of Eleventh Amendment); *Hughes v. Joliet Corr. Ctr.*, 931 F.2d 425, 427 (7th Cir. 1991) (same); *Santiago v. Lane*, 894 F.2d 219, 220 n. 3 (7th Cir. 1990) (same).[5]

Accordingly, IDOC shall be dismissed without prejudice.

[5] To the extent that Plaintiff is seeking injunctive relief, Jacqueline Lashbrook, the current warden of Menard, shall be added as an official capacity defendant.

John Doe 3 - Lieutenant on Yard

Plaintiff names John Doe 3 (Lieutenant on Yard) in the case caption. He does not, however, make any specific allegations against this individual in the body of the Complaint. Plaintiffs, even those proceeding *pro se*, are required to associate specific defendants with specific claims so that defendants are put on notice of the claims brought against them and can properly answer the complaint. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). Additionally, "Federal Rule of Civil Procedure 8(a)(2) 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)). Thus, where a plaintiff has not included a defendant in his statement of the claim, the defendant cannot be said to be adequately put on notice of which claims in the complaint, if any, are directed against him. 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) ("A plaintiff cannot state a claim against a defendant by including the defendant's name in the caption.").

Accordingly, John Doe 3 shall be dismissed from this action without prejudice.

Jacqueline Lashbrook

Jacqueline Lashbrook is the current warden of Menard. In the body of the Complaint Plaintiff objects to Lashbrook's handling of a letter Plaintiff submitted to Baldwin on December 18, 2016. (Doc. 1, pp. 5, 36, 39). The letter indicated that Plaintiff was not receiving adequate care for his injured thumb and alleged that his previous grievance and letters regarding the same were being ignored. (Doc. 1, p. 36). On February 9, 2017, Lashbrook responded to Plaintiff's letter indicating it had been forwarded to her. (Doc. 1, p. 39). Lashbrook indicated that she was

not in receipt of any grievances filed by Plaintiff but that she had reviewed his medical records and he appeared to be receiving care. *Id.*

These allegations suggest that Plaintiff may have intended to bring a claim against Lashbrook in her individual capacity, but Lashbrook is not identified as a defendant in the caption or in Plaintiff's list of defendants. Plaintiff identifies two wardens as defendants in this action: Kimberly Butler (former warden of Menard) and John Doe 1 (warden of Menard from December 1, 2016 to February 2017). Plaintiff's Complaint and attached exhibits indicate that Lashbrook was not employed as the Warden of Menard until February 2017. (Doc. 1, pp. 5, 39). Thus, Lashbrook does not appear to be the intended John Doe 1 Defendant and is not otherwise identified as a defendant in this action.

At this time, any individual capacity claims against Lashbrook shall be considered dismissed without prejudice. *See* FED. R. CIV. P. 10(a) (noting that the title of the complaint "must name all the parties"); *Myles v. United States*, 416 F.3d 551, 551-52 (7th Cir. 2005) (holding that to be properly considered a party, a defendant must be "specif[ied] in the caption"). If Plaintiff intended to bring a claim against Lashbrook in her individual capacity, he must submit an amended complaint in accordance with Federal Rule of Civil Procedure 15 and Local Rule 15.1.[6]

As detailed below, however, Lashbrook, as the current warden of Menard, will be added as an official capacity defendant for purposes of addressing any injunctive relief that might be granted and identifying any unknown defendants.

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[6] The Court also notes that the described sequence of events does not suggest a basis for individual liability under § 1983 as to Lashbrook. *See Diaz v. Godinez*, 2017 WL 2116175 (7th Cir. May 15, 2017); *Arnett v. Webster*, 658 F.3d 742, 755 (7th Cir. 2011).

Cell House Sergeant and Gallery Officer

The body of the Complaint alleges that two unknown individuals—the "cell house sergeant" and the "gallery officer"—disregarded Plaintiff's requests for medical care. (Doc. 1, p. 16). These individuals are not identified as defendants in Plaintiff's caption or in his list of defendants. Accordingly, any claims Plaintiff intended to bring against these individuals should be considered dismissed without prejudice. *See* FED. R. CIV. P. 10(a); *Myles*, 416 F.3d at 551-52. If Plaintiff intended to assert a claim against either individual, he must submit an amended complaint in accordance with Federal Rule of Civil Procedure 15 and Local Rule 15.1.

Merits Review Under § 1915(A)

Based on the allegations of the Complaint, the Court finds it convenient to divide the *pro se* action into the following counts. 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. The designation of these counts does not constitute an opinion regarding their merit.

Count 1 – Eighth Amendment conditions of confinement claim against Oakley, Butler, John Doe 1, Baldwin, and Wexford for housing Plaintiff in an unsanitary/unsafe cell and for placing two inmates in an cell designed for only one, with limited exercise opportunities outside of the cell.

Count 2 – Eighth Amendment deliberate indifference claim against Wexford, Butler, Baldwin, John Doe 1, John Doe 2, Jane Doe, and John Doe 4 for failure to adequately treat and/or delayed treatment of Plaintiff's injured thumb.

Count 3 – First Amendment claim pertaining to lost or delayed mail.

Count 4 – First Amendment and/or Fourteenth Amendment claim pertaining to inadequate law library staff.

Count 5 – First Amendment and/or Fourteenth Amendment claim pertaining to the opening of legal mail when Plaintiff is not present.

Count 6 – Eighth Amendment claim against Wexford, Trost, Butler, John Doe 1, and Baldwin for deliberate indifference to Plaintiff's medical needs on December 23, 2016.

Count 1–Conditions of Confinement

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment and applies to the states through the Due Process Clause of the Fourteenth Amendment. *Gillis v. Litscher*, 468 F.3d 488, 491 (7th Cir. 2006) (citing *Robinson v. California*, 370 U.S. 600 (1962)). Although the Constitution "does not mandate comfortable prisons," it does require inmates to be housed under "humane conditions" and provided with "adequate food, clothing, shelter, and medical care." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994); *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981). A claim for unconstitutional conditions of confinement includes an objective and a subjective component. *Farmer*, 511 U.S. at 834. Plaintiff must demonstrate (1) that he suffered a sufficiently serious deprivation (i.e., objective standard), and (2) the defendant acted with deliberate indifference to his conditions of confinement (i.e., subjective standard). *Sain v. Wood*, 512 F.3d 886, 893-94 (7th Cir. 2008) (citing *Farmer,* 511 U.S. at 837).

The allegations satisfy the objective component of this claim for screening purposes. Plaintiff describes being housed with a cellmate in a cell that is designed for a single person. Plaintiff contends the cell restricts his movement and that he has limited access to exercise. Plaintiff also describes unsanitary and unhealthy cell conditions (black mold, bacteria, human waste, and infestations). As a result of these conditions, Plaintiff has allegedly suffered from physical and mental health issues.

The next question is whether the officials named in connection with this claim exhibited deliberate indifference to these conditions. The Court evaluates this issue with respect to each Defendant below.

Butler, John Doe 1, and Baldwin

The Complaint suggests two theories of liability as to these Defendants. First, Plaintiff contends that the Defendants are subject to liability because they failed to conduct required safety and sanitation checks. (Doc. 1, p. 9). Even assuming prison policies require such checks, the alleged violation of a prison rule or regulation does not, by itself, establish a constitutional violation. *See Scott v. Edinburg*, 346 F.3d 752, 760 (7th Cir. 2003).

Plaintiff's second theory of recovery relates to the Defendants' alleged knowledge of unconstitutional conditions of confinement at Menard. The Complaint suggests that Butler, John Doe 1, and Baldwin must have known about the complained of conditions because of the numerous grievances, reports, and lawsuits that have been filed over the years considering the same conditions. The Seventh Circuit has found that prison administrators in a similar situation were "well aware of multiple grievances from inmates regarding small cells" based on "numerous past lawsuits, including one specifically describing and ordering a remedial plan for overcrowding, small cells, and lack of adequate medical care...." *Turley v. Rednour*, 729 F.3d 645, 652-53 (7th Cir. 2013) (citing *Lightfoot v. Walker*, 486 F. Supp. 504, 511 (C.D. Ill. 1980); *Munson v. Hulick*, 2010 WL 2698279 (S.D. Ill. July 7, 2010) (grievances filed by plaintiff and other inmates were deemed sufficient at screening to put prison officials on notice of unconstitutional conditions where Menard prisoner challenged 40' cells that held 2 inmates for 21-22 hours per day)). In addition to these past grievances and suits, Plaintiff did complain about the conditions in at least one grievance. (Doc.1, pp. 34-35). It was denied because decisions regarding cell size and occupancy are "Admin decision[s]." (Doc. 1, p. 39). Given these considerations, the Court finds that the Complaint satisfies the subjective component of this

claim against Butler, John Doe 1, and Baldwin, high-ranking administrative officials who were allegedly involved in decisions regarding cell conditions at Menard.

Wexford

With respect to Count 1, Wexford is allegedly subject to liability because it failed to conduct required safety and sanitation checks. As noted above, however, such a claim does not establish a constitutional violation. Accordingly, Count 1 shall be dismissed without prejudice as to Wexford.

Lori Oakley

Plaintiff suggests that Oakley is subject to liability for denying Plaintiff's grievance pertaining to cell conditions. Generally, the denial of a grievance, standing alone, is not enough to violate the United States Constitution. *See, e.g., George v. Abdullah*, 507 F.3d 605, 609 (7th Cir. 2007) ("Ruling against a prisoner on an administrative complaint does not cause or contribute to the violation."); *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) ("[T]he alleged mishandling of [a prisoner's] grievance by persons who otherwise did not cause or participate in the underlying conduct states no claim."). *See also Estate of Miller by Chassie v. Marberry*, 847 F.3d 425, 428-29 (7th Cir. 2017) ("inaction following receipt of a complaint about someone else's conduct is not a source of liability"). However, "a prison official's knowledge of prison conditions learned from an inmate's communications can, under some circumstances, constitute sufficient knowledge of the conditions to require the officer to exercise his or her authority and to take the needed action to investigate and, if necessary, to rectify the offending condition." *Perez v. Fenoglio,* 792 F.3d 768, 781-82 (citing *Vance v. Peters*, 97 F.3d 987, 993 (7th Cir. 1996)).

In this case, Plaintiff submitted a grievance pertaining to cell conditions and limited opportunities to exercise. (Doc. 1, pp. 34-35). After investigating Plaintiff's claims, Oakley concluded that Menard is in compliance with applicable regulations and recommended that Plaintiff's grievance be denied as moot. (Doc. 1, pp. 9, 39). These allegations do not suggest that Oakley "turned a blind eye" to a constitutional violation as described in *Perez* and related authority. As such, Oakley's denial of Plaintiff's grievance states no claim.

Accordingly, Count 1 shall be dismissed as to Oakley without prejudice.

Count 2–Deliberate Indifference to Serious Medical Needs

Deliberate indifference "to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'...proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). To state a claim, a prisoner must show that: (1) he suffered from an objectively serious medical need; and (2) state officials acted with deliberate indifference to the prisoner's medical need, which is a subjective standard. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Chapman v. Keltner*, 241 F.3d 842, 845 (7th Cir. 2001). Deliberate indifference to a serious medical need can be manifested by "blatantly inappropriate" treatment, *Greeno v. Daley*, 414 F.3d 645, 654 (7th Cir. 2005), or by "woefully inadequate action," *Cavalieri v. Shepherd*, 321 F.3d 616, 624 (7th Cir. 2003), as well as by no action at all. Delaying treatment may constitute deliberate indifference if such delay exacerbated the injury or unnecessarily prolonged an inmate's pain." *Gomez v. Randle*, 680 F.3d 859, 865 (7th Cir. 2012) (internal citations and quotations omitted). *See also Farmer v. Brennan*, 511 U.S. 825, 842 (1994); *Perez v. Fenoglio*, 792 F.3d 768, 777-78 (7th Cir. 2015). Medical malpractice, mere disagreement with a doctor's medical judgment, inadvertent error, and negligence, however, do not amount to deliberate indifference. *Estelle*, 429 U.S. at 106; *Berry v. Peterman*, 604 F.3d 435,

441 (7th Cir. 2010); *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008); *Greeno*, 414 F.3d at 653.

Plaintiff alleges that he suffered from a broken thumb, the thumb was obviously swollen and discolored, and he was in severe pain. These allegations establish that Plaintiff had an objectively serious medical need, at least at this stage.

A closer question is posed as to whether Plaintiff's allegations establish the subjective component, because Plaintiff received some medical care but alleges the care was delayed or inadequate. As discussed more fully below, applying the generous standard of review applicable at screening, the Court finds that Plaintiff has satisfied the subjective component of the inquiry with respect to John Doe 2, Jane Doe, John Doe 4, John Doe 1, Wexford, Butler, and Baldwin. The Complaint fails to state a claim, however, as to Trost.

John Doe 2 and Jane Doe

Plaintiff alleges that John Doe 2 and Jane Doe disregarded his requests for medical treatment. The alleged delay in treatment may have exacerbated Plaintiff's injury and/or unnecessarily prolonged Plaintiff's pain. Accordingly, Plaintiff may proceed as to John Doe 2 and Jane Doe.

John Doe 4

The Complaint and the accompanying records indicate Plaintiff was receiving treatment from John Doe 4. Plaintiff suggests, however, that John Doe 4 prescribed ineffective treatment (an ill-fitting thumb mold) and pain medication. For purposes of the initial review, the allegation of a lack of meaningful treatment is sufficient to proceed as to John Doe 4. Further development of the record may demonstrate that Plaintiff merely disagreed with the prescribed course of treatment and that John Doe 4 did not act with deliberate indifference. Nonetheless, the Court

cannot say this with certainty at the screening stage. Accordingly, Count 2 shall proceed against John Doe 4.

Wexford

Plaintiff also has satisfied the subjective component of the inquiry with respect to his allegations against Wexford. The Seventh Circuit has held that a corporate entity violates an inmate's constitutional rights only when it has a policy that creates conditions that infringe upon an inmate's constitutional rights. *See Woodward v. Corr. Med. Serv*. of Ill., Inc., 368 F.3d 917, 927 (7th Cir. 2004). *See also Jackson v. Ill. Medi-Car, Inc*., 300 F.3d 760, 766 n.6 (7th Cir. 2002) (private corporation is treated as though it were a municipal entity in a § 1983 action). Plaintiff alleges that Wexford has implemented various cost-saving policies and that his treatment requests have been delayed and/or denied because of those policies. Plaintiff has therefore stated a colorable claim against Wexford.

Accordingly, Count 2 shall proceed as to Wexford

Butler, Baldwin, and John Doe 1

The Complaint also suggests that Plaintiff's requests for treatment were denied or delayed because of a policy attributable to Butler, Baldwin, and/or John Doe 1—at least to the level of "turning a blind eye." *See Perez v. Fenoglio*, 792 F.3d 768, 781-782 (7th Cir. 2015); *Gentry v. Duckworth,* 65 F.3d 555, 561 (7th Cir. 1995). Further, Plaintiff's correspondence to Baldwin and John Doe 1 regarding inadequate medical treatment *may* have triggered a duty to investigate and, if necessary, rectify the complained of condition. *See Perez,* 792 F.3d at 781-82; *Vance v. Peters*, 97 F.3d 987, 993 (7th Cir. 1996).

Accordingly, Count 2 shall proceed as to Butler, Baldwin, and John Doe 1.

Trost

The Complaint fails to state a claim as to Trost. Trost is mentioned sporadically throughout the Complaint. But none of the allegations suggest that Trost was directly involved in treating the Plaintiff's injury or otherwise personally responsible for the alleged constitutional deprivations.

Accordingly, Count 2 shall be dismissed without prejudice as to Trost.

Count 3–First Amendment claim pertaining to lost or delayed 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 valid claim typically requires "a continuing pattern or repeated occurrences" of mail interference. *Zimmerman v. Tribble*, 226 F.3d 568, 572 (7th Cir. 2000). In this case, Plaintiff generally alleges that mail at Menard is often lost or delayed. But Plaintiff does not allege that *his* mail has been lost or delayed or otherwise elaborate on this claim. Absent additional information, the Complaint fails to state a claim pertaining to interference with Plaintiff's mail.

As such, Count 3 shall be dismissed without prejudice for failure to state a claim.

Count 4–Inadequate Law Library

"[T]he mere denial of access to a prison law library or to other legal materials is not itself a violation of a prisoner's rights; his right is to access *the courts*, and only if the defendants' conduct prejudices a potentially meritorious challenge to the prisoner's conviction, sentence, or conditions of confinement has this right been infringed." *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). To state a claim, a plaintiff must explain "the connection between the alleged denial of access to legal materials and an inability to pursue a legitimate challenge to a

conviction, sentence, or prison conditions," *Ortiz v. Downey*, 561 F.3d 664, 671 (7th Cir. 2009) (internal quotation and citation omitted); *accord Guajardo Palma v. Martinson*, 622 F.3d 801, 805–06 (7th Cir. 2010).

Here, Plaintiff merely alleges that the law library staffing is somehow inadequate. Plaintiff does not identify an injury associated with the alleged inadequacies. This is insufficient. Accordingly, Count 4 shall be dismissed without prejudice for failure to state a claim.

Count 5–Opening of Legal Mail

The Complaint does not support a constitutional claim pertaining to the opening of Plaintiff's legal mail. "[W]hen a prison receives a letter for an inmate that is marked with an attorney's name and a warning that the letter is legal mail, officials potentially violate the inmate's rights if they open the letter outside of the inmate's presence." *Kaufman v. McCaughtry*, 419 F.3d 678, 686 (7th Cir. 2005) citing *Wolf v. McDonnell*, 418 U.S. 539, 577 (1974); *see also Gaines*, 790 F.2d at 1306. Isolated incidents of interference with legal mail are generally insufficient to maintain a claim. *See Bruscino v. Carlson*, 654 F.Supp. 609, 618 (S.D. Ill. 1987), aff'd, 854 F.2d 162 (7th Cir.1988). However, a prisoner's claim of ongoing interference with his legal mail is generally sufficient to state a claim. *Castillo v. Cook Cnty. Mail Room Dep't*, 990 F.2d 304 (7th Cir. 1993).

In this case, Plaintiff merely alleges that his legal mail has been opened outside of his presence. This allegation, standing alone, is too vague to support a constitutional claim. Moreover, as with Count 5, this claim is only viable if Plaintiff can allege a related injury. *See Guajardo–Palma v. Martinson*, 622 F.3d 801, 805-06 (7th Cir. 2010) ("whether the unjustified opening of [attorney mail] is a violation of the right of access to the courts or merely, as intimated in *Kaufman* and held in *Gardner*, a potential violation….we think [as with claims

challenging the adequacy of a prison's library or legal assistance program] there must b[e] a showing of a hindrance"). Plaintiff has not alleged a hindrance.

Accordingly, Count 5 shall be dismissed without prejudice for failure to state a claim.

Count 6–Deliberate Indifference During Lockdown

According to the Complaint, Wexford, Trost, Butler, John Doe 1, and Baldwin have implemented a policy that cancels all medical call passes when Menard is on lockdown. (Doc. 1, p. 23). Because of this policy, Plaintiff missed a scheduled medical appointment on December 23, 2016. Plaintiff does not provide any additional information pertaining to this claim. Absent additional information, Plaintiff's claim fails to state a claim for deliberate indifference.

Accordingly, Count 6 shall be dismissed without prejudice for failure to state a claim.

Warden Lashbrook

As previously noted, Plaintiff is seeking injunctive relief. The current warden of Menard, Jacqueline Lashbrook, is the appropriate official capacity defendant with respect to this claim. *Gonzales v. Feinerma*n, 663 F.3d 311, 315 (7th Cir. 2011). Accordingly, the Clerk will be directed to add the Warden of Menard, in her official capacity, for purposes of carrying out any injunctive relief that is ordered. See FED. R. CIV. P. 21; FED. R. CIV. P. 17(d).

Identification of Unknown Defendants

With respect to Count 1, Plaintiff shall be allowed to proceed against John Doe 1 (Warden December 2016 to February 2017). With respect to Count 2, Plaintiff shall be allowed to proceed against John Doe 1 (Warden December 2016 to February 2017), John Doe 2 (Tower Officer), Jane Doe (Nurse), and John Doe 4 (Physician Assistant). These defendants must be identified with particularity, however, before service of the Complaint can be made on them. Where a prisoner's complaint states specific allegations describing conduct of individual prison

staff members sufficient to raise a constitutional claim, but the names of those defendants are not known, the prisoner should have the opportunity to engage in limited discovery to ascertain the identity of those defendants. *Rodriguez v. Plymouth Ambulance Serv*., 577 F.3d 816, 832 (7th Cir. 2009). Lashbrook, in her official capacity as the warden of Menard, shall be responsible for responding to discovery aimed at identifying these unknown defendants. Guidelines for discovery will be set by the United States Magistrate Judge. Once the names of the unidentified defendants are discovered, Plaintiff shall file a motion to substitute the newly identified defendant in place of the generic designation in the case caption and throughout the complaint.

Pending Motion

Plaintiff has filed a Motion to Appoint Counsel. (Doc. 2). This motion shall be **REFERRED** to United States Magistrate Judge Donald G. Wilkerson for disposition.

Disposition

IT IS HEREBY ORDERED that **COUNT 1** shall **PROCEED** against **WEXFORD, BUTLER, JOHN DOE 1**, and **BALDWIN. COUNT 1** is **DISMISSED** without prejudice as to **OAKLEY.**

IT IS FURTHER ORDERED that **COUNT 2** shall **PROCEED** against **WEXFORD, BUTLER, JOHN DOE 1, JOHN DOE 2, JANE DOE, JOHN DOE 4,** and **BALDWIN. COUNT 2** is **DISMISSED** without prejudice as to **TROST**.

IT IS FURTHER ORDERED that **COUNTS 3** through **6** are **DISMISSED** without prejudice for failure to state a claim.

IT IS FURTHER ORDERED that **IDOC, TROST, JOHN DOE 3,** and **OAKLEY** are **DISMISSED** without prejudice for failure to state a claim upon which relief can be granted. The

Clerk of the Court is **DIRECTED** to terminate **IDOC, TROST, JOHN DOE 3,** and **OAKLEY** as defendants in CM/ECF.

The Clerk of the Court is **DIRECTED** to add **JACQUELINE LASHBROOK**, in her official capacity as warden of Menard, for purposes of carrying out any injunctive relief that might be granted and identifying unknown defendants.

Service shall not be made on the Unknown (John Doe/Jane Doe) Defendants until such time as Plaintiff has identified them by name in a properly filed motion for substitution of parties. Plaintiff is **ADVISED** that it is his responsibility to provide the Court with the names and service addresses for these individuals.

IT IS FURTHER ORDERED that as to **COUNTS 1** and **2**, the Clerk of Court shall prepare for **WEXFORD, BUTLER, BALDWIN, JOHN DOE 1**, **JOHN DOE 2, JANE DOE,** and **JOHN DOE 4**: (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 any 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 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 each defendant (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 the defendant 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 Donald G. Wilkerson for further pre-trial proceedings, including a decision on Plaintiff's Motion to Appoint Counsel (Doc. 2). Further, this entire matter shall be **REFERRED** to United States Magistrate Judge Donald G. Wilkerson 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 Section 1915, Plaintiff will be required to pay the full amount of the costs, despite the fact 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: July 14, 2017

NANCY J. ROSENSTENGEL
United States District Judge