

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

**ENOS F. TAPLIN, JR.,** )  
**R60561,** )  
**Plaintiff,** )  
 )  
**vs.** )  
 )  
**WARDEN OF MENARD** )  
**CORRECTIONAL CENTER (2013-2015),** )  
 )  
**Defendant.** )

**Case No. 17-cv-00398-NJR**

**MEMORANDUM AND ORDER**

**ROSENSTENGEL, District Judge:**

This matter is before the Court for case management. On April 17, 2017, following the Memorandum and Order entered in *Taplin v. Warden Pinckneyville Correctional Center, et al.*, Case No. 16-cv-01146-SMY (Doc. 1 in this case), this matter was severed from the original case pursuant to *George v. Smith*, 507 F.3d 605 (7th Cir. 2007).

Plaintiff, an Illinois Department of Corrections inmate currently housed at Pontiac Correctional Center, filed this civil rights action pursuant to 42 U.S.C. § 1983 in order to address numerous alleged violations of his constitutional rights that occurred at Pinckneyville Correctional Center (“Pinckneyville”) and Menard Correctional Center (“Menard”). His First Amended Complaint (Doc. 4 in this case) named Pinckneyville’s warden and Menard’s warden as the only two defendants. (Doc. 2, pp. 1-2). The Court divided Plaintiff’s Complaint into two sets of claims (one set of claims—Count 1—directed against Pinckneyville’s warden, and one set of claims—Count 2—directed against Menard’s warden) and severed the First Amended

Complaint into two different cases. (Doc. 1). This case includes the second set of claims directed against Menard's warden, designated by the Court as follows:

**Count 2:** First, Eighth, and Fourteenth Amendment claims against Menard's warden for the events that occurred at that prison between September 6, 2013 and May 5, 2015.

As Plaintiff was advised in the order severing his claims, the threshold merits review pursuant to 28 U.S.C. § 1915A is now due to be conducted. 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 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).

### **Background**

On August 18, 2016, Plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983 in the United States District Court for the Northern District of Illinois in order to address alleged violations of his constitutional rights that occurred during his incarceration at Pinckneyville Correctional Center in 2013 and Menard Correctional Center from 2013-15. (Doc. 2 in this case).

The Northern District transferred the case to this District on October 17, 2016. (Case No. 16-cv-01146-SMY, Doc. 8).

Plaintiff filed a Motion for Leave to File Amended Complaint on November 4, 2016, before the Complaint had been screened. (Case No. 16-cv-01146-SMY, Doc. 13). The Court denied the motion because Plaintiff's proposed amended complaint was obviously incomplete as he omitted several pages and a request for relief from the proposed amended pleading (Doc. 3 in this case). The Court also found that the original Complaint failed to state a claim upon which relief may be granted and thus, it did not survive preliminary review under § 1915A. *Id.* The Court therefore entered an Order dismissing the original Complaint without prejudice on November 15, 2016. *Id.*

Plaintiff was granted leave to file a First Amended Complaint by December 13, 2016. (Doc. 3, p. 5). He was instructed to "present each claim in a separate count, and . . . 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." *Id.* (emphasis in original). Further, Plaintiff was warned that he "should include only related claims in his new Complaint [because] [c]laims found to be unrelated to one another w[ould] be severed into new cases, new case numbers w[ould] be assigned, and additional filing fees w[ould] be assessed." (Doc. 3, pp. 5-6) (emphasis in original).

#### **The First Amended Complaint (Doc. 4)**

As set forth above, this case involves only those claims directed against Menard's warden. Plaintiff blames Menard's warden for alleged constitutional violations that occurred following his disciplinary transfer to that prison on September 6, 2013. (Doc. 4, pp. 6-8). Specifically, Plaintiff was allegedly harassed by 15-20 correctional officers who were part of a

“welcoming committee.” (Doc. 4, p. 6). The officers spit on Plaintiff and forced him to crawl to the wall while he was shackled and cuffed behind his back. *Id.* He could not move quickly enough to satisfy the officers, and they began kicking him. *Id.* They held him against the wall and “smashed” his head with their elbows and knees, while saying that they were going to beat Plaintiff “to death.” *Id.* Plaintiff was then placed in a jumpsuit. (Doc. 4, p. 7). He remained cuffed behind his back for a total of five to seven hours. *Id.*

The cuffs were finally removed when Plaintiff was placed in segregation. (Doc. 4, p. 7). He remained there for almost two months. *Id.* The cell was small (*i.e.*, approximately 4’ x 10’ x 12’). *Id.* Plaintiff could not move freely in it. *Id.* The ventilation was poor. *Id.* There was mold on the walls, spider webs on the doors, and maggots in the toilets. *Id.* Plaintiff also had no human contact during this time period. (Doc. 4, p. 7). A social worker made rounds every three months. *Id.* Prison officials generally avoided inmates who were confined in this area of the prison, however, because they often spit on and hit correctional officers, counselors, and nurses. *Id.*

Plaintiff did meet with a nurse on one occasion. (Doc. 4, p. 8). She ordered him to submit to a shot. *Id.* But the nurse did not tell Plaintiff why it was being administered or what medicine he would be given. *Id.* Nevertheless, she threatened Plaintiff with additional time in segregation if he refused the shot. *Id.* To avoid additional punishment, Plaintiff agreed to take the shot. *Id.* The nurse returned to his cell twice to administer two additional rounds. *Id.* After reluctantly taking all three shots, Plaintiff began turning red in the face, and his arms developed sores. *Id.* He never received medical attention for this allergic reaction. *Id.*

When Plaintiff was finally transferred to the “hill” at Menard, he was subjected to other objectionable conditions. (Doc. 4, p. 7). On the way to and from the “pit” where he worked each

day, Plaintiff was strip searched (i.e., twice daily). *Id.* Female guards were present during one of these searches. *Id.* Plaintiff alleges that he was also harassed. *Id.*

Only two allegations in the First Amended Complaint are directed against Menard's warden. Plaintiff alleges that the warden is subject to liability because Plaintiff was harassed and assaulted by correctional officers when Plaintiff arrived at Menard. (Doc. 4, p. 6). Plaintiff also alleges that the warden is subject to liability because he never "talked" to Plaintiff and never found out why Plaintiff was not receiving pink copies of filed grievances. (Doc. 4, p. 8). No information is provided regarding any grievances that were filed. Further, nothing in the First Amended Complaint suggests that Menard's warden had any reason to talk to Plaintiff about his conditions of confinement or inquire about missing pink copies. That is, Plaintiff does not allege that Menard's warden had knowledge of any grievances or complaints initiated by Plaintiff or was otherwise aware of any of the constitutional violations mentioned in the First Amended Complaint.

Plaintiff remained at Menard from September 6, 2013 until May 5, 2015. (Doc. 4, p. 8). He spent a total of three months in segregation and a total of eight months in "segregation solitary confinement." *Id.*

### **Discussion**

Although Plaintiff lists the warden as a defendant in the case caption, his statement of claim does not include any factual allegations that would subject the warden to liability. Plaintiff does not allege that the warden participated in the conduct giving rise to his claims. Rather, he suggests that the warden is liable simply because alleged constitutional violations occurred when Plaintiff arrived at Menard. (Doc. 4, p. 6). He also fails to allege that the warden had knowledge of the alleged constitutional violations (through grievances or otherwise), but failed to act.

Plaintiff does allege that the warden failed to “talk” to him and failed to find out why he did not have pink copies of filed grievances. (Doc. 4, p. 8). Nothing in the First Amended Complaint suggests, however, that the warden possessed any knowledge that would trigger a duty to make these inquiries.

The Seventh Circuit Court of Appeals has long recognized that “a plaintiff cannot state a claim against a defendant by including the defendant’s name in the caption.” *Collins v. Kibort*, 143 F.3d 331, 334 (7th Cir. 1998). *See also Crowder v. Lash*, 687 F.2d 996, 1006 (7th Cir. 1982). Merely invoking the name of a potential defendant is insufficient to state a claim against that individual. *Id.* Similarly, Plaintiff cannot rely on conclusory allegations to support a claim against a defendant under *Twombly or Iqbal*. *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009).

Additionally, Section 1983 creates a cause of action based on personal liability and predicated upon fault. *Pepper v. Village of Oak Park*, 430 F.3d 809, 810 (7th Cir. 2005) (citations omitted). “[T]o be liable under § 1983, an individual defendant must have caused or participated in a constitutional deprivation.” *Id.* The doctrine of *respondeat superior*, or supervisory liability, does not apply to actions filed under § 1983. *Kinslow v. Pullara*, 538 F.3d 687, 692 (7th Cir. 2008).

Plaintiff’s original Complaint suffered from the same problem (Docs. 2, 3). In fact, the Court instructed Plaintiff to include allegations indicating who violated his constitutional rights, when his rights were violated, and what conduct resulted in each alleged violation. (Doc. 3, p. 3). Plaintiff disregarded these instructions, and in doing so, he failed to address this issue. Thus, the claims in Count 2 against Menard’s warden still do not survive screening.

Count 2 shall be dismissed against Menard’s warden for failure to state a claim upon which relief may be granted. Plaintiff has already taken several opportunities to plead his claims

against this Defendant and has failed to do so. (*See, e.g.*, Docs. 2, 4; *see also* Case No. 16-cv-01146-SMY, Doc. 13). Accordingly, the dismissal shall be with prejudice. Because Count 2 is the only claim in this action, it is appropriate to dismiss the First Amended Complaint and this action with prejudice. Plaintiff shall also receive a “strike” under 28 U.S.C. § 1915(e), (g).

### **Disposition**

**IT IS HEREBY ORDERED** that **COUNT 2** is **DISMISSED with prejudice** against **WARDEN OF MENARD CORRECTIONAL CENTER (2013-15)** for failure to state a claim upon which relief can be granted.

**IT IS HEREBY ORDERED** that the First Amended Complaint (Doc. 4) and this action are **DISMISSED with prejudice** for failure to state a claim upon which relief may be granted. Plaintiff is **ADVISED** that this dismissal shall count as one of his three allotted “strikes” under the provisions of 28 U.S.C. § 1915(g).

**IT IS ORDERED** that any other claims arising at Menard Correctional Center against individuals who are not named as defendants in this action are 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”).

Plaintiff’s obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

If Plaintiff wishes to appeal this Order, he may file a Notice of Appeal with this Court within thirty days of the entry of judgment. FED. R. APP. 4(A)(4). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the

appeal. See FED. R. APP. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockish*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another “strike.” A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended.

The Clerk of Court is **DIRECTED** to close this case and enter judgment accordingly.

**IT IS SO ORDERED.**

**DATED: July 19, 2017**



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**NANCY J. ROSENSTENGEL**  
**United States District Judge**