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

DUSTIN DONLEY Y22910,	)	
Plaintiff,	)	
	)	**Case No. 17−cv–00481−JPG**
vs.	)	
PHILIP MCLAUREN, and SGT. NICHOLS,	)	
Defendants.	)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983, claiming that his constitutional rights were violated while he was a pretrial detainee[1] at the St. Clair County Jail ("Jail"). Plaintiff is currently incarcerated at Menard Correctional Center. In connection with his claims, Plaintiff names Philip McLauren (Superintendent at the Jail) and Sgt. Nichols (Supervisor at the Jail).

This case is now before the Court for a preliminary review of the Complaint 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

[1] The constitutional standards applicable to Plaintiff's claims are determined based on whether he was an arrestee, detainee, or convict. Based on the allegations in the Complaint and publically available court records in the St. Clair County Circuit Court (Case No. 16-cf-110102), the Court presumes Plaintiff was a pretrial detainee at all relevant times.

> 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 does not survive preliminary review under this standard.

The Complaint

Plaintiff contends that on April 10, 2017, a boil order was in effect in Belleville, Illinois (where the Jail is located). (Doc. 1, p. 6). Plaintiff contends that "administration" and "staff" at the jail failed to inform him about the boil order. *Id.* Additionally, Plaintiff contends that a nurse, a correctional officer, and "supervisors" disregarded his concerns about the boil order. *Id.*

Plaintiff also contends that he was "neglected" by "staff members" for 22 days because he was not given a PIN number when he was processed and, without a PIN number, he could not use the phones to call his attorney or his family. *Id.* Plaintiff complained to numerous

individuals regarding his PIN number, including Sgt. Nichols, but all of his complaints were ignored. *Id.* Plaintiff also contends that he was "hindered from educating [himself] about important legal issues" because the Jail does not have an operational law library or provide adequate help in filing legal paperwork and the commissary does not sell ink pens. (Doc. 1, p. 7). Plaintiff complained to staff about these issues, but Sgt. Nichols told Plaintiff he does not have a right to a law library. *Id.*

Plaintiff also directs complaints against several individuals who are not defendants in the instant action. For instance, Plaintiff complains that various correctional officers cursed at him, and "downgraded" him. (Doc. 1, p. 6). He also complains that officers at the jail are unprofessional and were otherwise unhelpful. *Id.*

Finally, Plaintiff contends that the showers were unsanitary and that the meals were inadequate. *Id.* With respect to the showers, Plaintiff complains about mold, gnats, and "other unidentified particles." *Id.* Plaintiff contends that he complained about the showers to the "administration" and to "a nurse," but received no response. *Id.* With respect to meals, Plaintiff complains about inadequate portions and inadequate amounts of fruit. *Id.* Plaintiff alleges that "supervisors" do not care about the inadequacy of the meals.

Discussion

Applicability of Fourteenth Amendment

Because Plaintiff was a detainee at the time of the alleged violations, the Fourteenth rather than the Eighth Amendment applies to Plaintiff's claims. *Lewis v. Downey*, 581 F.3d 467, 473 (7th Cir. 2009). The governing standards are functionally equivalent, and "anything that would violate the Eighth Amendment would also violate the Fourteenth Amendment." *Id.* "In evaluating the constitutionality of conditions or restrictions of pretrial detention ... the proper

inquiry is whether those conditions amount to punishment of the detainee." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Deprivations must be "unquestioned and serious" and deprive prisoner of "the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981). Inmates are entitled to adequate food, clothing, shelter, medical care, bedding, hygiene materials, and sanitation. *Knight v. Wiseman*, 590 F.3d 458, 463 (7th Cir. 2009); *Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006).

Division of Claims

Based on the allegations in the Complaint, the Court finds it convenient to organize the *pro se* action into the following counts:

Count 1 - Fourteenth Amendment conditions of confinement claim for conduct related to the boil order.

Count 2 - Fourteenth Amendment access to the Courts claim.

Count 3 - Fourteenth Amendment claim for verbally harassing and unprofessional conduct.

Count 4 - Fourteenth Amendment conditions of confinement claim for unsanitary showers.

Count 5 - Fourteenth Amendment conditions of confinement claim for inadequate meals

Count 1 – Boil Order Claims

Plaintiff is entitled to humane conditions of confinement, *Sain v. Wood*, 512 F.3d 886, 893 (7th Cir.2008), which of course includes adequate amounts of safe drinking water. In the instant case, Plaintiff does not allege that he was not provided with access to adequate amounts of safe drinking water. He merely alleges that he was not informed about the existence of a boil order and that unidentified individuals disregarded his concerns about the boil order. This allegation – standing alone – states no claim.

Even if Plaintiff's allegations regarding the boil order stated a plausible conditions of confinement claim, it would be subject to dismissal. First, the claim is directed against unidentified individuals or groups of individuals who have not been identified as defendants in this action. Accordingly, Count 1 states no claim as to these individuals. *See Myles U.S.,* 416 F.3d 551, 551-53 (7th Cir. 2005). Second, the allegations in Count 1 are not associated with either of the named Defendants.[2] Third, the named Defendants, a jail administrator and a supervisor, cannot be held liable for a constitutional violation committed by a lower-ranking employee, because the doctrine of *respondeat superior* (supervisory liability) is not applicable to § 1983 actions. *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001).

Count 2 – Access to the Courts

The allegations in the Complaint suggest that Plaintiff is attempting to bring an access to the courts claim against Nichols. Plaintiff contends that "staff members" refused to provide him with access to a PIN number (apparently necessary to utilize the phones at the Jail) and that, as a result, Plaintiff was not able to contact his attorney. As previously explained, Nichols is not subject to liability simply because he was a supervisory official. *See Sanville,* 266 F.3d at 740. However, Plaintiff also alleges that he complained to Nichols about the lack of access to no avail. Additionally, Plaintiff contends that Nichols ignored Plaintiff's complaints about the law library. Even assuming that the alleged lack of response to Plaintiff's complaints could subject

[2] 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 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. 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). Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, "to be liable under § 1983, the individual defendant must have caused or participated in a constitutional deprivation." *Pepper v. Village of Oak Park*, 430 F.3d 805, 810 (7th Cir. 2005) (internal quotations and citations omitted). In order to state a claim against a defendant, a plaintiff must describe what each named defendant did (or failed to do), that violated the plaintiff's constitutional rights.

Nichols to liability,[3] Plaintiff has failed to state a viable access to the courts claim. To state an access to the courts claim, Plaintiff must allege "some quantum of detriment caused by the challenged conduct of state officials resulting in the interruption and/or delay of the plaintiff's pending or contemplated litigation." *Shango v. Jurich*, 965 F.2d 289, 292 (7th Cir. 1992).[4] Plaintiff does not claim any quantum of detriment here. Accordingly, Count 2 shall be dismissed without prejudice.

Count 3 – Verbally Harassing and Unprofessional Conduct

Plaintiff contends that various officers cursed at him, downgraded him, and were generally unprofessional. Absent more, the alleged conduct does not trigger any constitutional protections. *See DeWalt v. Carter*, 224 F.3d 607, 612 (7th Cir. 2000) ("[S]imple verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest or deny a prison equal protection of the laws."). Additionally, even if the alleged conduct did amount to a constitutional violation, as with previous counts, Count 3 would still be subject to dismissal because it is directed at individuals who are not party to this suit, it is not associated with either of the named Defendants, and/or the named Defendants are not subject to supervisory liability.

Counts 4 and 5 – Showers and Meals

Counts 4 and 5 are also subject to dismissal. Both counts contain threadbare allegations pertaining to unsanitary showers and inadequate meals at the Jail. As with previous counts, even if these minimal allegations stated a claim, they would still be subject to dismissal because the claims are directed at individuals who are not party to this suit, the claims are not associated with

[3] There are a number of problems with such an assumption. However, the Court need not delve into those issues at this time.

[4] The right of access to the courts extends to pretrial detainees. *See Smith v. Martin*, 46 F.3d 1134, *3 (7th Cir. 1995).

either of the named Defendants, and/or the named Defendants are not subject to supervisory liability.

Supplemental Pleadings

On July 17, 2017, Plaintiff filed two supplemental pleadings with the Court: (1) Memorandum (Doc. 9) and (2) Declaration/Affidavit (Doc. 10). The Court does not accept piecemeal pleadings. Accordingly, these pleadings have been disregarded and the Clerk of the Court shall be **DIRECTED** to **STRIKE THEM FROM THE RECORD.** The Court notes, however, that the supplemental pleadings did not include any information or argument that would alter the Court's decision. Additionally, Plaintiff is being granted leave to file a First Amended Complaint. Accordingly, if he wants, he may resubmit one or more of the stricken pleadings in conjunction with the filing of his First Amended Complaint.

Pending Motions

Plaintiff has filed a Motion for Recruitment of Counsel (Doc. 2). The dismissal of the complaint without prejudice raises the question of whether Plaintiff is capable of drafting a viable amended complaint without the assistance of counsel.

Plaintiff's Motion states that he is a high school graduate and that this area of the law is complex. In addition, Plaintiff's Motion indicates that his family contacted lawyers but the lawyers were not interested in taking his case.

There is no constitutional or statutory right to counsel in federal civil cases. *Romanelli v. Suliene*, 615 F.3d 847, 851 (7th Cir. 2010); *see also Johnson v. Doughty*, 433 F.3d 1001, 1006 (7th Cir. 2006). Nevertheless, the district court has discretion under 28 U.S.C. § 1915(e)(1) to

recruit counsel for an indigent litigant. *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866–67 (7th Cir. 2013).

When a pro se litigant submits a request for assistance of counsel, the Court must first consider whether the indigent plaintiff has made reasonable attempts to secure counsel on his own. *Navejar v. Iyiola*, 718 F.3d 692, 696 (7th Cir. 2013) (citing *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007)). If so, the Court must examine "whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it." *Navejar*, 718 F.3d at 696 (quoting *Pruitt*, 503 F.3d at 655). "The question...is whether the plaintiff appears competent to litigate his own claims, given their degree of difficulty, and this includes the tasks that normally attend litigation: evidence gathering, preparing and responding to motions and other court filings, and trial." *Pruitt*, 503 F.3d at 655. The Court also considers such factors as the plaintiff's "literacy, communication skills, education level, and litigation experience." *Id*.

The minimal information provided does not allow the Court to determine if Plaintiff has made *reasonable* attempts to obtain counsel on his own. Plaintiff's level of education (high school graduate) and a review of the pleadings file to date do not suggest that the recruitment of counsel is not warranted at this stage of the litigation. At this juncture, the Court is merely concerned with whether this action can get out of the gate, so to speak. All that is required is for Plaintiff to provide an amended complaint that includes sufficient factual content regarding the alleged constitutional violations and the individuals associated with the alleged violations. Plaintiff alone has knowledge of these facts, and no legal training or special knowledge is required to set them down on paper. Therefore, the Motion for Recruitment of Counsel (Doc. 2)

is **DENIED** without prejudice. The Court will remain open to appointing counsel as the case progresses.

Disposition

IT IS HEREBY ORDERED that the Complaint is **DISMISSED without prejudice.**

The Court **DIRECTS** the Clerk of the Court to **STRIKE** the supplemental pleadings (Docs. 9 and 10) from the record.

Plaintiff is **GRANTED** leave to file a "First Amended Complaint" on or before **August 29, 2017**. Should Plaintiff fail to file his First 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. Kamming*a, 34 F.3d 466 (7th Cir. 1994); 28 U.S.C. § 1915(e)(2).

Should Plaintiff decide to file a First 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, "First Amended Complaint," and he should use the case number for this action (*i.e*. 17-cv-481-JPG).

To enable Plaintiff to comply with this Order, the **CLERK** is **DIRECTED** to mail Plaintiff a blank civil rights complaint form.

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 the original Complaint. Thus, the First 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

First Amended Complaint. The First Amended Complaint is subject to review pursuant to 28 U.S.C. § 1915(e)(2).

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 First 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).

IT IS SO ORDERED.

DATED: July 31, 2017

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