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

MALCOLM WIGGINS,

Plaintiff,

vs. **Case No. 17–cv–0583–DRH**

JOHN BALDWIN,
JOSEPH YURKOVICH,
ALFONSO DAVID,
APOSTLE,
TAMMY PITTAYATHIHAN,
JEFFERY DENNISON,
JOHN DOE, and
UNKNOWN TACTICAL TEAM
MEMBERS

Defendants.

MEMORANDUM AND ORDER

HERNDON, District Judge:

Plaintiff Malcolm Wiggins, an inmate in Illinois River Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983 that occurred at Shawnee Correctional Center. Plaintiff seeks compensatory damages, punitive damages, and injunctive relief. 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 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–
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> (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).

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

The Complaint

On August 8, 2016, while at Shawnee Correctional Center, Plaintiff's cell was shaken down by the Orange Crush tactical team. (Doc. 1, p. 5). Dennison ordered the shakedown after a gang fight. (Doc. 1, p. 9). Plaintiff claims he had nothing to do with the gang fight, and that the gang members had already been

taken to segregation. *Id.* Plaintiff concludes that Dennison's purpose in ordering the shakedown was to hurt, harm, scare, and retaliate against inmates. *Id.*

Plaintiff was housed in cell #34, 1 House, D-wing. (Doc. 1, p. 5). Plaintiff alleges that he was specifically targeted because he was known to file grievances. (Doc. 1, p. 9). As a result of the shakedown, Plaintiff's cell was trashed, food and soap were poured on his clothes and legal work, and $92.27 worth of personal property was taken and destroyed by an unknown Orange Crush Member. *Id.*

John Doe and an unknown Orange Crush Member stripped searched Plaintiff and then cuffed him. (Doc. 1, p. 5). Plaintiff alleges that Doe had Plaintiff turn his palms out and his thumbs up prior to placing the handcuffs on Plaintiff. *Id.* Plaintiff alleges that this is a stressful position that causes twisting in the shoulders and pain. *Id.* Additionally, Plaintiff was forced to hold his head to his chest for over 2 hours. *Id.* Plaintiff alleges that Doe, Unknown Orange Crush Member, Yurkovich, and others were put on notice about the nature of this position by prior lawsuits, grievances, and complaints. *Id.*

Plaintiff immediately felt pain after being cuffed. (Doc. 1, p. 6). He asked Doe to loosen the cuffs, but Doe refused. *Id.* As a result of the too-tight handcuffs, Plaintiff experienced hand numbness, swelling, shoulder pain, and a lump on his collarbone and A.C. joint. *Id.*

During the strip search, Plaintiff was forced to touch his genitals and then spread his buttocks. (Doc. 1, p. 7). He was then instructed to put his fingers in his mouth without being able to wash his hands prior. *Id.* Plaintiff specifically

asked if he could wash his hands, but Doe and the Unknown Orange Crush Member threatened to beat Plaintiff. *Id.* Plaintiff was then forced to walk to the inmate dining room in a "nuts to butts" position. *Id.* Plaintiff alleges that he suffered emotional distress, anxiety, and other psychological injuries as a result of these actions. *Id.*

Plaintiff alleges that Warden Jeffery Dennison and Joseph Yurkovich turned a blind eye to the conduct. (Doc. 1, p. 8). Specifically, he alleges that there is a practice in the IDOC to conduct shakedowns in this manner, and that Yurkovich has overseen this practice. *Id.* Plaintiff alleges that Yurkovich encouraged this conduct and also failed to punish past incidents of similar misconduct. *Id.*

Plaintiff alleges that he saw Dr. Apostle on August 24, 2016, and Dr. Alfonso David and Tammy Pittayathihan on September 26, 2016 in reference to the injuries he received during the shakedown. (Doc. 1, p. 10). Plaintiff alleges that defendants failed to schedule a timely medical examination and/or treatment. (Doc. 1, p. 11). They have refused to give Plaintiff an MRI or send him to an orthopedist. (Doc. 1, p. 12). This refusal has left Plaintiff in severe pain, limited his range of motion, and caused emotional distress. (Doc. 1, p. 11).

Discussion

Based on the allegations of the Complaint, the Court finds it convenient to divide the pro se action into 7 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 following claims survive threshold review:

Count 1 – John Doe used excessive force on Plaintiff when he cuffed his hands too tightly, causing injury in violation of the Eighth Amendment;

Count 2 – Doe and Unknown Orange Crush Member conducted an unreasonable strip search of Plaintiff when they conducted it in a humiliating manner, in violation of the Eighth Amendment;

Count 3 – Dennison and Yurkovich had a custom or practice of directing and/or condoning strip searches and/or shakedowns conducted in an unreasonable manner in violation of the Eighth Amendment;

Count 4 – David, Apostle, and Pittayathihan were deliberately indifferent to Plaintiff's serious medical needs when they delayed treating him after he suffered injuries during the shakedown and persisted in a course of medical treatment after it proved ineffective in violation of the Eighth Amendment.

Plaintiff has also attempted to bring other Counts, but for the reasons elucidated below, these claims do not survive threshold review:

Count 5 – Dennison and Unknown Orange Crush Member shook down Plaintiff's cell in retaliation for grievances and lawsuits he had filed in violation of the First Amendment;

Count 6 – Unknown Orange Crush Member conducted an unreasonable search of Plaintiff's cell in violation of the Fourth Amendment;

Count 7 – Unknown Orange Crush Member violated Plaintiff's Fourteenth Amendment due process rights when he destroyed Plaintiff's property without due process of law.

As to Plaintiff's **Count 1**, the intentional use of excessive force by prison guards against an inmate without penological justification constitutes cruel and unusual punishment in violation of the Eighth Amendment and is actionable under § 1983. *See Wilkins v. Gaddy*, 559 U.S. 34 (2010); *DeWalt v. Carter*, 224 F.3d 607, 619 (7th Cir. 2000). An inmate must show that an assault occurred,

and that "it was carried out 'maliciously and sadistically' rather than as part of 'a good-faith effort to maintain or restore discipline.'" *Wilkins*, 559 U.S. at 40 (citing *Hudson v. McMillian*, 503 U.S. 1, 6 (1992)). The factors relevant to this determination include: (1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of injury inflicted; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them; and (5) any efforts made to temper the severity of a forceful response. *Outlaw v. Newkirk,* 259 F.3d 833, 837 (7th Cir. 2001) (citation omitted).

An inmate seeking damages for the use of excessive force need not establish serious bodily injury to make a claim, but not "every malevolent touch by a prison guard gives rise to a federal cause of action." *Wilkins*, 559 U.S. at 37-38 (the question is whether force was de minimis, not whether the injury suffered was de minimis); *see also Outlaw v. Newkirk*, 259 F.3d 833, 837-38 (7th Cir. 2001). Excessively tight handcuffs can be an example of excessive force. *Payne v. Pauley*, 337 F.3d 767, 779 (7th Cir. 2003); *Herzog v. Village of Winnetka*, 309 F.3d 1041 (7th Cir. 2002).

Here Plaintiff has alleged that he was handcuffed as part of a routine shakedown. According to the Complaint, Plaintiff complied with Doe's instructions during a strip search and was not resisting or otherwise interfering with the shakedown at the time he was handcuffed. Despite his compliance,

Plaintiff alleges that the handcuffs were over-tightened, causing him permanent injuries to his shoulder, arm, and wrist. Plaintiff also alleges that when he brought the overly-tight handcuffs to Doe's attention, his requests were ignored. This is sufficient to state an excessive force claim, and **Count 1** shall proceed against John Doe.

Count 2 alleges that Doe and an Unknown Orange Crush member conducted a strip search of Plaintiff in a humiliating manner, specifically, that they forced him to touch his genitals and then touch his mouth. A strip-search in jail or prison can be cruel and unusual punishment. See *Mays v. Springborn,* 575 F.3d 643, 649 (7th Cir. 2009); *Peckham v. Wisconsin Dep't of Corrections,* 141 F.3d 694, 697 (7th Cir. 1998). A prisoner states a claim under the Eighth Amendment when he plausibly alleges that the strip-search in question was motivated by a desire to harass or humiliate rather than by a legitimate justification, such as the need for order and security in prisons. See *Calhoun v. DeTella,* 319 F.3d 936, 939 (7th Cir. 2003); *Meriwether v. Faulkner,* 821 F.2d 408, 418 (7th Cir. 1987); see also *Hudson v. Palmer,* 468 U.S. 517, 530 (1984) (Eighth Amendment protects against "calculated harassment unrelated to prison needs"). Even where prison authorities are able to identify a valid correctional justification for the search, it may still violate the Eighth Amendment if "conducted in a harassing manner intended to humiliate and cause psychological pain." *Mays,* 575 F.3d at 649 (reversing summary judgment for defendants). In short, where there is no legitimate reason for the challenged strip-search or the

manner in which it was conducted, the search may "involve the unnecessary and wanton infliction of pain" in violation of the Eighth Amendment. *Rhodes v. Chapman,* 452 U.S. 337, 346 (1981), quoting *Gregg v. Georgia,* 428 U.S. 153, 173 (1976); *King v. McCarty*, 781 F.3d 889, 897 (7th Cir. 2015)

At the pleading stage, Plaintiff's allegations regarding the methods used in the strip search plausibly suggest that the strip searches were being performed to humiliate the inmate, rather than for legitimate security purposes. Therefore **Count 2** shall proceed against Doe and Unknown Orange Crush Member.

As to **Count 3**, Plaintiff alleges that Yurkovich and Dennison are also liable for the allegedly unconstitutional strip searches because they approved and implemented the shakedown methodology. In his "Defendants" section, Plaintiff notes that both Yurkovich and Dennison have "authority." But Plaintiff cannot sue Yurkovich and Dennison on the basis of their positions as supervisors because there is no respondeat superior liability under § 1983.[1] *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001) (quoting *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001)). *See also Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Eades v. Thompson*, 823 F.2d 1055, 1063 (7th Cir. 1987); *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983); *Duncan v. Duckworth*, 644 F.2d 653, 655-56 (7th Cir. 1981).

Additionally, Plaintiff has not alleged that Yurkovich or Dennison were present for the shakedown or knew that Plaintiff specifically would be strip

[1] To the extent that Plaintiff is trying to pursue a respondeat superior claim against John Baldwin, that claim also fails.

searched in the manner described. Thus Plaintiff has not sufficiently alleged that Yurkovich or Dennison were personally involved in the constitutional violations described in Counts 1 and 2. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995) ("To recover damages under § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right . . . he must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye . . .")(citation omitted). Plaintiff has alleged that Yurkovich and Dennison "turned a blind eye," but as he has not alleged that they were actually present, it is not clear what he means by that. There is no allegation that Dennison or Yurkovich specifically knew that Plaintiff personally experienced pain as the result of the cuffing or that his cell was trashed. "Turned a blind eye" is a conclusory allegation here. Plaintiff has not adequately alleged personal involvement.

However, another plausible reading of Plaintiff's Complaint is that there was a custom or practice of carrying out shakedowns in the manner described by Plaintiff. Plaintiffs may recover when government action takes place pursuant to an unconstitutional policy or custom. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). Plaintiff shall therefore be permitted to proceed against Yurkovich and Dennison in **Count 3** on the theory that they promulgated or encouraged the methodology of the shakedown under a *Monell* theory of liability.

Count 4 alleges that the medical defendants were deliberately indifferent to Plaintiff's serious medical needs in the aftermath of the shakedown. Prison

officials impose cruel and unusual punishment in violation of the Eighth Amendment when they are deliberately indifferent to a serious medical need. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Chatham v. Davis*, 839 F.3d 679, 684 (7th Cir. 2016). In order to state a claim for deliberate indifference, an inmate must show that he 1) suffered from an objectively serious medical condition; and 2) that the defendant was deliberately indifferent to a risk of serious harm from that condition. *Petties v. Carter*, 836 F.3d 722, 727 (7th Cir. 2016). An objectively serious condition includes an ailment that has been "diagnosed by a physician as mandating treatment," one that significantly affects an individual's daily activities, or which involves chronic and substantial pain. *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997). The subjective element requires proof that the defendant knew of facts from which he could infer that a substantial risk of serious harm exists, and he must actually draw the inference. *Zaya v. Sood*, 836 F.3d 800, 804 (7th Cir. 2016) (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

"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). The Eight Amendment does not give prisoners entitlement to "demand specific care" or "the best care possible," but only requires "reasonable measures to meet a substantial risk of serious harm." *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1997).

Deliberate indifference may also be shown where medical providers persist in a course of treatment known to be ineffective. *Berry v. Peterman*, 604 F.3d 435, 441-42 (7th Cir. 2010); *Greeno v. Daley*, 414 F.3d 645, 655 (7th Cir. 2005).

Plaintiff alleges that he has suffered permanent and lasting pain as a result of the improper shakedown. He alleges that his condition was ignored and defendants failed to take adequate steps to diagnose and treat his pain. On these facts, Plaintiff has stated a plausible claim that David, Apostle, and Pittayathihan were deliberately indifferent to his shoulder, arm, and wrist pain after the shakedown. **Count 4** shall be permitted to proceed.

But all of Plaintiff's remaining claims must be dismissed. Plaintiff alleges that Dennison ordered the shakedown of his cell and an unknown Orange Crush Member conducted an unreasonable shakedown of his cell out of retaliation in **Count 5**. To succeed on a First Amendment Retaliation claim, a plaintiff must prove 1) that he engaged in conduct protected by the First Amendment; 2) that he suffered a deprivation that would likely deter First Amendment activity in the future; and 3) that the protected conduct was a "motivating factor" for taking the retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009).

Plaintiff has not adequately alleged the first element. Plaintiff has alleged that he filed grievances and lawsuits generally, but that is insufficient. Plaintiff must plead this element with particularity. *See Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002) ("Had Higgs merely alleged that the defendants had retaliated against him for filing a suit, without identifying the suit or the act or acts claimed

to have constituted retaliation, the complaint would be insufficient."). Plaintiff has not identified the suit or suits that he filed. He has not pointed to specific grievances that he filed. He has not alleged that he filed any suits or grievances specifically naming Dennison prior to the shakedown. Moreover, because he does not know the identity of the Orange Crush Member who searched his cell, he does not actually know if he filed any grievances or lawsuits against him, making his claim as to the Orange Crush Member entirely speculative. At this stage, Plaintiff has not made sufficient allegations as to the first element of a retaliation claim.

Additionally, Plaintiff states that the search was conducted for a legitimate penological reason. *See Mays v Springborn*, 575 F.3d 643, 650 (7th Cir. 2009). Plaintiff states that the shakedown was conducted after a gang fight. Plaintiff alleges that it was unnecessary to conduct the search because the perpetrators were already in segregation, but that is merely his opinion and prison officials are permitted wide latitude to take steps to ensure the safety and security of the institution. *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). There is no allegation that Plaintiff's cell was the only cell searched; in fact, the allegations suggest that many inmates were subjected to the shakedown. The existence of a legitimate penological reason for the search suggests that Plaintiff's claim of retaliation is conclusory and unsupported by plausible facts. For these reasons, **Count 5** is dismissed without prejudice for failure to state a claim.

Count 6 fails because prisoners have no Fourth Amendment protection against unreasonable searches of their prisons cells. *Jones v. Walker*, 358 F.

App'x 708, 712 (7th Cir. 2009) (citing *Hudson v. Palmer,* 468 U.S. 517, 526 (1984)); *Hanrahan v. Lane,* 747 F.2d 1137, 1139 (7th Cir.1984)); *see also King v. McCarty*, 781 F.3d 889, 900 (7th Cir. 2015) (reiterating that prisoners have no right of privacy under the Fourth Amendment). Therefore, Plaintiff's claim that his cell was searched in a manner that destroyed various items and left a mess states no claim under the Fourth Amendment. For this reason, **Count 6** will be dismissed with prejudice as legally frivolous.

Likewise, Plaintiff's claim for the property lost or destroyed during the cell search also fails. A claim that a person was deprived of their property without due process of law arises under the Fourteenth Amendment. However, there is no due process violation if state law provides a meaningful post-deprivation remedy, and Illinois law does. *See Hudson,* 468 U.S. at 533; *Murdock v. Washington,* 193 F.3d 510, 512-13 (7th Cir. 1999); *Kimbrough v. O'Neil,* 523 F.2d 1057, 1059 (7th Cir. 1975). If Plaintiff has any claim for the loss or destruction of his property, that claim must be brought in the Illinois Court of Claims. It is not cognizable in Federal Court. **Count 7** will also be dismissed with prejudice as legally frivolous.

As another matter, Plaintiff has named every defendant in both their official and individual capacity. This is inappropriate. Individuals are not "persons" in their official capacities under § 1983 for the purposes of this suit. Plaintiff can only bring claims against individuals that were personally involved in the deprivation of which he complains. There is no supervisory liability in a § 1983 action; thus to be held individually liable, a defendant must be "'personally

responsible for the deprivation of a constitutional right.'" *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001) (quoting *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001). Therefore, to the extent that Plaintiff has attempted to bring claims against any defendant in their official capacity, those claims must be dismissed, with one exception.

The only time it is appropriate to name a defendant in his or her official capacity is when a plaintiff seeks injunctive relief. *Gonzalez v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011). In that case, a plaintiff need not allege any specific involvement and it is irrelevant whether the party participated in the alleged violations. *Id.* (citing *Houston v. Sheahan*, 62 F.3d 902, 903 (7th Cir. 1995); *Ogden v. United States*, 758 F.2d 1168, 1177 (7th Cir. 1985)). Here, Plaintiff has requested the injunctive relief of being referred to an outside physician for his injuries.[2] Although the Warden is frequently the appropriate party for such injunctive relief, Plaintiff has transferred prisons since filing suit and is no longer in Jeffrey Dennison's custody. But John Baldwin, as Director of the IDOC, has the authority to order injunctive relief, and the Court finds that he is an appropriate party, in his official capacity for Plaintiff's request. Plaintiff has not included Baldwin in his statement of claim, and thus has not adequately pleaded that he was personally involved in any of the other conduct complained of, so Plaintiff's case proceeds against Baldwin only in his official capacity. *See Collins*

[2] The Complaint also requests that the defendants pay for Plaintiff's future medical care and pay for any disability that arises as a result of this incident, but those requests are duplicative of the requests for monetary damages and not true requests for injunctive relief.

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.") The claims go forward against all other named Defendants in their individual capacities only.

Finally, Plaintiff has brought suit against "(unknown) members of tactical team, members know[n] as '(Orange Crush)' . . . tactical team members [o]n the day of question." (Doc 1, p. 3). Although Plaintiff has used the plural "members" throughout, after review of the Complaint, the Court finds that Plaintiff has only stated a viable claim against 1 Orange Crush Member—the member who assisted in the allegedly unreasonable and humiliating strip search in Count 2. Plaintiff's claim against the Orange Crush Member who searched his cell in Count 6 has been dismissed as discussed above. To the extent that Plaintiff is attempting to bring claims against a large group of vague, undefined Orange Crush Members, those claims are dismissed without prejudice for failure to state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (finding that a complaint must describe "more than a sheer possibility that a defendant has acted unlawfully"); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level."); *See also Brooks v. Ross*, 578 F.3d 574, 580 (7th Cir. 2009) (finding the phrase "one or more of the Defendants" did not adequately connect specific defendants to illegal acts, and thus failed to adequately plead personal involvement). The Clerk of Court therefore is directed to change the entry "Unknown Party" to 2 entries: "John Doe" and "Unknown

Orange Crush Member." Should Plaintiff wish to bring claims against other Orange Crush Members, he should move to file an amended complaint describing the actions that those officers took against him with particularity.

Pending Motions

Plaintiff's Motion to Appoint Counsel is **REFERRED** to a United States Magistrate Judge. (Doc. 3). Plaintiff's Motion for a Preliminary Injunction is **REFERRED** to a United States Magistrate Judge for immediate disposition. (Doc. 8).

Disposition

IT IS HEREBY ORDERED that **Counts 1-4** survive against Defendants Yurkovich, David, Apostle, Pittayathihan, Dennison, Doe, and Unknown Orange Crush Member. Plaintiff's request for injunctive relief proceeds against Baldwin only in his official capacity. The Clerk of Court is **DIRECTED** to terminate "Unknown Party" from the docket and replace that designation with 2 entries: "John Doe" and "Unknown Orange Crush Member." **Count 5** is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim. **Counts 6-7** are **DISMISSED WITH PREJUDICE** as legally frivolous.

IT IS ORDERED that the Clerk of Court shall prepare for Defendants Baldwin, Yurkovich, David, Apostle, Pittayathihan, and Dennison: (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 a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

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

IT IS FURTHER ORDERED that, 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.

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 a United States Magistrate Judge for further pre-trial proceedings.

Further, this entire matter is **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

IT IS FURTHER ORDERED that 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, notwithstanding that his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Plaintiff is **ADVISED** that at the time application was made under 28 U.S.C. § 1915 for leave to commence this civil action without being required to prepay fees and costs or give security for the same, the applicant and his or her attorney were deemed to have entered into a stipulation that the recovery, if any, secured in the action shall be paid to the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against plaintiff and remit the balance to plaintiff. Local Rule 3.1(c)(1)

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 25, 2017

United States District Judge