

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

<b>REYNEL VALENCIA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 18-cv-1286-MJR</b>
	)	
<b>EMMANUEL AFUWAPE</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**MEMORANDUM AND ORDER**

**REAGAN, Chief District Judge:**

Plaintiff Reynel Valencia, an inmate in Centralia Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983 for events that happened at Vandalia Correctional Center. Plaintiff seeks declaratory, compensatory, punitive and equitable 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–

(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 originally brought his claims in Case No. 18-cv-1061-MJR-SCW. On June 18, 2018, the Court severed one claim into this action as being improperly joined. (Doc. 1).

As relevant to that claim, Plaintiff reported to staff at Stateville Correctional Center that he was experiencing vomiting, abdominal pain, and migraines on October 15, 2016. (Doc. 2, pp. 2-3). On October 27, 2016 after experiencing symptoms for several weeks, Plaintiff transferred to Vandalia Correctional Center, and his condition worsened. (Doc. 2, p. 3). A nurse referred Plaintiff to Defendant Afuwape on October 29, 2016. *Id.* Plaintiff saw Afuwape on November 4, 2016, and he concluded that Plaintiff was suffering from diarrhea and prescribed him Imodium. *Id.* On November 11, 2016, Plaintiff informed Afuwape that the Imodium wasn't working. *Id.* Afuwape prescribed Robaxin and Ibuprofen on November 15, 2016, but did not prescribe any medication to address Plaintiff's frequent bowel movements. *Id.* Plaintiff continued to experience symptoms. *Id.* Plaintiff saw Afuwape again on November 25, 2016, and Afuwape changed the prescription back to Imodium. (Doc. 2, p. 4). Despite the persistence of Plaintiff's symptoms, Afuwape never provided any treatment other than Imodium and failed to order further tests or treatment. *Id.*

## Discussion

The severance order designated one claim for this action:

**Count 2** – Eighth Amendment claim against Afuwape for exhibiting deliberate indifference to Plaintiff’s serious medical condition (chronic diarrhea and associated pain) when Plaintiff was incarcerated at Vandalia.

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 to a serious medical need, 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)). The Eighth 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).

The Court will presume that Plaintiff's persistent gastro-intestinal troubles constitute a serious medical need at the pleading stages. Moreover, Plaintiff's allegations suggest that Afuwape persisted in an ineffective course of treatment by only trying Imodium and one alternate drug combination, despite the fact that the medication never alleviated Plaintiff's symptoms. *See, e.g., Greeno*, 414 F.3d at 654-55. At the pleading stages, Plaintiff has adequately stated a deliberate indifference claim against Afuwape.

### **Disposition**

**IT IS HEREBY ORDERED** that **Count 1** survives threshold review against Afuwape.

The Clerk of Court shall prepare for Defendant Afuwape: (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 Defendant's place of employment as identified by Plaintiff. If 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 Defendant, and the Court will require Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

If the Defendant cannot be found at the 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, nor disclosed by the Clerk.

Defendant is **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 Stephen C. Williams for further pre-trial proceedings.

Further, this entire matter is hereby **REFERRED** to United States Magistrate Judge Stephen C. Williams for disposition, as contemplated by Local Rule 72.2(b)(3) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under § 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 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: September 7, 2018**

s/ MICHAEL J. REAGAN  
United States Chief District Judge