

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|----------------------|---|---------------------------|
| RICHARD KELLY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | No. 1:15-cv-01529-TWP-TAB |
| |) | |
| PAUL TALBIT, et al., |) | |
| |) | |
| |) | |
| Defendants. |) | |

Entry Discussing Amended Complaint and Directing Further Proceedings

The motion to amend the complaint [dkt 21] is **granted**. The **clerk shall** docket the proposed amended complaint (dkt 21-1) as the Amended Complaint.

Because the plaintiff is a “prisoner” as defined by 28 U.S.C. § 1915(h), the amended complaint is subject to the screening requirement of 28 U.S.C. § 1915A(b). Pursuant to this statute, “[a] complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show that plaintiff is not entitled to relief.” *Jones v. Bock*, 127 S. Ct. 910, 921 (2007). To survive a motion to dismiss, the complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quotations omitted). Pro se complaints such as that filed by the plaintiff, are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Erickson*, 551 U.S. at 94; *Obriecht v. Raemisch*, 517 F.3d 489, 491 n.2 (7th Cir. 2008).

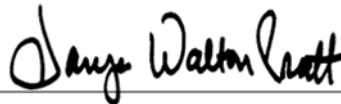
Based on the foregoing, the plaintiff's amended complaint shall proceed as follows: The claims that defendants Dr. Paul Talbit, Dr. Houman Kiani, and Dr. Mike Person have failed to treat Mr. Kelly for his spine and hip damage and degenerative bone disease **shall proceed as a claim** that these defendants have exhibited deliberate indifference to his serious medical needs in violation of the Eighth Amendment to the United States Constitution.

Defendants Talbit and Kiani have already appeared and filed an answer. They shall have **fourteen days** from the date this Entry issues in which to file an answer to the amended complaint.

The plaintiff's request for service by the United States Marshal [dkt 19] is **denied for the present**. The **clerk is designated** pursuant to *Fed. R. Civ. P. 4(c)(3)* to issue process to defendants Dr. Mike Person in the manner specified by Rule 4(d). Process shall consist of the amended complaint, applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Entry.

IT IS SO ORDERED.

Date: 12/31/2015



Distribution:

TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Richard Kelly
860033
Pendleton Correctional Facility
Electronic Service Participant – Court Only

Dr. Mike Person
New Castle Correctional Facility
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Note to Clerk: Processing this document requires actions in addition to docketing and distribution.