

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

THOMAS WILLIAM WOOTEN,

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Plaintiff

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v

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Civil Action No. GLR-16-3565

THE UNITED STATES BUREAU OF  
PRISONS, et al.,

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Defendants

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**MEMORANDUM OPINION**

THIS MATTER is before the Court on Defendants, the United States Bureau of Prisons, F.C.I. Cumberland, Jane Doe Staff Member, and John Doe Staff Member's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (ECF No. 8). The Motion is ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2016). For the reasons outlined below, the Court will grant Defendants' Motion.

**I. BACKGROUND**

Plaintiff Thomas William Wooten is a federal inmate presently housed at the Federal Correctional Institution ("FCI")-Allenwood, in White Deer, Pennsylvania. Wooten alleges that in October of 2014, while designated to FCI-Cumberland, he underwent a pacemaker implantation at the Western Maryland Regional Medical Center, and was forced by prison officials to leave the hospital earlier than his surgeon advised. (Am. Compl. ¶¶ 1, 9, 10, 11, ECF No. 3-1). He pleads that the surgeon recommended he remain in the hospital for 72 hours after his surgery and that the failure to follow the

surgeon's orders resulted in his suffering complications and necessitating additional surgery. (Id. at 3–4).

Howard Williams, Legal Assistant at the Mid-Atlantic Regional Office of the Federal Bureau of Prisons, reviewed BOP's computerized inmate records. (Williams Decl. ¶ 3, ECF No. 8-2). Upon review, Wooten has never filed any administrative remedies while housed in the BOP. (Id. ¶ 4). Nor has Wooten filed any administrative tort claims. (Id. ¶ 5).

On November 28, 2016, Wooten filed an Amended Complaint that raised claims of personal injury arising after the October, 2014, implantation of a cardiac pacemaker. (Am. Compl.). Wooten alleges that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment and filed the Complaint under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).<sup>1</sup> (Id.). He seeks compensatory damages. (Id.).

## II. DISCUSSION

### A. Standard of Review

#### 1. Motion to Dismiss

“The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint,” not to “resolve contests surrounding the facts, the merits of a claim, or the applicability of

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<sup>1</sup> Wooten asserted that his constitutional rights were violated under 42 U.S.C. § 1983. (ECF No. 3). The claim is properly asserted as a Bivens claim. Bivens “established that the victims of a constitutional violation by a federal agent have a right to recover damages against the official in federal court despite the absence of any statute conferring such a right.” Hartman v. Moore, 547 U.S. 250, 254 n.2 (2006) (quoting Carlson v. Green, 446 U.S. 14, 18 (1980)). “[A] Bivens action is the federal analog to suits brought against state officials under... § 1983.” Id.

defenses.” King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016) (quoting Edwards v. City of Goldsboro, 178 F.3d 231, 243–44 (4th Cir. 1999)). A complaint fails to state a claim if it does not contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” Fed.R.Civ.P. 8(a)(2), or does not “state a claim to relief that is plausible on its face,” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. (citing Twombly, 550 U.S. at 555). Though the plaintiff is not required to forecast evidence to prove the elements of the claim, the complaint must allege sufficient facts to establish each element. Goss v. Bank of Am., N.A., 917 F.Supp.2d 445, 449 (D.Md. 2013) (quoting Walters v. McMahan, 684 F.3d 435, 439 (4th Cir. 2012)), aff’d sub nom., Goss v. Bank of Am., NA, 546 F.App’x 165 (4th Cir. 2013).

In considering a Rule 12(b)(6) motion, a court must examine the complaint as a whole, consider the factual allegations in the complaint as true, and construe the factual allegations in the light most favorable to the plaintiff. Albright v. Oliver, 510 U.S. 266, 268 (1994); Lambeth v. Bd. of Comm’rs of Davidson Cty., 407 F.3d 266, 268 (4th Cir. 2005) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). But, the court need not accept unsupported or conclusory factual allegations devoid of any reference to actual events, United Black Firefighters v. Hirst, 604 F.2d 844, 847 (4th Cir. 1979), or legal

conclusions couched as factual allegations, Iqbal, 556 U.S. at 678.

Wooten filed his Amended Complaint pro se. Pro se pleadings are liberally construed and held to a less stringent standard than pleadings drafted by lawyers. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)); accord Brown v. N.C. Dep't of Corr., 612 F.3d 720, 722 (4th Cir. 2010). Pro se complaints are entitled to special care to determine whether any possible set of facts would entitle the plaintiff to relief. Hughes v. Rowe, 449 U.S. 5, 9–10 (1980). But even a pro se complaint must be dismissed if it does not allege “a plausible claim for relief.” Forquer v. Schlee, No. RDB-12-969, 2012 WL 6087491, at \*3 (D.Md. Dec. 4, 2012) (citation and internal quotation marks omitted).

## **2. Conversion to a Motion for Summary Judgment**

In this case, Defendants filed a Motion to Dismiss, or in the Alternative, for Summary Judgment. (ECF No. 8). A motion styled as a motion to dismiss or, in the alternative, for summary judgment implicates the Court’s discretion under Rule 12(d). See Kensington Vol. Fire Dept., Inc. v. Montgomery Cty., 788 F.Supp.2d 431, 436–37 (D.Md. 2011), aff’d sub nom. Kensington Volunteer Fire Dep’t, Inc. v. Montgomery Cty., 684 F.3d 462 (4th Cir. 2012). This Rule provides that when “matters outside the pleadings are presented to and not excluded by the court, the [Rule 12(b)(6)] motion must be treated as one for summary judgment under Rule 56.” Fed.R.Civ.P. 12(d).

The Court “has ‘complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or

simply not consider it.” Wells-Bey v. Kopp, No. ELH-12-2319, 2013 WL 1700927, at \*5 (D.Md. Apr. 16, 2013) (quoting 5C Wright & Miller, Federal Practice & Procedure § 1366, at 159 (3d ed. 2004, 2012 Supp.)). The Court’s complete discretion is guided by the United States Court of Appeals for the Fourth Circuit’s two-part test for proper conversion of a Rule 12(b)(6) motion to a Rule 56 motion. Under this test, the “parties [must] be given some indication by the court that it is treating the 12(b)(6) motion as a motion for summary judgment” and “the parties [must] first ‘be afforded a reasonable opportunity for discovery.’” Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt., 721 F.3d 264, 281 (4th Cir. 2013) (quoting Gay v. Wall, 761 F.2d 175, 177 (4th Cir. 1985)).

When the movant expressly captions its motion “in the alternative” as one for summary judgment and submits matters outside the pleadings for the court’s consideration, the parties are deemed to be on notice that conversion under Rule 12(d) may occur. See Moret v. Harvey, 381 F.Supp.2d 458, 464 (D.Md. 2005).

Here, Defendants caption their Motion in the alternative for summary judgment and attach matters beyond Wooten’s Complaint for the Court’s consideration. (ECF No. 8). Wooten has not filed any discovery requests in response. Thus, the Court will construe Defendants’ Motion as a motion for summary judgment.

## **2. Motion for Summary Judgment**

In reviewing a motion for summary judgment, the Court views the facts in a light most favorable to the nonmovant, drawing all justifiable inferences in that party’s favor. Ricci v. DeStefano, 557 U.S. 557, 586 (2009); Anderson v. Liberty Lobby, Inc., 477 U.S.

242, 255 (1986) (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 158–59 (1970)). Summary judgment is proper when the movant demonstrates, through “particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . admissions, interrogatory answers, or other materials,” that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a), (c)(1)(A). Significantly, a party must be able to present the materials it cites in “a form that would be admissible in evidence,” Fed.R.Civ.P. 56(c)(2), and supporting affidavits and declarations “must be made on personal knowledge” and “set out facts that would be admissible in evidence,” Fed.R.Civ.P. 56(c)(4).

Once a motion for summary judgment is properly made and supported, the burden shifts to the nonmovant to identify evidence showing there is genuine dispute of material fact. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986). The nonmovant cannot create a genuine dispute of material fact “through mere speculation or the building of one inference upon another.” Othentec Ltd. v. Phelan, 526 F.3d 135, 141 (4th Cir. 2008) (quoting Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985)).

A “material fact” is one that might affect the outcome of a party’s case. Anderson, 477 U.S. at 248; see also JKC Holding Co. v. Wash. Sports Ventures, Inc., 264 F.3d 459, 465 (4th Cir. 2001) (citing Hooven-Lewis v. Caldera, 249 F.3d 259, 265 (4th Cir. 2001)). Whether a fact is considered to be “material” is determined by the substantive law, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing

law will properly preclude the entry of summary judgment.” Anderson, 477 U.S. at 248; accord Hooven-Lewis, 249 F.3d at 265. A “genuine” dispute concerning a “material” fact arises when the evidence is sufficient to allow a reasonable jury to return a verdict in the nonmoving party’s favor. Anderson, 477 U.S. at 248. If the nonmovant has failed to make a sufficient showing on an essential element of her case where she has the burden of proof, “there can be ‘no genuine [dispute] as to any material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986).

**B. Analysis**

Defendants raise the affirmative defense that Wooten has failed to exhaust his administrative remedies. If Wooten’s claims have not been properly presented through the administrative remedy procedure they must be dismissed pursuant to the Prisoner Litigation Reform Act (“PLRA”), 42 U.S.C. §1997e. The PLRA provides, in pertinent part:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a).

For purposes of the PLRA, “the term ‘prisoner’ means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation,

pretrial release, or diversionary program.” 42 U.S.C. § 1997e(h); see also Gibbs v. Bureau of Prisons, 986 F.Supp. 941, 943–44 (D.Md. 1997) (dismissing a federal prisoner’s lawsuit for failure to exhaust, where plaintiff did not appeal his administrative claim through all four stages of the BOP’s grievance process). The phrase “prison conditions” encompasses “all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” Porter v. Nussle, 534 U.S. 516, 532 (2002); see also Chase v. Peay, 286 F.Supp.2d 523, 528 (D.Md. 2003), aff’d, 98 F.App’x. 253 (4th Cir. 2004).

Notably, administrative exhaustion under § 1997e(a) is not a jurisdictional requirement and does not impose a heightened pleading requirement on the prisoner. Rather, the failure to exhaust administrative remedies is an affirmative defense to be pleaded and proven by defendants. See Jones v. Bock, 549 U.S. 199, 215-216 (2007); Anderson v. XYZ Correctional Health Services, Inc., 407 F.2d 674, 682 (4th Cir. 2005).

Nevertheless, a claim that has not been exhausted may not be considered by this Court. See Bock, 549 U.S. at 220. In other words, exhaustion is mandatory. Ross v. Blake, \_\_\_\_ U.S. \_\_\_\_, 136 S.Ct. 1850, 1857 (2016). Therefore, a court ordinarily may not excuse a failure to exhaust. Ross, 136 S.Ct. at 1856 (explaining that “[t]he mandatory ‘shall’ . . . normally creates an obligation impervious to judicial discretion” (citing Miller v. French, 530 U.S. 327, 337 (2000))).

Ordinarily, an inmate must follow the required procedural steps in order to exhaust his administrative remedies. Moore v. Bennette, 517 F.3d 717, 725, 729 (4th Cir. 2008). Exhaustion requires completion of “the administrative review process in accordance with



the applicable procedural rules, including deadlines.” Woodford v. Ngo, 548 U.S. 81, 88, 93 (2006). This requirement is one of “proper exhaustion of administrative remedies, which ‘means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits).”’ Woodford 548 U.S. at 93 (quoting Pozo v. McCaughtry, 286 F.3d 1022, 1024 (7th Cir. 2002)) (emphasis in original).

The BOP has established an Administrative Remedy Program for inmates to resolve concerns related to their confinement. See 28 C.F.R. § 542.10 et seq. Inmates must first attempt informal resolution with staff. See 28 C.F.R. § 542.13. If an inmate is unable to resolve his complaint informally, he may file a formal written complaint on the proper form within twenty calendar days of the date of the occurrence on which the complaint is based. See 28 C.F.R. §542.14(a). If an inmate is not satisfied with the Warden’s response to the formal complaint, he may appeal, using the appropriate BP-10 form, to the Regional Director within twenty calendar days of the Warden's response. See 28 C.F.R. § 542.15(a). If the inmate is still dissatisfied, he may appeal the Regional Director’s response to the Office of the General Counsel, located in the BOP Central Office in Washington, D.C., using the appropriate form. The inmate must file this final appeal within thirty calendar days of the date the Regional Director signed the response. See id. An inmate is not deemed to have exhausted his administrative remedies until he has pursued his grievance through all levels. See 28 C.F.R. § 542.15(a).

Here, Wooten failed to initiate, much less exhaust, any of his claims through the BOP administrative remedy program. (Williams Decl. ¶¶ 4-5; see also Compl., ECF No. 1). Wooten maintains that he was not required to exhaust his administrative remedies by

relying on McCarthy v. Madigan, 503 U.S. 140, 150-51 (1992). Wooten’s reliance on McCarthy is misplaced. McCarthy interpreted the Civil Rights of Institutionalized Persons Act of 1980, which the PLRA later superseded. See Woodford, 548 U.S. at 84–85 (holding PLRA strengthened the exhaustion provisions applicable to prisoner litigation to include the requirement that prisoners “must now exhaust administrative remedies even where the relief sought—monetary damages—cannot be granted by the administrative process.) (citing Booth, 532 U.S. at 734). Because Wooten has no valid basis for his failure to exhaust his administrative remedies, his Complaint must be dismissed. Gibbs, 986 F.Supp at 944; see also Beckwith v. Giroux, 2002 WL 32356381, \*2–3 (D.Md.) (dismissing Bivens claims for failure to exhaust administrative remedies). Accordingly, the Court need not reach the merits of Wooten’s Bivens claim.

### III. CONCLUSION

For the foregoing reasons, Defendants’ Motion to Dismiss or, in the Alternative, for Summary Judgment (ECF No. 8) is GRANTED. A separate Order follows.

Entered this 28th day of February, 2018.

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/s/  
George L. Russell, III  
United States District Judge