

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

DONALD CONNELL BETTS, # 35834

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:16cv206-KS-MTP

**CAPTAIN RUDDERS, NURSE SKY
JOHNSON, MS. GERALDINE, MS. SUE,
OFFICER # C-47, OFFICER BRANNON,
OFFICER LONGINO, and MS. BETTY**

DEFENDANTS

MEMORANDUM OPINION AND ORDER OF PARTIAL DISMISSAL

This matter is before the Court *sua sponte*. *Pro se* Plaintiff Donald Connell Betts is a pretrial detainee at the Forrest County Adult Detention Center, and he challenges his conditions of confinement. The Court has considered and liberally construed the pleadings. As set forth below, Defendants Captain Rudders and Nurse Sky Johnson are dismissed.

BACKGROUND

Betts filed this action on November 29, 2016. Defendants Captain Rudders, Officer # C-47, Officer Brannon, and Officer Longino are officers at the Forrest County Adult Detention Center, where Betts is held. Nurse Sky Johnson is a nurse there. Finally, Ms. Geraldine, Ms. Sue, and Ms. Betty are alleged to work in the jail's kitchen.

Betts claims that he is a Muslim and, as such, cannot eat from a tray that has pork on it. For this reason, he is listed on the jail's "special diet list." (Compl. at 5). He also alleges that he is a "brittle diabetic," for which he has medicine that must be taken with food. (2d Mot. to Am. at 1).

According to Betts, on November 9, 2016, Officers Brannon and # C-47 refused to acknowledge Betts's religious diet, even though he was on the list. Apparently Betts was unable

to eat or take his medication. Again on December 27, Betts was given breakfast with pork sausage. Ms. Betty told him to “take it or leave it,” and Longino and Brannon wrote down that Betts refused breakfast. *Id.* He claims he was again unable to take his medicine, because he had no food. He also accuses the cooks—Ms. Geraldine, Ms. Sue, and Ms. Betty—of “knowingly violat[ing his] right to a pork free diet.” (Resp. at 1).

Betts filed this action, pursuant to 42 U.S.C. § 1983, accusing Defendants of subjecting him to cruel and unusual punishment and violating his right to practice his religion. In addition, he “feel[s] that [Johnson] was acting on retaliatory motive for [Betts’s] previous complaint.” *Id.*

DISCUSSION

The Prison Litigation Reform Act of 1996, applies to prisoners proceeding *in forma pauperis* in this Court. The statute provides in part, “the court shall dismiss the case at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). The statute “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). “[I]n an action proceeding under [28 U.S.C. § 1915, a federal court] may consider, sua sponte, affirmative defenses that are apparent from the record even where they have not been addressed or raised.” *Ali v. Higgs*, 892 F.2d 438, 440 (5th Cir. 1990). “Significantly, the court is authorized to test the proceeding for frivolousness or maliciousness even before service of process or before the filing of the answer.” *Id.* The Court has permitted Betts to proceed *in*

forma pauperis in this action. His Complaint is subject to *sua sponte* dismissal under § 1915.

Among others, Betts sues Rudders and Johnson. Betts alleges simply that Captain Rudders and “Nurse Sky Johnson violated my 8th amendment right by subjecting me to cruel and unusual punishment. I also feel that [Johnson] was acting on retaliatory motive for my previous complaint.” (Resp. at 1). This is the extent of the allegations against these two Defendants, despite Betts being given the opportunity to plead more.

Although Betts cursorily accuses Rudders and Johnson of violating the Eighth Amendment, Betts provides no factual allegations to suggest how these two Defendants did so or that they were personally involved in his alleged plight in any way. The same holds true for the attempted retaliation claim against Johnson. Because no facts are given against her, the Court is left to guess in what manner she allegedly wronged Betts.

Betts fails to state a claim against Rudders and Johnson upon which relief may be granted. They are dismissed with prejudice. The remainder of the case shall proceed at this time. **IT IS THEREFORE ORDERED AND ADJUDGED** that, for the reasons stated above, Defendants Captain Rudders and Nurse Sky Johnson are **DISMISSED WITH PREJUDICE** for failure to state claims against them upon which relief could be granted. Plaintiff is assessed a strike pursuant to 28 U.S.C. § 1915(g). The case shall proceed against the remainder of the Defendants.

SO ORDERED AND ADJUDGED, this the 13th day of February, 2017.

 s/Keith Starrett
UNITED STATES DISTRICT JUDGE