

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

JUSTIN L. SCHMIDT,

Plaintiff,

v.

ROBERT WILLOUGHBY, et al.,

Defendants.

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No. 1:16-CV-160 SNLJ

**MEMORANDUM AND ORDER**

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$4.50, which is twenty percent of his average monthly deposit. See 28 U.S.C. § 1915(b). Additionally, the Court will order the Clerk to serve defendant Robert Willoughby with process.

**Standard of Review**

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a "mere possibility of misconduct." *Id.* at 679. "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." *Id.* at 678. Determining whether a complaint states a plausible claim for relief [is] a

context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

### **The Complaint**

Plaintiff brings this action against correctional officer Robert Willoughby and several other John Doe officers. He alleges that defendants failed to protect him from his cellmate, who had been bullying him. He claims he requested protective custody from Willoughby but that Willoughby refused. Later, plaintiff got into an altercation with his cellmate, and he sustained severe facial injuries.

### **Discussion**

The Court finds that the complaint should not be dismissed at this time. As a result, it will order that Willoughby be served with process.

The Court cannot order service on the John Doe defendants. Plaintiff should attempt to learn their names as soon as is practical. He will need to file an amended complaint in order to state any actionable claims against them.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

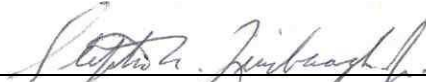
**IT IS FURTHER ORDERED** that the plaintiff must pay an initial filing fee of \$4.50 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.<sup>1</sup>

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<sup>1</sup> Prisoners must pay the full amount of the \$350 filing fee. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the

**IT IS FURTHER ORDERED** that the Clerk is directed to serve defendant Robert Willoughby with process. Defendant is an employee of the Missouri Department of Corrections.

Dated this 13<sup>th</sup> day of July, 2016.

  
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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE

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prisoner's account. The agency having custody of the prisoner will deduct the payments and forward them to the Court each time the amount in the account exceeds \$10. 28 U.S.C. § 1915(b)(2).