



Strange, the Deputy Warden of SECC (the “prison official defendants”) have filed the instant motion to dismiss plaintiff’s claims.

### **Legal Standard**

The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is to test the legal sufficiency of the complaint. The factual allegations of a complaint are assumed true and construed in favor of the plaintiff, “even if it strikes a savvy judge that actual proof of those facts is improbable.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 n.1 (2002)); *Neitzke v. Williams*, 490 U.S. 319, 327 (1989) (“Rule 12(b)(6) does not countenance . . . dismissals based on a judge’s disbelief of a complaint’s factual allegations”). The issue is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to present evidence in support of his claim. *Id.* A viable complaint must include “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp.*, 550 U.S. at 570. *See also id.* at 563 (“no set of facts” language in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), “has earned its retirement.”) “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 555.

### **Discussion**

The prison official defendants move to dismiss plaintiff’s complaint, stating they did not personally violate plaintiff’s constitutional rights and therefore cannot be held liable under § 1983. They state that other than alleging they failed to supervise or correct the medical defendants, whom plaintiff alleges provided inadequate medical care, plaintiff has made no other allegations against the prison official defendants.

“Liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights.” *Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990); *see also Martin v. Sargent*, 780 F.2d 1334, 1338 (8th Cir. 1985) (claim not cognizable under § 1983

where plaintiff fails to allege defendant was personally involved in or directly responsible for incidents that injured plaintiff); *Boyd v. Knox*, 47 F.3d 966, 968 (8th Cir. 1995) ( respondeat superior theory inapplicable in § 1983 suits). Supervisors cannot be held vicariously liable under § 1983 for the actions of a subordinate. See *Ashcroft v. Iqbal*, 556 U.S. 662, 675-76 (2009). To state a claim, the plaintiff must plead that the supervising official, through his own individual actions, has violated the Constitution. *Id.*

The Court disagrees with the prison official defendants, and will deny their motion to dismiss. Plaintiff alleges the prison official defendants were immediately notified about the incident, personally observed the seriousness of plaintiff's injuries, and did not authorize any immediate medical treatment or transfer plaintiff to the infirmary. Instead, the prison officials allowed plaintiff to be taken to a restrictive housing unit where he remained for three days without appropriate medical care. Viewing these facts in the light most favorable to plaintiff, the Court finds plaintiff has alleged a plausible claim of Eighth Amendment violations against the prison official defendants. Plaintiff alleges these defendants bore personal responsibility for his lack of medical treatment.

Additionally, the Court denies defendants' motion to dismiss on qualified immunity grounds. At this stage in the proceeding, plaintiff has alleged a violation of a constitutional right that was clearly established such that a reasonable official would have known that his actions were unlawful. Because plaintiff has alleged defendants Lombardi, Reed, Strange, and Wallace were personally involved in his alleged constitutional violations, and because these Eighth Amendment violations were clearly established such that a reasonable official would have known his actions were unlawful, the Court will deny defendants' motion to dismiss.

Accordingly,

**IT IS HEREBY ORDERED** that defendant George Lombardi, Paula Reed, Bill Strange, and Ian Wallace's motion to dismiss is **DENIED**. [ECF No. 20]

Dated this 18<sup>th</sup> day of December, 2017.

A handwritten signature in black ink, reading "Ronnie L. White", written over a horizontal line.

RONNIE L. WHITE  
UNITED STATES DISTRICT JUDGE