

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
NORTHERN DIVISION

**MEMORANDUM AND ORDER**

Plaintiff, a prisoner at the Northeast Correctional Center (“NECC”), seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983 and state law. Having reviewed plaintiff’s financial information, the Court assesses a partial initial filing fee of \$1.70, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b).

## 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 James Hurley, Warden of NECC; Unknown Christensen, Captain; and John or Jane Doe. Plaintiff alleges that in April 2016 Christensen ordered John or Jane Doe to remove plaintiff's legal materials from his cell. These included pleadings, medical records, and exhibits. Plaintiff says that Hurley "failed to take corrective actions." Plaintiff does not allege that he missed any court deadlines or was otherwise prejudiced in an active court case.

### **Discussion**

"To state a claim [for denial of meaningful access to the courts], inmates must assert that they suffered an actual injury to pending or contemplated legal claims." *Myers v. Hundley*, 101 F.3d 542, 544 (8th Cir. 1996). Because plaintiff has not made any such allegations, his § 1983 claim fails to state a claim upon which relief can be granted.

Because plaintiff's federal claims will be dismissed, all remaining pendent state claims should be dismissed as well. *See* 28 U.S.C. § 1337(c)(3); *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) (if federal claims are dismissed before trial, remaining state claims should also be dismissed); *Hassett v. Lemay Bank & Trust Co.*, 851 F.2d 1127, 1130 (8th Cir. 1988) (where federal claims have been dismissed, district courts may decline jurisdiction over pendent state claims as a "matter of discretion").

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 \$1.70 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>

**IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed separately.

Dated this 6th day of June, 2016.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

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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 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).