

CARL J. WALKER-BEY, )  
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 Plaintiff, )  
 )  
 v. ) No. 4:14CV1140 TIA  
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 DOLORES J. GUNN, et al., )  
 )  
 Defendants. )

This matter is before the Court upon the motion of Carl Walker-Bey (registration no. 6543), an inmate at St. Louis County Justice Center, for leave to commence this action without payment of the required filing fee. For the reasons stated below, the Court finds that the plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$17. See 28 U.S.C. § 1915(b)(1). Furthermore, after reviewing the complaint, the Court will partially dismiss the complaint and will order the Clerk to issue process or cause process to be issued on the non-frivolous portions of the complaint.

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. 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. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these

monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$86, and an average monthly balance of less than \$86. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$17, which is 20 percent of plaintiff's average monthly deposit.

### **28 U.S.C. § 1915(e)**

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it "lacks an arguable basis in either law or fact." Neitzke v. Williams, 490 U.S. 319, 328 (1989); Denton v. Hernandez, 504 U.S. 25, 31 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff'd 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

### **The Complaint**

Plaintiff brings this action under 42 U.S.C. § 1983 against several officials at the St. Louis County Justice Center (the "Justice Center") and St. Louis County employees. Named as defendants are Dolores Gunn, Rita Hendrix, Fay Crancer, Andrew Moore, Gerald Kramer,

Charlie Dooley, Garry Earls, Herbert Bernsen, Unknown Beard, Unknown Roberts, Unknown Rodnick. Plaintiff seeks monetary and injunctive relief.

Plaintiff alleges that he complained to the food service manager that the meals did not comply with the nutritional Guidelines of the Patient Protection and Affordable Care Act of 2010 (“ACA”). Plaintiff says he asked for a menu explaining the nutritional value of each meal but did not receive one.

Plaintiff alleges that “medical staff” deprived him of his blood pressure medication for three months. He also alleges that medical staff refused to evaluate his sleep apnea or back pain.

Plaintiff claims that defendants Fay Crancer and Rita Hendrix denied his grievances regarding his medical claims.

Plaintiff asserts that he complained to defendant Andrew Moore that his food tray was dirty and he could not eat from it. He says that Moore denied him a clean food tray. Plaintiff asserts that he filed a grievance about Moore, which was denied by defendant Gerald Kramer. Plaintiff maintains that Moore put him on lockdown in retaliation for filing the grievance.

### **Discussion**

The complaint states a plausible claim for retaliation under the First Amendment against defendant Andrew Moore. As a result, the Court will direct the Clerk to serve process on Moore.

“Only persons who cause or participate in the [constitutional] violations are responsible. Ruling against a prisoner on an administrative complaint does not cause or contribute to the violation.” George v. Smith, 507 F. 3d 605, 609 (7th Cir. 2007) (citations omitted). As a result, the complaint fails to state a claim against defendants Crancer, Hendrix, or Kramer.

“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 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1948 (2009) (“Because vicarious liability is inapplicable to Bivens and

§ 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.”). In the instant action, plaintiff has not set forth any facts indicating that defendants Dolores Gunn, Charlie Dooley, Garry Earls, Herbert Bernsen, Unknown Beard, Unknown Roberts, or Unknown Rodnick were directly involved in or personally responsible for the alleged violations of his constitutional rights. As a result, the complaint fails to state a claim upon which relief can be granted as to these defendants.

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 shall pay an initial filing fee of \$17 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.

**IT IS FURTHER ORDERED** that if plaintiff fails to pay the initial partial filing fee within thirty (30) days of the date of this Order, then this case will be dismissed without prejudice.

**IT IS FURTHER ORDERED** that the Clerk shall issue process or cause process to issue upon the complaint as to defendant Andrew Moore.

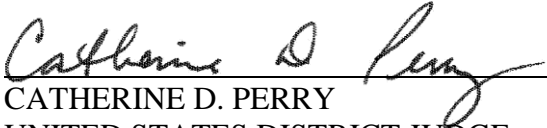
**IT IS FURTHER ORDERED** that, pursuant to 42 U.S.C. § 1997e(g)(2), defendant Andrew Moore shall reply to plaintiff's claims within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

**IT IS FURTHER ORDERED** that the Clerk shall not issue process or cause process to issue upon the complaint as to defendants Dolores Gunn, Rita Hendrix, Fay Crancer, Gerald Kramer, Charlie Dooley, Garry Earls, Herbert Bernsen, Unknown Beard, Unknown Roberts, or Unknown Rodnick because, as to these defendants, the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

**IT IS FURTHER ORDERED** that this case is assigned to Track 5B: Prisoner Standard.

An Order of Partial Dismissal will accompany this Memorandum and Order.

Dated this 26<sup>th</sup> day of June, 2014.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE