

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

DALLAS RAY DELAY,

Plaintiff,

v.

GEORGE LOMBARDI, et al.,

Defendants.

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No. 4:15CV878 JCH

MEMORANDUM AND ORDER

Plaintiff, a prisoner, filed this civil action under 42 U.S.C. § 1983 alleging that the diet at Potosi Correctional Center (“PCC”) is not providing enough Vitamin B12. Plaintiff must file an amended complaint.

Under 28 U.S.C. § 1915A, the Court is required to dismiss a complaint filed by a prisoner 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*, 129 S. Ct. 1937, 1949 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.”

Plaintiff alleges that he is not getting enough B12 because the diet contains too little meat and the institution switched to fat-free milk from two-percent. He says he has suffered memory loss, a sore tongue, and loss of his sense of smell. He says: “defendants listed are responsible for the nourishment (food) and medical care, as a third party beneficiary, for the offenders of the Missouri Department of Corrections.” He does not, however, state which defendants are directly responsible for creating the diet at PCC.

“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.”). Because plaintiff has not set forth any facts indicating that defendants were directly involved in or personally responsible for the alleged violations of his constitutional rights, the complaint fails to state a claim upon which relief can be granted.

Because plaintiff is proceeding pro se, the Court will allow him to file an amended complaint. Plaintiff shall have thirty days from the date of this Order to file an amended complaint. He is warned that the filing of an amended complaint replaces the original complaint, and claims that are not realleged are deemed abandoned. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). If plaintiff fails to file an amended complaint within thirty days, the Court will dismiss this action without prejudice.

Accordingly,

IT IS HEREBY ORDERED that the Clerk is directed to send plaintiff a copy of the Court’s prisoner civil rights complaint form.

IT IS FURTHER ORDERED that plaintiff must file an amended complaint within thirty (30) days from the date of this Order.

Dated this 9th day of June, 2015.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE