

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

BERRY LEE LIVINGSTON, )

Plaintiff, )

v. )

WARREN COUNTY, et al., )

Defendants. )

No. 4:15CV1318 AGF

**MEMORANDUM AND ORDER**

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983 for deliberate indifference to his serious medical needs. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$4.00, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b).

**Standard**

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.

## **The Complaint**

Plaintiff alleges that he has a severe umbilical hernia. He describes it as being the size of a baseball. He says, “I’m in constant pain, I only have a bowel movement every 4 days, my stomach hurt [sic] all over . . .” He claims that defendant Dr. Richard Buckles is aware of the condition and refuses to treat him. He claims that defendant Sheriff Kevin Harrison was made aware of his issue but has not done anything about it.

## **Discussion**

The complaint states a plausible claim of deliberate indifference against Buckles. As a result, the Court will direct the Clerk to issue process on him.

“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.”); *Camberos v. Branstad*, 73 F.3d 174, 176 (8th Cir. 1995) (“a general responsibility for supervising the operations of a prison is insufficient to establish the personal involvement required to support liability.”). Plaintiff’s allegations do not show Harrison’s direct involvement in the denial of medical care. Therefore, the Court dismisses Harrison without prejudice.

To state a claim against a municipality or a government official in his or her official capacity, plaintiff must allege that a policy or custom of the government entity is responsible for the alleged constitutional violation. *Monell v. Dep’t of Social Services*, 436 U.S. 658, 690-91 (1978). The instant complaint does not contain any allegations that a policy or custom of Warren County was responsible for the alleged violations of plaintiff’s constitutional rights. As a result,

the Court dismisses Warren County without prejudice, and the Court dismisses plaintiff's official-capacity claims.

Accordingly,

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

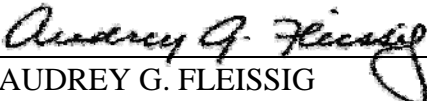
**IT IS FURTHER ORDERED** that the plaintiff must pay an initial filing fee of \$4.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

**IT IS FURTHER ORDERED** that the Clerk is directed to serve process on defendant Richard Buckles.

**IT IS FURTHER ORDERED** that defendants Warren County and Kevin Harrison are **DISMISSED** without prejudice.

An Order of Partial Dismissal will be filed separately.

Dated this 27th day of August, 2015.

  
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AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE