

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

| | | |
|--------------------------|---|--------------------|
| RONNIE LEE OWEN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:17CV1547 HEA |
| |) | |
| RICHARD LISENBE, et al., |) | |
| |) | |
| Defendant. |) | |

OPINION, MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff’s financial information, the Court assesses a partial initial filing fee of \$1.00. *See* 28 U.S.C. § 1915(b). Additionally, plaintiff must submit an amended complaint.

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, 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.

When reviewing a complaint under 28 U.S.C. § 1915(e), the Court accepts the well-pled facts as true. Furthermore, the Court liberally construes the allegations.

The Complaint

Plaintiff is detained at Phelps County Jail, which is overcrowded. As a result of the overcrowding, there are no religious services, there are no opportunities for exercise, and the conditions are unsanitary. He has gotten sick as a result.

Discussion

There are problems with the complaint. It does not comply with Rules 8 or 10 of the Federal Rules of Civil Procedure. Rule 8(a) requires that the complaint contain “a short and plain statement of the claim showing that [plaintiff] is entitled to relief . . .” And Rule 10(b) requires a plaintiff to “state [his] claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances.”

Moreover, it contains legal arguments and conclusions. Many of the allegations do not directly pertain to the plaintiff or the named defendants. And it is too long and repetitive.

Because plaintiff is proceeding pro se, the Court will allow him to file an amended complaint. Plaintiff is warned that the filing of an amended complaint replaces the original complaint, and so he must include each and every one of his claims in the amended complaint. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). Any claims from the original complaint that are not included in the amended complaint will be considered abandoned. *Id.* Plaintiff must allege how each and every defendant is directly responsible for the alleged harm. In order to sue defendants in their

individual capacities, plaintiff must specifically say so in the complaint. If plaintiff fails to sue defendants in their individual capacities, this action may be subject to dismissal.

The amended complaint must also comply with the requirements of Rules 8 and 10. It must be plain and short. And it must set out the claims in numbered paragraphs. If plaintiff fails to properly amend his complaint, the Court will dismiss this action without further proceedings.

Accordingly,

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

IT IS FURTHER ORDERED that plaintiff must pay an initial filing fee of \$1.00 within twenty-one (21) 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.¹

IT IS FURTHER ORDERED that the Clerk is directed to send plaintiff a prisoner civil rights complaint form.

IT IS FURTHER ORDERED that plaintiff must submit an amended complaint within twenty-one days of the date of this Order.

¹ 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).

If plaintiff fails to comply with this Order, the Court will dismiss this action without further proceedings.

Dated this 21st day of August, 2017



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE