

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

G'ESA KALAFI, f/n/a STANLEY FELTON,

Plaintiff,

v.

LEBBEUS BROWN, TIM HAINES,
CRAIG TOM, TROY HERMANS and
SHANA BECKER,

Defendants.

ORDER

Case No. 16-cv-847-slc

In previous orders, this court entered summary judgment against defendants Lebbeus Brown, Craig Tom and Troy Hermans on plaintiff G'esa Kalafi f/n/a Stanley Felton's claim that defendants retaliated against him in violation of the First Amendment when they disciplined him for writing an article in which he disparaged Shana Becker and other unnamed members of the psychology staff at the Wisconsin Secure Program Facility, where Kalafi is an inmate. The sole issue remaining is whether a trial is necessary on Kalafi's claim for compensatory and punitive damages.

Having considered Kalafi's proffer (dkts. 101, 108) and defendants' response (dkt. 116), I conclude that a trial is necessary on the question of punitive damages. The record contains enough evidence from which a jury could conclude that defendants punished Kalafi out of ill will or spite, or in reckless disregard of his First Amendment rights. Although defendants insist that they "reasonably relied" on the prison code's prohibition against lying about staff and therefore could not have acted with the requisite malice or recklessness, that is a question for the jury to decide.

As for economic damages, defendants have agreed to pay for Kalafi's lost wages in the amount of \$37.08.¹ To the extent that Kalafi may be seeking other damages for "loss of freedom and privileges in punitive segregation," (dkt. 101, at p.4, ¶4), I agree with defendants that such a claim amounts to a claim for mental or emotional injury which, absent physical injury, is not recoverable under the PLRA. 42 U.S.C. § 1997e(e) ("No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury."). Accordingly, there being no triable issues remaining with respect to Kalafi's economic damages, trial will proceed solely on the question of punitive damages.

Deadlines for the parties' pretrial submissions will be set forth in a Trial Preparation Order, to be issued simultaneously with this order.

Entered this 24th day of August, 2018.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

¹Defendants correctly note that Kalafi's litigation-related economic losses such as filing fees, copies and postage are costs that will be awarded after final judgment.