IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10283-B

DELROY T BOOTH,

Plaintiff - Appellant,

versus

WARDEN,
UNIT MANAGER FARLEY,
Baldwin State Prison
COMMISSIONER, GEORGIA DEPARTMENT OF
CORRECTIONS,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the Appellant Delroy T. Booth failed to pay the filing and docketing fees (or file a motion in the district court for relief from the obligation to pay in advance the full fee) to the district court within the time fixed by the rules, effective February 15, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Craig Stephen Gantt, B, Deputy Clerk

FOR THE COURT - BY DIRECTION

(Appendix C)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DELROY T. BOOTH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION NO. 5:18-CV-367 (MTT)**
	)	
	)	
Warden BOBBIT, *et al.*,	)	
	)	
	)	
Defendants.	)	
	)	

ORDER

After screening Plaintiff Delroy T. Booth's complaint pursuant to 28 U.S.C. § 1915A, United States Magistrate Judge Stephen Hyles allowed the Plaintiff's First Amendment retaliation claim against Defendants Bobbit and Farley to proceed for further factual development. Doc. 7 at 1. The Magistrate Judge recommends dismissing without prejudice the Plaintiff's remaining claims. *Id.* The Plaintiff has objected to the Recommendation. Doc. 11. Pursuant to 28 U.S.C. § 636(b)(1), the Court has made a de novo determination of the portions of the Recommendation to which the Plaintiff objects and accepts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation (Doc. 7) is therefore **ADOPTED**. Accordingly, the Plaintiff's Eighth Amendment conditions of confinement, Fourteenth Amendment due process,[1] and equal protection claims are **DISMISSED without**

[1] In his objection, the Plaintiff claims that the Defendants are "stealing the money [from his inmate trust fund account] and eating [his] monthly incen[]tive meals and food packages." Doc. 11 at 2. To the extent the Plaintiff is alleging a due process claim for unauthorized intentional deprivation of property, that claim

prejudice. The only remaining claim in this case is the Plaintiff's First Amendment retaliation claim against Defendants Bobbit and Farley.

SO ORDERED, this 7th day of January, 2019.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

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fails as a matter of law because a meaningful post-deprivation remedy is available for his loss. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) ("Accordingly, we hold that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available."). The Eleventh Circuit has "recognized that a civil cause of action for wrongful conversion provides an adequate post-deprivation remedy, and here Georgia law provides a cause of action in tort for wrongful deprivation of personal property." *Mines v. Barber*, 610 F. App'x 838, 840 (11th Cir. 2015) (citations omitted). Accordingly, because the Plaintiff can sue the Defendants for conversion of his property, his due process claim fails as a matter of law.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DELROY T BOOTH,	:	
Plaintiff,	:	
v.	:	Case No. 5:18-cv-00367-MTT-MSH
WARDEN BOBBIT, *et al.*,	:	
Defendants.	:	

ORDER AND RECOMMENDATION

This case is currently before the United States Magistrate Judge for screening as required by the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A(a). On October 4, 2018, Plaintiff Delroy T. Booth, an inmate confined at Baldwin State Prison, filed his complaint (ECF No. 1) seeking relief under 42 U.S.C. § 1983. Plaintiff also seeks to proceed without prepayment of the Court's filing fee and requests appointed counsel. Plaintiff's motion for leave to proceed *in forma pauperis* ("IFP") (ECF No. 2) is **GRANTED** and his motion for appointed counsel (ECF No. 3) is **DENIED**.

Further, upon review, Plaintiff may proceed with his First Amendment retaliation claim against Defendants Bobbit and Farley. However, it is **RECOMMENDED** that Plaintiff's Eighth Amendment conditions of confinement, Fourteenth Amendment due process, and equal protection claims be **dismissed without prejudice.**

I. Motion to Proceed IFP

28 U.S.C. § 1915 allows the district courts to authorize the commencement of a civil action without prepayment of the normally-required fees upon a showing that the plaintiff

is indigent and financially unable to pay the filing fee. A prisoner seeking to proceed IFP under this section must provide the district court with both (1) an affidavit in support of his claim of indigence and (2) a certified copy of his prison "trust fund account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint." § 1915(a)(1)-(2).

Here, Plaintiff's pauper's affidavit and inmate account statement show that he is currently unable to prepay the Court's $350.00 filing fee.[1] Plaintiff's motion for leave to proceed IFP (ECF No. 2) is thus **GRANTED**. Plaintiff, however, is still obligated to pay the full balance of the filing fee, in installments, as set forth in § 1915(b) and explained below. It is accordingly requested that the **CLERK** forward a copy of this **ORDER** to the business manager of the facility in which Plaintiff is incarcerated so that withdrawals from his account may commence as payment towards the filing fee. The district court's filing fee is not refundable, regardless of the outcome of the case, and must therefore be paid in full even if the Plaintiff's Complaint (or any part thereof) is dismissed prior to service.

A. Directions to Plaintiff's Custodian

It is hereby **ORDERED** that the warden of the institution wherein Plaintiff is

[1] Plaintiff submitted an unsigned account certification form and alleges that prison officials at Baldwin State Prison refused to sign it. Mot. for Leave to Proceed IFP 5, ECF No. 2. Plaintiff also submitted a printout showing the transactional history of his inmate trust account. *Id.* at 6-13. Based on the transactional history, it is clear that Plaintiff is unable to afford an initial partial filing fee at this time.

incarcerated, or the sheriff of any county wherein he is held in custody, and any successor custodians, each month cause to be remitted to the Clerk of this Court twenty percent (20%) of the preceding month's income credited to Plaintiff's account at said institution until the $350.00 filing fee has been paid in full. In accordance with provisions of the PLRA, Plaintiff's custodian is hereby authorized to forward payments from the prisoner's account to the Clerk of Court each month until the filing fee is paid in full, provided the amount in the account exceeds $10.00. It is further **ORDERED** that collection of monthly payments from Plaintiff's trust fund account shall continue until the entire $350.00 has been collected, notwithstanding the dismissal of Plaintiff's lawsuit or the granting of judgment against her prior to the collection of the full filing fee.

B. Plaintiff's Obligations Upon Release

An individual's release from prison does not excuse his prior noncompliance with the PLRA. In the event Plaintiff is hereafter released from the custody of the State of Georgia or any county thereof, he shall remain obligated to pay those installments justified by the income to his prisoner trust account while he was still incarcerated. Collection from Plaintiff of any balance due on these payments by any means permitted by law is hereby authorized in the event Plaintiff is released from custody and fails to remit such payments. Plaintiff's Complaint is subject to dismissal if he has the ability to make such payments.

II. Motion to Appoint Counsel

"[P]laintiffs in civil cases have no constitutional right to counsel, [but] district

judges may appoint counsel for indigent plaintiffs under 28 U.S.C. § 1915(e)(1)." *Maldonado v. Unnamed Defendant*, 648 F. App'x 939, 956 (11th Cir. 2016) (per curiam) (citing *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999)). Appointment is only appropriate in exceptional circumstances, and "[t]he fact a plaintiff would be helped by the assistance of an attorney does not, in itself, require appointment of counsel." *Id.* In deciding whether legal counsel should be provided, the Court considers, among other factors, the merits of Plaintiff's claim and the complexity of the issues presented. *Holt v. Ford*, 862 F.2d 850, 853 (11th Cir. 1989).

Here, Plaintiff has filed a § 1983 complaint following the format and style of the Court's standard form. The PLRA requires that the Court now review Plaintiff's filing to determine whether he can possibly state a viable claim against the named defendants. This process is routine in *pro se* prisoner actions and not an "exceptional circumstance" justifying the appointment of counsel. The facts and legal issues involved in this case are fairly straightforward, and the Court has not imposed any procedural requirements which would limit Plaintiff's ability to present his case. *See Kilgo v. Ricks*, 983 F.2d 189, 193-94 (11th Cir. 1993). There is no apparent immediate need for the appointment of counsel here. Accordingly, Plaintiff's motion seeking appointed counsel (ECF No. 3) is **DENIED.** If, however, it becomes apparent at some point later in these proceedings that counsel should be appointed in this case, after due consideration of the complexity of the issues raised or their novelty, the Court will entertain a renewed motion.

III. Preliminary Review of Plaintiff's Complaint

A. Legal Standard

Because Plaintiff is a prisoner proceeding under § 1983 and seeks to proceed IFP, his Complaint is subject to screening under 28 U.S.C. §§ 1915(e), 1915A, which require a district court to dismiss any complaint that is frivolous, malicious, or fails to state a claim upon which relief may be granted.[2] When conducting a preliminary review, the district court must accept all factual allegations in the complaint as true and make all reasonable inferences in the plaintiff's favor. *See Brown v. Johnson*, 387 F.3d 1344, 1347 (11th Cir. 2004) (stating that allegations in the complaint must be viewed as true). *Pro se* pleadings are also "held to a less stringent standard than pleadings drafted by attorneys," and a *pro se* complaint is thus "liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam). The district court, however, cannot allow a plaintiff to litigate frivolous, conclusory, or speculative claims. As part of the preliminary screening, the court shall dismiss a complaint, or any part thereof, prior to service, if it is apparent that the plaintiff's claims are frivolous or if his allegations fail to state a claim upon which relief may be granted—i.e., that the plaintiff is not entitled to relief based on the facts alleged. *See* 28 U.S.C. § 1915(e); 28 U.S.C. § 1915A.

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[2] The Eleventh Circuit has determined that "28 U.S.C. § 1915(e), which governs proceedings *in forma pauperis* generally . . . permits district courts to dismiss a case 'at any time' if the complaint 'fails to state a claim on which relief may be granted.'" *Robinson v. United States*, 484 F. App'x 421, 422 n.2 (11th Cir. 2012) (per curiam); *see also Troville v. Venz*, 303 F.3d 1256 (11th Cir. 2002).

To state a viable claim, the complaint must include "enough factual matter" to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). There must also be "enough facts to raise a reasonable expectation that discovery will reveal evidence" to prove the claim. *Id.* at 556. The claims cannot be speculative or based solely on beliefs or suspicions; each must be supported by allegations of relevant and discoverable fact. *Id.* Thus, neither legal conclusions nor a recitation of legally relevant terms, standing alone, is sufficient to survive preliminary review. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'") (quoting *Twombly*, 550 U.S. at 555). Claims without an arguable basis in law or fact will be dismissed as frivolous. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *accord Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001) (noting that claims are frivolous if "clearly baseless" or based upon "indisputably meritless" legal theories).

B. Plaintiff's Claims

Plaintiff's complaint concerns events that allegedly began in May 2018, when Plaintiff was transferred from Hays State Prison to Baldwin State Prison. According to Plaintiff, he filed a civil rights complaint against officials at Hays State Prison in March 2018. Compl. 3, ECF No. 1; *see also Booth v. Allen*, 4:18-cv-00069-HLM (N.D. Ga. filed March 19, 2018). On May 3, 2018, that complaint was dismissed without prejudice for failure to exhaust administrative remedies. Order of Dismissal, *Booth*, 4:18-cv-00069

(order of dismissal). However, Plaintiff was subsequently granted leave to proceed IFP on appeal. *Booth*, 4:18-cv-00069 (order granting application to appeal IFP). "Exactly 24 Days later, [Plaintiff] was transferred" to Baldwin State Prison "out of retaliation" for his ongoing lawsuit and appeal. Compl. 3.

Plaintiff explains that he was housed in protective custody at Hays State Prison between May 2016 and the date he was next transferred. *Id.* at 4. When Plaintiff arrived at Baldwin State Prison on June 14, 2018, he immediately informed prison personnel that he would like to be placed in protective custody. Plaintiff told his mental health counselor that he feared retaliation because of the lawsuit he filed in March and felt "like those prison officials [were] going to retaliate or use these prison officials and staff members to use inmates to retaliate." *Id.* Plaintiff's mental health counselor indicated they would ensure that Plaintiff was placed in protective custody. *Id.* Plaintiff was then transferred to a "one-man holding cell." *Id.* While in the cell, Plaintiff wrote a "two page witness statement about [his] lawsuit" and "put the statement form in Defendant, Unit Manager Farley Hands." *Id.*

Defendant Farley then transferred Plaintiff to the housing unit Farley was "in charge of" and placed Plaintiff in a cell by himself and wrote "discontinue" from Administrative Crisis Unit on Plaintiff's cell assignment chart. Compl. 4. Plaintiff's mental health counselors informed him that he was not on "their evaluation list"—presumably for the administrative crisis unit. *Id.* Defendants used Plaintiff's cell assignment to deny him various privileges, removed money from his inmate trust fund account, and imposed

restrictions on his access to the telephone, commissary, and packages. *Id.* at 5. When Plaintiff complained about these restrictions, both Defendants told him "go to population and you will receive everything you are entitled to." *Id.* Plaintiff surmises that Defendants Bobbit and Farley want Plaintiff to transfer to general population to facilitate retaliation by personnel at Hays State Prison. *Id.*

1. First Amendment Retaliation Claims

"For a prisoner to state a First Amendment retaliation claim under § 1983, the prisoner must establish: (1) that his speech or act was constitutionally protected; (2) that the defendant's retaliatory conduct adversely affected the protected speech; and (3) that there is a causal connection between the retaliatory actions and the adverse effect on the speech." *Thomas v. Lawrence*, 421 F. App'x 926, 928 (11th Cir. 2011) (citing *Douglas v. Yates*, 535 F.3d 1316, 1321 (11th Cir. 2008)). In order to successfully state a retaliation claim, the adverse action suffered must "be such that it 'would likely deter a person of ordinary firmness from engaging in such speech.'" *Id.* (quoting *Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008)). "[W]hether there was a causal connection between the retaliatory acts and the adverse effect on the speech 'asks whether the defendants were subjectively motivated to discipline because [the prisoner] complained of the conditions of his confinement.'" *Id.* (quoting *Smith*, 532 F.3d at 1277) (second alteration in original). Absent direct evidence of motivation, a causal connection may be established through "the more probable scenario, [] a chronology of events from which retaliation may plausibly be

inferred." *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995); *see also Williams v. Brown*, 347 F. App'x 429, 435 (11th Cir. 2009) (per curiam).

Plaintiff alleges that Defendants Farley and Bobbit conspired with unknown personnel at Hays State Prison to place Plaintiff in general population in order to expose Plaintiff to violence at the hands of other inmates. These allegations are vague, speculative, hypothetical, and unsupported by well-plead factual allegations. Plaintiff's assertion that he was transferred to Baldwin State Prison out of retaliation is based only on his feeling that "retaliation was in the atmosphere" and that he "felt like [Hays State Prison] officials" were going to retaliate against him for his lawsuit. Compl. 4.

Conclusory statements and speculation are insufficient to state a claim for relief and such statements are not entitled to be taken as true by this Court. *Grider v. Cook*, 590 F. App'x 876, 881 (11th Cir. 2014) (per curiam). Furthermore, Plaintiff's Complaint is devoid of well plead factual allegations that the Defendants came to an understanding or even communicated with officials at Hays State Prison. Plaintiff has, therefore, failed to plausibly allege that the Defendants conspired with Hays State Prison officials to retaliate against Plaintiff for filing his lawsuit. *See Id.* ("[T]he pleading must provide more than mere conclusory statements alleging conspiracy.") (quotations and citations omitted).

However, Plaintiff's well plead factual allegations support a plausible inference that Defendants retaliated against Plaintiff for requesting protective custody or writing a statement about the lawsuit. Liberally construing his Complaint, Plaintiff appears to allege that Defendants Farley and Bobbit have imposed unjustified restrictions on Plaintiff

in an attempt to get Plaintiff to disclaim his request for protective custody. Plaintiff's request for protective custody and his lawsuit constitute protected speech. *Boxer X v. Harris*, 437 F.3d 1107, 1112 (11th Cir. 2006) ("First Amendment rights to free speech and to petition the government for a redress of grievances are violated when a prisoner is punished for filing a grievance concerning the conditions of his confinement."). Plaintiff's timeline of events indicates that his placement in administrative segregation occurred shortly after he engaged in such protected speech to Defendant Farley, who personally intervened in Plaintiff's cell assignment without justification. Plaintiff further alleges that both Defendants Bobbit and Farley informed Plaintiff that the restrictions would remain until Plaintiff requested transfer back to general population and withdrew his request for protective custody. With inferences drawn in his favor, Plaintiff has alleged sufficient facts to state a retaliation claim under the First Amendment against Defendants Bobbit and Farley. *See Smith v. Villapando*, 286 F. App'x 682, 685 (11th Cir. 2008) (per curiam) (finding that district court erred in dismissing retaliation claim where plaintiff alleged he was placed in disciplinary confinement for a fabricated reason and in response for requesting protective custody).

Plaintiff, however, has not sufficiently alleged that Defendant Dozier is involved in the retaliatory conduct. Although Plaintiff is proceeding *pro se* and is not required to adhere to technical niceties in drafting his Complaint, he must "state with some minimal particularity how overt acts of the defendant caused a legal wrong." *Douglas,* 535 F.3d at 1322. "[S]ection 1983 'requires proof of an affirmative causal connection between the

actions taken by a particular person "under color of state law" and the constitutional deprivation."' *LaMarca v. Turner*, 995 F.2d 1526, 1538 (11th Cir. 1993) (quoting *Williams v. Bennett*, 689 F.2d 1370, 1380 (11th Cir. 1982)). Plaintiff has failed to meet this minimal standard as his Complaint is devoid of well plead factual allegations connecting defendant Dozier to the alleged retaliation. Indeed, Plaintiff failed to even mention Defendant Dozier in the statement of his claim and has done nothing more than list him as a Defendant. Accordingly, it is **RECOMMENDED** that Defendant Dozier be **dismissed without prejudice.**

2. Remaining Claims

It also appears that Plaintiff wishes to raise Fourteenth Amendment and / or Eighth Amendment claims based on the conditions and restrictions he experiences while he is confined in disciplinary segregation. Plaintiff's allegations, however, are not sufficient to state a claim for relief under either amendment. In order state an Eighth Amendment conditions of confinement claim, Plaintiff must allege, at a minimum, facts plausibly demonstrating that the challenged conditions are "extreme," violate contemporary standards of decency, deny him basic necessities of life, or pose a substantial risk of serious harm to his future health or safety. *Thomas v. Bryant*, 614 F.3d 1288, 1305-06 (11th Cir. 2010). Plaintiff does not allege, even in conclusory terms, that the conditions of his confinement pose a substantial risk to his health or safety, or deny him basic necessities of life, and the restrictions enumerated in his Complaint do not arguably meet Eighth Amendment standards. Moreover, Plaintiff's Complaint is devoid of well plead factual

allegations demonstrating that any named Defendant had subjective knowledge of a substantial risk of serious harm to Plaintiff and disregarded that risk by conduct that is more than negligent. *See generally Farmer v. Brennan*, 511 U.S. 825, 835 (1994) ("[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."). Accordingly, it is **RECOMMENDED** that Plaintiff's Eighth Amendment conditions of confinement claim be **dismissed without prejudice.**

In order to state a Fourteenth Amendment due process claim, Plaintiff must allege that the circumstances of his confinement constitute an "atypical and significant hardship relative to ordinary prison life." *Smith v. Deemer*, 641 F. App'x 865, 868 (11th Cir. 2016) (per curiam) (citing *Sandin v. Connor*, 515 U.S. 472, 486 (1995)). Plaintiff does not make such allegations, and his placement in disciplinary confinement does not, by itself, implicate a liberty interest. *See Al-Amin v. Donald*, 165 F. App'x 733, 738 (11th Cir. 2006) (per curiam) (finding no liberty interest where inmate was confined in administrative segregation for three years under conditions similar to those experienced by general population inmates). Plaintiff also does not have a free-standing liberty interest in unrestricted phone and commissary acess. *See McDowell v. Litz*, 419 F. App'x 149, 152 (3d Cir. 2011) (per curiam) (finding no liberty interest in phone privileges); *see also Nathan v. Hancock*, 477 F. App'x 197 (5th Cir. 2012) (per curiam) (affirming dismissal of Fourteenth Amendment due process claim because the "loss of recreation and commissary privileges" and other restrictions does not implicate a liberty interest); *Whiting v Owens*,

2014 WL 2769027 (M.D. Ga. June 18, 2014) (dismissing Fourteenth Amendment due process claim on preliminary review and finding no liberty interest in unrestricted visitation, telephone, commissary, and participation in various prison programs). Consequently, it is **RECOMMENDED** that Plaintiff's Fourteenth Amendment due process claim be **dismissed without prejudice.**

Finally, Plaintiff states that the Defendants actions amount to discrimination. Plaintiff may, therefore, seek to raise an equal protection claim. To state an equal protection claim, "a prisoner must demonstrate that (1) 'he is similarly situated with other prisoners who received' more favorable treatment; and (2) his discretionary treatment was based on some constitutionally protected interest such as race." *Jones v. Ray*, 279 F.3d 944, 946-47 (11th Cir. 2001) (per curiam) (quoting *Damiano v. Fla. Parole & Prob. Comm'n*, 785 F.2d 929, 932-33 (11th Cir. 1986)). Plaintiff's allegations do not arguably satisfy either element, as he has done nothing more than label the Defendants' actions as "discriminatory." Labels and conclusions alone are not sufficient to state a claim for relief. Accordingly, it is **RECOMMENDED** that Plaintiff's equal protection claim be **dismissed without prejudice.**

IV. Conclusion

Based on the forgoing, Plaintiff may proceed with his First Amendment retaliation claim against Defendants Bobbit and Farley. It is, however, **RECOMMENDED** that Defendant Dozier and Plaintiff's Eighth Amendment conditions of confinement, Fourteenth Amendment due process, and equal protection claims be **dismissed without**

prejudice.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to these recommendations with the assigned District Court Judge, **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Recommendation. The parties may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal any order based on factual and legal conclusions to which no objection was timely made. *See* 11th Cir. R. 3-1.

ORDER FOR SERVICE

It is **ORDERED** that service be made on Defendants Bobbit and Farley and that they file an Answer, or such other response as may be appropriate under Rule 12, 28 U.S.C. § 1915, and the PLRA. Defendants are reminded of their duty to avoid unnecessary service expenses, and of the possible imposition of expenses for failure to waive service pursuant to Rule 4(d).

DUTY TO ADVISE OF ADDRESS CHANGE

During this action, all parties shall keep the Clerk of this Court and all opposing attorneys and/or parties advised of their current address. Failure to promptly advise the Clerk of any change of address may result in the dismissal of a party's pleadings.

DUTY TO PROSECUTE ACTION

Plaintiff must diligently prosecute his Complaint or face the possibility that it will be dismissed under Rule 41(b) of the Federal Rules for failure to prosecute. Defendants are advised that they are expected to diligently defend all allegations made against them and to file timely dispositive motions as hereinafter directed. This matter will be set down for trial when the Court determines that discovery has been completed and that all motions have been disposed of or the time for filing dispositive motions has passed.

FILING & SERVICE OF MOTIONS AND CORRESPONDENCE

It is the responsibility of each party to file original motions, pleadings, and correspondence with the Clerk of Court. A party need not serve the opposing party by mail if the opposing party is represented by counsel. In such cases, any motions, pleadings, or correspondence shall be served electronically at the time of filing with the Court. If any party is not represented by counsel, however, it is the responsibility of each opposing party to serve copies of all motions, pleadings, and correspondence upon the unrepresented party and to attach to said original motions, pleadings, and correspondence filed with the Clerk of Court a certificate of service indicating who has been served and where (i.e., at what address), when service was made, and how service was accomplished (i.e., by U.S. Mail, by personal service, etc.).

DISCOVERY

Plaintiff shall not commence discovery until an answer or dispositive motion has been filed on behalf of the Defendant from whom discovery is sought by the Plaintiff. The

Defendants shall not commence discovery until such time as an answer or dispositive motion has been filed. Once an answer or dispositive motion has been filed, the parties are authorized to seek discovery from one another as provided in the Federal Rules of Civil Procedure. The deposition of the Plaintiff, a state/county prisoner, may be taken at any time during the time period hereinafter set out provided prior arrangements are made with his custodian. **Plaintiff is hereby advised that failure to submit to a deposition may result in the dismissal of his lawsuit under Rule 37 of the Federal Rules of Civil Procedure.**

IT IS HEREBY ORDERED that discovery (including depositions and the service of written discovery requests) shall be completed within 90 days of the date of filing of an answer or dispositive motion by the Defendants (whichever comes first) unless an extension is otherwise granted by the court upon a showing of good cause therefor or a protective order is sought by the Defendants and granted by the court. This 90-day period shall run separately as to Plaintiff and Defendants beginning on the date of filing of Defendants' answer or dispositive motion (whichever comes first). The scheduling of a trial may be advanced upon notification from the parties that no further discovery is contemplated or that discovery has been completed prior to the deadline.

Discovery materials shall **not** be filed with the Clerk of Court. No party shall be required to respond to any discovery not directed to him or served upon him by the opposing counsel/party. The undersigned incorporates herein those parts of the Local Rules imposing the following limitations on discovery: except with written permission of

the Court first obtained, INTERROGATORIES may not exceed TWENTY-FIVE (25) to each party, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS under Rule 34 of the Federal Rules of Civil Procedure may not exceed TEN (10) requests to each party, and REQUESTS FOR ADMISSIONS under Rule 36 of the Federal Rules of Civil Procedure may not exceed FIFTEEN (15) requests to each party. No party is required to respond to any request which exceed these limitations.

REQUESTS FOR DISMISSAL AND/OR JUDGMENT

The Court shall not consider requests for dismissal of or judgment in this action, absent the filing of a motion therefor accompanied by a brief/memorandum of law citing supporting authorities. Dispositive motions should be filed at the earliest time possible, but in any event no later than one hundred - twenty (120) days from when the discovery period begins unless otherwise directed by the Court.

COMPLIANCE WITH COURT ORDERS AND REQUESTS

Failure to fully and timely comply with any order or request of the Court, or other failure to diligently prosecute this case, will result in the dismissal of the failing party's pleadings. *See* Fed. R. Civ. P. 41.

SO ORDERED AND RECOMMENDED, this 20th day of November, 2018.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE

Additional material from this filing is available in the Clerk's Office.