IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10025-C

CHAVALIER DWAYNE JOHNSON, SR.,

Plaintiff-Appellant,

KENYA JOHNSON,
wife, et al.,

Plaintiffs,

versus

OKEECHOBEE CI WARDEN,
FNU SNYDER,
Asst. Warden,
MS. GARRETT,
Asst. Warden of Programs,
CAPTAIN COLEMAN,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

Before: WILSON, WILLIAM PRYOR and JILL PRYOR, Circuit Judges.

BY THE COURT:

Appellant, in the district court, filed a notice of appeal and a motion to proceed on appeal *in forma pauperis*. The district court denied *in forma pauperis* status, certifying that the appeal was frivolous and not taken in good faith. However, the district court did not assess the $505.00 appellate filing fee, as is required under the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915.

Appellant has consented to pay the $505.00 filing fee, using the partial payment plan described under § 1915(b). Thus, the only remaining issue is whether the appeal is frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). This Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

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Appeal from the United States District Court
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Before: WILSON, WILLIAM PRYOR and JILL PRYOR, Circuit Judges.

BY THE COURT:

Chavalier Dwayne Johnson, Jr., has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's June 6, 2019, order denying his motion for leave to proceed in his appeal of the district court's dismissal of his *pro se* 42 U.S.C. § 1983 complaint. Upon review, Johnson's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-CIV-14308-MARTINEZ
MAGISTRATE JUDGE P.A. WHITE

CHAVALIER DWAYNE JOHNSON, SR.,:

Plaintiff, :

v. :

WARDEN SEVERSON, :

Defendants. :

PRELIMINARY REPORT OF MAGISTRATE JUDGE

Introduction

The plaintiff Chavalier Dwayne Johnson, Sr., currently housed at Dade Correctional Institution, has filed a second amended civil rights complaint (DE#19), raising claims under 42 U.S.C. §1983. This cause is presently before the Court for initial screening pursuant to 28 U.S.C. §1915, because the plaintiff is proceeding *in forma pauperis* and seeks redress from a government entity or officer or employee of a governmental entity.

Plaintiff initiated this action with an initial complaint (DE#1), wherein Plaintiff purported to bring this complaint on behalf of himself, Kenya Johnson, Margolis Joesph, Sr., and Mary Ford "with family." Plaintiff sued Warden Severson, Assistant Warden Snyder, Ms. Garret, and Captain Coleman. Plaintiff purported to sue all defendants in their individual and official capacities, and "with family."

The Court conducted an initial screening of Plaintiff's initial complaint pursuant to the PLRA. (See DE#15). At the outset, the Court noted that Plaintiff's handwriting was extremely difficult to decipher. Moreover, Plaintiff's factual allegations were replete with cryptic references to numbers, most of which were

completely incomprehensible with regard to what Petitioner meant to reference. However, it appeared that the thrust of Plaintiff's allegations were that, on December 8, 2015, between 12:45 and 2:45, he was stabbed in the face while standing on the food line. Petitioner also allegedthat there was no officer present. Beyond that, all that Petitioner alleged was that "the dept. set everything up." Petitioner also stated that he was not allowed to go to the hospital, and that he was operated on in the ICT [?] building.

Based on these allegations, Plaintiff stated that he would like to be released due to repeated reprisals from Warden Severson "and the segg." Plaintiff also sought damages payable to himself and his family, in the amount of $150 million, as well as punitive damages. Plaintiff has also appended a Notice of Intent to File Claim (DE#1-1) to his complaint. This Notice was not addressed to any of the defendants, and was entirely incomprehensible.

In keeping with the rule that a prisoner's complaint should not be dismissed upon screening under the PLRA without giving the Plaintiff at least one opportunity to amend, if it appears that he might be able to state a claim, the Court thus ordered Plaintiff to file an amended complaint. (DE#15). That order painstakingly set forth the legal standards applicable to all the claims that Plaintiff could conceivably be attempting to raise, and further advised Plaintiff of why his claims were deficient. It also advised Plaintiff that the rules of pleading required him to set forth a short and plain statement of facts showing that he is entitled to relief, and that conclusory allegations and mere labels and formulaic recitations of the elements of a cause of action will not suffice. The order also specifically cautioned Plaintiff that the amended complaint would be the sole operative pleading, would supersede his original complaint, and that facts alleged or claims raised in the original complaint that were not specifically repled

would be deemed abandoned. The order also specifically cautioned Plaintiff that, if his submission was handwritten, that it had to be legible, and that illegible submissions, whether in whole or in part, would be disregarded.

In response to the Court's order, rather than file a short and plain statement of his claims on or substantially following the form Complaint that Plaintiff had been provided, Plaintiff filed 89 pages of indecipherable, disjointed documents, that similarly failed to state any claim for relief. (See DE#15). However, in light of Plaintiff's pro se status, rather than recommend that the amended complaint be dismissed at that juncture, the Court afforded Plaintiff one final opportunity to file a second amended complaint in compliance with the Court's original order. (See DE#16). In so doing, the Court again specifically cautioned Plaintiff that the portions of Plaintiff's submissions that appeared to be his attempt to amend consisted entirely of conclusions of law, which is precisely what the Court explained would not suffice. The order also again warned Plaintiff that the second amended complaint had to state facts, and that the Court would not sift through voluminous appended documents to glean why they were attached, or what Plaintiff might be trying to say.

In response to the Court's order, Plaintiff has filled out the form complaint for civil rights actions, appended a handwritten section entitled "amended complaint . . .," followed by copies of previous orders issued by this Court. (DE#19). The Court's orders are interspersed a number of handwritten pages that appear to be nothing more than disjointed and cryptic references to dozens of people's names, addresses, phone numbers, and other identifying information, and similarly cryptic "cross-references" to a variety of numbers (Id. at 43-61), and the filing concludes with yet another copy of Plaintiff's amended complaint that the Court has already advised him was insufficient (Id. at 54-61).

As the foregoing demonstrates, Plaintiff has been twice warned of what he needed to submit, and yet insists on continuing to attach irrelevant documents to his pleading. However, in light of the fact that Plaintiff has filled out the form complaint, which is followed by a self-contained attempt at an amended complaint, the Court will screen those portions of Plaintiff's submission. However, consistent with this Court's previous admonition, which was given in the exercise of the Court's inherent authority to manage its docket, the Court will disregard the largely illegible, disjointed, and nonsensical handwritten pages interspersed within the previous filings that Plaintiff has attached (i.e., pages 43-61 of DE#19).[1]

Claims

Plaintiff again purports to bring this complaint "with family," and lists six other individuals in addition to himself as plaintiffs. As defendants, Plaintiff lists the Florida Department of Corrections "et al Grier's entire family," and Assistant Warden Snyder, Ms. Garret, and Captain R.Coleman, all apparently of Okeechobee Correctional Institution.[2]

Plaintiff's form complaint makes a variety of cryptic, repetitive references to sexual abuse, being terrorized, death threats, verbal abuse, negligence, medical malpractice, negligent security, and violations of rules of procedure. Plaintiff seems to

[1]Per the Court's admonition that any amended complaint would be the sole operative pleading and for Plaintiff to refrain from referring to or incorporating by reference allegations or claims raised in previous complaints, the Court will also not review the copy of Plaintiff's first amended complaint that he has appended to his latest filing (i.e., pages 54-60 of DE#19).

[2]Plaintiff purports to also sue most of these defendants "with family."

allege that the events giving rise to his claims occurred at Okeechobee CI, Dade CI, Martin CI, the SFRC,[3] Charlotte CI, "etc."

Plaintiff then alleges that, on December 8, 2015, while "walking the yellow line" with no officer present during lunch, that he was stabbed in the face. He then states that the events giving rise to his claims occurred on December 8, 2017. He then goes on to make totally disjointed and nonsensical references to credit reports, admissible evidence, and states that he was stabbed in the face at Okeechobee CI on December 8, 2015, and that "Dept. members set the entire conspiracy up." Plaintiff goes on to allege that, after he was stabbed, he was taken to medical and operated on in the medical area, and that when he asked to go the hospital, he was told no. Plaintiff then states that the same individuals who set "it" up then placed him in confinement.

As relief, Plaintiff states that he would like to be released from the FDOC due to repeated reprisals, sexual abuse, negligence, and "the segg. action."[4] Plaintiff also seeks punitive damages, injunctive relief, and actual damages in the amount of 150 million dollars.

Petitioner then appends two handwritten pages entitled "Amended Complaint." (DE#1, pp.15-16). These pages purport to raise five (5) claims of supervisory liability against the defendants, and consists of nothing other than more cryptic and disjointed references to things such as malicious intent, disregard of human rights, discrimination, negligent security, sexual abuse, failure to protect, conspiracy, deliberate indifference, terrorist acts, and medical malpractice.

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[3]The South Florida Reception Center.

[4]Presumably being placed in confinement.

Standard of Review

As amended, 28 U.S.C. §1915 of the Prison Litigation Reform Act, which permits *in forma pauperis* proceedings, reads in pertinent part:

> (e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -
>
> * * *
>
> (B) the action or appeal -
>
> * * *
>
> (I) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. §1915(e)(2).

Section 1915A of the PLRA further provides:

> (a) Screening.--The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
>
> (b) Grounds for dismissal.--On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint--
>
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. §1915A(a), (b).

A complaint is frivolous under the PLRA "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490

U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11th Cir. 1998).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."' Estelle v. Gamble, 429 U.S. 97, 106 (1979)(quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11th Cir. 1997). The complaint may be dismissed if the plaintiff does not plead facts that do not state a claim to relief that is plausible on its face. See Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007)(retiring the oft-criticized "no set of facts" language previously used to describe the motion to dismiss standard and determining that because plaintiffs had "not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed" for failure to state a claim); Watts v. FIU, 495 F.3d 1289 (11th

Cir. 2007). While a complaint attacked for failure to state a claim upon which relief can be granted does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 127 S.Ct. at 1964-65. The rules of pleading do "not require heightened fact pleading of specifics . . . ." The Court's inquiry at this stage focuses on whether the challenged pleadings "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007)(quoting Twombly, 127 S.Ct. at 1964). When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.[5]

Discussion

All persons, regardless of wealth, are entitled to reasonable access to the courts. Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989). Reasonable access to the courts is provided to indigent litigants by the *in forma pauperis* (IFP) statute, 28 U.S.C. sec. 1915 et seq., which allows for the commencement of suits without payment of fees and court costs by persons who make a showing that they are unable to pay the costs. Id. Still, once *pro se* IFP litigants are in court, they are subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure. Id. Moreover, "federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out

[5]Application of the Twombly standard was clarified in Ashcroft v. Igbal, 129 S.Ct. 1937 (2009).

Article III functions." Procup v. Strickland, 792 F.2d 1069, 1073-74 (11th Cir. 1986).

The Court is cognizant that Plaintiff is IFP and proceeding *pro se*. Still, as set forth above, Plaintiff has been repeatedly advised that neither conclusory allegations or formulaic recitations of the elements of a cause of action will suffice to state a claim. Despite this, Plaintiff has repeatedly submitted what amounts to the same disjointed pleading, which contains virtually no factual allegations. Moreover, Plaintiff has been advised of the applicable legal standards governing the claims he appears to be raising, yet has failed to plead any additional facts in support of them. The Court thus proceeds to screen Plaintiff's latest amended complaint with regard to the only comprehensible facts alleged: that Plaintiff was stabbed in the face while standing in a food line, that there was apparently no officer present, that he was then taken to medical and had some sort of surgery on premises, that he asked to go to the hospital and was told that he couldn't, and that he at some point put in administrative segregation.

Proper Parties

As set forth above, Plaintiff purports to bring this action together with three other individuals who have no apparent connection to this case. However, Plaintiff is the only one who has signed the complaint, and he purports to have signed it "with family." Plaintiff fails to allege any facts that would permit him to bring derivative claims on behalf of any of these individuals, and fails to allege any facts that would compel or permit joinder pursuant to Fed.R.Civ.P 19 or 20. It also bears noting that the law is well settled that inmates may not join together in a single civil rights suit so as to share the mandatory filing fee, see Hubbard v. Haley, 262 F.3d 1194, 1198 (11th Cir. 2001), cert.

den'd, 534 U.S. 1136 (2002), and extension of this rule may limit the ability of a prisoner litigant to join other plaintiffs as a general matter. Finally, Plaintiff's naming of the defendants "with family" is simply nonsensical, and has no apparent basis in law under the facts and circumstances of this case.

Claims for Damages Against the FDOC

The Eleventh Amendment provides that: "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. Amend. XI. "The Amendment not only bars suits against a state by citizens of another state, but also applies equally to suits against a state initiated by that state's own citizens." Summit Medical Associates, P.C. v. Pryor, 180 F.3d 1326, 1336 (11th Cir. 1999), cert. denied, 529 U.S. 1012, 120 S.Ct. 1287, 146 L.Ed.2d 233 (2000).

While the text of the amendment does not explicitly so provide, the Supreme Court has held that the Eleventh Amendment serves as a jurisdictional bar to a suit against a state in federal court unless: (1) the state has explicitly consented to suit, thus waiving its sovereign immunity; or (2) Congress has specifically abrogated a state's Eleventh Amendment immunity. Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996). In Zatler v. Wainwright, the Eleventh Circuit found that Congress did not intend to abrogate a state's Eleventh Amendment immunity in Section 1983 damage suits, and Florida has not waived its sovereign immunity in such suits. Zatler, 802 F.2d 397, 400 (11th Cir. 1986)(finding that the Secretary of Florida Department of Corrections was immune from suit in his official capacity where the Section 1983 complaint alleged that prison officials failed to protect prisoner from sexual assault) (*citing* Gamble v. Fla. Dep't

of Health and Rehab. Servs., 779 F.2d 1509, 1513-20 (11th Cir. 1986)(dismissing Section 1983 complaint for lack of jurisdiction upon finding that Florida has not waived its Eleventh Amendment sovereign immunity)). "It is clear . . . that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984)(*citations omitted*).

The law is well settled that, absent several limited exceptions, the Eleventh Amendment is an absolute bar to suit for monetary damages by an individual against a state or its agencies, or against officers or employees of the state or its agencies in their official capacities. Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974); Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 145-46, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993); Seminole Tribe of Fla. v. Fla., 517 U.S. 44, 58 (1995); Carr v. City of Florence, 916 F.2d 1521, 1524 (11th Cir. 1990). The Eleventh Amendment, however, does not bar suits for equitable relief against state officials in their official capacities, Pennhurst, supra; Ex Parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), nor for damages against state officials in their individual capacities. Hafer v. Melo, 502 U.S. 21, 25-27,112 S.Ct. 358, 362, 116 L.Ed.2d 301 (1991); Kentucky v. Graham, 473 U.S. 159, 167, 105 S.Ct. 3099, 3106 (1985).

Here, to the extent that Plaintiff sues the FDOC, and claim for monetary damages is barred as a matter of law by the Eleventh Amendment. Gardner v. Riska, 444 F. App'x 353, 355 (11th Cir. 2011) ("As the DOC is a state agency, and thus not a person within the meaning of § 1983, Gardner's § 1983 claim for damages against the DOC is frivolous).

Claims for Injunctive Relief Against the FDOC

Plaintiff also asked to be released from FDOC custody. As Plaintiff has already been advised, it is well settled that "a prisoner in state custody cannot use a § 1983 action to challenge 'the fact or duration of his confinement.' ... He must seek federal habeas corpus relief (or appropriate state relief) instead." Wilkinson v. Dotson, 544 U.S. 74, 78, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005) (quotation omitted); see also Preiser v. Rodriguez, 411 U.S. 475, 499 n. 14, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973) (to the extent a prisoner attacks the legality of his custody or is seeking release from custody, "his sole federal remedy is a writ of habeas corpus").

Moreover, as Plaintiff has also been advised, to the extent that Plaintiff may mean request some other form of injunctive relief, he must still state a claim in the first instance in order to establish liability. In that regard, Plaintiff has already been advised that, although the Supreme Court has held that government bodies are "persons" within the scope of § 1983 and subject to liability, a § 1983 Plaintiff cannot rely upon the theory of *respondeat superior* to hold such entities liable. See Monell v. Dept. of Soc. Servs., 436 U.S. 658, 692, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) (finding that § 1983 "cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor"); Pembaur v. Cincinatti, 475 U.S. 469, 479, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986). "It is only when the 'execution of the government's policy or custom ... inflects the injury' that the municipality may be held liable." City of Canton v. Harris, 489 U.S. 378, 385, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). A government entity does not incur § 1983 liability for injuries caused solely by its employees. Monell, 436 U.S. at 694, 98 S.Ct. 2018. Nor does the fact that a plaintiff has suffered a

deprivation of federal rights at the hands of an employee infer county or municipal culpability and causation. Bd. of County Com'rs v. Brown, 520 U.S. 397, 403, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997). Instead, to impose § 1983 liability on a government body, a plaintiff must show: (1) that his constitutional rights were violated; (2) that the entity had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation. See Canton, 489 U.S. at 388, 109 S.Ct. 1197. In addition, a plaintiff "must identify those officials who speak with final policymaking authority for that local governmental entity concerning the act alleged to have caused the particular constitutional violation in issue." Grech v. Clayton County, 353 F.3d 1326, 1329 (11th Cir.2003).

Plaintiff has further already been advised that conclusory allegations of a custom or policy are insufficient to state a claim. Miller v. Bartow Cty., Ga., 478 F. App'x 549, 550 (11th Cir. 2012); Harvey v. City of Stuart, 296 F. App'x 824, 826 (11th Cir. 2008). In addition, in order to demonstrate a policy or custom, it is generally necessary to show a persistent and wide-spread practice; random acts or isolated incidents are insufficient. See, e.g., City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-24 (1985) (plurality) ("Proof of a single incident of unconstitutional activity is not sufficient to impose liability under Monell" unless that incident was caused by an existing unconstitutional policy attributable to a policymaker); Depew v. City of St. Marys, 787 F.2d 1496 (11th Cir.1986) ("Normally, random acts or isolated incidents are insufficient to establish a custom or policy"). Prieto v. Metro. Dade Cnty., 718 F. Supp. 934, 938-39 (S.D. Fla. 1989) ("four isolated incidents . . . fall well short of proving a persistent and widespread practice sufficient to establish a policy or custom"); Pineda v. City of Houston, 291 F.3d

325, 329 (5th Cir. 2002) ("Eleven incidents . . . cannot support a pattern of illegality in one of the Nation's largest cities and police forces"); Tomberlin v. Clark, 1 F. Supp. 3d 1213, 1230 (N.D. Ala. 2014)(dismissing Monell claim because, "[i]nstead of showing 'the repeated acts of a final policymaker,' [the plaintiff] provides only facts about his own case"); Hughes v. City of Chicago, No. 08-cv-627, 2011 WL 5395752, at *5 (N.D. Ill. Nov. 8, 2011) (observing that, "while at times the absence of a policy might reflect a decision to act unconstitutionally, one incident---which is all that Plaintiffs' have provided evidence of---in these circumstances is insufficient to establish the need for a policy was so obvious that the municipality effectively exercised a deliberate indifference toward [the plaintiff's] rights"); Fowles v. Stearns, 886 F. Supp. 894, 899 (D. Me. 1995) (refusing to infer the lack of a policy on use of force from one incident involving the plaintiff).

Here, not only does Plaintiff fail to request any permissible injunctive relief, Plaintiff has again failed to allege any facts whatsoever that would state a claim of any unconstitutional custom or policy necessary to support such a request.

Supervisory Liability

Plaintiff purports to sue all the defendants under a theory of supervisory liability, yet makes no factual allegations whatsoever about what any of the defendants did. And again, Plaintiff has already been advised that, to the extent that he may seek to hold the defendants liable in their supervisory capacities, it is well-settled that "supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability." Miller v. King, 84 F.3d 1248, 1261 (11th Cir.2004). Rather, such liability attaches under § 1983 only "when the supervisor personally

participates in the alleged unconstitutional conduct or when there is a causal connection between the actions of a supervising official and the alleged constitutional deprivation." Id. "A causal connection may be established: (1) when a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he [or she] fails to do so; (2) when a supervisor's custom or policy results in deliberate indifference to constitutional rights; or (3) when facts support an inference that the supervisor directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so." Miller, 384 F.3d at 1261 (internal quotations omitted).

As also set forth above, Plaintiff's complaint is replete with references to all sorts of numbers, the majority of which are impossible to decipher as to what they are. However, Plaintiff has already been advised that, to the extent that Plaintiff may be referencing grievances or other types of complaints, the filing a grievance with a supervisor does not alone make the supervisor liable for the allegedly violative conduct brought to light by the grievance, even if the grievance is denied. Weaver v. Toombs, 756 F. Supp. 335, 337 (W.D. Mich. 1989) aff'd, 915 F.2d 1574 (6th Cir. 1990); Edler v. Schwarz, 2010 WL 3211941 at *5 (N.D. Fla. May 13, 2010).

In sum, Plaintiff has again failed to allege any facts whatsoever that would state a claim for supervisory liability against any of the defendants.

Failure to Protect

As set forth above, Plaintiff alleges that he was stabbed in the face while standing in the food line, and that there was no officer present. Liberally construing Plaintiff's allegations, it

is possible that Plaintiff may mean to raise a claim for failure to protect.

To state a claim under 42 U.S.C. § 1983 for failure to protect, a plaintiff must allege that the defendants: (1) were "aware of facts from which the inference could be drawn that a substantial risk of serious harm" existed, (2) actually drew such an inference, and (3) exhibited a conscious or callous indifference to that risk. Purcell v. Toombs County, 400 F.3d 1313, 1319-20 (11th Cir. 2005) (quotation marks omitted); see also id. ("To be deliberately indifferent a prison official must know of and disregard an excessive risk to inmate health or safety." (quotation marks omitted)). Moreover, a valid failure-to-protect claim requires "much more than mere awareness" of an inmate's "generally problematic nature." Carter v. Galloway, 352 F.3d 1349-1350 (11th Cir. 2003)(affirming summary judgment for defendants where, although they knew the plaintiff's cellmate had a history of violence, they had no knowledge of a particularized threat because the plaintiff never complained he feared the cellmate or had been threatened). See also Chatham v. Adcock, 334 Fed. App'x 281, 294 (11th Cir. 2009) ("The fact that Hardy was a 'problem inmate' with 'violent tendencies' simply 'does not satisfy the subjective awareness requirement.'") (quoting Carter at 1350); Lavender v. Kearney, 206 Fed. App'x 860, 863 (11th Cir. 2006) (While defendant officer "may have known of Gray's violent tendencies, there was no evidence he was aware that Gray posed a specific risk to Lavendar or other white FCCC residents.")

Again, Plaintiff has been advised of this standard, yet has still failed to allege any facts whatsoever that would state a failure-to-protect claim against any of the defendants.

Conspiracy Claim

Plaintiff also alleges that "the dept. members was involved in setting everything up," and makes various conclusory references to conspiracy. Plaintiff's allegations are thus also properly liberally construed as an attempt to raise a conspiracy claim.

To state a claim for conspiracy under § 1983, a plaintiff must allege that (1) the defendants reached an understanding or agreement that they would deny the plaintiff one of his constitutional rights; and (2) the conspiracy resulted in an actual denial of one of his constitutional rights. See Hadley v. Gutierrez, 526 F.3d 1324, 1332 (11th Cir.2008). A plaintiff "must show that the parties reached an understanding to deny the plaintiff his or her rights and prove an actionable wrong to support the conspiracy." Bailey v. Board of County Commissioners of Alachua County, Fla., 956 F.2d 1112, 1122 (11th Cir.1992) (internal quotations omitted). The linchpin for a conspiracy claim is the agreement between the parties, and where the complaint fails to allege this agreement, the complaint is deficient and should be dismissed. McKenzie, 765 F.Supp. at 1507; see also Bailey, 956 F.2d at 1122. Moreover, some factual detail about the conspiracy is necessary, as conclusory statements suggesting a conspiracy are not sufficient to state a claim. Spiegel v. City of Chicago, 920 F.Supp. 891, 899 (N.D.Ill.1996), *citing* Tarkowski v. Robert Bartlett Realty Co., 644 F.2d 1204, 1206-07 (7th Cir.1980); and Kunik v. Racine County, 946 F.2d 1574, 1580 (7th Cir.1991).

Here, Plaintiff has similarly already been advised of this standard, and has similarly again failed to allege any facts whatsoever that would state a claim for conspiracy against any of the defendants.

Deliberate Indifference to Serious Medical Needs

Plaintiff also alleges that the defendants did not allow him to go to the hospital, and that he instead had an operation at his place of incarceration. Liberally construing Plaintiff's allegations, this could be read as an attempt to raise a claim of deliberate indifference to serious medical needs.

The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11th Cir. 1999). "However, not 'every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment.'" McElligott v. Foley, 182 F.3d 1248, 1254 (11th Cir. 1999) (citation omitted).

Eighth Amendment claims of deliberate indifference to serious medical needs contain both an objective and a subjective component. Taylor v. Adams, 221 F.3d 1254, 1257 (11th Cir. 2000); Adams v. Poag, 61 F.3d 1537, 1543 (11th Cir. 1995). First, a plaintiff must set forth evidence of an objectively serious medical need. Taylor, 221 F.3d at 1258; Adams, 61 F.3d at 1543. An objectively serious medical need is considered "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Hill v. DeKalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1187 (11th Cir. 1994) (quotation marks and citation omitted). Second, a plaintiff must prove that the prison official subjectively acted with an attitude of "deliberate indifference" to that serious medical need. Farmer v. Brennan, 511 U.S. 825, 834 (1994); McElligott, 182 F.3d at 1254; Campbell, 169 F.3d at 1363. Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. Farmer, 511

U.S. at 835-36. Consequently, allegations of medical malpractice or negligent diagnosis and treatment fail to state an Eighth Amendment claim of cruel and unusual punishment. See Estelle, 429 U.S. at 106; Wilson, 501 U.S. at 298. Indeed, once an inmate has received medical care, courts are hesitant to find that an Eighth Amendment violation has occurred. Hamm, 774 F.2d at 1575.

The Eleventh Circuit has provided guidance concerning the distinction between "deliberate indifference" and "mere negligence." For instance, "an official acts with deliberate indifference when he knows that an inmate is in serious need of medical care, but he fails or refuses to obtain medical treatment for the inmate." Lancaster v. Monroe County, 116 F.3d 1419, 1425 (11th Cir. 1997). The "deliberate indifference" standard may be met in instances where a prisoner is subjected to repeated examples of delayed, denied, or grossly incompetent or inadequate medical care; prison personnel fail to respond to a known medical problem; or prison doctors take the easier and less efficacious route in treating an inmate. See, e.g., Waldrop v. Evans, 871 F.2d 1030, 1033 (11th Cir. 1989).

It also bears noting that courts have long recognized that a difference of opinion between an inmate and the prison medical staff regarding medical matters, including the diagnosis or treatment which the inmate receives, cannot in itself rise to the level of a cause of action for cruel and unusual punishment, and have consistently held that the propriety of a certain course of medical treatment is not a proper subject for review in a civil rights action. See Estelle, 429 U.S. at 107 ("matter[s] of medical judgment" do not give rise to a §1983 claim); see also Ledoux v. Davies, 961 F.2d 1536 (10th Cir. 1992) (inmate's belief that he needed additional medication other than that prescribed by treating physician was insufficient to establish constitutional violation); Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir. 1980) (difference of

opinion between inmate and prison medical staff regarding treatment or diagnosis does not itself state a constitutional violation), cert. denied, 450 U.S. 1041 (1981); Smart v. Villar, 547 F.2d 112, 114 (10th Cir. 1976) (same); Burns v. Head Jailor of LaSalle County Jail, 576 F.Supp. 618, 620 (N.D. Ill., E.D. 1984) (exercise of prison doctor's professional judgment to discontinue prescription for certain drugs not actionable under §1983).

Here, Plaintiff fails to allege sufficient facts to state a claim of deliberate indifference to serious medical needs. While Plaintiff does state that he was stabbed in the face, he fails allege the nature of the resulting injuries and, more importantly, what any of the defendants knew or did in response. Moreover, Plaintiff admits that he received treatment, and fails to allege why he needed to go to the hospital instead, or how the treatment he did receive in fact was inadequate.

Segregation Claim

Plaintiff also alleges that, sometime after his operation, he was put in confinement, and alternatively makes cryptic references to "the segg." Liberally construed, this could be read as a claim taking issue with being put in administrative segregation or confinement.

Prisoners generally do not have a constitutionally recognized liberty interest in a particular security classification or in remaining in the general population. See Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995); see also Trujillo v. Williams, 465 F.3d 1210, 1225 (10th Cir. 2006)(classification of a plaintiff into segregation does not involve deprivation of a liberty interest independently protected by the Due Process Clause)(citations omitted). This is because "the transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a

prison sentence," and "administrative segregation is the sort of confinement ... inmates should reasonably anticipate receiving at some point in their incarceration." Hewitt v. Helms, 459 U.S. 460, 468, 103 S. Ct. 864, 870, 74 L. Ed. 2d 675 (1983). It follows that an inmate's challenges to transfers and classification decisions, which have resulted in more restrictive conditions, fail to state a claim under § 1983 absent a showing that the inmate has been subjected to conditions that impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995).

Punitive Damages

Finally, as set forth above, Plaintiff also requests punitive damages. "Punitive damages are appropriate under § 1983 'when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves callous or reckless indifference to the federally protected rights of others.' " Wright v. Sheppard, 919 F.2d 665, 670 (11th Cir.1990) (*quoting* Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983)).

Here, as explained throughout this report, Plaintiff has fails to state any claims whatsoever against any of the defendants in the first instance. It logically follows, then, the he has similarly failed to state any claims for punitive damages against any of them.

Conclusion

Based on the foregoing, it is recommended that the second amended complaint (DE#19) be dismissed in its entirety pursuant to 28 U.S.C. §1915(e)(2) and 28 U.S.C. §1915A as frivolous, malicious, and failing to state any claim upon which relief may be granted, and as seeking monetary relief from a defendant who is immune from

such relief. It is further recommended that Plaintiff not be granted any further leave to amend. See Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962)(factors counseling against include, *inter alia*, repeated failure to cure deficiencies by amendments previously allowed).

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report. Failure to file timely objections shall bar plaintiff from a *de novo* determination by the district judge of an issue covered in this report and shall bar the parties from attacking on appeal factual findings accepted or adopted by the district judge except upon grounds of plain error or manifest injustice. See 28 U.S.C. §636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790,794 (1989); LoConte v. Dugger, 847 F.2d 745 (11th Cir. 1988); RTC v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993).

It is so recommended at Miami, Florida, this 26th day of January, 2018.

UNITED STATES MAGISTRATE JUDGE

Copy furnished:

Chavalier Dwayne Johnson, Sr.
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PRO SE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Fort Pierce Division

Case Number: 17-14308-CIV-MARTINEZ-WHITE

CHAVALIER DWAYNE JOHNSON, SR.,

Plaintiff,

vs.

WARDEN SEVERSON, et. al.,

Defendants.
_____/

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THIS MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge, for a Report and Recommendation on all dispositive matters [ECF No. 9]. Magistrate Judge White filed a Report and Recommendation [ECF No.21], recommending that (1) Plaintiff's Second Amended Complaint be DISMISSED pursuant to 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915A and (2) Plaintiff not be granted any further leave to amend in light of his prior failures to cure deficiencies by amendments previously allowed. *Foman v. Davis,* 371 U.S. 178, 182 (1962). The Court has reviewed the entire file and record, has made a *de novo* review of the issues that Plaintiff's objections to the Report and Recommendation present [ECF No. 24], and is otherwise fully advised in the premises. The Court finds the issues raised in Plaintiff's objections are already addressed in Magistrate Judge White's well-reasoned Report and Recommendation.

Accordingly, after careful consideration, it is hereby:

ADJUDGED that United States Magistrate Judge Patrick A. White's Report and Recommendation [ECF No. 21] is **AFFIRMED** and **ADOPTED**. Accordingly, it is:

ADJUDGED that

1. Plaintiff's Second Amended Complaint [ECF No. 19] is **DISMISSED WITH PREJUDICE** for the reasons set forth in Magistrate Judge White's Report and Recommendation.

2. This case is **CLOSED** and all pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 3 day of August, 2018.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge White
All Counsel of Record
Chavalier Dwayne Johnson, Sr., *pro se*

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