No. _____

IN THE
SUPREME COURT FOR THE UNITED STATES

_____

October Term, 2020

_____

JOHN JOSEPH BARRERA,

Petitioner,

vs.

JESSICA NEWSOME, at. al.,

Respondents.

PETITIONER'S APPENDIX

Submitted by:

John Joseph Barrera, #160094
In Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Dated: November 20, 2020

APPENDIX
INDEX

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NOT RECOMMENDED FOR PUBLICATION

No. 20-1270

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN JOSEPH BARRERA, Plaintiff-Appellant, v. [UNKNOWN] NEWSOME, Food Service Supervisor; [UNKNOWN] BRAND, Corrections Sergeant; MARGARET A. OUELLETTE, Physician Assistant, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: ROGERS, NALBANDIAN, and MURPHY, Circuit Judges.

John Joseph Barrera, a pro se Michigan prisoner, appeals the district court's judgment dismissing his 42 U.S.C. § 1983 civil rights action for failure to state a claim upon which relief may be granted, pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b) and 42 U.S.C. § 1997e(c). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Barrera filed this action in 2019 against (Unknown) Newsome, (Unknown) Brand, and M. Ouellette, all of whom are employees at the Lakeland Correctional Facility, where Barrera is incarcerated.

According to Barrera, on May 30, 2019, he entered the "Early Diet Line Chow," a food service area that serves elderly prisoners and those with medical issues, such as Barrera. An inmate

("the alleged assailant") working in the food service line allegedly became "very hostile" toward and started arguing with and threatening Barrera.

After Barrera finished his meal, the alleged assailant purportedly hit him in the back of his head as he was exiting the food service area; Barrera claims that this hit rendered him unconscious for approximately one minute. Barrera claims that Newsome was in charge of the food service line, heard the alleged assailant threaten him, and did nothing to stop the assault. Barrera also claims that Brand was the custody supervisor on duty at the time of this incident, heard the alleged threats, and failed to intervene.

Barrera alleges that he was taken to medical and then to an outside hospital, where it was determined that he had a "lump and swelling" on the back of his head.

According to Barrera, he requested additional medical treatment for his head injuries on May 31, 2019, June 5, 2019, and June 11, 2019, all of which Ouellette denied.

Barrera alleges that he was finally sent to an outside hospital on August 6, 2019, where a CT scan was conducted. He also purportedly received an EKG on October 3, 2019, and alleges that he was given pain medication that day.

Allegedly, Barrera complained to Ouellette that his pain medication was insufficient, and Ouellette purportedly refused to send Barrera for an MRI and increased the dosage of his pain medication, "knowing that [he has] a bad liver disorder."

Based on the foregoing facts, Barrera claims that the defendants failed to protect him from other inmates and deprived him of adequate medical treatment, in violation of the Eighth Amendment.

The district court dismissed Barrera's complaint, reasoning that Barrera failed to state an Eighth Amendment claim against any of the defendants.

Barrera then filed a motion for reconsideration pursuant to Rule 59(e), which the district court denied. Barrera now appeals the denial of his Rule 59(e) motion. "[A]s a general matter, the appeal from the denial of a Rule 59(e) motion is treated as an appeal from the underlying

judgment itself." *Bonner v. Metro. Life Ins.*, 621 F.3d 530, 532 (6th Cir. 2010) (quoting *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 833 (6th Cir. 1999))

Standard of Review

We review de novo the dismissal of a complaint under 28 U.S.C. §§ 1915(e) and 1915A and 42 U.S.C. § 1997e(c). *Flanory v. Bonn*, 604 F.3d 249, 252 (6th Cir. 2010). To survive dismissal under these statutes, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Eighth Amendment Claim

The Eighth Amendment protects inmates by requiring prison officials to take reasonable measures to guarantee inmates' safety. *Mingus v. Butler*, 591 F.3d 474, 479 (6th Cir. 2010). "[T]he elements of an Eighth Amendment violation have both objective and subjective components." *Id.* at 479-80. "First, the failure to protect from risk of harm must be objectively sufficiently serious." *Id.* at 480 (quoting *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008)). Second, the inmate must show that the official acted with deliberate indifference by knowing of and disregarding an excessive risk to inmate health or safety. *Id.*

Defendants Brand and Newsome

The district court properly concluded that Barrera failed to state an Eighth Amendment claim against Brand or Newsome. Even if Barrera's allegations that Brand and Newsome heard the alleged assailant yelling at Barrera, as he claims, these allegations fail to show that Brand and Newsome *knew of* and *disregarded* an *excessive risk* to Barrera's health and safety. *Mingus*, 591 F.3d at 480. Indeed, Barrera alleges that, after the alleged assailant yelled at and threatened him, he was able to sit down and begin to eat his meal. It was only after Barrera attempted to leave the food service area that the alleged assailant abruptly ran after and assaulted Barrera—an altercation that apparently neither Brand nor Newsome anticipated. Based on these allegations, dismissal of Barrera's Eighth Amendment claims against these defendants was proper.

Defendant Ouellette

The district court also properly determined that Barrera failed to state an Eighth Amendment claim against Ouellette. "[W]here a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims that sound in state tort law." *Graham ex rel. Estate of Graham v. County of Washtenaw*, 358 F.3d 377, 385 (6th Cir. 2004) (quoting *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976)).

That is precisely the case here. Barrera alleges that, on the day that he was struck by the alleged assailant, he was taken to medical and thereafter taken to an outside hospital. He further alleges that he received a CT scan, an EKG, and pain medication for his head injury (which he claims was insufficient).

These allegations fail to state a plausible claim that Ouellette violated Barrera's Eighth Amendment rights. Rather, these allegations, at most, state a claim of mere negligence—i.e., that Ouellette failed to respond appropriately to Barrera's injury and failed to provide him adequate medical care. But allegations of negligence or medical malpractice are insufficient to state an Eighth Amendment violation. *See, e.g.*, *Durham v. Nu'Man*, 97 F.3d 862, 868 (6th Cir. 1996) (noting that the Supreme Court has held that "an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind'" for purposes of the Eighth Amendment and that "negligence or 'medical malpractice' alone is insufficient to establish liability" (quoting *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976)).

To the extent that Barrera challenges Ouellette's failure to timely treat him, such a claim could arguably be construed as alleging a delay in treatment and would then come under "a separate branch of Eighth Amendment decisions." *Blackmore v. Kalamazoo County*, 390 F.3d 890, 897 (6th Cir. 2004); *see also Morabito v. Holmes*, 628 F. App'x 353, 358 (6th Cir. 2015). To establish such a delay-in-treatment claim, an inmate "must place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment." *Napier v. Madison*

County, 238 F.3d 739, 742 (6th Cir. 2001) (quoting *Hill v. Dekalb Reg'l Youth Det. Ctr.*, 40 F.3d 1176, 1188 (11th Cir. 1994), *overruled in part on other grounds by Hope v. Pelzer*, 536 U.S. 730 (2002)); *see also Love v. Taft*, 30 F. App'x 336, 337-38 (6th Cir. 2002) (order) (applying the *Napier* standard to an appeal from a § 1915A(b) dismissal). A detrimental effect is an "injury, loss, or handicap." *Blackmore*, 390 F.3d at 897. Because Barrera failed to allege facts showing that the delay caused his condition to deteriorate, his claim would also fail under this standard.

Leave to Amend Complaint

Finally, Barrera argues that the district court erred by not allowing him to amend his complaint. But Barrera did not move for leave to amend his complaint or submit a proposed amended complaint. In these circumstances, "it was impossible for the district court to determine whether leave to amend should [be] granted." *Spadafore v. Gardner*, 330 F.3d 849, 853 (6th Cir. 2003); *see also United States ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 739 F. App'x 330, 335 (6th Cir. 2018) ("[A] district court does not abuse its discretion by failing to grant leave to amend where the plaintiff has not sought leave and offers no basis for any proposed amendment.").

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

SA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN JOSEPH BARRERA,

Plaintiff,

Case No. 1:19-cv-961

Honorable Paul L. Maloney

v.

UNKNOWN NEWSOME et al.,

Defendants.
_____/

ORDER

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. On January 14, 2020, the Court issued an opinion and order (ECF Nos. 4 and 5) dismissing Plaintiff's complaint for failure to state a claim upon which relief can be granted. This matter is presently before the Court on Plaintiff's motion for reconsideration or to amend judgment (ECF No. 6).

In the opinion dismissing Plaintiff's complaint, the Court held that Plaintiff's Eighth Amendment claims against Defendants Newsome and Brand lacked merit because he failed to allege facts showing that they failed to protect him from a known serious risk of attack. The Court also dismissed Plaintiff's Eighth Amendment denial of medical care claim against Defendant Ouellette because the facts as alleged by Plaintiff did not show that his treatment was "so woefully inadequate as to amount to no treatment at all." *Alspaugh v. McConnell*, 643 F.3d 162, 169 (6th Cir. 2011).

In Plaintiff's motion, he contends that the Court should not have dismissed his complaint for failure to state a claim on initial screening. Plaintiff is incorrect. As noted in the January 14, 2020, opinion, the Court is required to dismiss any prisoner action brought under

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federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). Reading Plaintiff's *pro se* complaint indulgently and accepting Plaintiff's allegations as true, the Court properly concluded that the facts as asserted by Plaintiff do not rise to the level of an Eighth Amendment violation. Because Plaintiff's complaint fails to allege facts showing a violation of his constitutional rights, his motion will be denied.

IT IS HEREBY ORDERED that Plaintiff's motion for reconsideration or to amend judgment (ECF No. 6) is **DENIED**.

Dated: February 21, 2020

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN JOSEPH BARRERA,

Plaintiff,

v.

UNKNOWN NEWSOME et al.,

Defendants.
/

Case No. 1:19-cv-961

Honorable Paul L. Maloney

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim.

Discussion

I. Factual allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Lakeland Correctional Facility (LCF) in Coldwater, Branch County, Michigan.

Plaintiff was sixty-seven years old and had a liver disorder. Defendant Ouellette told Plaintiff that she would not waste taxpayer's money by sending Plaintiff for an MRI. Plaintiff filed grievances regarding the failure to protect and the denial of medical treatment, but his grievances were rejected at each step.

Plaintiff states that Defendants violated his rights under the Eighth Amendment. Plaintiff seeks compensatory and punitive damages, as well as equitable relief.

II. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails "'to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). The court must determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "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." *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a "'probability requirement,' . . . it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (holding that the

In order for a prisoner to prevail on an Eighth Amendment claim, he must show that he faced a sufficiently serious risk to his health or safety and that the defendant official acted with "'deliberate indifference' to [his] health or safety." *Mingus v. Butler*, 591 F.3d 474, 479-80 (6th Cir. 2010) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (applying deliberate indifference standard to medical claims)); *see also Helling v. McKinney*, 509 U.S. 25, 35 (1993) (applying deliberate indifference standard to conditions of confinement claims)).

Inmates have a constitutionally protected right to personal safety grounded in the Eighth Amendment. *Farmer*, 511 U.S. at 833. Thus, prison staff are obliged "to take reasonable measures to guarantee the safety of the inmates" in their care. *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984). To establish a violation of this right, Plaintiff must show that Defendant was deliberately indifferent to the Plaintiff's risk of injury. *Walker v. Norris*, 917 F.2d 1449, 1453 (6th Cir. 1990); *McGhee v. Foltz*, 852 F.2d 876, 880-81 (6th Cir. 1988). While a prisoner does not need to prove that he has been the victim of an actual attack to bring a personal safety claim, he must at least establish that he reasonably fears such an attack. *Thompson v. Cty. of Medina*, 29 F.3d 238, 242-43 (6th Cir. 1994) (holding that plaintiff has the minimal burden of "showing a sufficient inferential connection" between the alleged violation and inmate violence to "justify a reasonable fear for personal safety.")

Plaintiff states that Defendants Newsome and Brand heard Plaintiff's attacker arguing loudly with Plaintiff while he was in the chow line, and that they failed to intervene before Plaintiff was assaulted. However, the fact that a prisoner was yelling at Plaintiff, without more, does not indicate that Plaintiff at serious risk of being physically attacked. Plaintiff alleges that after he got his tray, he sat at a table and began eating. Plaintiff was not actually assaulted until he attempted to leave the chow hall. After reviewing the complaint, the Court concludes that

Not every claim by a prisoner that he has received inadequate medical treatment states a violation of the Eighth Amendment. *Estelle*, 429 U.S. at 105. As the Supreme Court explained:

> [A]n inadvertent failure to provide adequate medical care cannot be said to constitute an unnecessary and wanton infliction of pain or to be repugnant to the conscience of mankind. Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.

Id. at 105-06 (quotations omitted). Thus, differences in judgment between an inmate and prison medical personnel regarding the appropriate medical diagnoses or treatment are not enough to state a deliberate indifference claim. *Sanderfer v. Nichols*, 62 F.3d 151, 154-55 (6th Cir. 1995); *Ward v. Smith*, No. 95-6666, 1996 WL 627724, at *1 (6th Cir. Oct. 29, 1996). This is so even if the misdiagnosis results in an inadequate course of treatment and considerable suffering. *Gabehart v. Chapleau*, No. 96-5050, 1997 WL 160322, at *2 (6th Cir. Apr. 4, 1997).

The Sixth Circuit distinguishes "between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment." *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976). If "a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law." *Id.*; *see also Rouster v. Saginaw Cty.*, 749 F.3d 437, 448 (6th Cir. 2014); *Perez v. Oakland Cty.*, 466 F.3d 416, 434 (6th Cir. 2006); *Kellerman v. Simpson*, 258 F. App'x 720, 727 (6th Cir. 2007); *McFarland v. Austin*, 196 F. App'x 410 (6th Cir. 2006); *Edmonds v. Horton*, 113 F. App'x 62, 65 (6th Cir. 2004); *Brock v. Crall*, 8 F. App'x 439, 440 (6th Cir. 2001); *Berryman v. Rieger*, 150 F.3d 561, 566 (6th Cir. 1998). "Where the claimant received

Should Plaintiff appeal this decision, the Court will assess the $505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is barred from proceeding *in forma pauperis*, *e.g.*, by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the $505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A judgment consistent with this opinion will be entered.

Dated: January 14, 2020

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

Certified as a True Copy
By _____
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date 1/14/20

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN JOSEPH BARRERA,)
)
Plaintiff,)
)
v.)
)
)
)
MS. NEWSOME, Food Service Supervisor;)
C/O BRAND, Corrections Sergeant, and,)
M. OUELLETTE, Physician Assistant,)
In their Individual Capacity,)
)
Defendants.)

Civil Action No. _____
Hon._____
Mag. _____

42 USC § 1983 CIVIL RIGHTS COMPLAINT AND JURY DEMAND

NOW COMES, John Joseph Barrera, and for his verified Complaint, pursuant to Title 42 USC § 1983; The Fourteenth Amendments to the US Constitution, and the Institutionalized Person's Act of 1963, submits his Complaint against Defendants on information and belief, and allege as follows:

I. Introduction

This Civil Rights Action involves deprivations of Plaintiff's Fourteenth Amendment Rights to be protected from harm while confined, and the deliberate indifference for the delay in providing adequate pain medication following an assault from another prisoner. The matter in controversy involves Defendants' failure to act when they had a duty to act, and failed to provide needed medication following an attack. Plaintiff seeks monetary damage awards for compensatory and punitive damages in excess of Ten Thousand Dollars jointly and severally.

Defendants, in their individual capacities, act under the color of state law, while performing their individual duties at the Lakeland Correctional Facility in Coldwater, Michigan 49036, under the authority of the Michigan Department of Corrections - a State Agency.

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II. Jurisdiction

Jurisdiction is vested in this Court pursuant to Title 28 USC §§ 1331;1333; Title 42 USC § 1983. This Court is vested with subject matter jurisdiction on all claims arising under the Constitution of the United States, its laws and treaties. Plaintiff invokes all pendent jurisdiction claims under state law in conjunction with the violations of his constitutional rights under the US Constitution, or the State Statutory Enactment of MCL § 19.142 - prohibiting annoyance of a prisoner while confined.

III. Parties

All parties involved in this action are associated with, the Michigan Department of Corrections. Defendants are employees of the MDOC, or contracted with the MDOC, while Plaintiff is prisoner confined under the custody/supervision of the MDOC. Defendants perform their duties at the lakeland Correctional Facility in Coldwater, Michigan. Plaintiff is confined at the Lakeland Correctional Facility, in Coldwater, Michigan 49036. The parties can be addressed as listed below:

Plaintiffs:

John Joseph Barrera, #160094
~~Joshua Lopp, #654488~~
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Defendants:

Ms. Newsome, F.S.S.
Sgt. Brand,
M. Ouellette, P.A.
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

IV. Other 1983 Civil Rights Litigation

Plaintiff has not previously filed a complaint in this Court, or any other state or federal court, which was dismissed, transferred, or reassigned after having been assigned to a judge. Plaintiff has not submitted any other action under the PLRA, nor any other statutory provision allowing a prisoner to submit a 42 USC § 1983 civil rights complaint and jury demand regarding the conditions of his confinement. This is the first time Plaintiff has litigated this claim in a court of law under the PLRA.

V. Exhaustion Requirement

Plaintiff exhausted all his administrative remedies on the claims asserted in the body of his 42 USC § 1983 Complaint within the structure of the Michigan Department of Corrections. Plaintiff exhausted his remedies in grievance identifier code numbers LCF 19-06-0518-28B [Failure to Protect], and LCF-19-06-0572-28e [Delay in Providing Pain Medication]. (Exhibits: A and B).

VI. Statement of Case

1. This is a civil rights action pursuant Title 42 USC § 1983, for Defendants' failure to protect Plaintiff from harm from another prisoner, as well as deliberate indifference to a serious medical need following the attack. The matter in controversy is a deprivation of Plaintiff's Eighth and Fourteenth Amendments, when Defendants deprived him of his right to be confined in a safe environment. Defendants, collectively, deprived Plaintiff of his constitutional right to Equal Protection of the Law under the Fourteenth Amendment, and subjected him to Cruel and/or Unusual Punishment under the Eighth Amendment. Plaintiffs seeks monetary awards under the compensatory and punitive allowence provision of 42 USC § 1983, and injunctive relief in this action.

2. Defendants are employees of the Michigan Department of Corrections. They perform their duties under the color of state law. They are sued in their individual capacity for purposes of this litigation. Plaintiff is a prisoner cared for under the supervision of the MDOC, its officers, agents, and employees, including all those who are under contract with the MDOC..

VII. Statement of Facts

3. Plaintiff is currently confined at the Lakeland Correctional Facility in Coldwater, Michigan 49036. He is an elderly prisoner who has medical issues and he eats on the Chow Hall Diet Lines, which is separate from the general population food serving meal lines.

4. On or about May 30, 2019, Plaintiff entered the Food Service Area for his diet line noon meal which the facility authorizes by detail/call out, which is commonly referred to as [Early Diet Line Chow]. As he entered the food serving line to receive his designated diet tray of food, a White Inmate diet line worker became very hostile toward him and started arguing. The serving line prisoner raised his voice so loud that all other inmates stopped, looked and listened to the argument.

5. Plaintiff received his diet tray and proceeded to a table where he could eat his meal. Plaintiff was so nerveous that he could not finish his meal so he got up to leave the chow hall after turning in his diet tray. As he approached the exit doors, the White Prisoner left the serving lines and ran over and hit Plaintiff in the back of the head where he fell to the floor unconscious and laid there for approximately one minute, and he got up and left the chow hall area.

6. As Plaintiff exited the chow hall doors, Sgt. Bland and another officer came out and ordered Plaintiff escorted to health care where he was taken to an outside hospital, where it was determined that Plaintiff had a "lump and swelling" on his head area where he had been strucked.

7. Defendant, Ms. Newsome, was incharge of the food serving diet line as the supervisor. She witnesses the loud boisterous White Prisoner make threats to Plaintiff and did nothing to stop the confrontation as the serving prisoner was under her immediate supervision.

8. Defendant, Sgt. Brand was the custody supervisor in charge of the chow hall on May 30, 2019, who overheard the threats from the assaulting White Prisoner, but did not intervein when the prisoner became boisterous and loud to cause other prisoners to stop, look, and listen.

9. Plaintiff requested further medical treatment for his headaches and lump on his head on May 31; June 5, and June 11, 2019, but was denied by Defendant Margaret Ouellette, who told him that she would not waste tax payer's money.

10. On August 6, 2019, Plaintiff was finally sent to Henry Ford Hospital in Jackson, Michigan and a C.T. scan on his head was administered. Plaintiff was provided an EKG on October 3, 2019 and pain medication was finally ordered for him.

11. Plaintiff complained that the medication was not working and Defendant Ouellette increased the meds from 10 mg to 25 mg. Defendant Ouellette again told Plaintiff that she would not waste the tax payers' money by sending him out for an MRI. She instead, increased the medication to 50 mg knowing that Plaintiff's had a bad liver disorder at age 67.

12. Plaintiff submitted his grievances on both the assauly in the chow hall and the delay in receiving medication for the pain in his head. Both were rejected at al lthree steps leaving him with no avenue for complete exhaustion of his administrative remedies. [Exhibits A and B].

13. Defendants, collectively, owed a duty to Plaintiff to protect him from harm at the ahnds of other prisoners and to provide him with adequate medical treatment while confined. Notably, the chow hall area is fully equipt with cameras for monitoring prisoners while in the chow hall area, and has a Sgt. desk foe supervisory monitoring. Defendants, Newsome and Brand deprived Plaintiff of his safety rights when they ignored the White Prisoner's threats towards Plaintiff.

VIII. Claims for Relief

14. Plaintiff incorporates herein by reference all paragraphs as set forth above, and claims relief in an action at law from those facts which specifically sets forth a violation, under the Eighth and Fourteenth Amendments of the United States Constitution, as well as relief under the state law mandate that employees cannot annoy, discriminate, harass, ridicule, or mistreat prisoners while cared for by the MDOC. Cf. MCL § 19.142.

Count-One

15. The acts and omissions of Defendants, Newsome and Brand as set forth above, by denying Plaintiff protection from harm, after he was verbally threatened, constitutes a failure to protect creating cruel and unusual punishment by subjecting him to an assault causing severe pain and suffering actionable under the Eighth Amendment of the US Constitution.

Count-Two

16. The acts of commission by Defendants Newsome and Brand by failing to properly supervise the assaulting prisoner, or take charge of the security of Plaintiff;s well being while in their supervised areas and allowed him to be brutally assaulted, constitutes deliberate indifference to Plaintiff's safety actionable under the Fourteenth Amendment of the US Constitution.

Count-Three

17. The acts and omissions, coupled with the acts of commissions, as set forth above by Defendant M. Ouellette when she failed on numerous occasions to provide pain medication to Plaintiff after having been assaulted, constitutes a wilfull and wanton refusal to provide medical treatment by delaying medication to combat the severe pain and suffering caused by the assault which is actionable under the Eighth and Fourteenth Amendment of the US Constitution by the deliberate indifference she displayed toward Plaintiff.

Count-Four

18. The acts and omissions, coupled with the acts of commissions by all Defendants as set forth above, collectively, constitutes a denial of fundamental due process of law, equal protection of the law, and a right to be free of cruel and unusual punishment by allowing the assault, had the authority to

prevent the assault, and after the assault, acted with deliberate indifference to a serious medical need by withholding pain medication and telling Plaintiff money would not be wasted on his serious medical needs, constitutes an immediate injury in fact actionable under the Fourteenth Amendment of the US Constitution, depriving Plaintiff of his right to be treated equally under the laws of the United States and the State of Michigan.

19. The blatant acts and omissions, as well as the acts of commissions by all Defendants, collectively, constitute an injury in fact where Plaintiff is/was deprived of his right to be placed in a safe environment while confined in the custody of the MDOC.

Immunities

20. Defendants, all of whom act and perform their duties under the color of law, have no immunity to these counts as alleged in this complaint, as they acted in bad faith, and they did not rely on any policy or procedure to prevent them from protecting Plaintiff from harm, or to provide adequate medical treatment following an assault. Nor is/was there any 'penalogical' interest in depriving Plaintiff of his constitutional rights.

21. Defendants have no immunity, qualified, or otherwise as the law was clearly established that their conduct was a deprivation of Plaintiff's constitutional rights which has been secured under the US Constitutional safeguards of the Eighth and Fourteenth Amendments.

IX. Proximate Cause of Harm

22. Plaintiff asserts that the acts, omissions, and the acts of commissions as set forth above by all Defendants are the proximate cause of his harm and danages. Plaintiff has suffered severe pain and suffering, and the loss of his valued constitutional rights by the callous disregards of the Defendants and but for their willfull violation of the law, Plaintiff would not be suffering.

Plaintiff reserve his right to amend his complaint after complete exhaustion of any available administrative remedies consistent with the PLRA and FRCP 15a, and Fed. Rule Civ. Proc. 23(a)(2).

X. Jury Demand

Plaintiff demands a trial by jury on all claims triable under the laws of the United States, and a trial on those claims under any state law rights.

RELIEF REQUESTED

Plaintiff seeks relief in the following manner as to each Defendant listed in this complaint, jointly and severally for:

a). A declaratory ruling that their individual acts and omissions, coupled with their acts of commissions constitutes a denial of Plaintiff's Eighth and Fourteenth Amendment rights;

b). A monetary judgment award in excess of Ten Thousand Dollars [$10,000.00] as compensatory for Plaintiff's harm;

c). Punitive damage awards in excess of Ten Thousand Dollars, jointly and severally, as a mode of punishment for the willfull violation of the US Constitution, and;

d). Grant any such other relief, rewards, rulings that this Court deems just and proper for the unlawful conduct as set forth above.

Submitted by,

John Joseph Barrera 01/12/2021

Dated: November 5, 2019

John Joseph Barrera, #160094
In Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Verification

I, John Joseph Barrera, do hereby verify under the penalty of perjury, that I have read the above complaint and jury demand. That the same is true in all respects as to the statement of facts. That as to Constitutional provisions, statutes, and all other legal concepts, I believe them to be true and hereby place my reliance thereupon. FURTHER, I say not.

Dated: November 5, 2019

/s/ John Joseph Barrera
John Joseph Barrera

John Joseph Barrera 01/12/2021