Appendix A.1

United States Court of Appeals
For the Eighth Circuit

No. 23-2984

Nersius Adonliel Artisani, also known as Roger Joseph Hoffert, Jr.

Plaintiff - Appellant

v.

State of Iowa; Captain Neff, Captain, Black Hawk County Jail; Lt. Braun, Black Hawk County Sheriff's Office; Sergeant Paulsen, Black Hawk County Sheriff's Office; Thompson, Sheriff, Black Hawk County

Defendants - Appellees

Appeal from United States District Court
for the Northern District of Iowa - Eastern

Submitted: January 9, 2024
Filed: January 22, 2024
[Unpublished]

Before BENTON, ERICKSON, and STRAS, Circuit Judges.

PER CURIAM.

Iowa pretrial detainee Nersius Artisani, formerly Roger Hoffert, appeals after the district court dismissed his pro se 42 U.S.C. § 1983 complaint. Having jurisdiction under 28 U.S.C. § 1291, this court affirms in part, reverses in part, and remands for further proceedings.

Initially, this court affirms the district court's dismissal of the State of Iowa as a defendant. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66, 71 (1989) (Eleventh Amendment bars suit against state for alleged deprivation of civil liberties unless state waived immunity).

As to the remaining defendants, this court affirms the dismissal of Artisani's challenge to his segregation restrictions as unconstitutional conditions of confinement. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (in evaluating the constitutionality of conditions or restrictions of pretrial detention, the proper inquiry is whether they amount to punishment under the Due Process Clause); *Karsjens v. Lourey*, 988 F.3d 1047, 1052-53 (8th Cir. 2021) (regarding pretrial detainees, the prohibition against punishment encompasses conditions of confinement). Artisani claimed that in segregation he was denied commissary privileges, some cleaning supplies, and the right to attend substance abuse classes and religious services. We conclude, based in part on the grievance responses Artisani submitted, that these conditions did not amount to punishment. *See Beard v. Banks*, 548 U.S. 521, 533 (2006) (withholding privileges "is a proper and even necessary management technique to induce compliance with the rules of inmate behavior, especially for high-security prisoners who have few other privileges to lose"); *Smith v. Copeland*, 87 F.3d 265, 268 (8th Cir. 1996) (if particular condition or restriction of pretrial detention is reasonably related to legitimate governmental objective, it does not, without more, amount to punishment; government has legitimate interests that stem from need to manage facility where individual is detained); *Stickley v. Byrd*, 703 F.3d 421, 424 (8th Cir. 2013) (citing sanitation-related deprivations that did not constitute constitutional violations); *Kemp v. Black Hawk Cnty. Jail*, No. C15-2094, 2017 WL 581316, at *10 (N.D. Iowa Feb. 13, 2017) (because maximum security policies related to religious observance and access to reading materials furthered safety and security of jail, plaintiff's confinement in maximum security did not amount to constitutional punishment).

This court also affirms the dismissal of Artisani's claims that the restriction on attending classes and religious services violated the Americans with Disabilities

Act (ADA), and his right to equal protection. *See* 42 U.S.C. § 12101 (ADA protects individuals from being discriminated against because of a disability); *Nolan v. Thompson*, 521 F.3d 983, 989-90 (8th Cir. 2008) (for equal protection claim, plaintiff must prove defendants treated him differently from others similarly situated, without a rational basis); *Hosna v. Groose*, 80 F.3d 298, 305 n.10 (8th Cir. 1996) (finding no equal protection violation when restrictions on administrative segregation inmates' access to prison resources, such as classes, were reasonable due to safety concerns).

As to the dismissal of Artisani's claim that he was placed in segregation without due process on several occasions, it is not clear at this stage of the proceedings whether the placements amounted to punishment. *See Bell*, 441 U.S. at 535; *Hall v. Ramsey Cnty.*, 801 F.3d 912, 919 (8th Cir. 2015) (if plaintiff asserts defendants unconstitutionally placed him in seclusion as a form of punishment, court must examine whether the record supports a claim that defendants placed him in seclusion as "punishment" and not to serve a "legitimate governmental objective"). Thus, the court concludes that further proceedings are necessary as to this claim.

The judgment is affirmed as to the dismissal of the State of Iowa as a defendant, and as to Artisani's challenges to his conditions of confinement. The judgement is reversed as to the dismissal of his due process claim, and the case is remanded for further proceedings in accordance with this opinion. Artisani's pending appellate motions are denied.

Appendix B.1

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2984

Nersius Adonliel Artisani, also known as Roger Joseph Hoffert, Jr.

Appellant

v.

State of Iowa, et al.

Appellees

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(6:23-cv-02045-CJW)

ORDER

The motion to file an overlength petition for rehearing and the motion seeking leave to supplement the petition for hearing are denied. The petition for an en banc rehearing and petition for a panel rehearing are also denied.

February 12, 2024

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix C/

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

NERSIUS ADONLIEL ARTISANI, Plaintiff, vs. STATE OF IOWA, *et. al.*, Defendants.	No. 23-CV-2045-CJW-MAR **INITIAL REVIEW ORDER**

This matter is before the Court on plaintiff Nersius Adonliel Artisani's[1] pro se complaint filed under Title 42, United States Code, Section 1983. (Doc. 1). Plaintiff also has filed a pro se motion to appoint counsel, (Doc. 2), a pro se motion for recusal, (Doc. 7), pro se correspondence (Doc. 9), and pro se motions to amend his complaint and supplements to his complaint (Docs. 4, 5, 6, 8). Plaintiff has submitted the required filing fees.[2] In his complaint, plaintiff alleges defendants violated his due process and Eighth Amendment rights with conditions of confinement and practices at Black Hawk County Jail.[3] For the reasons set forth below, the Court dismisses plaintiff's complaint for failure to state a cognizable claim. The Court also denies his motions for recusal and to appoint counsel.

[1] Plaintiff was previously known as Roger Joseph Hoffert, Jr. (*See* Doc. 1, at 23-24).

[2] Because plaintiff has three qualifying strikes under Title 28, United States Code, Section 1915(g), he could not file a motion to proceed in forma pauperis and was given 30 days to pay the full $402 filing fee. (Doc. 3).

[3] Plaintiff is currently a pretrial detainee at the Black Hawk County Jail in Waterloo, Iowa.

I. MOTION FOR RECUSAL

Plaintiff requests the assignment of a different judge because the undersigned judge was assigned to four of plaintiff's prior cases. (Doc. 7). Plaintiff contends he is not accusing anyone of "case fixing or intentionally assigning [the undersigned judge] to my case for nefarious and prejudicial reasons" but he asserts one could view it that way. (*Id.* at 1). Thus, he requests the recusal of the undersigned judge to avoid the appearance of impropriety. (*Id.*).

Recusal is required when the presiding judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "A party introducing a motion to recuse carries a heavy burden of proof; a judge is presumed to be impartial and the party seeking disqualification bears the substantial burden of proving otherwise." *Pope v. Federal Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992) (citing *Ouachita Nat'l Bank v. Tosco Corp.*, 686 F.2d 1291, 1300 (8th Cir. 1982)). *See also Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995) ("a judge has as strong a duty to sit when there is no legitimate reason to recuse as he does to recuse when the law and facts require"). Section 455(a) imposes an objective reasonableness standard based not on whether a litigant "might believe that a bias exist[s]" but "whether the 'average person on the street' would question the impartiality of the judge." *Id.*

Here, plaintiff has not submitted an affidavit alleging facts which, if true, would establish that the undersigned judge has personal bias for or against him or the defendants. Indeed, he affirmatively disavows assertions of bias. Even if plaintiff had submitted an affidavit, his allegations fail to rise beyond the level of "conclusions, opinions, and rumors," which are insufficient to demonstrate bias. *Davis v. Comm'r*, 734 F.2d 1302, 1303 (8th Cir. 1984). Plaintiff cites no authority for the proposition that there is a conflict of interest simply because the undersigned judge also handled previous cases that plaintiff filed. There are, after all, only two district court judges in the Northern District of Iowa.

The Court finds no conflict of interest exists, and the Court will not recuse itself. Plaintiff's motion is **denied**.

II. INITIAL REVIEW STANDARD

Courts must liberally construe a pro se complaint. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam); *Smith v. St. Bernards Reg'l Med. Ctr.*, 19 F.3d 1254, 1255 (8th Cir. 1994); *see also Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004). The Court is obligated to review this case under the provisions of Title 28, United States Code, Section 1915A(a). The Court may dismiss a complaint if it is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant that is immune from a monetary judgment. 28 U.S.C. § 1915A(b).

In reviewing a prisoner or in forma pauperis complaint, unless the facts alleged are clearly baseless, a court must weigh them in favor of the plaintiff. *See Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). Pro se complaints, however, must allege sufficient facts to support the plaintiff's claim. *Stone*, 364 F.3d at 914. A claim is "frivolous" if it "lacks an arguable basis in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Carmichael v. Fed. Bureau of Prisons*, 2010 WL 5829239, at *1 (D. Minn. Dec. 20, 2010) (applying *Neitzke* in a Section 1915A initial review). In determining whether a complaint fails to state a claim, courts generally rely on the standards articulated in Federal Rule of Civil Procedure 12(b)(6). *See Hake v. Clarke,* 91 F.3d 1129, 1132 & n.3 (8th Cir. 1996) (stating initial review for Rule 12(b)(6) purposes was authorized for prisoner cases under 28 U.S.C. § 1915A). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "In evaluating whether a pro se plaintiff has asserted sufficient facts to state a claim, we hold 'a pro se complaint, however inartfully pleaded, . . . to less stringent standards than formal pleadings drafted by lawyers.'" *Jackson v. Nixon,* 747

F.3d 537, 541 (quoting *Erickson v. Pardus,* 551 U.S. 89, 94 (2007) (per curiam)) (modifications in original).

III. INITIAL REVIEW ANALYSIS

A. Section 1983 Standard

Title 42, United States Code, Section 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

Section 1983 was designed to provide a "broad remedy for violations of federally protected civil rights." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 685 (1978). However, Title 42, United States Code, Section 1983 provides no substantive rights. *See Albright v. Oliver*, 510 U.S. 266, 271 (1994); *Graham v. Conner*, 490 U.S. 386, 393-94 (1989); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617 (1979). "One cannot go into court and claim a 'violation of [Section] 1983'—for [Section] 1983 by itself does not protect anyone against anything." *Chapman*, 441 U.S. at 617. Rather, Section 1983 provides a remedy for violations of all "rights, privileges, or immunities secured by the Constitution and laws [of the United States]." 42 U.S.C. § 1983; *see also Albright*, 510 U.S. at 271 (stating that Section 1983 "merely provides a method for vindicating federal rights elsewhere conferred."); *Graham*, 490 U.S. at 393-94 (same); *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) ("Constitution and laws" means Section 1983 provides remedies for violations of rights created by federal statute, as well as those created by the Constitution.). To state a claim under Section 1983, a plaintiff must establish: (1) the violation of a right secured by the Constitution or laws of the United States and (2) the alleged deprivation of that right was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Initial Review Analysis

In his initial complaint, plaintiff alleges that defendants violated his due process and Eighth Amendment rights by: (1) wrongfully placing plaintiff in the maximum security A-Pod between February 23, 2023, and May 29, 2023; (2) refusing to allow detainees to have privileges such as commissary items when they are housed in the A-Pod; (3) taking away and placing in storage previously purchased commissary items when moving an individual from general population to the A-Pod; and (4) refusing to provide brooms, mops, and toilet brushes to inmates housed in A-Pod. (Doc. 1, at 14-21). Plaintiff asserts that inmates and detainees are placed in A-2 for disciplinary segregation and those with "violent pending charges or have been in the Jail in the past and have displayed disruptive/violent behavior or have mental health issues or disciplinary issues are placed in A-1 or A-3 part of the A-Pod." (*Id.* at 14). In sum, plaintiff challenges the lack of privileges for those individuals housed in the A-Pod compared with those in general population. Plaintiff names as defendants the State of Iowa and employees of the Black Hawk County Jail, including Captain Neff, Lieutenant Braun, Sergeant Paulsen, and Sheriff Thompson. (*Id.* at 2-3, 4). Plaintiff seeks $10,000 in compensatory damages, $1,000,000 in punitive damages, $100,000 in other damages, and an injunction. (*Id.* at 6).

At the outset, the Court notes that the State of Iowa is an improper defendant. Section 1983 specifically provides for a federal cause of action against a "person" who, under color of state law, violates another's federal rights. In *Will v. Michigan Dept. of State Police*, the Supreme Court ruled "that a State is not a person within the meaning of § 1983." 491 U.S. 58, 63 (1989). *See also Owens v. Scott Cty. Jail,* 328 F.3d 1026, 1027 (8th Cir. 2003) (stating that "county jails are not legal entities amenable to suit"); *Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (8th Cir. 1992) (stating that "departments or subdivisions" of local government are not "juridical entities suable as such"); *and De La Garza v. Kandiyohi Cty. Jail,* 18 Fed. Appx. 436, 437 (8th Cir. 2001)

(affirming district court dismissal of county jail and sheriff's department as parties because they were not suable entities). Thus, the State of Iowa must be dismissed as a defendant.

1. Motions to Amend and Supplements

In the two months since plaintiff filed his initial complaint, plaintiff has filed numerous pro se motions to amend his complaint and supplements to his complaint totaling over 50 pages in which he seeks leave to add additional defendants and claims. (*See* Docs. 4, 5, 6, 8, 9). First, plaintiff seeks leave to add defendants Sergeant Nai and Sergeant Stainbrook and claims that: (1) defendants do not allow inmates housed in maximum security A-1 and A-3 to attend Pathways drug and alcohol classes and (2) all communications via CIDNET on kiosks are reviewed and stored, including those with attorneys. (Doc. 4, at 1; Doc. 4-1, at 1-2). Plaintiff also reasserts his initial claim challenging his placement in A-Pod and requests an injunction to cease his confinement in that unit. (Doc. 4-1, at 5-6). He then filed a second motion to amend and requested leave to add Encartele, which he asserts owns and operates CIDNET kiosks, and three unnamed defendants who oversee and administer CIDNET. (Doc. 5, at 1-2). Plaintiff also included seven numbered claims in that motion that attempt to tie individual defendants to his various claims, specifically by failing to stop the violation of his rights after he filed grievances.[4] (*Id.* at 3-11). Additionally, plaintiff filed a supplement that included grievances he has submitted at Black Hawk County Jail. (Doc. 6). In his last amendment, plaintiff seeks to add Black Hawk County, Black Hawk County Sheriff's Office, and Pathways Behavioral Solutions as defendants and add claims that: (1) defendants violate the First Amendment with "a policy and practice of not allowing detainees to order magazines and they restrict what books detainees can have sent in;"

[4] Plaintiff has not sought leave to add Lieutenant McDonald as a defendant but includes him in his factual assertions.

(2) defendants violate the Fourteenth Amendment, Equal Protection Clause, and the Americans with Disabilities Act by not allowing maximum security detainees in A-Pod to attend drug and alcohol classes in the jail library; and (3) defendants violate the First Amendment and the Fourteenth Amendment by having a policy and practice of not allowing maximum security detainees in A-Pod to attend religious services in the jail library. (Doc. 8, at 1, 3-4).

Under Federal Rule of Civil Procedure 15(a)(2), a party may amend a pleading prior to trial with leave of court. Allowing amendment of pleadings is improper if the motion to amend involves "undue delay, bad faith, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of the amendment." *Popoalii v. Correctional Medical Services*, 512 F.3d 488, 497 (8th Cir. 2009). "The court should freely give leave [to amend] when justice so requires." FED. R. CIV. P. 15(A)(2). "It is well-established that an amended complaint supercedes an original complaint and renders the original complaint without legal effect." *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000). Plaintiffs, including those proceeding pro se, must comply with the filing requirements as set out in the Local Rules for the Northern District of Iowa. Local Rule 15 provides:

> A party moving to amend or supplement a pleading pursuant to Federal Rule of Civil Procedure 15(a)(2) must describe in the motion the changes sought, and must electronically attach to the motion and file under the same docket entry the proposed amended or supplemented pleading . . .. An amended or supplemented pleading, whether filed as a matter of course pursuant to Federal Rule of Civil Procedure 15(a)(1) or as an electronic attachment to a motion, must not, except by leave of court, incorporate any prior pleading by reference, but must reproduce the entire new pleading. If a motion to amend or supplement a pleading is granted, the Clerk of Court will detach and docket the proposed pleading.

LR 15.

Generally, multiple defendants may be joined in one lawsuit only if the claims against them: (1) arise "out of the same transaction, occurrence, or series of transactions

or occurrences"; and (2) involve "any question of law or fact common to all defendants." FED. R. CIV. P. 20(a)(2); *see also* FED. R. CIV. P. 21 (providing that a court may sua sponte "add or drop" an improperly joined party or "sever" any claim); *Stephens v. Does*, 777 Fed. App'x 176, 177 (8th Cir. 2019) (affirming dismissal without prejudice of several unrelated claims). A prisoner cannot attempt to defeat the filing fee requirements of Section 1915 by joining unrelated and legally distinct claims in one lawsuit. *See Bailey v. Doe*, 434 F. App'x 573, 573 n.1 (8th Cir. 2011) (affirming severance of a prisoner's complaint into three separate actions and obligating him to pay three separate filing fees).

Some claims plaintiff seeks to add fall within the general ambit of conditions of confinement claims asserting that detainees held in A-Pod are afforded fewer privileges than those housed in general population. Such claims relate to restrictions on detainees in A-Pod that do not allow them to attend drug and alcohol classes and religious services in the library. The Court **grants** plaintiff's motion to amend to add those claims. The Court also will allow plaintiff to add Sergeant Nai and Sergeant Stainbrook as defendants. However, the Court **denies** plaintiff's request to add Black Hawk County, Black Hawk County Sheriff's Office, and Pathways Behavioral Solutions as defendants because they are not proper defendants in a Section 1983 suit and adding them to the case would be futile. The other claims plaintiff seeks to add, specifically his claims that all messages in CIDNET are stored and reviewed and that defendants are violating the First Amendment by limiting books and not allowing any detainees to order magazines, are entirely unrelated and legally distinct from his conditions of confinement claim. (Doc. 4-1, at 2; Doc. 5, at 1-2; Doc. 8, at 3). For that reason, the Court **denies** leave to add those claims. If plaintiff wishes to pursue those claims he must bring them in a separate case.

In addition, plaintiff seeks leave to add a claim challenging the treatment of a fellow detainee at Black Hawk County Jail who plaintiff alleges is in solitary confinement

for a protracted period. Plaintiff also challenges the general policy of long periods of solitary confinement for mentally ill detainees. (Doc. 8, at 4; Doc. 9). A prisoner does not have standing to bring claims on behalf of other prisoners if he does not have standing to bring the claim on his own behalf. *Sabers v. Delano,* 100 F.3d 82, 84 (8th Cir. 1996) (prisoners cannot bring claims on behalf of other inmates); *see also Meis v. Gunter,* 906 F.2d 364, 367-68 (8th Cir. 1990); *Miner v. Brackney,* 719 F.2d 954, 956 (8th Cir. 1983) (per curiam). Plaintiff does not allege he was placed in solitary confinement. Accordingly, the Court **denies** plaintiff's request to amend his complaint to add a claim on behalf of other inmates.

2. Plaintiff's Placement in A-Pod

Plaintiff alleges that defendants violated his due process rights through a classification system that placed him in A-Pod as a pretrial detainee. Plaintiff asserts that he was immediately placed in A-3, but after review dates and good behavior he was moved to general population. (Doc. 1, at 16). He states that later, after involvement in a fight, he was placed in A-2 with thirty days of disciplinary time, A-3 for two weeks after that, and then general population for one day after which he was returned to A-1 on maximum security status. (*Id.*; Doc. 6, at 7). Defendant Neff noted in a grievance response that "your refractive behavior has indicated you are a maximum security inmate" but he would be moved to general population "when we feel it is appropriate (and safe) to do so. . . . This is not a disciplinary sanction; this is a classification." (Doc. 6, at 7).

To show a violation of the Fourteenth Amendment's due process clause, a plaintiff first must demonstrate a deprivation of life, liberty, or property. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). Only then can the plaintiff seek to invoke the procedural protections of the due process clause. *Id.* at 224; *see also Smith v. McKinney*, 954 F.3d 1075, 1079 (8th Cir. 2020) ("Once a liberty interest is established, the next question is what process is due."). "[T]he Due Process Clause does not protect every change in the

conditions of confinement having a substantial adverse impact on the prisoner." *Sandin v. Conner*, 515 U.S. 472, 478 (1995). Instead, due process is only implicated if the conditions impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 484. *See Ballinger v. Cedar Cty.*, 810 F.3d 557, 562 (8th Cir. 2016) (holding prisoner who spent approximately one year in isolation, limited shower access, social interaction, telephone or exercise was not atypical or significant deprivation under *Sandin*).

An inmate has neither a protectible property nor liberty interest in his custody classification. *Hartsfield v. Dep't of Corr.*, 107 Fed. App'x 695, 696 (8th Cir. 2004) (per curiam) ("we agree with the district court that [plaintiff] failed to state a due process claim, as he has no liberty interest in a particular classification and his segregation did not impose an atypical and significant hardship."); *Madewell v. Roberts*, 909 F.2d 1203, 1207 (8th Cir. 1990) (stating inmates have no protected liberty interest in their classification). "Prisoner classification is not generally protected by due process. Due process is not implicated by classification systems with fewer privileges." *McGhee v. Waddle,* No. 4:18-CV-00260-RP-CFB, 2018 WL 10229963, at *2 (S.D. Iowa Sept. 17, 2018) (denying due process claim about policy that bars prisoner from advancing to a higher status within 90 days of a major disciplinary report); *see also Madole v. Dorney,* No. 2:20-CV-02239, 2021 WL 499038, at *6 (W.D. Ark. Feb. 10, 2021) ("Discretionary decisions made in connection with inmate classification or housing implicates no liberty interest."); *Blair-Bey v. Iowa*, 732 Fed. App'x 488, 488 (8th Cir. 2018) (per curiam) (citing *Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976)) (stating there is no due process protection for prisoner classification). An inmate therefore cannot invoke procedural due process protections within that classification system. *See Walling v. Simmons,* No. CIV. A. 94-3398-GTV, 1998 WL 229541, at *3-4 (D. Kan. Apr. 8, 1998), *aff'd*, 156 F.3d 1245 (10th Cir. 1998) ("Because plaintiff had no protected liberty interest in his minimum custody classification, he was not entitled to any particular process before his

reclassification."); *see also Moody v. Hardy,* No. 407CV035-P-D, 2007 WL 1610791, at *3 (N.D. Miss. June 1, 2007). Plaintiff does not have a protected interest in his classification and therefore is not entitled to due process protections when assigned to a particular category. Accordingly, the Court **dismisses** plaintiff's claim for failure to state a cognizable claim.

3. Conditions of Confinement

Plaintiff also challenges several restrictions that Black Hawk County Jail places on those inmates and detainees housed in the maximum security A-Pod, but not those individuals in general population. Plaintiff argues that "[p]aramount to this claim here . . . [is the] unfair and unconstitutional policy of not allowing 'maximum security' inmates on A-1 and A-3 any access whatsoever to commissary food and beverage items." (Doc. 1, at 14). Plaintiff asserts that "[i]nmates in general population receive many privileges that A-1 + A-3 'maximum security' inmates do not." (*Id.*).

Plaintiff initially lists the privileges as access to tablets, food and drink items, more freedom outside their cells, and television. (*Id.*). However, he later contests various privileges restricted from A-Pod in additional claims, including cleaning equipment, drug and alcohol classes, and religious services. A pro se litigant "is not excused from complying with procedural rules, including Federal Rule of Civil Procedure 8, which requires a short and plain statement showing the pleader is entitled to relief, and that each allegation in the pleading be simple, concise, and direct." *Cody v. Loen*, 468 Fed. App'x 644, 645 (8th Cir. 2012) (unpublished per curiam) (citation omitted). Plaintiff does not tie these allegations about various restrictions to particular defendants. Rather, he directs his claims generally against every defendant. *See Tatone v. SunTrust Mortgage, Inc.*, 857 F. Supp. 2d 821, 831 (D. Minn. 2012) ("A complaint which lumps all defendants together and does not sufficiently allege who did what to whom, fails to state a claim for relief because it does not provide fair notice of the grounds for the claims made against a particular defendant."); *Boggs v. Am. Optical Co.*, No. 4:14-CV-1434-CEJ, 2015 WL

300509, at *2 (E.D. Mo. Jan. 22, 2015) ("A 'shotgun pleading' or 'kitchen sink pleading' in which a plaintiff asserts every possible cause of action against a host of defendants for actions over a prolonged period . . . but without facts specific enough that those defendants can respond to the allegations does not comport with even the most generous reading of Rule 8(a)."). Plaintiff's various filings include scattershot comments and complaints about a multitude of issues he has with the conditions of his confinement. However, the Court will not "mine" the complaint to try to make those comments into a properly plead allegation. Rather, the Court will address those restrictions he most clearly challenges.

Because plaintiff is a pretrial detainee, his constitutional claims are analyzed under the Fourteenth Amendment's due process clause, rather than the Eighth Amendment. *Owens*, 328 F.3d at 1027. The Supreme Court has determined that the government may detain defendants before trial and "subject [them] to the restrictions and conditions of [a] detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution." *Bell v. Wolfish*, 441 U.S. 520, 536-37 (1979); *see Butler v. Fletcher*, 465 F.3d 340, 344 (8th Cir. 2006) ("In evaluating the constitutionality of conditions or restrictions of pretrial detention . . . the proper inquiry is whether those conditions amount to punishment of the detainee.").

Initially a court considers "whether a given imposition is of a de minimis level . . . with which the Constitution is not concerned." *Kemp v. Black Hawk Cnty. Jail*, No. C15-2094-LRR, 2017 WL 581316, at *8–10 (N.D. Iowa Feb. 13, 2017), *aff'd sub nom. Kemp v. Waterloo Police Dep't*, 700 Fed. App'x 558 (8th Cir. 2017) (citation omitted). If it is of a constitutional concern then the court considers whether it "amounts to punishment in the constitutional sense." *Id.* There are two ways to establish that conditions rise to the level of punishment. First, a plaintiff can show that his or her conditions of confinement were punitive by demonstrating an express intent to punish. *Stearns v. Inmate Services Corp.*, 957 F.3d 902, 907 (8th Cir. 2020). Second, in the

absence of an express intent to punish, a plaintiff can "also show that the conditions were not reasonably related to a legitimate governmental purpose or were excessive in relation to that purpose." *Id.* If conditions are arbitrary or excessive, it can be inferred that the purpose of the governmental action is punishment. *Id.* "Punishment that 'deprive[s] inmates of the minimal civilized measures of life's necessities' is unconstitutional." *Owens*, 328 F.3d at 1027 (citation omitted). "However, not every disability imposed during pretrial detention amounts to punishment in the constitutional sense." *Smith v. Copeland*, 87 F.3d 265, 268 (8th Cir. 1996). In addition, the Eighth Circuit has applied the deliberate indifference standard when the pretrial detainee's claim is "ground[ed] in principles of safety and well-being." *Butler*, 465 F.3d at 344. To that end, the Eighth Circuit has held "that deliberate indifference is the appropriate standard of culpability for all claims that prison officials failed to provide pretrial detainees with adequate food, clothing, shelter, medical care, and reasonable safety." *Id.* at 345.

Plaintiff first contends that it is unconstitutional not to allow detainees housed in the maximum-security A-Pod to purchase or possess food and beverage commissary items.[5] (Doc. 1, at 17). Plaintiff asserts that, unlike those housed in general population, individuals housed in A-Pod may only order hygiene items, paper and envelopes, and some medical items. (*Id.*). The Eighth Circuit has stated that persons in confinement have no constitutional right to purchase snacks or gifts from the commissary or similar setting. *Tokar v. Armontrout*, 97 F.3d 1078, 1083 (8th Cir. 1996) ("[W]e know of no constitutional right of access to a prison gift or snack shop."). Other courts have agreed. *See, e.g., Blake v. Moore*, 16-CV-2078, 2018 WL 3745826, at *8 (W.D. Ark. Aug. 7, 2018) ("When a prison provides for an inmate's basic necessities, he has 'no protected property or liberty interest in commissary privileges.'") (quoting *Scott v. Burl*, 2018 WL

[5] Plaintiff does not argue that he is receiving inadequate food such that his health is suffering. Rather, he argues that he is entitled to the same privilege of purchasing additional food and beverages from the commissary that general population enjoys.

1308963, at *6 (E.D. Ark. Feb 2, 2018)); *Gibson v. McEvers,* 631 F.2d 95, 98 (7th Cir. 1980) (a denial of a prisoner's commissary privileges does not implicate due process); *Partee v. Cain,* No. 92 C 4838, 1999 WL 965416, at *9 (N.D. Ill. Sept. 30, 1999) (citing *Campbell v. Miller,* 787 F.2d 217, 222 (7th Cir. 1986) (finding no Constitutional or statutory right to commissary privileges)); *Mitchell v. City of New York,* No. 10 Civ. 4121, 2011 WL 1899718, at *2 (S.D.N.Y. May 13, 2011) (finding no constitutional right to access the prison commissary); *Vega v. Rell*, 2011 WL 2471295, at *25 (D. Conn. June 21, 2011) ("Inmates have no constitutional right to purchase items from the prison commissary."). Plaintiff has no right to purchase food from the commissary while confined at Black Hawk County Jail, nor does he have a constitutional right to receive food from outside sources. Similarly, plaintiff has not sufficiently alleged a constitutional violation from Black Hawk officials' practice of temporarily taking and storing previously purchased commissary items for the duration of an individual's placement in A-Pod.

Plaintiff also contends that Black Hawk County Jail is not providing sufficient cleaning supplies to those individuals housed in the maximum security A-Pod because they do not provide brooms, mops, and toilet brushes for individuals to clean their cells. (Doc. 1, at 20). Plaintiff asserts that the jail only provides rags and that is insufficient and requires detainees and inmates to get on their hands and knees to clean. Plaintiff attaches a grievance he filed as to the lack of brooms, mops, and toilet brushes. (Doc. 6, at 6). The officer responding to plaintiff's grievance first notes that "materials left in A-Pod specifically have been used as weapons or been the subject of an inmate's anger and been destroyed." (*Id.*). Another officer noted that "[w]e do restrict the use of certain items in A pod that could be used as weapons. We have had previous issues of inmates using them in threatening manners." (*Id.*) Defendant Neff finally notes that "we used to have all those supplies more readily available in A Pod but they were removed after being used as weapons. I understand your concerns, and I will work with my staff to find a solution that is both safe and sanitary." (*Id.*).

Plaintiff has pled no facts showing how Black Hawk County Jail's practice of not providing brooms, mops, and toilet brushes expressed an intent to punish. Nor has he alleged sufficient facts to show that practice was not reasonably related to a legitimate goal or, if it was so related, whether it is excessive as compared to that legitimate goal.

Similarly, plaintiff's claim fails when considered in the context of deliberate indifference. Even though prisoners have a right to hygienic conditions, to state a claim, a plaintiff must allege more than a dirty conditions. *See Beaulieu v. Ludeman*, 690 F.3d 1017, 1045 (8th Cir. 2012) (applying the deliberate indifference standard to detainee sanitation claims). Pretrial detainees "are entitled to reasonably adequate sanitation, personal hygiene, and laundry privileges, particularly over a lengthy course of time." *Beaulieu*, 690 F.3d at 1045 (quoting *Howard v. Adkison*, 887 F.2d 134, 137 (8th Cir. 1989)). Courts focus on the conditions and length of plaintiff's exposure to these conditions. *Smith*, 87 F.3d at 268-69 (no constitutional violation when pretrial detainee was subjected to overflowing toilet for four days). A review of this claim under the deliberate indifference standard fails because, to prove deliberate indifference, a plaintiff must allege a serious risk of harm. Plaintiff's claim that his floor is dirty and he has to get on his hands and knees to clean it with a rag include no such allegations. *See Cook v. Long*, 05-CV-211-HEA, 2009 WL 1578924, at *4 (E.D. Mo. June 3, 2009) (holding plaintiff failed to state a claim based on the refusal to give plaintiff in administrative segregation a mop or gloves). Accordingly, this claim is **denied**.

Next, plaintiff challenges the practice of not allowing anyone from A-Pod to participate in the Pathways drug and alcohol classes in the library. (Doc. 4-1, at 1). In response to plaintiff's grievance about this practice, Sergeant Stainbrook responded that "[i]nmates in A-pod are restricted in what they are allowed to do, due to security issues. We cannot/will not compromise the safety and security of this jail to accompany MAX inmates to all of these programs." (Doc. 6, at 4). Another officer noted that "having max inmates in programs can cause issues with the inmates and volunteers. Finally, you

have to apply to be in the programs." (*Id.*). Plaintiff fails to allege facts demonstrating either an intent to punish or an excessive or arbitrary restriction in barring maximum security individuals from being transported to the library to attend classes with external volunteers. The same is true of the practice of not allowing individuals housed in A-pod to go to the library for religious services. *See Kemp*, 2017 WL 581316, at *10 (upholding constitutionality of policies in maximum security related to commissary food and drink, religious observance, access to reading materials; "Regarding the other pretrial-detention conditions or restrictions that the plaintiff experienced while confined in a maximum security cell, all of them are reasonably related to legitimate governmental objectives.")

Plaintiff's assertions that the restriction violates the Equal Protection Clause and the Americans with Disabilities Act are frivolous. (Doc. 8, at 3). The Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101, et seq., protects individuals from being discriminated against because of a disability. Here, plaintiff does not set forth his disability or allege how any defendant discriminated against him based on that disability. "To state a claim under the Equal Protection Clause, a § 1983 plaintiff must allege that a state actor intentionally discriminated against the plaintiff because of membership in a protected class." *Nolan v. Thompson*, 521 F.3d 983, 989 (8th Cir. 2008). Plaintiff here does not identify a protected class of which he is a member. If a plaintiff does not assert that he is a member of a protected class as in this case, he must prove that he was "treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Plaintiff makes no such factual allegations.

For all these reasons, plaintiff's claims fail and must be dismissed.

IV. MOTION TO APPOINT COUNSEL

Plaintiff filed a motion (Doc. 2) to appoint counsel. That motion is **denied** as moot.

V. CONCLUSION

For the reasons stated:

1. Plaintiff's motion to recuse (Doc. 7) is **denied**;
2. Plaintiff's motions and supplements to amend (Docs. 4, 5, 6, 8, 9) are **granted-in-part** and **denied-in-part** as set out above;
3. After an initial review, plaintiff's complaint is **dismissed** because it fails to state a claim upon which relief may be granted;
4. Plaintiff's motion to appoint counsel (Doc. 2) is **denied** as moot.

IT IS SO ORDERED this 9th day of August, 2023.

C.J. Williams
United States District Judge
Northern District of Iowa